

DATE: August 22, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-26490

DECISION OF ADMINISTRATIVE JUDGE

DAVID S. BRUCE

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 49 years old and has been employed by a defense contractor as an aircraft mechanic since March 2003. Applicant has been married since 1999, and resides with his wife in Japan. His wife is a citizen of the People's Republic of China (PRC) and has held a U.S. Resident Alien card since February 1, 2002. Applicant's wife's parents, her sister and her sister's husband are all citizens and residents of the PRC. Applicant and his wife maintain regular contact with her family members and they have traveled to the PRC to visit them five times since 1998. Applicant's wife also provides regular financial assistance to her parents. Applicant has failed to mitigate the security concerns under Guideline B pertaining to foreign influence. Clearance is denied.

STATEMENT OF THE CASE

On February 22, 2005, The Defense Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Review Program*, dated January 2, 1992, as amended and modified (Directive), issued a Statement of Reasons (SOR) to Applicant in response to his application for a security clearance. The SOR detailed why DOHA could not preliminarily determine under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's request for a security clearance.

In a sworn statement dated March 1, 2005, Applicant responded to each of the allegations set forth in the SOR, and further represented he did not wish to personally present his case at a hearing. Department Counsel submitted the government's File of Relevant Materials (FORM) on April 21, 2005, which contained eight itemized documents in support of the allegations. The complete file was forwarded to Applicant and received by him on May 9, 2005. Applicant was given thirty days to file objections to the government's case set forth in the FORM, and to submit materials in refutation, extenuation, or mitigation in support of his position. On May 17, 2005, Applicant submitted a written letter to Department Counsel together with supporting documentation further qualifying his responses. Department Counsel did not object to the additional information submitted by Applicant being included as a part of the file, and the case was assigned to me on June 8, 2005.

FINDINGS OF FACT

Applicant has admitted some of the factual allegations of subparagraphs 1.a. through 1.e. pertaining to certain foreign influence issues under Guideline B, but denies certain other factual allegations of the SOR. The admissions are incorporated herein by reference.

After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant is 49 years old and married his current wife in 1999. He was previously married in 1978 until divorced in 1991, and has an adult son with his first wife. He and his present wife have a daughter, age 4, and the family resides in Japan. Applicant has lived in Japan continuously from at least 1991. [\(1\)](#)

Applicant served honorably in the U.S. Navy for a total of 20 years, first having served from 1975 to 1979, and then upon reenlistment, from 1981 to 1997. [\(2\)](#) He has been employed in his current position with a defense contractor as an aircraft mechanic since March 2003, and he has worked continuously for other federal contractors in similar positions since his retirement from the Navy in 1997. [\(3\)](#) Applicant has previously held defense department secret security clearances in 1981 and 1991. [\(4\)](#)

Applicant's wife is 36 years old and is a citizen of the People's Republic of China (PRC). While she and Applicant presently reside with their daughter in Japan, she has also been a resident alien of the United States since February 1, 2002, [\(5\)](#) and she intends one day to become a naturalized U.S. citizen. [\(6\)](#) According to Applicant, his wife has traveled to the U.S. two times with approval of the U.S. Immigration and Naturalization Service. [\(7\)](#)

His wife's immediate family, consisting of her mother, father and sister, are all citizens of the People's Republic of China. Applicant asserts that none of them are members of the Communist party. [\(8\)](#) His wife's parents live in Shanghai, are both over the age of 60, and intend to remain in the PRC. His wife's sister is about 31 years old and also lives in Shanghai, and is married to a PRC National. No personal, employment, or other information of any kind was provided by Applicant about his wife's brother-in-law. [\(9\)](#)

The family has traveled to the PRC at least five times since 1998 for visits with his wife's relatives. Applicant's mother-in-law and father-in-law have also visited with Applicant and his family in Japan in 2001 and 2003. His wife communicates with her parents about every other day by telephone, and with her sister about two times per month. Applicant himself speaks incidentally to his father-in-law about once a week in basic English and Japanese, and to his sister-in-law about once a month. He does not speak with any other members of his wife's family due to his inability to speak Chinese. [\(10\)](#)

His wife's sister owns the rights to an apartment in Shanghai where the parents reside. [\(11\)](#) Applicant's wife also provides routine financial assistance to them for assistance with their on-going living expenses. Applicant submits he and his wife own no property of any kind in the PRC, and no information has been submitted by the government which indicates otherwise.

