

KEYWORD: Foreign Influence

DIGEST: Applicant is not potentially subject to foreign influence through his parents and siblings, who are citizens and residents of the People's Republic of China (PRC). He demonstrated that none of them were foreign agents or otherwise so situated as to present a pressure point on Applicant. Clearance granted.

CASE NO: 05-01583.h1

DATE: 06/14/2006

DATE: June 14, 2006

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 05-01583

**DECISION OF ADMINISTRATIVE JUDGE**

**JOHN GRATTAN METZ, JR**

**APPEARANCES**

**FOR GOVERNMENT**

Jason Perry, Esquire, Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant is not potentially subject to foreign influence through his parents and siblings, who are citizens and residents of the People's Republic of China (PRC). He demonstrated that none of them were foreign agents or otherwise so situated as to present a pressure point on Applicant. Clearance granted.

### **STATEMENT OF THE CASE**

Applicant challenges the 9 August 2005 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of foreign influence concerns. <sup>(1)</sup> He answered the SOR on 22 August 2005, and requested a decision without hearing. He responded to DOHA's 20 September 2005 File of Relevant Material (FORM) on 10 October 2005. The record closed 19 October 2005, when Department Counsel indicated no objection to the response. DOHA assigned the case to me 20 October 2005.

### **FINDINGS OF FACT**

Applicant admitted the allegations of the SOR, and accordingly, I incorporate those admissions as findings of fact. He is a 40-year-old software engineer for a defense contractor, and seeks access to classified information. He has not

previously held a clearance.

Applicant was born in the People's Republic of China (PRC) in 1965. He grew up in China, and was educated there, receiving his undergraduate degree in 1986. In 1988 or 1989, he immigrated to the U.S. to pursue post-graduate education. He obtained a master's degree in physics in 1991 and a master's in computer science in May 1993.

Applicant became a legal permanent resident of the U.S. in 1994. He became a naturalized U.S. citizen in August 1999, and obtained his U.S. passport in November 1999. When he became a U.S. citizen, he surrendered his PRC passport to the Immigration and Naturalization Service (INS).

Applicant's parents and siblings are citizens and residents of the PRC. He also has extended family members who are citizens and residents of the PRC.

Applicant's father is 74 years old, and has been retired from his job as a tax accountant for a local municipality for 14 years. His mother is 73 years old, and has been a homemaker all her life. Both are in poor health. They live off their savings with some help from their daughter and oldest son, both of whom live in the PRC.

Applicant's sister is a school teacher. He has one brother who is trying to start a private business and another brother who is an engineer in a private company. Applicant speaks to his parents 3-4 times per year by telephone, and speaks to his sister about that often. He has monthly contact with his brothers by email. Applicant visited his family in the PRC for two weeks in February 2000.

The PRC is a repressive, totalitarian government with foreign policy goals antithetical to the U.S., although it has cooperated with the U.S. in the global war on terrorism in recent years. It has an active, effective intelligence service that targets U.S. intelligence and economic information, and operates against its citizens in the U.S. However, under PRC law, citizens who become naturalized citizens of other countries lose their PRC citizenship.

## **POLICIES AND BURDENS**

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guideline is Guideline B (Foreign Influence).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.<sup>(2)</sup>

## CONCLUSIONS

The Government established its case under Guideline B, by demonstrating that Applicant's parents and siblings are citizens and residents of the PRC.<sup>(3)</sup> However, Applicant mitigated the resulting security concerns. The allegation that Applicant has extended family members who are citizens and residents of the PRC (SOR 1.c.) fails to raise a security concern under Guideline B, because they are not Applicant's immediate family members and the government's evidence fails to establish any close ties of affection or obligation to Applicant.

Although Applicant's immediate family members are citizens and residents of the PRC, none are agents of the PRC, and none are in a position to be exploited by the PRC against Applicant.<sup>(4)</sup> Applicant's parents are elderly and retired. His sister is a teacher. Applicant has contact with them no more than four times a year. His contact with his brothers is only slightly more frequent. This limited contact presents an extremely narrow avenue of pressure on Applicant.<sup>(5)</sup> Further, in more than 17 years in the U.S., Applicant has been back to the PRC once--for two weeks. Under these circumstances, I conclude that there is little likelihood that Applicant could be pressured over his family in the PRC. He has met his burden of demonstrating that none of those family members are so situated as to present a point of influence. Accordingly, I conclude Guideline B for Applicant.

## **FORMAL FINDINGS**

Paragraph 1. Guideline B: FOR THE APPLICANT

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph 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. Clearance granted.

**John G. Metz, Jr.**

**Administrative Judge**

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated 2 January 1992--amended by Change 3 dated 16 February 1996 and by Change 4 dated 20 April 1999 (Directive).

2. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).

3. 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;

4. 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 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.

5. E2.A2.1.3.31. Contact and correspondence with foreign citizens are casual and infrequent;

