

KEYWORD: Foreign Influence

DIGEST: Applicant was born in the People's Republic of China (PRC). He left China with his wife in 1991 and emigrated to the U.S. He and his wife both became naturalized U.S. citizens in 2001. His parents and his wife's parents are still citizens and residents of the PRC. Applicant successfully mitigated foreign influence security concerns. Clearance is granted.

CASE NO: 04-02233.h1

DATE: 09/20/2005

DATE: September 20, 2005

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-02233

**DECISION OF ADMINISTRATIVE JUDGE**

**DAVID S. BRUCE**

**APPEARANCES**

**FOR GOVERNMENT**

Eric H. Borgstrom, Esq., Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant was born in the People's Republic of China (PRC). He left China with his wife in 1991 and emigrated to the U.S. He and his wife both became naturalized U.S. citizens in 2001. His parents and his wife's parents are still citizens and residents of the PRC. Applicant successfully mitigated foreign influence security concerns. Clearance is granted.

### **STATEMENT OF THE CASE**

On May 5, 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.

On May 24, 2005, Applicant responded to each of the SOR allegations and elected not to present his case at a hearing. Department Counsel submitted the government's File of Relevant Materials (FORM) on June 15, 2005, which contained 13 itemized documents in support of the SOR. The complete FORM was forwarded to Applicant and received by him on June 22, 2005. Applicant was given 30 days to file objections and to submit information in support of his position. No further response was submitted by Applicant and the case was assigned to me on August 1, 2005.

## FINDINGS OF FACT

Applicant has admitted the factual allegations of subparagraphs 1.a. through 1.d. of the SOR pertaining to foreign influence issues. The admissions are incorporated herein by reference. After a thorough review of all the evidence in the record and the information submitted by Applicant to support his position, I make the following additional findings of fact:

Applicant is 46 years old and was married in March 1987 in Shanghai, People's Republic of China (PRC). He has no children.<sup>(1)</sup> His wife is 44 years old and teaches Chinese at a community college near their home.<sup>(2)</sup> They have lived in the United States since 1991, and they both became naturalized U. S. citizens on October 19, 2001.<sup>(3)</sup> They have not exercised the rights and privileges of their prior PRC citizenship since becoming naturalized U.S. citizens.

Applicant's father is 80 years old, his mother is 79, and both are citizens and residents of the PRC.<sup>(4)</sup> Both are retired from former teaching positions, and his mother worked in a factory and was an office assistant for a private company later in her life.<sup>(5)</sup> Applicant's parents never worked for any government-related agencies in the PRC, and neither were ever connected with the government or the PRC military or any other foreign government.<sup>(6)</sup> Neither of his parents have any substantial financial interest in any Chinese or foreign-owned or operated business.

Applicant's father-in-law and mother-in-law are 75 and 71 years old, respectively, and are citizens and residents of the PRC.<sup>(7)</sup> His father-in-law is a retired factory worker and his mother-in-law is a housewife.<sup>(8)</sup> Neither of his in-laws ever worked for any government agency of the PRC or were agents for any other foreign power.<sup>(9)</sup> They have no substantial financial interest in any Chinese or foreign-owned business, and they have never had any connection with any foreign government.

Applicant's only sister, age 44, is a resident of the U.S. and became a naturalized U.S. citizen on March 30, 2000.<sup>(10)</sup> His only brother is 35 years old and a citizen of the PRC. He currently is a U.S. legal alien and has resided in the U.S. for 15 years. He works for a privately-owned U.S. computer company and intends to apply for U.S. citizenship when he becomes eligible in the next one to two years. He is not an agent for any foreign government. He has no financial interest in any Chinese or foreign-owned or operated business.<sup>(11)</sup>

Applicant has been employed in his current position in computer technology since July 2002.<sup>(12)</sup> Except for a period of unemployment of about seven months earlier in 2002, Applicant has been gainfully employed with four other companies since 1991, when he completed his technology education in the U.S.<sup>(13)</sup> He has never left a job under any unfavorable circumstances.<sup>(14)</sup> Applicant has not served in the U.S. or Chinese military, and he has never held a

Defense Department security clearance. (15)

Applicant owns no property and has no business connections or other financial interests in any foreign country. He has never been employed by or acted as a consultant for any foreign government, firm, or agency. He has had no contact with any foreign government or its representatives since coming to the U.S., except for making routine arrangements with the PRC consulate to travel to the PRC on two occasions in 2000 and 2004. (16)

