

KEYWORD: Foreign Influence

DIGEST: Applicant, a native of the People's Republic of China (PRC), came to the United States (U.S.) For graduate studies in August 1989, and became a U.S. naturalized citizen in September 2002. Foreign influence concerns persist where his father and siblings, whom he contacts monthly and visited in 1995, 1999, and 2002, are resident citizens of the PRC. Clearance is denied.

CASENO: 04-02121.h1

DATE: 12/13/2005

DATE: December 13, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-02121

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a native of the People's Republic of China (PRC), came to the United States (U.S.) for graduate studies in August 1989, and became a U.S. naturalized citizen in September 2002. Foreign influence concerns persist where his father and siblings, whom he contacts monthly and visited in 1995, 1999, and 2002, are resident citizens of the PRC. Clearance is denied.

STATEMENT OF THE CASE

On March 14, 2005, the Defense Office of Hearings and Appeals (DOHA) 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. [\(1\)](#) 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).

On March 22, 2005, Applicant responded to the SOR allegations and requested a hearing before a DOHA administrative judge. The case was assigned to me on June 10, 2005, and on that date I scheduled a hearing for June 23, 2005, Applicant having waived the 15-day notice requirement. At the hearing, two government exhibits were admitted, and Applicant testified, as reflected in a transcript received on July 6, 2005.

At the government's request, I agreed to take official notice of several publications: the U.S. State Department's *Country Reports on Human Rights Practices-2004 China (includes Tibet, Hong Kong, and Macau)* dated February 28, 2005; the State Department's *Background Note: China*, dated March 2005; a Congressional Research Service issue brief titled *Intelligence Issues for Congress*, dated February 1, 2005; a Congressional Research Service report titled *China-U.S. Relations: Current Issues and Implications for U.S. Policy*, dated March 24, 2005; excerpts from a declassified redacted version of a report of the U.S. House Select Committee on U.S. National Security and Military/Commercial Concerns with the People's Republic of China dated January 3, 1999; the National Counterintelligence Center's *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage* for 2000; and an article reporting on the Defense Personnel Security Research Center's Espionage Database Project titled *Espionage by the Numbers: A Statistical Overview*.

FINDINGS OF FACT

The SOR alleges foreign influence concerns because Applicant's father, siblings (a brother and a sister), and parents-in-law are resident citizens of the PRC, he sent his father \$500 over the past five years, and he traveled to the PRC in July 1995, July 1999, and June 2002. Applicant admitted the allegations, which are accepted as findings of fact. After a complete and thorough review of the evidence of record, and upon due consideration of the same, I make the following additional findings:

Applicant's background

Applicant is a 43-year-old senior scientist employed by a defense contractor since October 2002. Applicant seeks a secret-level security clearance.

A native of the PRC, Applicant was raised by his grandmother with his two siblings (an older sister and younger brother) in a small town about 500 miles south of Beijing until middle school, when he was sent to boarding school. His father, who worked as an accountant and retail store manager until he retired, lived in another village during Applicant's youth, and Applicant saw him once a month. Applicant's mother worked in retail when she was young, but with the Cultural Revolution of the mid to late 1960s, she left the job to work on the farm. Applicant attended college and three years of graduate study in the PRC, with most of the costs borne by the state. In January 1986, he married a PRC native citizen whom he met in college, and they had a daughter in June 1987.

Applicant was accepted for graduate study by a university in the U.S. in 1987. He decided to wait a semester to commence his studies abroad because of his spouse's pregnancy. Financial aid became unavailable, forcing him to take the entrance exams again. Applicant, his spouse, and daughter eventually came to the U.S. in August 1989 where he pursued graduate study in nuclear particle (subatomic) physics. In December 1993, he earned his doctorate degree. For the next two years, he did postdoctoral work at a research facility in Canada. In July 1995, Applicant went to the PRC for about six weeks. He attended an international conference for one week, gave two lectures on particle physics at a PRC university at the invitation of the Chinese university, and then spent the remainder of his time with his in-laws and his father. From September 1996 to June 1999, Applicant was a postdoctoral research associate at a prestigious technical university in the U.S.

In June 1999, Applicant changed career fields from theoretical physics to computer science, due to the limited opportunities available in subatomic physics. His spouse had just graduated from a local university and his daughter was to enter middle school that Fall, and he did not want to uproot them. For eleven months, he worked as a software engineer for a small company involved in laser medical applications. He then joined a software company in May 2000 as a development support engineer.

In June 2002, Applicant traveled to the PRC with his spouse and daughter for tourism and to visit his parents-in-law and father. While he was in the PRC, he contacted the professor who had served as his faculty advisor for his master's degree and who had facilitated Applicant's lectures at the PRC university in 1995. Applicant extended a luncheon invitation but they did not get together as Applicant became ill. The professor is now retired.

