

DATE: May 23, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-06868

DECISION OF ADMINISTRATIVE JUDGE

THOMAS M. CREAN

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esq., Department Counsel

Stephanie C. Hess, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a software engineer for a defense contractor. She was born in the People's Republic of China (PRC). Her parents and brothers are citizens of and reside in the PRC. She visits her parents in the PRC frequently with her children, and maintains frequent contact with them. Applicant has not met her heavy burden to mitigate security concerns under Guideline B. Clearance is denied.

STATEMENT OF THE CASE

On August 13, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny a security clearance for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive). Applicant acknowledged receipt of the SOR on August 19, 2004. The SOR alleges security concerns under Guideline B (Foreign Influence) of the Directive.

Applicant answered the SOR in writing on September 1, 2004. She admitted the allegations under Guidelines B, and her request for a hearing before an administrative judge was received by DOHA on September 2, 2004. Department Counsel was prepared to proceed with the case on November 18, 2004. The case was assigned to another administrative judge on November 22, 2004, and reassigned to me because of a region change on February 9, 2005. Because of a change of Department Counsel, a notice of hearing was not issued until April 1, 2005, and the hearing convened on May 3, 2005. One government exhibit and the testimony of the Applicant were received during the hearing. The transcript was received on May 13, 2005.

FINDINGS OF FACT

Applicant is a 49-year-old software engineer who has been employed by the same defense contractor for 17 years. Applicant was born in the People's Republic of China (PRC) and lived there until she earned a bachelor's degree in engineering from a PRC university. Applicant came to the United States in 1985, received a master's degree in engineering from a United States university, and went to work for the defense contractor. She became a naturalized United States citizen in 1993. In 1985, she married her husband, a fellow student in the PRC who came to the United States with her. They had two children now teenagers. Applicant's husband died approximately eight years ago. [\(1\)](#)

Applicant's father, mother, and two brothers are citizens of and reside in the PRC. Her father is an 81-year-old retired planner for a manufacturer but suffers from memory loss. Applicant's mother is a 76-year-old retired school librarian/secretary. [\(2\)](#) Neither parent worked for the PRC government except that all businesses and schools are controlled by the PRC government. Applicant's brothers do not work directly for the PRC government, one works for the railroad, and one for a restaurant, except as noted, that all businesses are controlled by the PRC government. [\(3\)](#)

Applicant's last visit to the PRC was in summer 2004 when she and her sons visited for approximately 20 days staying with her parents. During this visit, she also saw her brothers on a number of occasions. Prior to this trip, she and her children visited her parents in the PRC four times in five years, from 1997 to 2001. After her husband died, Applicant's youngest son lived in PRC with her parents for approximately two years. [\(4\)](#) She talks by telephone to her parents about every other week, but rarely talks to her brothers. [\(5\)](#) Applicant has a sister who is a citizen of and resides in the United States.

When Applicant's husband died, he left a bank account in the PRC containing over \$50,000 to Applicant. Applicant closed the account in September 2004, and gave the money to her mother in part payment for taking care of her son and to help her mother and father buy necessities in PRC. Only her brothers will inherit any of the money left on the death of her parents. [\(6\)](#)

The People's Republic of China is a totalitarian regime who's interests are inimical to those of the United States. Citizens lack the freedom peacefully to express opposition to the political system and the right to change the national leaders or form of government. The government's human rights record remains poor, and the government continues to commit numerous and serious abuses of power. The government maintains tight restrictions on freedom of speech and of the press. China has conducted extensive political, military, and economic espionage against the United States. [\(7\)](#)

POLICIES

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." [\(8\)](#) Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. [\(9\)](#)

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions and mitigating conditions for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. [\(10\)](#) An administrative judge should consider: (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 applicant'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 of recurrence. [\(11\)](#)

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant.⁽¹²⁾ 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 present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information.⁽¹³⁾ Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.⁽¹⁴⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽¹⁵⁾ "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability."⁽¹⁶⁾ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."⁽¹⁷⁾

Based upon a consideration of the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline B - Foreign Influence: A security risk may exist when an individual's immediate family 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 interest in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guideline are set forth and discussed in the conclusions section below.

CONCLUSIONS

I carefully considered all of the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

The government has established its case under Guideline B. Applicant's parents and brothers in the PRC brings this matter under Foreign Influence Disqualifying Condition Directive ¶ E2.A2.1.2.1 (*an immediate family member, or a person to whom the individual has close ties of affection and obligation, is a citizen of, or resident or present in a foreign country*). An immediate family member includes spouse, father, mother, sons, daughters, brothers, sisters.⁽¹⁸⁾ Applicant's parents and brothers are immediate family members within the meaning of the disqualifying condition. I conclude the disqualifying condition has been established as to Applicant's parents and brothers.

