

KEYWORD: Foreign Influence, Personal Conduct

DIGEST: Applicant, who is 49-years-old, was born in the People's Republic of China (PRC). He immigrated to the United States (U.S.) in 1986, and became a U.S. citizen in 1998. He worked on the development of a computer simulator weapons system for small firearms, a commercial firearm shooting sport system, and a software system to translate Chinese characters. He routinely demonstrated the simulator weapons system and sport shooting system for customers, including visitors from the PRC. He now owns his own company, and he communicates with former classmates and co-workers in the PRC about business matters. He deliberately failed to identify his PRC business contacts when he submitted his security clearance application. He has not mitigated the government's concerns under foreign influence and personal conduct. Clearance is denied.

CASE NO: 04-08464.h1

DATE: 05/30/2006

DATE: May 30, 2006

In re:

SSN:

Applicant for Security Clearance

ISCR Case No. 04-08464

DECISION OF ADMINISTRATIVE JUDGE

MARY E. HENRY

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, who is 49-years-old, was born in the People's Republic of China (PRC). He immigrated to the United States (U.S.) in 1986, and became a U.S. citizen in 1998. He worked on the development of a computer simulator weapons system for small firearms, a commercial firearm shooting sport system, and a software system to translate Chinese characters. He routinely demonstrated the simulator weapons system and sport shooting system for customers, including visitors from the PRC. He now owns his own company, and he communicates with former classmates and co-workers in the PRC about business matters. He deliberately failed to identify his PRC business contacts when he submitted his security clearance application. He has not mitigated the government's concerns under foreign influence and personal conduct. Clearance is denied.

STATEMENT OF THE CASE

On June 17, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. 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 Applicant. Specifically, the SOR set forth security concerns arising under Guideline B (Foreign Influence), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct), of the Directive. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. On July 5, 2005, Applicant submitted a notarized response to the allegations. He requested a hearing.

This matter was assigned to me on January 30, 2006. A notice of hearing was issued on March 6, 2006, and a hearing was held on March 28, 2006. Nine government exhibits and one Applicant exhibit were admitted into evidence. Applicant and one witness testified. The hearing transcript (Tr.) was received on April 10, 2006.

FINDINGS OF FACT

Applicant admitted, with explanations, the allegations in Guideline B, subparagraphs 1.a. through 1.g., Guideline E, subparagraphs 2.a. through 2.c., and Guideline E, subparagraphs 2.d.(2) through 2.d.(4) of the SOR. ⁽¹⁾ Those admissions are incorporated as findings of fact. He denied the remaining allegations. ⁽²⁾ After a complete review of the evidence in the record, I make the following additional findings of fact:

Applicant is a 49-year-old computer systems developer. ⁽³⁾ Since 2000, he has been president and chief executive officer (CEO) of his own company. ⁽⁴⁾ He completed a security clearance application (SF 86) in December 2002. ⁽⁵⁾

Applicant was born in the PRC. Prior to the communist takeover of China in 1949, his grandparents has been successful business people, who owned significant property and assets, which were confiscated by the communists. ⁽⁶⁾ His parents had been teachers and educators. ⁽⁷⁾ When the cultural revolution began in 1966, the communist government sent his parents to re-education camps for several years. ⁽⁸⁾ Thus, at age 13, Applicant assumed responsibility for the care of his younger sisters. ⁽⁹⁾ He was forbidden to attend college because his parents were in re-education camps. ⁽¹⁰⁾

Education and Training

When the cultural revolution ended in 1978, Applicant successfully competed for admission to college. ⁽¹¹⁾ He graduated from a Chinese university in 1982 with a bachelor of science degree. ⁽¹²⁾ Upon his graduation, he began work as a software engineer at an institute in the PRC, a job selected for him by the government. ⁽¹³⁾ In December 1986, he immigrated to the U.S., after accepting a job as a research fellow at a U.S. university. ⁽¹⁴⁾ He remained on the payroll of the institute for one year after his arrival in the U.S., and on its employee roster for another 13 months because the institute expected him to return to the PRC and work for it. ⁽¹⁵⁾ At the conclusion of his fellowship, his employment with the institute ended when he advised the it that he intended to remain in the U.S. ⁽¹⁶⁾