On his return to the U.S. in July 2002, Applicant was laid off from his job and unemployed for about three months. Applicant and his spouse became U.S. naturalized citizens in September 2002, taking the oath to renounce all foreign allegiances, to support and defend the U.S. Constitution and its laws, and to bear arms or perform noncombatant service or civilian service on behalf of the U.S. if required. Their acquisition of U.S. citizenship served to renounce their PRC citizenship. ⁽²⁾ In mid-October 2002, he started his current job. As a senior scientist for the defense contractor, he has performed theoretical work (as opposed to experiments), and run and tested computer code involving laser imaging of unmanned aerial vehicles and atmospheric corrections.

Needing a secret-level security clearance for his duties, Applicant executed a security clearance application (SF 86) on December 19, 2002. He disclosed the PRC citizenship of his father, his siblings, and his parents-in-law, the PRC citizenship and U.S. legal residency of his daughter, and his possession of a PRC passport, issued in August 1999, that he used to travel to Canada in 2001 and the PRC in June 2002, before he became a U.S. citizen. As for the addresses of family members living in the PRC, Applicant was uncertain of the translation so elected to inaccurately indicate "UNKNOWN."

In August 2003, Applicant was issued his U.S. passport, valid until August 2013. On December 24, 2003, Applicant was interviewed by a Defense Security Service special agent about his foreign connections, including his possession of a PRC passport with an expiration date of August 30, 2004. Applicant denied any use of the foreign passport since becoming a U.S. citizen, as well as any exercise of dual citizenship, and he expressed a willingness to relinquish the foreign passport if required. Applicant provided the general areas where his relatives were living in the PRC, and he updated his daughter's citizenship status to reflect her U.S. naturalization in October 2003. As for foreign travel, Applicant disclosed previously unreported trips to the PRC for six weeks in July 1995 to attend an "educational conference" and to visit his family, and in June 1999 to see his family on the tenth anniversary of his mother's death. Applicant indicated he has monthly telephone contact with his father, brother, and sister, and twice yearly telephone contact with his in-laws. Over the past five years, he had sent his father a total of \$500. Applicant denied any other financial assistance or contacts or associations with anyone else residing in a foreign country.

In conjunction with a trip to the PRC planned for July 2005, Applicant applied in March 2005 for a visa to travel on his U.S. passport. At that time, a Chinese consular official invalidated Applicant's expired PRC passport, cutting the corner to obliterate the identification number.

Applicant's father and siblings reside in the same area in the PRC. His brother is a manager in a small hotel. His brother's spouse is a clerk in a bookstore. Applicant's sister and her husband are engaged in accounting work. Applicant does not know whether or not they are privately employed or work for the local or county government. His sister's

spouse travels within the local province for his job. Applicant had not sent his father any money since Chinese New Year 2003, but he planned on visiting him in July 2005.

Applicant's parents-in-law worked in a factory that manufactures cables before they retired in about 1982 and moved back to their hometown in the PRC. Her brother works in a brewery in the PRC. In June 2005, Applicant's spouse took their daughter to the PRC to visit her parents.

Applicant intends to remain in the U.S. for the educational and work opportunities for his 18-year-old daughter, who had been accepted into an Ivy League university for the Fall semester 2005, and because his spouse "hated the system" in the PRC. Applicant's spouse is employed as a software engineer for a small firm in the U.S. Applicant has no financial assets in the PRC. He and his spouse own their home in the U.S.

PRC's political and economic state

On January 1, 1979, the U.S. formally recognized the People's Republic of China (PRC) as the sole legal government of China. The PRC is an authoritarian state with ultimate control of all state military, commercial, and political activities constitutionally vested in the Chinese Communist Party. As the country transitions from a centrally-planned economy to a market-based economy, the PRC has gained power and influence internationally while improving the living standard for its citizens. The PRC is now the third largest trading partner of the U.S. and has been an important partner in U.S. counterterrorism efforts since September 11, 2001. [\(3\)](#) PRC-U.S. relations are now "smoother" than they have been at any time since the Chinese suppression of the Tiananmen Square protests in 1989. [\(4\)](#)

The PRC has a history of targeting U.S. intelligence, economic, and technical information, including dual use technology with an ostensibly civil purpose that can be integrated into the PRC military and industrial base. The PRC is known to blend intelligence and non intelligence assets and to rely on different collection methods (*e.g.*, including illegal transfers of technology through a third country, joint ventures with foreign firms, scientific conferences) to obtain military and economic information. [\(5\)](#)