The Foreign Influence Mitigating Condition that must be evaluated for Applicant is Directive ¶ E2.A2.1.3.1 (*a determination that 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 person(s) involved or the United States*). There is a rebuttable presumption that an Applicant who has immediate family members in a foreign country has ties of affection or obligation to them and that such ties are not casual in nature.⁽¹⁹⁾ In the PRC, there is a lack of basic freedoms, the government has a poor record on human rights, the government continues to abuse its citizens, and there is extensive espionage against United States. Because of these conditions, Applicant has a heavy burden to demonstrate that her immediate family members in the PRC do not pose a security risk as agents of a foreign power or are not in a position to be exploited forcing Applicant to chose between loyalty to the United States and her family members. While there is no evidence the PRC government has targeted PRC citizens to obtain information from citizens of the United States, the federal government does not have to wait until there is specific proof of targeting for there to be a security concern.⁽²⁰⁾

Applicant asserts she is a loyal American citizen who would not betray the United States. The government has not

alleged, and the evidence does not show, Applicant is anything but a loyal United States citizen. However, the issue is not her loyalty, but whether she is vulnerable to foreign influence that could result in the compromise of classified information.

Applicant has divested herself of the proceeds of the bank account left by her late husband. She gave the money to her parents with no residual rights to the money. Her brothers will inherit whatever is left on the death of her parents. I conclude Applicant has no financial interests in the PRC that creates a security concern.

There is no evidence Applicants parents or brothers are agents of a foreign power. Applicant has not rebutted the presumption that she has ties of affection to her immediate family members in the PRC. In fact, there is ample evidence to establish that Applicant has a high degree of affection for her parents. She talks to them frequently and visits them in the PRC with her children, the last time less than a year ago. She even had one son live with them for a few years after her husband died. When she had to close a large bank account, she did not take the money for herself but gave it to her parents to use for their well being and necessities. Applicant also has a high degree of affection for her brothers. She does not talk to her brothers as much as she talks with her parents, but she does visit with them whenever she goes to the PRC. Applicant gave her parents the proceeds from her husband's bank account knowing whatever was left would go to her brothers.

She has not established she is not vulnerable to foreign influence through her family members in the PRC in a way that could force her to chose between her loyalty to the United States or her immediate family members. Because of the repressive government in the PRC, the lack of basic human rights, and the propensity of the PRC government to conduct espionage against the United States, the PRC government could exploit Applicant's parents and brothers in a way that could force Applicant to choose between her loyalty to the United States and her family members. Applicant's close ties to her parents and brothers and the potential for their exploitation by the PRC government are a security concern and she has not met her heavy burden to establish she could not be forced to chose between her family and her loyalty to the United States. I conclude Applicant has not mitigated the foreign influence disqualifying condition concerning her immediate family in the PRC.

I carefully considered all of the circumstances in light of the "whole person" concept. I conclude Applicant is not eligible for access to classified information.

FORMAL FINDINGS

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are

Paragraph 1, Guideline B: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: For Applicant

DECISION

In light of all of the circumstances in the record in this case, it is not clearly consistent with the national interest to grant a security clearance for Applicant. Clearance is denied.

Thomas M. Crean

Administrative Judge

1. Tr. 9; Tr. 22; Government exhibit 1 (Security clearance application, dated Sep. 9, 2003).

2. TR. 10.
3. Tr. 35.
4. Tr. 27-29.
5. Tr. 37-38.
6. Tr. 18-19; Applicant's letter to Department Counsel, dated Dec 30, 2004 (Translation of Certificate of account closure, dated Sep. 2, 2004).
7. U.S. Department of State Background Notes, China, dated Oct, 2004; U.S. Department of State, Country Report on Human Rights Practices, China, 2003.
8. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).
9. Directive ¶ E2.2.1.
10. *Id.*
11. Directive ¶¶ E2.2.1.1 through E2.2.1.9.
12. *See* Exec. Or. 10865 § 7.
13. Directive ¶ E3.1.14.
14. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.
15. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
16. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))
17. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.
18. Directive ¶ E2.A2.1.3.1.
19. ISCR Case No. 00-0484 (App. Bd., Feb. 1, 2002) at 5.
20. ISCR Case No. 01-26893 (App. Bd. Oct. 16, 2002) at 8.