

KEYWORD: Foreign Influence

DIGEST: This 49-year-old software engineer was born in the People's Republic of China (PRC), came to the U.S. in about 1990, and became a U.S. citizen in 2000. His parents and in-laws still reside in the PRC. He visited the PRC to see them in 1998 and 2000. They are all elderly and unaware of what Applicant's job position involves. Applicant is married to an American and has a daughter born here. He has established his close ties to the U.S. and the absence of any ties to the PRC beyond caring for his parents. Mitigation has been established. Clearance is granted.

CASENO: 03-14258.h1

DATE: 01/06/2005

DATE: January 6, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-14258

**DECISION OF ADMINISTRATIVE JUDGE**

**BARRY M. SAX**

**APPEARANCES**

## **FOR GOVERNMENT**

Rita C. O'Brien, Esquire, Department Counsel

## **FOR APPLICANT**

*Pro Se*

## **SYNOPSIS**

This 49-year-old software engineer was born in the People's Republic of China (PRC), came to the U.S. in about 1990, and became a U.S. citizen in 2000. His parents and in-laws still reside in the PRC. He visited the PRC to see them in 1998 and 2000. They are all elderly and unaware of what Applicant's job position involves. Applicant is married to an American and has a child born here. He has established close ties to the U.S. and no ties to the PRC, beyond caring about his parents. Mitigation has been established. Clearance is granted.

## **HISTORY OF THE CASE**

On April 26, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons

why DOHA could not make the preliminary affirmative finding required under the Directive that it

is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and

determine whether a clearance should be granted, denied or revoked.

By a reply to the SOR that was undated, but date stamped April 26, 2004, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge on the written record, i.e.,

without a hearing. Department Counsel issued a File of Relevant Material (FORM) on August 12, 2004. The Form instructed Applicant that any response to the FORM had to be submitted within 30 days of its receipt by Applicant. Any response was due by September 16, 2004. Applicant timely responded to the FORM on September 1, 2004. The matter was assigned to me for resolution on September 13, 2004.

### **FINDINGS OF FACT**

Applicant is a 49-year-old software engineer for a defense contractor. The April 25, 2004 SOR contains two allegations under Guideline B (Foreign Influence). In his May 2, 2004 Response to the SOR, Applicant *admits* the language of both allegations in the SOR, along with lengthy explanations. The admitted allegations are accepted and incorporated herein as Findings of Fact.

After considering the totality of the evidence derived from the FORM and its attachments, including Applicant's responses to the SOR and the FORM, I make the following additional FINDINGS OF FACT as to the status, past and present, of each SOR allegation:

#### Guideline B (Foreign Influence)

1.a. - Applicant's father (84), mother (81), brother, father-in-law (78) and mother-in-law (74) are citizens of the People's Republic of China (PRC) and reside in that country. His father is a general manager of a privately owned electronics company in Taiwan. His mother is a housewife (Response to FORM). Both are in fragile health and unable to travel. Otherwise, Applicant would have sought to move them to the United States (Response to the SOR). His brother works in a textile company.

1.b. - Applicant traveled to the PRC from May 17, 1998 to June 7, 1998, and from May 24, 2000 to June 18, 2000. He was accompanied by his wife and children to visit both sets of parents /grandparents.

Applicant has attended university and worked in the computer field in the U.S. for about 15 years and has been a U.S. citizen since 2000. He renounced his PRC citizenship when he was naturalized and has been a U.S. citizen only since that time.

### **POLICIES**

Each adjudicative decision must also include an assessment of nine generic factors relevant in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowing participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

Because each security case presents its own facts and circumstances, it should not be assumed that the factors cited above exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable financial judgment and conduct. Because Applicant chose to have this matter decided without a hearing and without submitting any additional information in response to the FORM, all credibility determinations and findings of fact are necessarily based entirely on the contents of the FORM and applicant's response.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of

whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. In reaching the fair and impartial overall common sense determination based on the "whole person" concept required by the Directive, the Administrative Judge is not permitted to speculate, but can only draw those inferences and conclusions that have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make

critical judgments as to the credibility of witnesses, here based solely on the written record.

In the defense industry, the security of classified information is entrusted to civilian workers who must be counted on to safeguard classified information and material twenty-four hours a day.

The Government is therefore appropriately concerned where available information indicates that an applicant for a security clearance, in his or her private life or connected to work, may be involved

in conduct that demonstrates poor judgment, untrustworthiness, or unreliability. These concerns include consideration of the potential, as well as the actual, risk that an applicant may deliberately

or inadvertently fail to properly safeguard classified information.

An applicant's admission of the information in specific allegations relieves the Government

of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons. If the Government meets its burden (either

by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence

of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

A person seeking access to classified information enters into a fiduciary relationship with the

Government based upon trust and confidence. As required by DoD Directive 5220.6, as amended,

at E2.2.2., "any doubt as to whether access to classified information is clearly consistent with the interests of national security will be resolved in favor of the nation's security."

## CONCLUSIONS

Since this matter is being decided without a hearing, my evaluation is necessarily limited to the contents of the various documents that are found in the case file, the latest of which is Applicant's response to the FORM.

*Guideline B (Foreign Influence)* - The primary concern stated in the SOR is the status of some of Applicant's closest family members as citizens and residents of the PRC. The secondary concern is Applicant's travel to the PRC in 1998 and 2000 to visit his family. In context, I find this second factor, which occurred five to seven years ago, not to be of current security significance.

Keeping in mind that all relevant information in the case file comes from Applicant, I note his emphatic statement that

he believes and feels his primary obligation is to his wife and daughters, who live with him in the United States and are also American citizens (Response to the FORM). He considers himself to be an American citizen only, since renouncing any allegiance to the PRC when he became a naturalized citizen in 2000.

Applicant acknowledges his love for his parents, but suggests that two visits to see them in 15 years "can hardly be considered excessive" (Id.). He acknowledges that it is unlikely, although at least possible, that his parents might be used to coerce him, but that:

[e]ven if this happened, my loyalty is to the United States, which is my home and country. Disclosure of classified information is against the law, and it is a crime. As a citizen, the security of the nation concerns my well being. It is my duty to protect my country. I have built a new life here and raised a growing family

The state of the record shows the only ongoing concern deals with Applicant's relationship with his parents. While any relatives in a foreign country may present a risk, the Directive does not make this factor an automatic bar to holding a security clearance. Fairness and responsible decision-making require an analysis of the entire record and an overall commonsense determination.

The PRC is cited in an official Government document (Item 7) as actively involved in espionage in the United States, meaning that there is higher risk of coercion with relatives in that country. Although the lack of improper pressure and contacts in the past does not mean it will not happen in the future, it is a positive factor that should be considered along with other evidence, including Applicant's statement that his allegiance is to the United States alone and many years of dedicated service to this country. Based on the totality of the record, I conclude (1) that there is minimal risk that Applicant's parents will be pressured into contacting Applicant for improper purposes and (2) even less risk that Applicant would respond to any such contact by agreeing to act against U.S. interests.

### **FORMAL FINDINGS**

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Guideline B (Foreign Influence) ` For the Applicant

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

**DECISION**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Barry M. Sax

Administrative Judge