As of late 2004, the PRC's human rights record remained poor. Citizens lacked the freedom to express opposition to the Chinese Communist Party-led political system and to change their national leaders or form of government. In violation of internationally recognized norms, the PRC continued its crackdown on independent writers, religious organizations, and political dissenters, harassing, detaining, and in some cases imprisoning, those perceived as threatening central government authority or national stability. Abuses included instances of torture and mistreatment of prisoners, coerced confessions, arbitrary arrest and detention, and even extrajudicial killings. The PRC prosecuted individuals for subversion and leaking state secrets as a means to harass and intimidate, and infringed on individuals' right to privacy. [\(6\)](#) As of March 2005, the U.S. was concerned about the PRC's track record of weapon sales, technology transfers, and

nuclear energy assistance to "rogue" nations (Iran and Syria) and the official adoption by the PRC's National People's Congress of an "anti-secession" law, aimed at reining in those who advocate independence for Taiwan. [\(7\)](#)

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

After a complete review of the evidence of record, the following adjudicative guideline is most pertinent to an evaluation of Applicant's security suitability:

Foreign Influence. 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. (¶ E2.A2.1.1.)

CONCLUSIONS

Having considered the evidence in light of the appropriate legal precepts and factors, and having assessed the credibility of the Applicant, I conclude the government has established its case with respect to Guideline B, foreign influence.

Applicant's father, his two siblings, and his parents-in-law are resident citizens of his native PRC. Applicant contacts his family members about once a month, and he sent his father financial support to as recently as Chinese New Year 2003. He visited his family members in 1995, 1999, and 2002, and had another trip planned for July 2005. Furthermore, the DOHA Appeal Board has held it reasonable for the administrative judge to consider the significance not only of an applicant's ties, but also of his spouse's ties to a foreign country and the possible effect they may have on Applicant's contacts under Guideline B (*see* ISCR Case No. 01-02452, App. Bd. Nov. 21, 2002). Although Applicant speaks to his in-laws only about twice per year, he visited them in the PRC in 1995 and 2002. While the frequency of his spouse's contacts with her parents is not of record, she and their daughter were in the PRC visiting her parents when his security clearance was held in June 2005. Disqualifying conditions ¶ 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,* and ¶ 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,* apply.

The foreign influence concerns raised by these family connections in the PRC may be mitigated where it can be determined that they 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 Applicant to choose between loyalty to them and the United States (*see* C ¶ E2.A2.1.3.1.).⁽⁸⁾ Applicant's father was an accountant and retail store manager before he retired. His brother works in a beer-making factory (brewery). His parents-in-law worked in a factory that manufactures cables before their retirements in 1982. Applicant's sister and her husband are accountants. The evidence does not establish that his father, parents-in-law, or his brother is or ever was a foreign agent.⁽⁹⁾ Applicant's sister and her husband are employed in accounting, and the latter travels frequently within his province in the PRC for his work. Applicant denied knowledge of any PRC government connection, but was unable to rule it out.

Even if none of his relations is a foreign agent, the inquiry in a foreign influence case is not limited to consideration of whether the foreign contacts or connections are agents of a foreign power. The foreign contacts or connections must also be evaluated in terms of whether they place an applicant in a position of vulnerability, even if there is no evidence that a foreign country has sought to exploit that vulnerability. (*See* ISCR Case No. 00-0628, Feb. 24, 2003) As long as there is a tie of obligation or affection to a person who is subject to a foreign government's jurisdiction/laws and/or is within physical reach of the foreign authorities, undue foreign influence remains possible. Common sense suggests that the stronger the ties of affection or obligation, the more vulnerable a person is to being manipulated if the relative is improperly influenced, brought under control, or even used as a hostage by a foreign intelligence or security service.

Although not specifically stated in the adjudicative guideline, the particular foreign country of which the close relative or associate is a citizen or resides is relevant in determining the likelihood of undue influence being brought to bear on its citizens/residents. Countries with strong democratic institutions and respect for the rule of law are generally regarded

as presenting less of a risk than totalitarian regimes with a record of human rights abuses, support for terrorist activities, or hostility to the U.S. While relations between the U.S. and the PRC are reportedly "smoother" than they have been at any time since 1989, the PRC has a history of targeting U.S. intelligence and economic information, and it continues to have a poor human rights record against its own citizens.

