

KEYWORD: Foreign Influence

DIGEST: Applicant is 44 years old, married with two children. She immigrated to the U.S. in 1989 from the People's Republic of China (PRC) to obtain her Ph.D. She became U.S. citizens and works in the U.S. for a defense contractor. Her sister lives in the U.S. and has continuously since 1996 with permanent residency status although her citizenship is PRC. Her mother has permanent U.S. residency status although a PRC citizen. Her mother lives with Applicant. Her mother and sister intend to become U.S. citizens, starting the process in 2006. Her parents-in-law live in and are citizens of the PRC, but Applicant has no contact with them. Applicant mitigated the foreign influence security concern. Clearance is granted.

CASENO: 04-06206.h1

DATE: 01/12/2006

DATE: January 12, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-06206

**DECISION OF ADMINISTRATIVE JUDGE**

**PHILIP S. HOWE**

**APPEARANCES**

**FOR GOVERNMENT**

Braden Murphy, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is 44 years old, married with two children. She immigrated to the U.S. in 1989 from the People's Republic of China (PRC) to obtain her Ph.D. She became U.S. citizens and works in the U.S. for a defense contractor. Her sister lives in the U.S. and has continuously since 1996 with permanent residency status although her citizenship is PRC. Her mother has permanent U.S. residency status although a PRC citizen. Her mother lives with Applicant. Her mother and sister intend to become U.S. citizens, starting the process in 2006. Her parents-in-law live in and are citizens of the PRC, but Applicant has no contact with them. Applicant mitigated the foreign influence security concern. Clearance is granted.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On March 29, 2005, DOHA issued a Statement of Reasons <sup>(1)</sup> (SOR) detailing the basis for its decision-security concerns raised under Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing on April 6, 2005 and elected to have a hearing before an administrative judge. The case was assigned to me on June 13, 2005. On July 28, 2005, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government and the Applicant submitted exhibits that were admitted into evidence. DOHA received the hearing transcript (Tr.) on August 5, 2005.

**FINDINGS OF FACT**

Applicant's admissions to the SOR allegations are incorporated here as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is a 44 years old, married, and has two children. She was born in the People's Republic of China (PRC). She obtained her bachelor and master's degrees in chemistry in the PRC. In January 1989 she immigrated to the U.S. on a full scholarship to study for her Ph.D. in chemistry at a U.S. university. About the same time, her husband, who was also born in the PRC, immigrated and studied for his Ph.D. They became U.S. citizens in 1999 (Applicant) and 2001. Applicant obtained her Ph.D. in 1992, and worked for a defense contractor from 1992 to 1997, then for a U.S. company until 2002, when she started working for a defense contractor. She is now a manager and an engineering specialist. (Tr. 9, 32-43; Exhibits 1, A and B)

Applicant's family members consist of her two sons, the oldest was born in the PRC in 1985, and the youngest son born in the U.S. in 1996, along with her husband. Her mother is a PRC citizen who is a permanent resident of the U.S. and intends to apply for U.S. citizenship in 2006. Applicant's sister immigrated to the U.S. in 1996 and is a permanent resident with PRC citizenship. She intends to apply for U.S. citizenship. Her sister has not returned to the PRC since she immigrated. Applicant has no other siblings. Her 93-year-old grandmother lives in the PRC. Applicant has no relationship or contact with her grandmother. She may have seen her once when Applicant was very young. Applicant's mother lives with Applicant's family in the U.S. She started visiting Applicant in 1991 for several months before returning to the PRC. Her stays in the U.S. became longer as the years passed, and when she obtained permanent residency she was able to remain longer in the U.S. Her mother stayed in the U.S. for two years from July 2000 to July 2002, then returned to the PRC to visit her aged mother. She returned to the U.S. in October 2003, remaining until July 2004. Then she returned to the U.S. in March 2005, where she currently remains. Her two children, Applicant and her sister, live in the U.S., and when her mother dies, she will not return to the PRC. Applicant's mother is 67 years old. Applicant's father died several years ago. (Tr. 44-59, 65-76; Exhibits 1 and F)

Applicant's parents-in-law live in the PRC. Applicant has little or no contact with them. Her husband talks to his parents every few months on the telephone. Applicant does not have a relationship with her in-laws, including her husband's sister, and cannot get along with her in-laws, so she remains away from them. (Tr. 60-62; Exhibit 1)

Applicant traveled to the PRC in 1990 to get her son from there and bring him to the U.S. He is now a junior in college in the U.S. In 1995 she traveled to the PRC to visit various sites. She has no family that she visits in the PRC. She has no friends in the PRC that she would or has visited. Applicant's most recent trip to the PRC was in 2004 when she took her family to visit various famous sites, such as the Great Wall of China. Applicant has no intention of returning for more visits to the PRC. Applicant has an excellent job in the U.S., has a home in the U.S., and realizes her future is in the U.S. (Tr. 57-59)

The PRC is ruled by the Communist Party of China. It is an authoritarian state that does not respect human rights as established as internationally recognized norms, including freedom of speech, freedom of religion, and other individual rights. There are 66 million members of the Communist Party out of a population of 1.3 billion people. PRC military policies include the importation and development of modern weapons, sale of weapons to other nations, and the acquisition by surreptitious methods U.S. industrial and military technology. (Exhibits 2-5)

## 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 the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information with 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.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required.

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. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 (See Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

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.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. ay 2, 1996). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at \*\*6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Exec. Or. 12968 § 3.1(b).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

Guideline B: Foreign Influence: 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 are relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure. E2.A2.1.1

## CONCLUSIONS

The Government established by substantial evidence and Applicant's admissions each of the allegations in the SOR. The Disqualifying Condition (DC) applicable here is DC 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. E2.A2.1.2.1). Applicant's mother and sister are citizens of the PRC. Her husband's parents are also citizens of the PRC and live there. Applicant's mother spends some time in the PRC every few years to visit with her mother.

The Mitigating Conditions (MC) applicable here are MC 1 (A determination that the immediate family members, (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 E2.A2.1.3.1) and MC 3 (Contact and correspondence with foreign citizens are casual and infrequent E2.A2.1.3.3). Applicant's husband and sons live in the U.S. and are

citizens, so they are not a security concern. Applicant's mother and sister, who are PRC citizens but also are permanent residents of the U.S. and have minimal connection remaining to the PRC, are not agents of the PRC government as shown by the evidence at the hearing. Because they both live in the U.S., the sister since 1996 continuously, and her mother with increasing duration since 2000, and both have permanent residency status, they are not in a position to be exploited by the PRC. Applicant has little or no contact with her husband's family members, so any contact is casual and infrequent. From Applicant's testimony, her contact with her in-laws is less than MC 3 contemplates. Furthermore, they would not fit the definition of immediate family members to Applicant because of the lack of any intimate relationship.

I did examine the Exhibits C through E submitted by Applicant. However, I find they are not persuasive or relevant to Applicant's case, which I decided on the guideline conditions and the evidence introduced into the record. Therefore, based on all the evidence and examining Applicant's "whole person" since she immigrated to the U.S. in 1989, I conclude this guideline for Applicant.

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: 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.

Philip S. Howe

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).