

DATE: May 5, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 04-00110

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 35-year-old Applicant was born in the Peoples Republic of China (PRC) in 1971 and still has parents and other relatives there, with whom she has close ties. Her husband is a PRC citizen, living with her in the U.S. She became a U.S. citizen in 2000, at which time she lost her PRC citizenship. Considering official U.S. policy viewing the PRC as one of the most active collectors of U.S. defense and other information, she has not provided adequate evidence that the risks involved are acceptable. Mitigation and/or extenuation have not been established. Clearance is denied.

STATEMENT OF THE CASE

On February 24, 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, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding required under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether a clearance should be granted, denied or revoked.

On March 24, 2005, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge on the written record; i.e., without a hearing. Department Counsel issued a File of Relevant Material (FORM) on June 29, 2005. Applicant was informed that any response had to be submitted within 30 days of receipt of the FORM. Any response was due by August 5, 2005, but none was submitted. The case was assigned to me on August 24, 2005.

FINDINGS OF FACT

Applicant is a 36-year-old employee of a defense contractor. The February 24, 2005 SOR contains four (4) allegations under Guideline B (Foreign Influence). Applicant admits all four allegations. All admissions are accepted and incorporated herein as Findings of Fact.

After considering the totality of the evidence, I make the following additional FINDINGS OF FACT as to the status, past and present, of each SOR allegation.

Guideline B (Foreign Influence)

1.a. - Applicant's spouse is a citizen of the People's Republic of China (PRC) and resides with Applicant in the United States (U.S.).

1.b. - Applicant's parents, sibling, and parents-in-law are citizens and residents of the PRC.

1.c. - Applicant sends her family in the PRC a hundred dollars a year for financial assistance.

1.d. - Applicant traveled to the PRC in 2000 to visit her family.

POLICIES

Each adjudicative decision must also include an assessment of nine generic factors relevant in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowing 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 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 (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons.

If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

A person seeking access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. As required by DoD Directive 5220.6, as amended, at E2.2.2., "any doubt as to whether access to classified information is clearly consistent with the interests of national security will be resolved in favor of the nation's security."

CONCLUSIONS

Guideline B (Foreign Influence)

The details behind the SOR allegations are found primarily in Applicant's Security Clearance Application (SCA) (Item 1), her sworn statement (Item 5), and her response to the SOR (Item 3). Based on the entire record, I conclude the following:

Applicant is 35 years old. She was born in the PRC in November 1971, came to the U.S. prior to 1991, attended college, was a teaching assistant from 1993 to 1996, and graduated in 1998. She has been a document analyst since May 1997. Married in 1999, her husband, a citizen of the PRC, resides with her in the U.S. She became a U.S. citizen in December 2000 (Item 4).

Her mother, born in 1937, and father, born in 1930, have an address at an Institute of Post and Telecommunications, in one of the PRC's largest cities (*Id.*). Applicant states that her PRC passport, renewed in 1999, became invalid under PRC law, in 1999, when she became a U.S. citizen (*Id.*).

I have carefully considered the Government's arguments in the FORM, to which Applicant did not respond. Department Counsel attached to the FORM nine different official U.S. publications, all of which describe in considerable detail the basis for the Government's concerns about the PRC in general and PRC intelligence collection activities against the United States. All clearance seekers with family in foreign countries have the burden of showing that the risk of improper intelligence activity is minimal and acceptable.

The PRC is officially recognized as one of the most active gatherers of defense and industrial information in the United States, which means her burden of proof is even heavier than for someone with relatives in a friendly country such as Canada or Mexico (ISCR Case No. 01-26893 (October 16, 2002); Directive, Additional Procedural Guidance, Item 15) (*See*, Items 6-14, inclusive).

There is no suggestion in the record that Applicant would voluntarily act against U.S. security interests, but Applicant has not provided any evidence about her parents and other relatives from which a reasoned judgment could be made that no risk exists that they are agents of a foreign power; or that they are susceptible to pressure from the PRC government or intelligence agencies; and that they might ask Applicant to act against U.S. security interests (ISCR Case No. 99-0511 (December 12, 2000) at pp 8, 9; and ISCR Case No. 00-0485 (February 1, 2002) at p.4). The PRC is known to identify ethnic Chinese in the United States who have access to sensitive information, and sometimes is able to enlist their cooperation to illegal technology information transfers (Item 1 at p. 27).

In the absence of such evidence, there is no basis for a conclusion that Applicant has mitigated or extenuated the Government's evidence in support of the SOR.

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 not* citizens of the United States *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.

Disqualifying Conditions that are applicable: (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; and (2) Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists (husband is a PRC citizen).

Mitigating Conditions that could mitigate security concerns: None that are established by the record; e.g., the record does not permit (1) a determination that the immediate family member(s), . . . 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; or (2). that her contacts and ties with her family are casual and infrequent.

Overall, Applicant has not come close to overcoming the evidence supporting the Government's concerns, as stated in the SOR. It is not necessary to question Applicant's sincerity to conclude that she has simply not demonstrated adequate mitigation that would establish that she is presently eligible for access to the nation's secrets. Consequently, I cannot conclude that it is clearly consistent with the national interest for Applicant to obtain or continue a DoD security clearance.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Guideline B (Foreign Influence) Against the Applicant

Subparagraph 1.a. - 1.d. Against the Applicant

Subparagraph 1.b. Against the Applicant

Subparagraph 1.c. Against the Applicant

Subparagraph 1.d. Against 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.

BARRY M. SAX

ADMINISTRATIVE JUDGE