

KEYWORD: Foreign Influence

DIGEST: Applicant, a native of the People's Republic of China (PRC), emigrated to the United States (U.S.) with his parents and brother in 1991 when he was 14 years old. Since becoming a U.S. naturalized citizen in July 2002, Applicant traveled to the PRC twice as a tourist, and while there stayed with his sister-in-law's family. Applicant currently lives with his brother and sister-in-law, both PRC natives who have acquired U.S. naturalized citizenship. The risk of undue foreign influence presented by the PRC citizenship of his parents is minimal given their relatives all reside in the U.S., and they intend to remain here permanently. Applicant's contacts with his sister-in-law's family members in the PRC are sufficiently casual and infrequent to raise little concern. Clearance is granted.

CASENO: 04-06451.h1

DATE: 02/11/2005

DATE: February 11, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-06451

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), emigrated to the United States (U.S.) with his parents and brother in 1991 when he was 14 years old. Since becoming a U.S. naturalized citizen in July 2002, Applicant traveled to the PRC twice as a tourist, and while there stayed with his sister-in-law's family. Applicant currently lives with his brother and sister-in-law, both PRC natives who have acquired U.S. naturalized citizenship. The risk of undue foreign influence presented by the PRC citizenship of his parents is minimal given their relatives all reside in the U.S., and they intend to remain here permanently. Applicant's contacts with his sister-in-law's family members in the PRC are sufficiently casual and infrequent to raise little concern. Clearance is granted.

STATEMENT OF CASE

On August 10, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant. The SOR 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 September 21, 2004, Applicant executed an Answer to the SOR in which he admitted the allegations with explanation, and requested a hearing before a DOHA Administrative Judge. The case was assigned to me on December 20, 2004. A formal notice was issued on January 3, 2005, scheduling a hearing for January 19, 2005. At the hearing, the government submitted four exhibits and Applicant ten exhibits. Testimony was taken from Applicant, from a section manager at work, and from a close personal friend who has known Applicant since middle school, as reflected in a transcript received January 31, 2005.

FINDINGS OF FACT

DOHA alleged foreign influence concerns related to the PRC citizenship of Applicant's parents with whom he was said to reside; the PRC residency and citizenship of his sister-in-law's mother, sister, and brother, with whom he was alleged to have monthly contact; and his travel to, and stay with, his sister-in-law's relatives in the PRC for one month in November/December 2002, and for nine days in January 2004. In response to the SOR, Applicant admitted the PRC citizenship of his parents, but indicated they intend to become U.S. naturalized citizens as soon as they have the 15 years residency needed to relieve them of the English language proficiency requirement. He no longer resided with them as of May 2003. Applicant admitted he had infrequent contact with his sister-in-law's relatives in the PRC in connection with his trips there but no contact since his return. He explained his stay with these Chinese nationals was because of concern for his personal safety (less likely to be targeted by criminals or terrorists). Employed in classified environments with an interim clearance since March 2003, Applicant cited his violation-free record to justify his continued access. Applicant's admissions are accepted and incorporated as findings of fact. Additional findings are as follows:

Applicant is a 28-year-old computer software engineer who has worked for a defense contractor since June 2001. His interim clearance was withdrawn on issuance of the SOR; he seeks a final grant of secret-level access.

Born in a southern province of the PRC in December 1976, Applicant spent his primary years there with his brother (born in 1970) and parents. His father worked in a local hospital as a laborer while his mother operated a bookstand selling magazines and newspapers.

In January 1991, Applicant emigrated to the U.S. with his parents and brother (born in 1970), sponsored by his maternal grandmother who had been in the U.S. since 1980. The last members of their family to leave the PRC, Applicant has no close relatives who still reside in the PRC. Applicant attended city public schools in the U.S. In April 1997, Applicant's brother became a U.S. naturalized citizen. He sponsored the immigration of his future spouse, who he had met on a trip to the PRC, and she joined him in the U.S. in April 1998 where they then wed.

On graduating from high school in June 1997, Applicant received an honor given annually by the school system to one male and one female in each high school who exhibited advanced scholarship and meritorious deportment. He was also awarded a four-year full tuition scholarship to a local private university and recognized by the state senate for outstanding academic achievement and motivation. While at the university, Applicant was granted membership in a national honor society in 2000. In May 2001, he was awarded his Bachelor of Arts degree in computer science.

In June 2001, he began working for his present employer (company A) as a software engineer. After the terrorist attack of September 11, 2001, Applicant applied to become an agent for the Federal Bureau of Investigation (FBI) as he wanted to do whatever he could to protect the U.S. He was selected to participate further in the selection process, but before he could take the Phase I test, he learned he had a medical problem that could hinder him in any physical

confrontation, so he had to decline the opportunity.

In early July 2002, Applicant became a U.S. naturalized citizen, taking an oath to renounce all foreign allegiances, to support and defend the U.S. Constitution and its laws, and to bear arms or noncombatant service or civilian service on behalf of the U.S. if required. His acquisition of U.S. citizenship served to revoke his PRC citizenship, and he anglicized his name, taking on a new first name. In September 2002, he obtained his U.S. passport.