Family

Applicant's father had four brothers and two sisters. ⁽¹⁷⁾ In 1949, his father's four brothers fled mainland China. These brothers and their families have been in the U.S. for many years. His father and his father's two sisters remained in the ⁽¹⁸⁾

PRC. Applicant has two sisters living in the U.S. One sister is a naturalized U.S. citizen, and the other has her citizenship request pending.⁽¹⁹⁾ His parents immigrated to the U.S. in 1996.⁽²⁰⁾ He became a U.S. citizen in 1998.⁽²¹⁾ His father continues to live in the U.S.⁽²²⁾ His mother died in June 2005.⁽²³⁾ He contacts his two aunts living in the PRC once a year.⁽²⁴⁾ He provides no financial support to either aunt.⁽²⁵⁾

In October 1986, Applicant married his first wife.⁽²⁶⁾ She immigrated to the U.S. in 1990, and in October 1990, they divorced under Chinese law.⁽²⁷⁾ She now lives in Canada.⁽²⁸⁾ He married his current wife, a U.S. citizen, in 1992.⁽²⁹⁾ They have two children, a son age 12 and a daughter age 10, who were born in the U.S.⁽³⁰⁾

Contacts with the Chinese Embassy

From December 1988 until May 1989, while a research fellow at a U.S. university, Applicant served as president of a Chinese student organization which helped Chinese students with housing, school issues, passport issues, and other issues related to their stay at U.S. schools.⁽³¹⁾ In this position, Applicant had contact with the Embassy of the PRC.⁽³²⁾ In this six-month time period, he contacted the PRC Embassy to request assistance with student passport issues, funds to present a booth on Chinese culture at the university, and for copies of Chinese movies.⁽³³⁾

In 1989, Applicant participated in student demonstrations against the events in Tiananmen Square.⁽³⁴⁾ In 1990, Applicant contacted the PRC Embassy and asked for assistance with getting his then wife an exit visa from the PRC. She was having difficulty leaving the PRC because the Chinese government had placed his name on a list of political dissidents.⁽³⁵⁾ Through his contact, the Embassy forwarded a letter to the PRC's government indicating that Applicant had not been involved in demonstrations regarding the Tiananmen Square incident.⁽³⁶⁾ His first wife then came to the U.S.⁽³⁷⁾ In the early 1990s, he did not tell others of his contact with the Embassy for fear of reprisal actions against his friend. When his friend was scheduled to return to the PRC, he contacted Applicant to say goodbye.⁽³⁸⁾ Applicant has not had any further contact with this individual.⁽³⁹⁾

Foreign Business Contacts

From 1989 until July 2000, Applicant worked for a computer company owned by an individual who fled China in 1949 and immigrated to the U.S. in 1961.⁽⁴⁰⁾ The company initially hired Applicant as a network technical engineer.⁽⁴¹⁾ He progressed to research and development, where he helped develop a computer simulator weapons system for small firearms up to the size of a bazooka, and a subsystem sport system.⁽⁴²⁾ He developed and placed a three-layer protection system on these software systems to prevent copying.⁽⁴³⁾ He also helped with the development of a software system

which could translate Chinese characters and with an interface card system.⁽⁴⁴⁾ As part of his duties for this company, he demonstrated the computer simulator weapons systems to visitors, including visitors from the PRC.⁽⁴⁵⁾ Since he spoke Chinese, he occasionally had lunch with a visitor from the PRC or took a visitor sightseeing.⁽⁴⁶⁾

Applicant had many contacts with various foreign visitors, particularly visitors from the PRC and delegations from the Embassy of the PRC, while employed at the computer company.⁽⁴⁷⁾ He did not initiate these contacts, nor did he continue with follow-up contacts after the visits.⁽⁴⁸⁾ These visits were reported to his company's security office.⁽⁴⁹⁾ These frequent contacts ceased when he left his employment with this company in July 2000.⁽⁵⁰⁾

In August 2000, Applicant established his own business, which works with the computer simulator weapons system for small firearms and other research projects.⁽⁵¹⁾ Since then, he has communicated by e-mail with former college classmates who own private business companies in the PRC and Canada.⁽⁵²⁾ Former classmates and co-workers in China do contact him occasionally for assistance with their business or with business opportunities.⁽⁵³⁾ He has some business contacts through his father.⁽⁵⁴⁾ His business office is located in the same building as his former employer.⁽⁵⁵⁾ He leases office space from his former employer.⁽⁵⁶⁾

