

DATE: December 27, 2004

In Re:

SSN: -----

Applicant for Trustworthiness Determination

ADP Case No. 03-16839

ECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant mitigated security concerns over foreign influence raised because her elderly mother and two brothers are citizens of China. It is improbable that foreign pressure on her mother or brothers would create a situation that could result in the compromise of classified information as Applicant attests she would report any attempt to her security officer. Eligibility is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on November 21, 2003. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant eligibility to Applicant to occupy an information systems position designated ADP II to support a contract with the Department of Defense (DoD).⁽¹⁾ The SOR alleges specific concerns over foreign influence (Guideline B) in paragraph 1. Applicant replied to the SOR allegations in an Answer notarized on November 25, 2003, and requested a decision without a hearing.

The case was assigned to Department Counsel who prepared a File of Relevant Material (FORM) on March 30, 2004, which was forwarded to Applicant. She received it on April 8, 2004, but submitted no response by May 8, 2004, within the thirty day deadline outlined in the transmittal letter. On May 19, 2004, the case was assigned to me.

FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following additional Findings of Fact:

Applicant, a 51-year-old employee, began working for a defense contractor (Employer #1) in State #1 in March 2002. In April 2002 she completed a Public Trust Position Application (Standard Form 85P). (Exhibit 4)

Applicant emigrated to the U.S. from China in August 1987 in order to do graduate work. She completed an MS in computer science in August 1997 from a university in State #2. (Exhibit 4)

Applicant became a naturalized U.S. citizen in April 2000 and was issued a U.S. passport. After she became a U.S. citizen, she renounced her Chinese citizenship. She is single. (Exhibits 4, 5)

Foreign Influence

When Applicant completed her SF 85P forms, she disclosed that her parents are citizens of the Peoples Republic of China and that she visited her mother there in 1998, 1999, and in 2001. In April 2003 she disclosed that her father died in 1997. Her mother and two brothers are citizens of China. Another brother is a U.S. citizen. She has limited contact with her mother by telephone on the average of once per week. She has infrequent contact with her two brothers. She also has minimal contact with classmates from China who are now U.S. citizens. She has never observed any indication of hostile interests from any person in China. She intends to follow all company policies and reporting requirements. She is under no pressure or duress. She never received any requests or threats by a foreign national that should have been report or might have been of security concern. (Exhibits 4, 5) From October 12 to November 9, 2003, she again visited her 85-year-old mother in China. (Answer)

The Government provided for Administrative Notice two documents: a U.S. Department of State Consular Information Sheet on China and a Background Note: China. (Exhibits 6, 7)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below :

Guideline B - Foreign Influence

The concern: A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are: (1) not citizens of the United States or (2) may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Conditions that could raise a security concern and may be disqualifying include:

1. An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country;
3. Relatives, cohabitants, or associates who are connected with any foreign government;

Conditions that could mitigate security concerns include:

1. A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States;
3. Contact and correspondence with foreign citizens are casual and infrequent;

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Applicant mitigated the Government's security concerns over possible foreign influence raised by Applicant's close ties of affection to citizens of China, her elderly mother and two brothers. The security concern under Guideline B, Foreign Influence, is that a security risk may exist when an individual's immediate family. . . and other persons to whom he may be bound by affection, influence, or obligation are: (1) not citizens of the United States, (3) or have relatives who are connected with any foreign government who may be subject to duress. While I have considered these concerns, I conclude Applicant has presented evidence to meet the burden those circumstances present. These security concerns are mitigated by the fact that Applicant's only family ties to China are her elderly mother with whom she has limited contact and intermittent visits and her brothers with whom she has infrequent contact. Thus, any risk of foreign duress or influence on Applicant and/or his immediate family would appear to be slight and clearly manageable. Moreover, Applicant made evident that at any hint of any coercion or pressure on herself or her family, she would immediately report such coercion to the corporate security officer. Thus, I find there is no substantial likelihood that she would be subject to duress merely because of these family ties. While she traveled to China, that travel alone does not raise a security concern. Her most recent trip was with her U.S. passport which she fully disclosed.

Security clearance decisions are predictive judgments about an applicant's security eligibility in light of the applicant's past conduct and present circumstances. *Department of Navy v. Egan*, 484 U.S. 518, 528-29 (1988). Contacts with citizens of other countries are relevant to security determinations only if they make an individual potentially vulnerable to coercion, exploitation, or pressure through threats against those foreign relatives. Acts indicative of foreign influence warrant careful scrutiny. After considering the Adjudicative Process factors and the Adjudicative Guidelines, I conclude these ties are not of such a nature as to create any tangible risks of undue pressure on Applicant, so foreign influence security concerns are mitigated. Thus, I resolve SOR paragraph 1 and subparagraphs 1.a. and 1.b. in Applicant's favor.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline B FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: 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 eligibility for a position of trust for the Applicant.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by DoD Directive 5200.2-R., paragraph 3-614, and DoD Directive 5200.6, paragraph 2.4, dated January 2, 1992 (Directives).