In evaluating whether the risk of undue foreign influence is acceptable, the particular circumstances of each applicant must be taken into account. Applicant's academic accomplishments have not gone unnoticed by the PRC. While in the PRC attending an international conference in 1995, Applicant gave two lectures at the PRC university where he had pursued his bachelor and master's degrees. These lectures were not part of the conference, and were at the request of the university. Applicant continued his contacts with his faculty advisor, a professor on staff of the PRC university, to at least 2002. When in the PRC to visit family members and tour the major cities with his daughter, Applicant extended a luncheon invitation to this professor, who has since retired. Applicant's switch of careers in the U.S. to computer software imaging does not eliminate the risk of his relatives (or even himself when he is in the PRC) being targeted. PRC authorities are known to arbitrarily interfere with the privacy of its citizens. Telephone conversations, facsimile transmissions, electronic mail and internet communications were routinely monitored, and even hotel guestrooms were bugged and searched at times for sensitive or propriety materials in 2004. [\(10\)](#)

Applicant has taken substantial steps toward establishing firm roots in the U.S. His acquisition of U.S. citizenship in September 2002 and of a U.S. passport in August 2003 are consistent with his intent to remain in the U.S., and he and his spouse are productively employed in the computer software field. However, he remains vulnerable to undue foreign influence through his family members in the PRC. None of the mitigating conditions apply. Accordingly, SOR ¶¶ 1.a., 1.b., 1.c. and 1.d. are resolved against him.

FORMAL FINDINGS

Formal findings as required by Section 3. Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

Paragraph 1. 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

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.

Elizabeth M. Matchinski

Administrative Judge

1. The SOR was issued under the authority of 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).
2. The PRC does not recognize dual citizenship. *See the U.S. State Department's Consular Information Sheet-China*, dated January 15, 2005. The consular information sheet was updated on September 13, 2005, to reflect new entry/exit requirements and makes no reference to the PRC's failure to recognize dual citizenship, but there is no indication that the PRC has changed its laws on this issue.
3. *See the U.S. State Department's Background Note: China*, dated March 2005.
4. *See the Congressional Research Service's report for Congress, China-U.S. Relations: Current Issues and Implications for U.S. Policy*, dated March 24, 2005.
5. *See the declassified version of the January 1999 report of the House of Representatives Select Committee on U.S. National Security and Military/Commercial Concerns with the People's Republic of China (105th Congress, 2d Session).*
6. *See the U.S. State Department's Country Reports on Human Rights Practices-2004 for China (including Tibet, Hong Kong, and Macau)*, dated February 28, 2005.
7. *See the Congressional Research Service's report for Congress, China-U.S. Relations: Current Issues and Implications for U.S. Policy*, dated March 24, 2005.
8. *See MC E2.A2.1.3.1. A determination that the immediate family members(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.* The mitigating condition is bifurcated in nature ["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. . . ."]. To construe the conjunction "or" as "and" would be against the plain language. While MC E2.A2.1.3.1. can be applied if an applicant satisfies only one of the two parts, a given adjudicative condition (either disqualifying or mitigating) cannot be read in such a way to be inconsistent with other adjudicative conditions. Under Guideline B, if foreign relations, who are not government agents or employees, are in a position to be exploited then MC E2.A2.1.3.1. does not mitigate the foreign influence concerns.
9. See 50 U.S.C. §1801, which defines agent of a foreign power as:

(1) any person other than a United States person, who-

(A) acts in the United States as an officer or employee of a foreign power, or as a member of a foreign power as defined in subsection (a)(4) of this section;

(B) acts for or on behalf of a foreign power which engages in clandestine activities in the United States contrary to the interests of the United States when the circumstances of such person's presence in the United States indicate that such person may engage in such activities in the United States, or when such person knowingly aids or abets any person in the conduct of such activities or knowingly conspires with any person to engage in such activities; or

(2) any person who-

(A) knowingly engages in clandestine intelligence gathering activities for or on behalf of a foreign power, which activities involve or may involve a violation of the criminal statutes of the United States;

(B) pursuant to the direction of an intelligence service or network of a foreign power, knowingly engages in any other clandestine intelligence activities for or on behalf of such foreign power, which activities involve or are about to involve a violation of the criminal statutes of the United States;

(C) knowingly engages in sabotage or international terrorism, or activities that are in preparation therefor, for or on behalf of a foreign power;

(D) knowingly enters the United States under a false or fraudulent identity for or on behalf of a foreign power or, while in the United States, knowingly assumes a false or fraudulent identity for or on behalf of a foreign power; or

(E) knowingly aids or abets any person in the conduct of activities described in subparagraph (A), (B), or (C) or knowingly conspires with any person to engage in activities described in subparagraph (A), (B), or (C).

Under federal law, the terms foreign power and agent of a foreign power have the same meanings with respect to national security and access to classified information. *See* 50 U.S.C. § 438.

10. *See the U.S. State Department's Country Reports on Human Rights Practices-2004* for China.