Applicant holds a valid U.S. passport issued in January 2002. (17) He previously held a passport issued by the government of the PRC in 1991 when he came to the U.S. (18) According to Applicant, his Chinese passport became invalid when he became a naturalized U.S. citizen. (19) He has taken no action since then to renew his Chinese passport, and does not intend to do so. (20) Applicant holds no dual citizenship with any other country and does not have possession or use of any foreign passport. He accepts no educational, medical, or other benefits from any country other than the United States. (21)

Applicant has been in the U.S. for about 15 years and has a good financial record. (22) He does not use illegal drugs or abuse alcohol and he has never been charged with a criminal offense. (23)

Applicant traveled to the PRC for pleasure in October 2000 for ten days to visit his parents and attend his brother's wedding. (24) He also visited China in 2004 to attend a work-related business conference at the request of his present employer. (25)

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. (26) It also has a history of aggressive intelligence gathering endeavors directed at the United States. Human rights abuses committed against its own citizens are exacerbated by the lack of due process protections and the operation of a non-independent judiciary. (27) Chinese security personnel may place foreign visitors with access to advanced proprietary technology under surveillance without their consent or knowledge. (28) 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. 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. (29)

## 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), together with 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 well-informed 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.<sup>(30)</sup> The decision to deny a security clearance request to an individual is not necessarily a determination of the loyalty of the applicant.<sup>(31)</sup> 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.<sup>(32)</sup> The legal standard for the burden of proof is something less than a preponderance of the evidence.<sup>(33)</sup> 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.<sup>(34)</sup>

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 - 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.**

### 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 Condition (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*), and 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*), apply in this case. "Immediate family member" in the context of the first paragraph includes a spouse, father, mother, sons, daughters, brothers, and sisters. In the context of the second paragraph, Applicant resides with his wife whose parents are foreign citizens and could be subject to adverse foreign influence.

Applicant's parents and his wife's parents are citizens and residents of the PRC. All live in Shanghai and are now retired from various middle class occupations. No information was presented concerning the frequency of Applicant's and his wife's contact with their parents, but it is reasonable to assume there is regular communication among them. Applicant and his wife, and his brother and sister, have all been residing in the U.S. for about 15 years, but returned to China about five years ago to attend a family wedding. Applicant has provided significant information concerning the current circumstances of his parents and siblings, and given the family relationship, such contact among the family members cannot be characterized as casual. Further, it is specifically unknown whether or not Applicant's parents or his in-laws, along with his brother who is still a citizen of the PRC, are, or have ever been, members of the Communist Party. Nevertheless, there is no rational basis to assume or conclude that the Chinese 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 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.<sup>(35)</sup> 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 find it does not apply in this case. Exploitation of Applicant's remaining immediate family members in the PRC is always possible. They have been life-long residents and citizens of the PRC. Although Applicant's parents and his wife's parents are not agents of a foreign power and are elderly and retired, the historically aggressive nature of the PRC in such matters demonstrates Applicant's parents and his in-laws could be potentially subject to pressure and duress from the government. Even though it is unlikely, if not remote, that classified information could be compromised through these family members given their station in life, FI MC E2.1.3.1. still does not apply.

In addition to the formal mitigating conditions, I have considered the following information with regard to the "whole person" concept in evaluating Applicant's overall risk and vulnerability in protecting our national interests:

First, Applicant left China with his wife in 1991 and emigrated to the U.S. Both became naturalized U.S. citizens in 2001, and they have not exercised any rights and privileges of their previous PRC citizenship since becoming naturalized U.S. citizens. Applicant holds a valid U.S. passport and his prior passport issued by the PRC government is no longer valid.<sup>(36)</sup> Applicant's elderly parents are the only members of his immediate family who remain in China. With the changes that have occurred in China since Applicant, his wife, and his siblings left the country, it is reasonable that they would want to stay in contact with their parents, particularly since Applicant's siblings have also permanently emigrated to the U.S. No one in his family or his wife's family has ever been employed by, or associated with, the government of the PRC. Thus, it is also unlikely that any of them have ever been members of the Communist Party. Applicant has seen his parents and his in-laws twice since he left China nearly 15 years ago; the first time in 2000 when he attended his brother's wedding in Shanghai; and the second time in 2004 during a work-related trip he took to China at the request of his present employer to attend a business convention. Neither his nor his wife's parents have visited Applicant and his wife in the United States. His sister and brother have permanently located in the U.S. The information Applicant has provided about his family appears credible considering all the circumstances.

Second, Applicant has been consistently employed since arriving in the U.S. and he and his wife are productive U.S. citizens. Applicant has been fully responsible with regard to his personal financial affairs and he has never been charged with a criminal offense. Applicant and his wife hold no foreign passports and do not hold dual citizenship with any other country. Applicant's sister has also been in the U.S. for at least 15 years, and became a naturalized U.S. citizen in 2000. His brother is employed by a private U.S. company and has also been in the U.S. for about 15 years. He is currently a legal alien and it is reasonable to conclude he may become a naturalized U.S. citizen as well.