In 2002, a representative from a company based in New York City contacted Applicant for the purpose of purchasing the simulator weapons system for small firearms with specific modifications related to other military weapons systems and night vision goggle use.⁽⁵⁷⁾ In addition, this company sought ammunition, which Applicant would obtain through a subcontractor. The subcontractor would buy the ammunition from Chinese manufacturers.⁽⁵⁸⁾ After meeting with the representative on several occasions, Applicant provided the representative with a partial price quote, but then withdrew from negotiations when the representative suggested changing the shipping port from Jordan, a country Applicant believed friendly to the U.S., to Italy because of the document filings required by Jordan.⁽⁵⁹⁾

Travel

In 2000, Applicant traveled to the PRC with his father as his mother was too ill to travel.⁽⁶⁰⁾ His father wanted to gather personal belongings left in the PRC, to vacate and clean the apartment he still held, and to show Applicant some of their family history.⁽⁶¹⁾ He met with his aunt while in the PRC, but did not meet with any government officials or business people.⁽⁶²⁾ This has been his only trip to PRC since he arrived in the U.S. in 1986. He traveled on his U.S. passport,

after obtaining a visa from the Embassy of the PRC. [\(63\)](#)

Falsification

On December 4, 2002, Applicant completed his security clearance application. He answered "yes" to the following question in the SOR and listed his contacts from December 1, 1988 to June 4, 1989: [\(64\)](#)

Question 14. Your Foreign Activities - Contact with Foreign Government

Have you ever had **any contact with a foreign government, its establishments (embassies or consulates), or its representatives**, whether inside or outside the U.S., other than on official U.S. Government business? (Does not include routine visa applications and border crossing contacts.)

He did not list his contacts with the Embassy of the PRC in 1990, when he sought assistance with his then wife's exit visa to the U.S., and when his friend called him to say good-bye. [\(65\)](#) He also did not list his contacts with representatives of the PRC when they visited his previous place of employment. [\(66\)](#) He did not list the contacts in the early 1990s because he had repressed all memories of events connected with his first wife. [\(67\)](#) He did not list the contacts which occurred during his prior employment because he did not remember the specific contacts and because he misunderstood the question. [\(68\)](#)

He answered "no" to the following question:

Question 12. Your Foreign Activities - Property

Do you have **any foreign property, business connections**, or financial interests?

He did not list his contacts with a standards institute from 1988 to 1992 and in 2000, with a representative of a China tea and fruit company in 1997, with two employees of a Chinese equipment company in 1997 or 1998, and with a science and technological research institute in 1999. Applicant explained that these contacts occurred when he was an employee of the computer company and at the request of his employer. [\(69\)](#) He has not had any contacts with these individuals,

except through this employer.

In his signed statement, dated January 31, 2003, Applicant did not list or discuss his contacts with the PRC Embassy after 1989, nor did he list or discuss his involvement with the visits from the PRC Embassy while he was employed at the computer company.⁽⁷⁰⁾ He did list five relatives and seven other contacts in the PRC.⁽⁷¹⁾

Other

The retired chief executive officer (CEO) of Applicant's former employer testified on his behalf.⁽⁷²⁾ The CEO was born in China, but fled China with his family in 1949.⁽⁷³⁾ They settled in Taiwan, where he graduated from college.⁽⁷⁴⁾ He immigrated to the U.S. in 1961.⁽⁷⁵⁾ He received a masters of science degree and a doctorate degree from U.S. universities.⁽⁷⁶⁾ In 1980, he started a computer business, which grew to 500 people in the 1990s.⁽⁷⁷⁾ His business developed the simulator weapons system for small fire arms, and a firearm shooting sport subsystem. This business has been sold.⁽⁷⁸⁾

He acknowledges that he sold some of the weapons simulation systems to the PRC, since the system has commercial applications and there are no restrictions on the sale or distribution of this product.⁽⁷⁹⁾ Before the U.S. ban in 1994, he purchased ammunition for shotguns and air rifles from the PRC.⁽⁸⁰⁾ He arranged trips to the PRC for some individuals, and traveled to the PRC as a private individual.⁽⁸¹⁾ Finally, his cousin was arrested for, charged with, and convicted of espionage in the 1990s.⁽⁸²⁾

