

KEYWORD: Foreign Influence

DIGEST: This 44-year-old Physicist is a native born American, who met his future wife, a native of the PRC, when both were at the same U.S. university in the mid 1990s,. They were married in 1996. She works for a U.S. university in a position that sends her to the PRC for period totaling about half the year, during which times Applicant sometimes travels there to see her. Her elderly parents and her brother in the PRC do not speak much English and Applicant speaks little Chinese. Their relationship is warm, but not emotionally close. Applicant is aware of his responsibilities in protecting U.S. secrets and avers an intent to report any improper contacts. Mitigation has been shown. Clearance is granted.

CASENO: 04-02181.h1

DATE: 11/15/2005

DATE: November 15, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-02181

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 44-year-old Physicist is a native born American, who met his future wife, a native of the People's Republic of China (PRC), when both were at the same U.S. university in the mid 1990s,. They were married in 1996. She works for a U.S. university in a position that sends her to the PRC for period totaling about half the year, during which times Applicant sometimes travels there to see her. Her elderly parents and her brother in the PRC do not speak much English and Applicant speaks little Chinese. Their relationship is warm, but not emotionally close. Applicant is aware of his responsibilities in protecting U.S. secrets and avers an intent to report any improper contacts. Mitigation has been shown. Clearance is granted.

STATEMENT OF THE CASE

On March 4, 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 April 22, 2005, Applicant submitted a response to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge after a hearing. The case was assigned to me on July 7, 2005. A Notice of Hearing was issued on August 22, 2005, setting the hearing for September 7, 2005. At the hearing, the Government introduced six exhibits (Government's Exhibits (GX) 1 - 6). Applicant testified, but did not introduce and exhibits.

Applicant did submit a timely post hearing exhibit (Applicant's Exhibit (AX) A). Without objection, all exhibits were admitted into evidence as marked. The transcript was received by DOHA on September 21, 2005.

FINDINGS OF FACT

Applicant is a 44-year-old physicist engineer for a defense contractor. The SOR contains four allegations, 1.a. - 1.d., under Guideline B (Foreign Influence). In his response, Applicant *admits* the factual statements in all four allegations. The factual admissions are accepted and incorporated as Findings of Fact.

After considering the totality of the evidence of record, I make the following Findings of Fact as to each SOR allegation:

Guideline B (Foreign Influence)

1.a. - Applicant's spouse is a citizen of the People's Republic of China (PRC). She resides in the PRC six months a year and in the United States (U.S.) the other six months. The time in China is usually broken up into several one or two month periods, after which she returns to the U.S. (Tr at 32). She works for an American university that has a partner sister university in China, running an MBA program. She was born in China in 1967. They met about twelve years ago at an American university and they were married in 1996. She has a "U.S. Green Card" (Tr at 27). She has not yet applied to become a U.S. citizen, but may do so if/when they have children (*Id.*).

1.b. - Applicant's in-laws are citizens of and resident in the PRC. They are retired college professors and live on a Government run university campus. They speak very little English. They have a government pension and do not need financial help from Applicant (Tr at 31, 38).

1.c. - Applicant's brother-in-law and his family are citizens of and resident in the PRC. The brother-in-law works in a steel mill. He does not speak any English.

1.d. - Applicant traveled to the PRC in at least 1996, 1999, 2000, 2001 and August 2003, usually to visit his wife when

she is working there (Tr at 25, 33).

Applicant has never called his wife's family, and has not helped them financially or otherwise. He knows only a few words of Chinese.

Applicant has received yearly security training at his employer and understands his obligation to protect U.S. security interests. He never takes his work to the PRC and does not discuss it with anyone there (Tr at 35, 36). He reports each trip to the PRC to his company security office (Tr at 36). He avers that if his in-laws or anyone asked him to act improperly, he would immediately report it (Tr at 38, 39). He has received several "technical awards" for his accomplishments (Tr at 40). His work evaluation views him as a "conscientious worker" and comments positively on his continued excellence (AX A)

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.

CONCLUSIONS

Applicant is a 44-year-old native born American who fell in love with his wife when they were both at an American university in the mid 1990s. They were married in 1996 and have no children as yet. Applicant has long worked in the U.S. defense industry, the last ten years with his current employer. The record does not show any security-related incidents in a career in which his excellence and contributions have been noted by the defense contractor.

There are no acts alleged in the SOR or supported by the record that suggest any foreign preference by Applicant for the PRC or any other country. The sole stated concern is that his wife and in-laws have PRC connections. There is a valid concern when any applicant for a DoD security clearance has relatives or close friend or associates in a foreign country.

"The Concern: A security risk may exist when [members of]an individual's immediate family . . . are (1) not citizens of the United States or (2) may be subject to duress. These situations may create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of foreign countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure."

The DOHA Appeal Board has held that: "an applicant with immediate family members living in a country hostile to the United States should not be granted a security clearance without a very strong showing that those family ties do not pose a security risk" (Appeal Board Decision, ISCR Case No. 01-26893 (October 16, 2002)): I do take official notice that the PRC is listed by the U.S. government as being among the most active intelligence gatherers in the U.S. (Items 2 and 3). Appeal Board guidance states that: "family ties in [any] foreign country raise a *prima facie* security concern" that requires an applicant "to present evidence of rebuttal, extenuation or mitigation sufficient to meet the burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him" (Appeal Board Decision, ISCR Case No. 02-06478 (May 19, 2003)). The Government's official notice documents (GX 2 and 3) make it clear that the PRC is an active gatherer of classified and proprietary information in the U.S., so I have given particular attention to their position in PRC society and in Applicants life.

The most significant information about Applicant's relatives in the PRC is that his parents-in-law (both in their 70s) are retired University professors, living on a university campus. They have been Applicant's in-laws since 1996 and there is no indication of any efforts by them to seek to influence Applicant to act improperly in any way. There is no evidence suggesting any connection with the PRC military or intelligence organizations

Applicant's evaluation portrays him as a hard working and conscientious employee. He was born and grew up in the U.S. and has no emotional or other ties of any kind to the PRC or any other country. As I evaluate the position of the in-laws in Applicant's life, the part they play is minimal

and hindered, in any case, by a language barrier. Considering the entire record, including Applicant's own testimony, I conclude there is no evidence of any attempts at improper influence since 1996 and only the abstract possibility of any such effort in the future. The fact that it has not occurred in the past does not prove that it will not occur in the future, but it is evidence that must be considered in context. Applicant has long been involved in DoD programs and has received periodic security training. I conclude from all of the evidence that Applicant has established his positive character, that he would reject any efforts on behalf of the PRC or other country to act against his own and his country's security interests.

Disqualifying Condition - (1) " an immediate family member . . . is a citizen of, or resident or present in, a foreign country." Mitigating Condition (1) - "a determination that the immediate family members . . . would not constitute an unacceptable security risk."

Mitigating Condition (MC) 1; "the immediate family members . . . are not agents of a foreign power or are in a position to be exploited by a foreign power in a way that could force the individual to choose between his loyalty to the persons involved and the U.S." is applicable.

All of the evidence shows Applicant to be a man of integrity, and one who understands his responsibilities to his country. Nothing in the evidence suggests otherwise. I conclude he can be relied upon to place the nation's security interests above any feelings for his wife or her relatives in the PRC.

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) For the Applicant

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.c. For the Applicant

Subparagraph 1.d. For the 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.

BARRY M. SAX

ADMINISTRATIVE JUDGE