

DATE: October 31, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-08313

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant has surrendered his Chinese passport to the proper authorities and it has been cancelled. He has also renounced his Chinese citizenship. His casual and infrequent contact with foreign ties pose no security risk. Clearance is granted.

STATEMENT OF THE CASE

On May 24, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), 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.

The Applicant responded to the SOR in writing on June 7, 2005, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on August 15, 2005. A notice of hearing was issued on August 30, 2005, scheduling the hearing for September 28, 2005. At the hearing the Government presented four exhibits. The Applicant presented three exhibits and called one witness. He also testified on his own behalf. The official transcript (Tr.) was received on October 13, 2005.

On August 16, 2000, a memorandum was issued by Mr. Arthur Money, Assistant Secretary of Defense for Command, Control, Communications and Intelligence, clarifying "the application of Guideline C to cases involving an Applicant's possession or use of a foreign passport." The Applicant received a copy of this memorandum with the SOR.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the exhibits and the testimony. The

Applicant is 25 years of age and holds a Bachelor's Degree in Computer Science. He is employed as a Computer Engineer for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline C - Foreign Preference). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has acted in such a way as to show a preference for another country over the United States.

The Applicant is a dual citizen of the Peoples's Republic of China and the United States. He was born in the People's Republic of China to Chinese parents. His parents separated, and in 1992 his mother moved to the United States to pursue her post-doctorate degree in Biology. The Applicant followed his mother and moved to the United States in 1996, and attended high school and college. Both he and his mother became naturalized United States citizens in April 2003, and they applied for a United States passport. (See Government Exhibit 1). The Applicant possessed a Chinese passport that was issued to him on May 15, 1995, before he became a United States citizen. This passport will not expire until May 13, 2006. (See Applicant's Answer to SOR).

After learning of the provisions of the Money Memorandum, the Applicant returned his Chinese passport to the Chinese Embassy and had it cancelled and formally renounced his Chinese Citizenship. (See Applicant's Exhibit C).

The Applicant is married to a woman from China who is also naturalized United States citizen. Her parents are naturalized United States citizens. The Applicant and his wife are expecting a baby who will also be a United States citizen.

The Applicant is very involved in his church. He spends most of his free time as a volunteer at the church, comprised of Chinese-Americans.

Paragraph 2 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant's father, cousin, maternal grandparents and two friends are citizens of the People's Republic of China. The Applicant's father is sixty-two years old and is retired from working in a pharmaceutical department at a government hospital in China. He is financially stable and does not receive any assistance from the Applicant. The Applicant contacts him by telephone about once a month to check up on him. The Applicant's cousin was also, at one time, employed at the same hospital as his father was. She is no longer employed there. The Applicant has no contact with her. The Applicant has no contact with his maternal grandparents. His two friends in China were middle school classmates with whom the Applicant had dinner on one occasion when he was in China visiting his father. The Applicant maintains no regular contact with these friends. None of the Applicant's family or friends in China are affiliated in any way with the Chinese Government or are associated with the communist party.

The Applicant traveled to the People's Republic of China in December 1998 until January 1999, twice in 2000 and in 2001. During this period, the Applicant's father was experiencing a bout with mental depression and the Applicant went to visit him during his winter or summer breaks. Since 2001, the Applicant has not returned to China and has no intentions of returning. The Applicant has no assets in China and never intends to.

Mitigation.

The Applicant's wife testified that she has known the Applicant for seven years, as they were neighbors growing up together. She finds him to be honest, responsible and caring. (Tr. p. 39). She emphatically states that she and her husband and her parents have no plans to ever return to China. They have all made the United States their permanent home. (Tr. 42- 43).

Letters of recommendation from the Applicant's coworkers and pastor indicate that the Applicant has integrity, loyalty and a strong sense of morals. He is considered mature, trustworthy and responsible. (See Applicant's Exhibit A).

The Applicant was given an award for "outstanding initiative and diligence" by his employer in April 2004. (See Applicant's Exhibit B).

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Foreign Preference

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

Conditions that could raise a security concern:

1. The exercise of dual citizenship;
2. Possession and/or use of a foreign passport;

Conditions that could mitigate security concerns:

1. Dual citizenship is based solely on parent's citizenship or birth in a foreign country;
4. Individual has expressed a willingness to renounce dual citizenship.

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: (1) not citizens of the United States or (2) 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.

Condition that could raise a security concern:

1. An immediate family member, or person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country;

Condition that could mitigate security concerns:

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 the loyalty of the person(s) involved and the United States.
3. Contact and correspondence with foreign citizens are casual and infrequent.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "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. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have 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. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

The Government must make out a case under Guideline C (foreign preference) and Guideline B (foreign influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between 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 adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates a foreign preference and has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The mere possession of a foreign passport raises legitimate questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. 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

Having considered the evidence in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR, and that Applicant's foreign contacts have a direct and negative impact on his suitability for access to classified information.

The Applicant was a dual citizen of the People's Republic of China and the United States who possessed a Chinese passport. Disqualifying Conditions, (1) *The exercise of dual citizenship* and (2) *Possession and/or use of a foreign passport* apply. However, Mitigating Conditions (1) *Dual citizenship is based solely on parent's citizenship or birth in a foreign country* and (4) *Individual has expressed a willingness to renounce dual citizenship* are applicable.

Since learning that possession of a foreign passport is not permitted when holding a security clearance, in compliance with the provisions of the Money Memorandum, he surrendered his foreign passport to the Chinese Consulate. He has also renounced his Chinese citizenship. Under the circumstances, the Applicant has done everything possible to be in compliance with the requirements of the directive and the Money Memorandum. Accordingly, he has clearly demonstrated an unequivocal preference for the United States. Under the circumstances of this case, I find for the Applicant under Guideline C.

With respect to Guideline B, the evidence establishes that he is not vulnerable to foreign influence. Disqualifying Condition (1) *an immediate family member, or 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. However, Mitigating Conditions (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 the loyalty of the person(s) involved and the United States* and (3) *Contact and correspondence with foreign citizens are casual and infrequent* are applicable. Although the Applicant's father, cousin, maternal grandparents and two friends are citizens and residents of China, none of the individuals are any longer associated with the Chinese government or in a position to place foreign influence on the Applicant, or in a position to be exploited by the Chinese Government in a way that could force the Applicant to choose between loyalty to them and loyalty to the United States. Furthermore, the Applicant's contacts with his foreign relatives are very limited, and are not of a nature to influence his security worthiness. The Applicant has cut all ties with China, except his very infrequent contact with his father. The Applicant understands his responsibility to the United States in holding a security clearance. Based on the foregoing, the Applicant does not raise a security concern and Guideline B is found for the Applicant.

Considering all the evidence, the Applicant has met the mitigating conditions of Guideline C and Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guidelines C and B.

FORMAL FINDINGS

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.

Subparas. 1.a.: For the Applicant

1.b.: For the Applicant

Paragraph 2: For the Applicant.

Subparas. 2.a.: For the Applicant

2.b.: For the Applicant

2.c.: For the Applicant

Subparas. 2.d.: For the Applicant

2.e.: For the Applicant

2.f.: For the Applicant

2.g.: For the Applicant

DECISION

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson

Administrative Judge