The Peoples Republic of China

The PRC is an authoritarian, communist party-led state.⁽⁸³⁾ Human rights violations continue to be problematic.⁽⁸⁴⁾ Concerns regarding the PRC's weapons development, theft of classified technology information between 1979 and 1999, and industrial espionage activities remain as the PRC continues to seek any and all information needed to improve its military and economic position.⁽⁸⁵⁾ On the other hand, the PRC supports the U.S.'s anti-terrorism position and activities.⁽⁸⁶⁾ The U.S. and the PRC have developed joint trade agreements, resulting in the sale of goods to each other, and work together on environmental issues.⁽⁸⁷⁾ The PRC enjoys a most favored nation status in trading with the U.S. The PRC has opened its doors to outside investment.⁽⁸⁸⁾

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the adjudicative process provision in Paragraph E2.2., Enclosure 2 of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Included in the guidelines are disqualifying conditions and mitigating conditions applicable to each specific guideline. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. In addition, each security clearance decision must be based on the relevant and material facts and circumstances, the whole-person concept, and the factors listed in the Directive. Specifically, these are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (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 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.⁽⁸⁹⁾

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽⁹⁰⁾ The government has the burden of proving controverted facts.⁽⁹¹⁾ The burden of proof is something less than a preponderance of the evidence.⁽⁹²⁾ Once the government has met its burden, the burden shifts to the applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁽⁹³⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁹⁴⁾

No one has a right to a security clearance,⁽⁹⁵⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽⁹⁶⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽⁹⁷⁾ Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." The decision to deny an individual a security clearance is not necessarily a determination as to the allegiance, loyalty, and patriotism of an applicant.⁽⁹⁸⁾ 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.

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:

Foreign Influence - Guideline B: 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.

Personal Conduct - Guideline E: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulation, could indicate that the person may not properly safeguard classified information.

Criminal Conduct - Guideline J: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to the allegations set forth in the SOR:

Applicant endured government repression during most of his childhood. The Chinese Cultural Revolution of the 1960s and 1970s severely impacted his parents and his family. Despite this immensely stressful time, he successfully competed for admission to college. When the government of the PRC presented him with an opportunity to attend school in the U.S., he accepted. He came to the U.S., and eventually became a citizen. He has succeeded in his career. He is living the American dream. His loyalty to the U.S. is unquestioned, and is not a factor which determines his right to a security clearance.

The government has established its case under Guideline B. Since arriving in the U.S., Applicant has continually maintained contacts with family, friends, colleagues, and co-workers in the PRC. He also developed friendships and business connections with PRC immigrants in the U.S., some of whom have ongoing connections in the PRC. Through business, both as an employee and an owner, he routinely interacted with representatives of the PRC and other countries with interests contrary to the U.S. These individuals seek him out, partly because of his involvement in the development of a small firearms simulated weapons system. With his contacts, he has placed himself in a position for potential

coercion, exploitation or pressure by a foreign power or its agents. Disqualifying Condition Foreign Influence (DC FI) E2.A2.1.6. (*Conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government*) applies.

Applicant's contacts with family and friends from his homeland and other immigrants from the PRC are important to him and his family, and to the growth of his business. While some of his contacts with the foreign visitors at his prior place of employment were casual and infrequent, he has not mitigated the government's concerns about his security worthiness. He continues to have business and personal contacts with former Chinese classmates and co-workers who are now business owners in the PRC, and with immigrants from the PRC, who still maintain business contacts in the PRC. Over the last 20 years, he has relied heavily upon these contacts as part of his life in the U.S.

In determining whether he is in a position to be exploited by the government of the PRC because of these contacts, the character of the PRC's government and its relationship with the U.S. is an important factor. The PRC is an authoritarian, communist state with a strong interest in obtaining military and economic information from the U.S. It is an active collector of defense, medical, economic, technological, and computer information. There is a history of the PRC government exploiting or using influence, pressure, force, incentive, or coercion for the purpose of making the holder of a security clearance in the U.S. act adversely to the U.S. Applicant's involvement in the development of a simulated small weapons program makes him an individual of interest to the PRC. The government of the PRC has actively sought this system, and would not be adverse to approaching his contacts, who are its citizens and residents, and pressuring them to obtain needed information from him directly or through his contacts. While Applicant is a loyal citizen of the U.S. who does not want to harm his new country, the PRC would seek to exploit his skills and knowledge whenever possible. He is in a position of potential harm, which causes security concerns for the government. The Applicant has not mitigated the government's concerns. Guideline B is found against Applicant.

