

DATE: October 30, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-16118

**DECISION OF ADMINISTRATIVE JUDGE**

**JOHN GRATTAN METZ, JR**

**APPEARANCES**

**FOR GOVERNMENT**

Stephanie C. Hess, Esquire, Department Counsel

**FOR APPLICANT**

Jon L. Roberts, Esquire

**SYNOPSIS**

The government's evidence did not establish that Applicant had immediate family members living in the People's Republic of China (PRC). Alternatively, Applicant demonstrated that those family members were not agents of a foreign government or so situated as to provide a point of influence on Applicant. Clearance granted.

**STATEMENT OF THE CASE**

Applicant challenges the 14 September 2004 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of foreign influence concerns. <sup>(1)</sup> On 4 October 2004, Applicant answered the SOR, and requested a hearing. DOHA assigned the case to me 9 December 2005, and I convened a hearing 13 March 2006. DOHA received the transcript 23 March 2006.

**PROCEDURAL ISSUES**

At the hearing, Department Counsel moved to amend SOR 1.c. to correctly reflect Applicant's date of travel to the PRC as 1998, vice the 1996 date alleged. Applicant did not object, and I granted the motion (Tr. 103).

**FINDINGS OF FACT**

Applicant admitted the allegations in SOR 1.a., 1.b., and 1.c. He denied traveling to the PRC in 1996 (SOR 1.c.) or providing financial support to his in-laws (SOR 1.d.) Accordingly, I incorporate his admissions as findings of fact. He is a 34-year-old technical consultant for a defense contractor seeking access to classified information. He held an interim secret clearance until the SOR was issued.

Applicant is a U.S. citizen, born, raised, and educated in the U.S. In 1997, while he was employed as a programmer-analyst in his career field, he was considering what his next career move might be, as he did not want to remain at the same level in his field. He thought that teaching overseas might enhance his resume, as well as expose him to different

cultures. He first looked at Europe, particularly Germany (as he spoke some German), but found no opportunities. While looking at a website devoted to his career field, he saw a posting advertising teaching positions in his career field at a technical university in the PRC. He followed up on the advertisement, and eventually decided to accept an offer to teach one semester in the PRC. However, before traveling to the PRC, he followed the recommendation of a family friend--a retired U.S. Navy rear admiral whose military and post-military careers had been in intelligence--to obtain an informal counter-intelligence briefing from another friend, an FBI agent involved in counter-intelligence issues. The briefing largely addressed avoiding behavior that would put Applicant under potential duress, and reporting any efforts by foreign nationals to elicit information from him.

Applicant's commitment to the university was to teach the spring semester, from approximately February 1998 until June 1998. However, while he was in the PRC, he became romantically involved with a fellow teacher in his department. He extended his contract with the university to teach during the fall semester, through December 1998. They became engaged to be married, and at the end of his contract with the university, Applicant returned to the U.S. even though he did not have a job lined up. Applicant also had to be in the U.S. in order to file an application for a K-1 (fiancé) visa for his fiancé. A K-1 visa permits the holder to enter the U.S. conditioned on marriage within 90 days of entry.

In August 1999, Applicant returned to the PRC to complete the required K-1 visa interview at the U.S. consulate. His fiancé immigrated to the U.S. in September 1999, and they married within a week. end school. They have two children, both native-born U.S. citizens. His wife applied for legal permanent resident status and U.S. citizenship as soon as she was eligible. She became a naturalized U.S. citizen in July 2005. She has her real estate broker's license, and is in graduate school seeking her master's in business administration.

Applicant's in-laws--mother, father, brother--are all citizens and residents of the PRC. Father is a retired municipal railroad employee; mother is a housewife. They live on his pension. Neither speak English. Applicant speaks no Chinese. His wife has telephone contact with her parents about twice a month. Brother is a truck driver who speaks no English. Applicant has virtually no contact with him. Applicant's in-laws have no connection to the government of the PRC and are not politically active in the PRC.

Applicant and his wife own a home in the U.S. All their financial interests are here. They have no intent to return to the PRC to live. Applicant has not been back to the PRC since the K-1 interview in August 1999. The in-laws have visited in the U.S. once. Applicant's spouse sent them money to buy the plane tickets. Other than that, Applicant and his wife provide no support to her parents. He has had no further contact with any of the people he met in the PRC while he was teaching there.

The retired rear admiral considers Applicant absolutely trustworthy. Applicant had no security violations during the period he held an interim clearance. He understands his security responsibilities, particularly the reporting requirements should he be contacted by foreign nationals.

The PRC is a repressive, totalitarian government with foreign policy goals antithetical to the U.S., although it has cooperated with the U.S. in the global war on terrorism in recent years. It has an active, effective intelligence service that targets U.S. intelligence and economic information, and operates against its citizens in the U.S. However, under PRC law, citizens who become naturalized citizens of other countries lose their PRC citizenship.

### **POLICIES AND BURDENS**

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guideline is Guideline B (Foreign Influence).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government. <sup>(2)</sup>

### **CONCLUSIONS**

The government did not establish a Guideline B case. The plain language of the stated concerns and disqualifying factors of Guideline B may (or may not) raise concerns and may (or may not) be disqualifying. This implies that mere citizenship of, or residence in, a foreign country of an immediate family member does not automatically establish the disqualifying conditions precedent to shift the burden to Applicant to mitigate the government's case.

In this case, the evidence establishes that Applicant has no immediate family members living in the PRC. His wife is a U.S. citizen, living in the U.S. His in-laws are not his immediate family members. Further, while it may make sense to presume that his wife has close ties of affection or obligation to her parents and sibling, and even that he has close ties of affection or obligation to his wife, it does not make sense to impute her familial obligations to him--particularly where his contacts with his in-laws are casual and infrequent and burdened by language barriers.

Even if I concluded that the government established a case for disqualification under Guideline B, Applicant's mitigation is established. None of his in-laws is connected to the government of the PRC (the father-in-law's municipal pension is tangential at best). None is an agent of the government of the PRC, and given their retired status, none is positioned to be exploited in such a way as to influence Applicant to disclose classified information. Under these circumstances, I conclude that it is unlikely Applicant can be pressured based on his in-laws living in the PRC. Further, Applicant's travel to the PRC in 1998 and 1999 has no independent security significance under Guideline B, and under the circumstances of this case does not even establish that he has any ties of affection or obligation to anyone living in the PRC. Similarly, his 10-month teaching job in the PRC implicates no disqualifying conditions. I resolve Guideline B for Applicant.

### **FORMAL FINDINGS**

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraph a: For Applicant

Subparagraph b: For Applicant

Subparagraph c: For Applicant

Subparagraph d: For Applicant

Subparagraph e: For 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. Clearance granted.

**John G. Metz, Jr.**

## **Administrative Judge**

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated 2 January 1992--amended by Change 3 dated 16 February 1996 and by Change 4 dated 20 April 1999 (Directive).
2. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).