

DATE: November 15, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-26744

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Jeff A. Nagel, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant sought and was granted political asylum in the U.S. He was involved in the pro-democracy movement vis-a-vis the People's Republic of China (PRC). His elderly parents, although citizens of the PRC, reside in the U.S. with Applicant's naturalized American sister. The Applicant's elderly mother-in-law is a citizen of the PRC, but resides much of the year in the U.S. with the Applicant and his wife. His mother-in-law has permanent residency status. The Applicant has little contact with his step-father-in-law, who is a citizen of and resides in the PRC. The Applicant visited the PRC in 1996 to visit his parents. He plans no further visits to the PRC. None of the Applicant's foreign relatives is connected with any foreign government or subject to coercion. Mitigation is shown. Clearance is granted.

STATEMENT OF THE CASE

On June 2, 2005, 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, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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 and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

Applicant filed an Answer to the SOR on June 28, 2005.

The case was received by the undersigned on August 24, 2005. A notice of hearing was issued on September 9, 2005, and the case was heard on September 28, 2005. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also submitted documentary evidence. The transcript (TR) was received on October 11, 2005. The issues raised here are whether the Applicant's perceived Foreign Influence militates against the granting of a security clearance. [The Applicant admits the underlying factual basis for subparagraphs 1.b. and 1.d. He denies subparagraphs 1.a. and 1.c., as his mother resides in the U.S., and his father-in-law is deceased.]

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The Applicant is 44 years of age, has a Ph.D., and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact.

Guideline B - Foreign Influence

The Applicant sought and was granted political asylum in the U.S. (TR at page 26 line 19 to page 28 line 12, and Applicant's Exhibits (AppXs) 6 and 7). He was involved in the pro-democracy movement vis-a-vis the PRC (*Id*). He came to the U.S. in 1986 to pursue his Master's and Ph.D. (AppXs 6 and 7). He became a naturalized American in 1996, and has established a net worth in the U.S. of about \$1,750,000 (TR at page 25 line 11 to page 26 line 18, and AppXs 4 and 7).

1.a.~1.d. The Applicant's elderly parents are citizens of the PRC, but reside in the U.S. with Applicant's naturalized American sister (TR at page 18 line 25 to page 20 line 5, and AppX 1). They are retired college professors (*Id*). The Applicant's elderly mother-in-law is a citizen of the PRC, but resides much of the year in the U.S. with the Applicant and his wife (TR at page 21 line 13 to page 22 line 14, and AppX 2). His mother-in-law is a retired factory worker, and has permanent residency status in the U.S. (*Id*). The Applicant's father-in-law is deceased, and he has little contact with his step-father-in-law, who is a citizen of and resides in the PRC (TR at page 22 line 23 to page

23 line 12, and AppX 3). The Applicant visited the PRC in 1996 to visit his parents (TR at page 24 line 21 to page 25 line 10). He plans no further visits to the PRC (*Id*).

Mitigation

The Applicant has the unqualified support of those who know and work with the Applicant (AppX 5).

POLICIES

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern. Furthermore, as set forth in the Directive, each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature, extent, and seriousness of the conduct, and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future.

The Administrative Judge, however, can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature.

The Government must make out a case under Guideline B (foreign influence), which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and his ability to

effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past disqualifying conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who is subject to a foreign influence, may be prone to provide information or make decisions that are harmful to the interests of the United States. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSIONS

The Applicant came to the U.S. in 1986 to pursue his Master's and Ph.D. As he was involved in the pro-democracy movement, the Applicant sought and was granted political asylum in the U.S. The Applicant's parent's, mother-in-law, and step-father-in-law are citizens of the PRC. The first disqualifying condition under Foreign Influence is therefore applicable as "[a]n immediate family member . . . is a citizen of . . . a foreign country." However, the Applicant's parents and mother-in-law are permanent U.S. residents, and he has little contact with his step-father-in-law. None of the Applicant's immediate family member is connected with any government, and there is no evidence that their presence in the U.S. or in the PRC can be exploited by any government. In addition, I conclude that it would be unlikely that the Applicant would even consider any such attempt at exploitation (TR at page 28 line 13 to page 29 line 11). The first mitigating condition is therefore applicable as "the immediate family members . . . 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 persons involved and the United States." Mitigation is shown. Guideline B is found in the Applicant's favor.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his alleged foreign influence. The Applicant has thus met the mitigating conditions of Guideline B, and of Section E.2.2. of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guideline B.

FORMAL FINDINGS

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.
- d. For the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

DECISION

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

Richard A. Cefola

Administrative Judge