Under Guideline E, the government alleges Applicant deliberately falsified material facts on his latest security clearance application when he answered "no" to Question 12, when he failed to provide detailed answers to Question 14, and when he twice failed to provide this information in his signed, sworn statements. He denies intentionally falsifying his answers. When a falsification allegation is controverted, the government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's intent or state of mind at the time the omission occurred.⁽⁹⁹⁾ For Personal Conduct Disqualifying Conditions (PC DC) E2.A5.1.2.2. (*The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire . . .*) and PC DC E2.A5.1.2.3. (*Deliberately providing false or misleading information concerning relevant and material matters to an investigator . . .*) to apply, the government must establish that Applicant's omission, concealment or falsification in his answers related to a relevant and material fact and was deliberate.

The government has established its case under Guideline E. Although Applicant has denied that he intentionally falsified his answers to Questions 12 and 14, the questions are clear about the information requested from him. He knew that during the years he worked at the computer company, he regularly demonstrated the simulated small firearms system to visitors, including visitors from the PRC. His job required him to show the positive operational aspects of this system to potential business customers. These customers are business connections for him as well as his former

employer. He also knew that he had contacted, for personal reasons, the Embassy of the PRC long after he resigned his position as president of a student organization.

I have considered the mitigating factors and conclude that none apply. Applicant did not voluntarily provide correct information after completing his security clearance; rather, he provided this information only after being confronted by the investigator. In addition, he failed to voluntarily report the potential sale of a modified simulated small firearms weapons system by his company to a company which intended to ship the system and ammunition to Jordan. He did not consult with legal counsel or authorized personnel about his answers before submitting his application. Given his continued correspondence with college classmates and co-workers in the PRC, he has not taken the necessary steps to significantly reduce or eliminate his vulnerability to coercion, exploitation, or duress. Guideline E is found against Applicant.

Under Guideline J, a single serious offense can raise a security concern. It is a felony punishable by a fine or imprisonment for not more than five years, or both, to knowingly and willfully make any materially false, fictitious, or fraudulent statement or representation in any matter within the jurisdiction of the executive branch of the Government of the United States. [\(100\)](#) Security clearance are within the jurisdiction of the executive branch of the Government of the United States. [\(101\)](#) A deliberately false answer on a security clearance application or in response to questions by a security investigator is a serious crime within the meaning of Guideline J.

The government has established its case under Guideline J. Applicant falsified his answers to his security clearance. His criminal conduct raises Criminal Conduct Disqualifying Condition E2.A10.1.2.2. (*A single serious crime or multiple lesser offenses*). Applicant has not mitigated this criminal conduct. Guideline J is found against him. Accordingly, for the reasons stated, I find that it is not clearly consistent with the national interest to grant a security clearance to Applicant.

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 (Foreign Influence): AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: Against Applicant

Paragraph 2, Guideline E (Personal Conduct): AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: Against Applicant

Subparagraph 2.d: Against Applicant

Paragraph 3, Guideline J (Criminal Conduct): Against APPLICANT

Subparagraph 3.a: Against Applicant

DECISION

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

Mary E. Henry

Administrative Judge

1. Applicant's Response to SOR, filed July 15, 2005, at 1-8.
2. *Id.*
3. Government Exhibit 1 (Applicant's security clearance application, dated December 4, 2002) at 1; Tr. at 68.
4. Government Exhibit 1, *supra* note 3, at 2; Tr. at 70.
5. Government Exhibit 1, *supra* note 3, at 1.
6. Tr. at 59-61, 73.
7. Applicant Exhibit A (letter from Applicant's father, dated March 18, 2006) at 2-3.
8. *Id.*; Applicant Exhibit A, *supra* note 7, at 2-4.
9. *Id.*
10. *Id.*
11. Tr. at 62.
12. *Id.* at 63; Government Exhibit 2 (Applicant's signed statement, dated January 31, 2003) at 1.
13. *Id.*
14. Tr. at 64, Government Exhibit 2, *supra* note 12, at 1.
15. Government Exhibit 2, *supra* note 12, at 1; Tr. 75-76.
16. *Id.*
17. Tr. at 72-73.
18. *Id.*
19. *Id.* at 71-72.
20. Government Exhibit 2, *supra* note 12, at 4.
21. Government Exhibit 1, *supra* note 3, at 1.
22. Applicant Exhibit A, *supra* note 7, at 1.
23. Tr. at 71-72.
24. *Id.*
25. *Id.*

26. *Id.* at 84-85, 93; Government Exhibit 1, *supra* note 3, at 3; Government Exhibit 2, *supra* note 12, at 5.