The People's Republic of China is the most populous country in the world and is controlled by the Chinese Communist Party. The country has been undergoing rapid and profound economic and social change and development, [\(12\)](#) but also has a history of aggressive intelligence gathering endeavors directed at the United States. Chinese security personnel may place foreign visitors with access to advanced proprietary technology under surveillance without their consent or knowledge. [\(13\)](#) Reports issued by the CIA and FBI indicate that China has increased its military spying against the United States while at the same time using political influence programs to manipulate U.S. policy. The U.S. military and U.S. private corporations are the primary targets of Chinese intelligence. Chinese companies play a significant role in the country's pursuit and acquisition of secret U.S. technology. [\(14\)](#)

POLICIES

Enclosure 2 of the Directive, *Adjudicative Guidelines For Determining Eligibility For Access To Classified Information*, sets forth the criteria which must be evaluated when determining security clearance eligibility. The adjudicative guidelines specifically distinguish between those factors that are considered in denying or revoking an employee's request for access to classified information (Disqualifying Conditions), and those factors that are considered in granting an employee's request for access to classified information (Mitigating Conditions). By acknowledging that individual circumstances of each case are always different, the guidelines provide substantive standards to assist an administrative judge in reaching fair and impartial common sense decisions.

The adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at meritorious decisions. Section E2.2. of Enclosure 2 of the Directive describes the essence of scrutinizing all appropriate variables in a case as the "whole person concept." In evaluating the conduct of the applicant and the circumstances in any case, the factors an administrative judge should consider pursuant to the concept are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable 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 the 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.

Protecting national security is the paramount concern in reaching a decision in any case, and is dependent upon the primary standard that issuance of a clearance must be clearly consistent with the interests of national security.

Granting an applicant's clearance for access to classified information is predicated on a high degree of trust and confidence in the individual. Accordingly, decisions under the Directive must include consideration of not just the *actual* risk of disclosure of such information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information in any aspect of his or her life. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information. ⁽¹⁵⁾ The decision to deny a security clearance request to an individual is not necessarily a determination of the loyalty of the applicant. ⁽¹⁶⁾ It is merely an indication the applicant has not met the strict guidelines established by the Department of Defense for issuing a clearance.

In accordance with the Directive, the government bears the burden of proof in the adjudicative process to first establish conditions which indicate it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. ⁽¹⁷⁾ When the government meets this burden, the corresponding heavy burden of rebuttal then falls on the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the position of the government, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance. ⁽¹⁸⁾

Upon consideration of all the evidence submitted in this matter, the following adjudicative guideline is appropriate for evaluation with regard to the facts of this case:

Guideline B - A security risk may exist when an applicant's immediate family, or other persons to whom he may be bound by affection, influence, or obligation, are not citizens of the U.S. or 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.

The Guideline B disqualifying and mitigating conditions, either raising security concerns or mitigating security concerns applicable to this case, are set forth and discussed in the Conclusions section below.

CONCLUSIONS

I have thoroughly considered all the facts in evidence in this case and the legal standards required by the Directive. The government has established a *prima facie* case for disqualification under Guideline B - Foreign Influence.

Considering all the evidence, Foreign Influence Disqualifying Conditions (FI DC) E2. A2.1.2.1. (*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*), FI DC E2.A2.1.2.2. (*Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists*), and FI DC E2.A2.1.2.8. (*A substantial financial interest in a country, or in any foreign owned or operated business that could make the individual vulnerable to foreign influence*), apply in this case.

Applicant's wife, her parents, and her sister are all citizens of the PRC. Virtually all of Applicant's wife's immediate family reside in the PRC, including her sister's husband, who is also a citizen of the PRC. Applicant's mother-in-law and father-in-law reside in an apartment in Shanghai, PRC, purportedly owned by Applicant's wife and sister. Applicant and his wife reside together with their daughter in Japan, and they communicate regularly by telephone with members of her immediate family, although no mention has been made by Applicant of any regular communication anyone has with his wife's brother-in-law. No information of any kind has been submitted by either party about this related by marriage family member. Applicant maintains no one in his wife's immediate family are members of the Communist Party. Nevertheless, there is no rational basis to assume or conclude that a foreign government can exert influence or pressure on or through its citizens only if they are members of the Communist Party, or employed by, or associated with, a defense-related component of the foreign government. The government of the People's Republic of China maintains aggressive intelligence gathering techniques directed at the U.S. military and private U.S. corporations. While having family ties with persons located in another country is not, as a matter of law, automatically disqualifying...[it] does raise a *prima facie* security concern to require Applicant to present evidence of mitigation sufficient to meet applicant's burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for the applicant.⁽¹⁹⁾ The government's evidence and Applicant's admissions constitute substantial evidence of disqualifying conditions under Guideline B.