Needing a secret-level security clearance for his duties with company A, Applicant executed a security clearance application on October 22, 2002. Applicant disclosed his birth in the PRC, his parents' status as PRC citizens with permanent residency in the U.S., his brother's naturalization in the U.S. in April 1997, and his sister-in-law's status as a resident alien. Concerning foreign travel, Applicant listed three pleasure trips to Canada.

Unaware he had been granted an interim secret clearance for his duties, Applicant traveled to the PRC for pleasure from late November 2002 to late December 2002. He reported his planned travel to his section manager, who expressed no concerns, and checked the website of the U.S. State Department before his trip. With foreign travelers reported to be at high risk of being targeted in the PRC, Applicant arranged through his sister-in-law to stay with her family members (mother, sister, and brother) in the PRC, where he would not be placed in the position of having to identify himself as a foreigner, which would have been required had he checked into a hotel. In the month immediately prior to his departure for the PRC, Applicant conversed with his sister-in-law's family by telephone, asking for permission to stay with them. During his month-long stay in the PRC, Applicant took three overnight bus trips to tourist sites, one trip lasting five days. He experienced no problems with PRC authorities during his stay.

In March 2003, Applicant became aware that he had been granted an interim secret clearance in October 2002. In June 2003, Applicant took his first trip abroad for his employer. Apprised by his coworkers that he had to report his foreign travel to the facility security officer (FSO) if not to the government, Applicant notified his FSO in about September 2003 about his trip to the PRC the previous year. The FSO informed Applicant there were no required forms to complete regarding his vacation in the PRC, and it should not affect his clearance application.

With temporary duty (TDY) for his employer in Japan scheduled for January 2004, Applicant decided to take a second trip to the PRC preceding this TDY. Before leaving for the trip, Applicant reported his planned travel to his FSO, and he again contacted his sister-in-law's relatives for permission to stay with them, which was granted. The telephone call was initiated by his sister-in-law, with his contact limited to a brief conversation with her mother. During his week in the PRC, Applicant toured the Forbidden City and Great Wall for about five days.

In February 2004, Applicant was interviewed by a special agent of the Defense Security Service (DSS) in conjunction with the background investigation into his suitability for access to classified information. Applicant volunteered that he had taken two sightseeing trips to the PRC. He also provided the agent with the names of his sister-in-law's relatives in

the PRC. The agent did not indicate to him that his travel to the PRC or his contacts with his sister-in-law's relatives in the PRC were of concern to the government.

From early August 2004 to early September 2004, Applicant was abroad on TDY for his employer. He received the SOR on his return. Now knowing of the government's concerns about his connections to the PRC, Applicant does not intend to travel to the PRC in the future as he does not want to jeopardize his job.

As of January 2005, Applicant's parents had not acquired U.S. citizenship. Both in their sixties, Applicant's parents lack the English language proficiency required, although his mother had taken English classes after work with the intent of naturalizing. She did not renew her PRC passport that expired in 1999 as she has no intent to return to the PRC. Applicant's parents intend to apply for U.S. citizenship when they meet the 15-year residency requirement as they will no longer be required to demonstrate an understanding of the English language. [\(2\)](#)

Applicant's mother is currently employed in a Chinese supermarket in the U.S. His father, who is unemployed, spends his time socializing with friends. They have resided since May 2003 in elderly housing and need Applicant's help to translate their bank statements and to prepare their rent check.

Applicant resided with his parents until they moved into elderly housing. He remained at their old apartment until February 2004, when he moved in with his brother and sister-in-law who own their home. His brother works as a waiter, while his sister-in-law, who became a U.S. naturalized citizen in February 2003, is a cardiac stenographer at a local hospital. She corresponds with her mother by letter once every three or four months and has no regular telephone contact. Her mother, a retired factory worker, is in the process of preparing documentation for an immigration interview at the U.S. consulate. Her brother is unemployed while her sister works as an office clerk for a foreign capital company in the PRC. Applicant has not had any contact with his sister-in-law's relatives in the PRC since January 2004.

Applicant has proven to be a trustworthy, conscientious employee for company A. The section manager for the project Applicant worked on until his interim clearance was withdrawn has full confidence in Applicant. Applicant was diligent in handling classified information, including while on temporary duty to numerous government sites overseas.

Applicant has a close personal relationship with a PRC native whom he met in 1991 in middle school. They attended the same university, and this friend is also employed by company A as a software engineer, but at another facility. Applicant has not discussed his work projects with this friend.

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.

CONCLUSIONS

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.

Guideline B, foreign influence, concerns are raised in this case where Applicant's parents are citizens of the PRC, albeit permanent residents of the U.S. Disqualifying condition (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,* applies. Moreover, Applicant currently resides with his sister-in-law, whose immediate family members (mother and siblings) are resident citizens of the PRC, and he stayed with these foreign nationals while on vacation in the PRC in late 2002 and early 2004. DC E2.A2.1.2.2. *Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for foreign adverse influence or duress exists,* also applies.

