KEY WORD: Foreign influence
DIGEST: Applicant is a 39 year-old, native born United States citizen, and all of his blood relatives, including his 3 year old son, are U. S. Citizens. Applicant's wife, born in the People's Republic of China (PRC), became a U. S. citizen in 2004. Applicant's parents in-law reside with him and his wife in the United States. His contact with his wife's family members who reside in the PRC is extremely limited. The evidence establishes that Applicant is not vulnerable to foreign influence because of his strong attachment to the U. S., and because his wife's family members are not in a position to be exploited in a way that could force him to choose between loyalty to these family members and his loyalty to the United States. Mitigation has been shown. Clearance is granted.
CASENO: 03-25411.h1
DATE: 07/26/2005
DATE: July 26, 2005
In Re:
<b></b>
SSN:
Applicant for Security Clearance
ISCR Case No. 03-25411
DECISION OF ADMINISTRATIVE JUDGE
MARTIN H. MOGUL
APPEARANCES

### FOR GOVERNMENT

Melvin A. Howry, Esq., Department Counsel

#### FOR APPLICANT

B. Daniel Lynch, Esq.

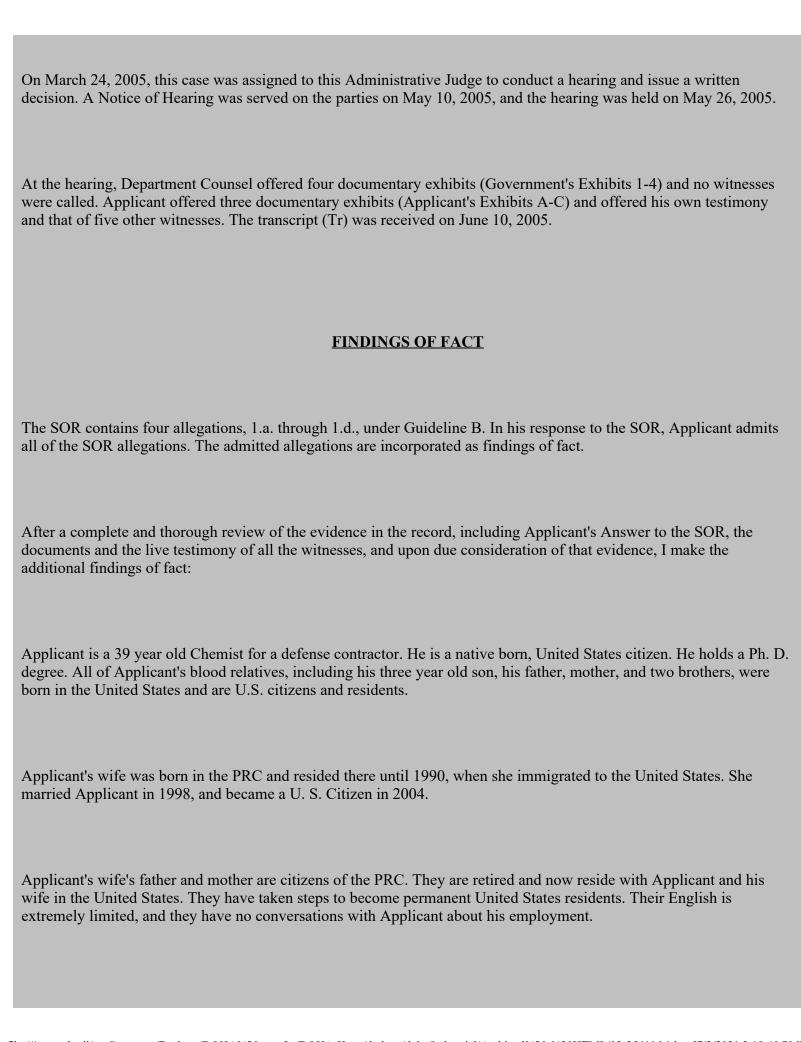
#### **SYNOPSIS**

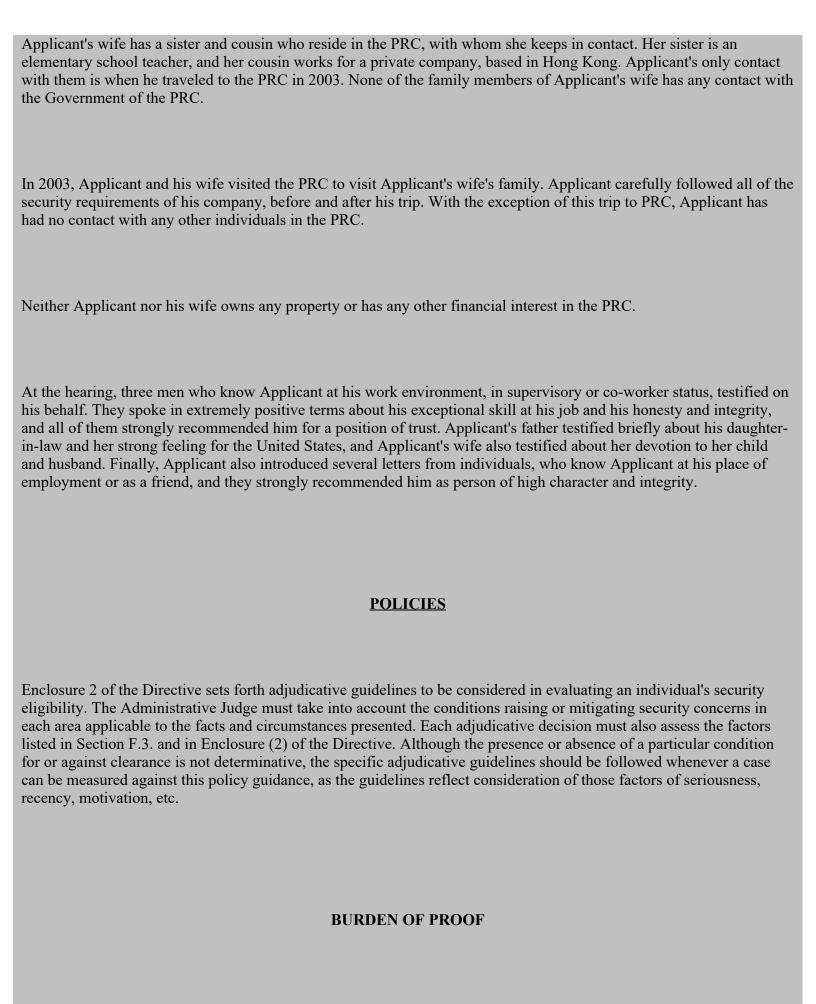
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### **STATEMENT OF THE CASE**

On December 27, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4), issued a Statement of Reasons (SOR) to the Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. The SOR was based on Foreign Influence (Guideline B) concerns because of the foreign residency and citizenship of Applicant's wife's family.

Applicant filed a notarized response on January 10, 2005, to the allegations set forth in the SOR, and requested a hearing before a DOHA Administrative Judge.





Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance. Assessment of an applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of rehabilitation.

A person who seeks access to classified information enters into a fiduciary relationship with

the U.S. Government that is predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability, or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

<u>CONCLUSIONS</u>Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of Applicant, I conclude the following with respect to Guideline B:

Based on the evidence of record, the Government has established an initial reason to deny Applicant a security clearance because of foreign influence. While Applicant's wife is now a United States citizen and resident, her mother and father are citizens of the PRC, and her sister and cousin are a citizen and resident of the PRC. The Chinese citizenship and residency of family members creates the potential for foreign influence that could result in the compromise of classified information because it makes Applicant potentially vulnerable to coercion, exploitation, or pressure. The possession of such ties raises a security concern sufficient to require Applicant to present evidence in rebuttal, extenuation, or mitigation sufficient to meet his burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him. ISCR Case No. 99-0424, 2001 (App. Bd. Feb. 8, 2001). This Applicant has done.

The evidence of existence of immediate family members, who are citizens of and reside in the PRC, a country which is undisputedly hostile to the Government of the United States, comes within Disqualifying Condition (DC) (E2.A2.1.2.1), immediate family members, or persons to whom the individual has close ties of affection or obligation, who are citizens of, or resident in, a foreign country.

However, I conclude that Applicant has mitigated the security concerns, thereby demonstrating that it is clearly consistent with national security to grant him the clearance. This decision is based on several factors. These include the fact that Applicant is a native born United States citizen, who has lived his entire life in the United States, and his only trip to PRC was in 2003. Applicant's wife is now a United States citizen, and all his blood relatives, including his three year old son, his father, mother, and two brothers, were born in the United States and are U.S. citizens. Finally, the

family members, who are of a concern, are related to Applicant's wife and not to Applicant; his parents-in-law now live in the United States with him and his wife, and his contact with his wife's sister ans cousin has been casual and extremely infrequent.

I have determined that Applicant's wife's family do not constitute an unacceptable security risk, and Mitigating Conditions (MC) (E2.A2.1.3.1.), a determination that the immediate family members 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, applies.

After considering all of the evidence of record on Guideline B., I conclude that the mitigating evidence substantially outweighs the evidence supporting the SOR and even in the unlikely event pressure was exerted upon Applicant to compromise classified information, he would resist it, and would report the incident to the proper authorities. Accordingly, Guideline B is found for Applicant.

## **FORMAL FINDINGS**

# Paragraph 1. Guideline B: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: 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.

Martin H. Mogul

Administrative Judge