I have considered all the mitigating conditions and specifically considered Foreign Influence Mitigating Condition (FI MC) E2.A2.1.3.1. (*A determination that the immediate family member(s) (spouse, father, mother, sons, daughter, 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*) and FI MC E2.A2.1.3.2. (*Contacts and correspondence with foreign citizens are casual and infrequent*), and find they do not apply in this case. Applicant maintains none of his wife's immediate family are members of the Communist Party, but he has provided no information as to their employment activities, past or present, that may or may not have been involved with the Chinese government. While it is likely that Applicant's in-laws have no present contact with their government given their age and probable retired station in life, no information at all has been provided by Applicant about what both did for a living during their working years, nor has Applicant provided any information about the current occupations of his sister-in-law and her husband. Applicant's sister-in-law owns the rights to the state owned property occupied by her parents, and she provides regular financial assistance to them. Applicant's wife speaks to her parents about every other day and to her sister about twice a month. She also contributes financially to her parents' well-being in the PRC. It is not clear whether or not Applicant's wife or her sister may be in a position to be exploited by the Chinese government with regard to these matters. While it is likely contact with the family is motivated primarily by genuine family affection, this consistent contact by Applicant's wife with her family who are citizens and residents of the PRC cannot be characterized as being casual and infrequent. Applicant and his wife have also traveled to the PRC to visit his wife's family five times since 1998. Moreover, Applicant's failure to provide factually accurate information and proof concerning the employment of his sister-in-law, and, particularly, having provided no information at all about her husband, raises great concern.

I have also considered FI MC E2.A2.1.3.5. (*Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities*), and find that it applies in this case. Applicant owns no property in the PRC. He has further presented documentation verifying his wife holds no proprietary interest in the state owned apartment located in Shanghai in which her parents reside, and that the rights to that apartment are owned solely by her sister. As to allegation 1.e. of the SOR, Applicant has mitigated the security concern regarding this particular issue and it is concluded in favor of Applicant.

I have further reviewed all the record evidence in this case with respect to the "whole person" concept required by the Directive in evaluating Applicant's vulnerability in protecting our national security. I am persuaded by the totality of the

evidence that it is not clearly consistent with the national interest to grant Applicant a security clearance. For the reasons stated, Applicant has failed to fully mitigate or overcome the security concerns caused by foreign influence issues in this case. Accordingly, allegations 1.a. through 1.d. of the SOR are concluded against the Applicant.

FORMAL FINDINGS

In accordance with Section E3.1.25 of Enclosure 3 of the Directive, the following are the formal findings as to each allegation in the SOR:

Paragraph 1. Foreign Influence (Guideline B) AGAINST THE APPLICANT

Subparagraph 1.a. Against the Applicant

Subparagraph 1.b. Against the Applicant

Subparagraph 1.c. Against the Applicant

Subparagraph 1.d. Against the Applicant

Subparagraph 1.e. For the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

David S. Bruce

Administrative Judge

1. Item 4 (Applicant's Security Clearance Application dated June 25, 2005) at 1-4.
2. *Id.*, at 5.
3. *Id.*, at 2.
4. *Id.*, at 8.
5. Item 3 (Applicant's response to SOR dated February 28, 2005) at 3.
6. Item 5 (Applicant's sworn statement to Special Agent of the Naval Criminal Investigative Service dated May 18, 2004) at 1.
7. *Id.*, at 1.
8. Item 3, *supra* note 5, at 1.
9. *Id.*, at 1.
10. Item 5, *supra* note 6, at 1-2.
11. Applicant stated in his separate statement dated May 18, 2004, that his wife was a ½ share part owner of the apartment in Shanghai, and repeated that representation in his response to the SOR dated February 28, 2005. In his letter to Department Counsel dated May 17, 2005, however, Applicant submitted documentation to show that the rights to this state owned apartment are owned solely by his sister-in-law.

12. Item 7 (U.S. Department of State Consular Information Sheet dated April 22, 2005) at 1.

13. *Id.*, at 2.

14. Item 8 (U.S. Official Policy Materials on US-China Relations dated May 8, 2000), from the text of Rep. Frank Wolf's testimony before the House Committee on Ways and Means Subcommittee on Permanent Normal Trade Relations for China, at 4.

15. Directive, Enclosure 2, Para. E2.2.2.

16. Executive Order 10865, § 7.

17. ISCR Case No. 96-0277 (July 11, 1997) at page 2.

18. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Para. E3.1.15.

19. ISCR Case No. 99-0424 (February 8, 2001).