Third, Applicant and his wife own no property and have no business connections or other financial interests in the PRC or any other foreign country, and Applicant has never been employed by any foreign government, firm, or agency. He has not exercised the rights and privileges of any foreign citizenship since becoming a naturalized U. S. citizen. (37)

Fourth, given their present circumstances, it is highly unlikely Applicant's parents or in-laws have any particular knowledge of Applicant's employment duties and responsibilities in the U.S. While application of FI DC E2.A2.1.2.1. is not predicated upon a member of Applicant's immediate family having specific knowledge of the nature of Applicant's work, their lack of knowledge logically reduces the likelihood the government might exploit them. Accordingly, the opportunity for adverse influence against Applicant's relatives in the PRC is diminished. In addition, his closest family members are his wife, sister, and brother, all of whom have ostensibly severed their prior connections with the PRC. All active members of the family now live permanently in the U.S. thereby negating any vulnerability from pressure or duress that might be applied to any of them to gain access to classified information.

Applicant has been an exemplary U.S. resident, and now citizen, for nearly 15 years. The government has not presented information to rebut the evidence offered by Applicant. I am persuaded by the totality of the evidence under the "whole person" concept that Applicant is not vulnerable to pressure or duress from the government of the PRC. His two trips to China were motivated to attend a family wedding and to attend a business convention related to his employment, and were not a part of any questionable planned pattern of visits. His closest family members all permanently reside in the U.S. His only remaining family in the PRC are his elderly parents and in-laws, and Applicant's credible information concerning their personal circumstances and employment history mitigate against the likelihood that pressure would be asserted against them. I conclude Applicant has successfully mitigated and overcome the government's case under Guideline B.

### **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 of the SOR:

Paragraph 1. Foreign Influence (Guideline B) FOR APPLICANT

Subparagraph 1.a. For Applicant

Subparagraph 1.b. For Applicant

Subparagraph 1.c. For Applicant

Subparagraph 1.d. For Applicant

### **DECISION**

In light of all of 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. Clearance is granted.

David S. Bruce

Administrative Judge

1. Item 3 (Applicant's Security Clearance Application dated August 11, 2003), at 4.
2. Item 2 (Applicant's response to the SOR dated May 24, 2005), at 2.
3. Item 3, *supra* note 1, at 1 and 5.
4. *Id.*, at 4.
5. Item 2, *supra* note 2, at 2.
6. *Id.*
7. *Id.*, at 5, (Applicant later submits in his answer to the SOR that his in-laws are 78 and 76 years old, but also provides their birth dates which reflect their actual ages to be 75 and 71 as originally set forth in his SF 86).
8. *Id.*, at 2.
9. *Id.*
10. Item 3, *supra* note 1, at 5.

11. Item 2, *supra* note 2, at 1-2.
12. Item 3, *supra* note 1, at 2.
13. *Id.*
14. *Id.*, at 6-7.
15. *Id.*, at 6 and 8.
16. *Id.*, at 6.
17. Item 5 (Applicant's Answers to Interrogatories dated March 8, 2005), at 2 and 24-37.
18. *Id.*, at 3 and 7-22.
19. Item 3, *supra* note 1, at 6. (See also Item 4, Applicant's Certificate of Naturalization dated October 19, 2001).
20. Item 5, *supra* note 12, at 3.
21. Item 2, *supra* note 2, at 3.
22. Item 3, *supra* note 1, at 8-9.
23. *Id.*, at 7-8.
24. Item 2, *supra* note 2, at 2.
25. *Id.*
26. Item 6 (U.S. Department of State Consular Information Sheet dated April 22, 2005), at 1.
27. Item 13 (U.S. Department of State, China, Country Reports on Human Rights Practices - 2004), at 2-67.
28. Item 6, *supra* note 25, at 2.
29. 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.
30. Directive, Enclosure 2, Para. E2.2.2.
31. Executive Order 10865 § 7.
32. ISCR Case No. 96-0277 (July 11, 1007) at p. 2.
33. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
34. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Para. E3.1.15.
35. ISCR Case No. 99-0424 (February 8, 2001).
36. See ISCR Case No. 03-16516 (November 26, 2004) at 8, citing ISCR Case No. 03-16516 (January 10, 2002) at 10-11. The applicability of Adjudicative Guidelines disqualifying or mitigating conditions is not solely dependent on the specific wording of the SOR. Rather, their applicability turns largely on whether or not there is sufficient record evidence in a case that supports their application.

