

KEYWORD: Foreign Influence

DIGEST: The Applicant's parents are citizens of the Peoples Republic of China (PRC), but have permanent resident status and reside in the U.S. They are retired college professors. Her brother, an engineer, is a citizen of and resides in the PRC. He has been approved for permanent resident status in the U.S. The Applicant's mother-in-law and three siblings-in-law are citizens of and reside in the PRC. Her mother-in-law is a housewife, as is her one sister-in-law. One brother-in-law is retired from village work, and the other is an engineer. The Applicant has not seen any of her in-laws since 1994. None of the Applicant's foreign relatives is connected with any foreign government or subject to coercion. The Applicant visited the PRC in 1994 and 1998. She plans no further visits to the PRC. Mitigation is shown. Clearance is granted.

CASENO: 04-03610.h1

DATE: 11/16/2005

DATE: November 16, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-03610

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Jeff A. Nagel, Esquire, Department Counsel

FOR APPLICANT

Robert R. Bohn, Esquire, Applicant's Counsel

SYNOPSIS

The Applicant's parents are citizens of the Peoples Republic of China (PRC), but have permanent resident status and reside in the U.S. They are retired college professors. Her brother, an engineer, is a citizen of and resides in the PRC. He has been approved for permanent resident status in the U.S. The Applicant's mother-in-law and three siblings-in-law are citizens of and reside in the PRC. Her mother-in-law is a housewife, as is her one sister-in-law. One brother-in-law is retired from village work, and the other is an engineer. The Applicant has not seen any of her in-laws since 1994. None of the Applicant's foreign relatives is connected with any foreign government or subject to coercion. The Applicant visited the PRC in 1994 and 1998. She plans no further visits to the PRC. litigation is shown. Clearance is granted.

STATEMENT OF THE CASE

On April 5, 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 April 29, 2005.

The case was received by the undersigned on September 7, 2005. A notice of hearing was issued on September 26, 2005, and the case was heard on October 20, 2005. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also submitted documentary evidence. The transcript (TR) was received on November 3, 2005. The issue raised here is whether the Applicant's perceived Foreign Influence militates against the granting of a security clearance. [The Applicant admits the underlying factual basis of all of the allegations.]

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 41 years of age, has a Master's Degree, 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

In 1989, the Applicant came to the U.S. to join her husband and to further her education (TR at page 13 lines 18~20, and at page 27 line 22 to page 29 line 19). She was awarded a Master's Degree in 1997 (*Id.*, and Government Exhibit 2 at page 2). In 2000, the Applicant became a naturalized U.S. citizen, and has two native born American children (TR at page 13 lines 6~10, and Applicant's Exhibit (AppX) A). She has a net worth in excess of \$400,000 in the U.S. (TR at page 30 line 21 to page 31 line 20, and AppXs C~F).

1.a.~1.e. The Applicant's parents are citizens of the PRC, but have permanent resident status and reside with the Applicant in the U.S. (TR at page 19 line 6 to page 24 line 19). Her father is 70 and her mother is 68 (*Id.*). They are retired college professors (*Ibid.*). The Applicant's brother is a citizen and resident of the PRC (TR at page 19 line 6 to page 24 line 19). He is an engineer, and has been approved for permanent resident status in the U.S. (*Id.*).

1.f. The Applicant's mother-in-law and three siblings-in-law are citizens of and reside in the PRC (TR at page 24 line 10 to page 27 line 21). Her mother-in-law is a housewife, as is her one sister-in-law (*Id.*). She has two brothers-in-law. One brother-in-law is retired from village work, and the other an engineer (*Ibid.*). The Applicant has not seen any of her in-laws since 1994 (TR at page 24 line 10 to page 27 line 21). None of the Applicant's foreign relatives is connected with any foreign government (TR at page 33 lines 8~16, and at page 37 line 25 to page 38 line 10).

1.g. The Applicant visited the PRC in 1994 and 1998 (TR at page 32 line 8 to page 33 line 7). She also visited Hong Kong in 1997 (*Id.*). She plans no further visits to the PRC (TR at page 33 lines 17~25).

Mitigation

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 1989, in part, to pursue her Master's Degree. The Applicant's parent's, brother, mother-in-law, and siblings-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 are permanent U.S. residents, and her brother has been approved for permanent resident status. She has little contact with her in-laws since last seeing them more than ten years ago. 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 34 lines 1~12). 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 her alleged foreign influence. The Applicant has thus met the mitigating conditions of Guideline B, and of Section E.2.2. of the Directive.

Accordingly, she has met her 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.
- e. For the Applicant.
- f. For the Applicant.
- g. 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