In determining whether an applicant's foreign connections pose an unacceptable security risk, the Administrative Judge

must consider the record evidence as a whole. Common sense suggests that the stronger the ties of affection or obligation, the more vulnerable a person is to being manipulated if the relative, cohabitant, or close associate is improperly influenced, brought under control, or even used as a hostage by a foreign intelligence or security service. Applicant understandably has a close relationship with his parents. He lived with them until they moved into elderly housing in May 2003 and continues to assist them by explaining their bank statements and drafting checks for their signature. There is no evidence his parents were ever agents of a foreign power. Before they immigrated to the U.S. in January 1991, Applicant's mother sold magazines and newspapers at a bookstand; his father worked for a local hospital as a laborer.

The analysis does not end with a determination that Applicant's parents are not agents of a foreign power, however. The risk of undue foreign influence must be evaluated in terms of the possible vulnerability to both coercive and non coercive means of influence being brought to bear on, or through them by the PRC, a country known to have significant intelligence operations against the U.S. and a poor human rights record. Yet, Applicant is at minimal risk where his parents only connection to the PRC is citizenship. Continuous residents of the U.S. since their immigration in January 1991, they are entitled to the protections afforded legal permanent residents of the U.S. The last of their family to emigrate from the PRC, they do not intend to return. There is no evidence that they have any close and continuing contacts with any persons in the PRC or any financial assets in the PRC. They remain PRC citizens not because of any demonstrated preference for their native country, but rather due to difficulties learning English. As soon as they are not required to meet the English language requirement for U.S. citizenship, they plan to apply for naturalization. Mitigating condition (MC) E2.A2.1.3.1. *A determination that the immediate family member(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, applies in Applicant's favor.*

The potential for undue foreign influence being brought to bear on Applicant through his sister-in-law's family members is just as remote, notwithstanding her relatives are subject to the laws of the PRC and within the physical reach of PRC authorities. Applicant does not have an ongoing relationship with these foreign nationals. He has not had any contact with them since January 2004. Although he stayed with them during a portion of each vacation taken in the PRC, his motivation was to keep a low profile as a foreign tourist so as to minimize the potential of being targeted by any PRC authority. MC E2.A2.1.3.3. *(Contact and correspondence with foreign citizens are casual and infrequent)* aptly describes his relationship with his sister-in-law's relatives. To his knowledge, Applicant was not approached improperly when he was in the PRC, and there is no evidence his sister-in-law's family members are agents of a foreign government. Now aware of the security concerns presented by his travel to the PRC, Applicant does not intend to vacation in the PRC again and is, therefore, unlikely to have any direct contact with these foreign citizens in the future.

While there exists the theoretical possibility that the PRC could attempt to influence Applicant indirectly through his sister-in-law by placing pressure on her relatives, Applicant is not vulnerable to such foreign influence. Committed to the U.S. Applicant was educated in the U.S. from middle school. He testified credibly to a personal sense of obligation to the U.S. for his tuition-free college education. After September 11, 2001, he applied for a special agent position with the FBI only to subsequently learn that he had a potentially disqualifying medical condition. When he became a U.S. naturalized citizen, he took on a new first name more reflective of his U.S. citizenship. Trusted by his defense contractor employer, Applicant traveled to government sites abroad until his interim clearance was withdrawn pending final adjudication of his clearance, and he proved trustworthy and reliable in the handling and safeguarding of classified information. Applicant has not discussed his work projects with his best friend, who also works as a software engineer for the company but at a separate facility. Sensitive to the fact that others do not have a "need to know," Applicant tells

those who ask him about his work only that he fixes computers. Favorable findings are returned as to subparagraphs 1.a., 1.b., and 1.c. of the SOR.

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: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: 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.

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. 8 U.S.C. § 1423, which sets forth the requirements as to understanding the English language, history, principles and form of government of the United States, provides in pertinent part:

(a) No person except as otherwise provided in this subchapter shall hereafter be naturalized as a citizen of the United States upon his own application who cannot demonstrate - (1) an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language: Provided, That the requirements of this paragraph relating to ability to read and write shall be met if the applicant can read or write simple words and phrases to the end that a reasonable test of his literacy shall be made and that no extraordinary or unreasonable condition shall be imposed upon the applicant; and (2) a knowledge and understanding of the fundamentals of the history, and of the principles and form of government, of the United States. (b)(1) The requirements of subsection (a) of this section shall not apply to any person who is unable because of physical or developmental disability or mental impairment to comply therewith. (2) The requirement of subsection (a)(1) of this section shall not apply to any person who, on the date of the filing of the person's application for naturalization as provided in section 1445 of this title, either - (A) is over fifty years of age and has been living in the United States for periods totaling at least twenty years subsequent to a lawful admission for permanent residence, or (B) is over fifty-five years of age and has been living in the United States for periods totaling at least fifteen years subsequent to a lawful admission for permanent residence.