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. Tr. at 80; Government Exhibit 2, *supra* note 12, at 2.

32. *Id.*

33. *Id.*

34. Government Exhibit 3 (Applicant's statement, signed and dated June 10, 2003) at 4.

35. *Id.*

36. Tr. at 82-84, 89.

37. *Id.* at 92.

38. *Id.* at 120.

39. *Id.* at 81.

40. *Id.* at 35.

41. *Id.* at 27, 68.

42. *Id.*

43. *Id.* at 69, 97-99.

44. *Id.* at 68.

45. *Id.* at 29-30, 53, 86-87.

46. *Id.* at 53, 96.

47. *Id.* at 96-102; Government Exhibit 2, *supra* note 12, at 3-4.

48. Tr. at 86-87

49. *Id.* at 55, 97.

50. *Id.* at 90; Government Exhibit 2, *supra* note 12, at 3-4.

51. Government Exhibit 1, *supra* note 3, at 2.

52. Tr. at 103.

53. *Id.*

54. *Id.*
55. *Id.* at 110.
56. *Id.* at 111.
57. *Id.* at 112-115.
58. *Id.* at 112-116; *See* Government Exhibit 4 (U.S. Department of State, Bureau of East Asian and Pacific Affairs, Background Note: China, dated March 2005) at 16.
59. Tr. at 117, 124.
60. Government Exhibit 1, *supra* note 3, at 7; Government Exhibit 2, *supra* note 12, at 5.
61. Tr. at 72-73; Government Exhibit 2, *supra* note 12, at 5.
62. Tr. at 73-74.
63. Government Exhibit 2, *supra* note 12, at 2.
64. Government Exhibit 1, *supra* note 3, at 1, 6.
65. *Id.*; Tr. at 82.
66. *Id.*
67. Tr. at 95.
68. *Id.* at 90-91, 126.
69. *Id.* at 102.
70. Government Exhibit 2, *supra* note 12.
71. *Id.* at 9-11.
72. Tr. at 26-55.
73. *Id.* at 35.
74. *Id.* at 35-36.
75. *Id.* at 35.
76. *Id.* at 36-37.
77. *Id.* at 37-38.
78. *Id.* at 42.
79. *Id.* at 49.
80. *Id.* at 44-45.
81. *Id.* at 31-32, 51.

82. *Id.* at 45-47; Government Exhibit 7 (Paper from Select Committee on U.S. National Security and Military/Commercial Concerns with the People's Republic of China, dated January 3, 1999) at 41.
83. Government Exhibit 6 (U.S. Department of State, China: Country Reports on Human Rights Practices 2004) at 1; Government Exhibit 4, *supra* note 58, at 1, 9.
84. *Id.*
85. Government Exhibit 7, *supra* note 82; Government Exhibit 8 (Operations Security Intelligence Threat Handbook) at 4.
86. Government Exhibit 4, *supra* note 58, at 19.
87. *Id.* at 11-12, 13-14.
88. *Id.* at 13-14.
89. Directive, Enclosure 2, ¶ E2.2.1.1. through E2.2.1.9.
90. ISCR Case No. 96-0277 (July 11, 1997) at 2.
91. ISCR Case No. 97-0016 (App. Bd., December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.
92. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).
93. ISCR Case No. 94-1075 (App. Bd., August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.
94. ISCR Case No. 93-1390 (App. Bd. Decision and Reversal Order, January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.
95. *Egan*, 484 U.S. at 531.
96. *Id.*
97. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
98. Executive Order No. 10865 § 7.
99. *See* ISCR Case No. 03-09483 at 4 (App. Bd. Nov.17, 2004)(explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).
100. 18 U.S.C. § 1001.
101. *Egan*, 484 U.S. at 527.