

DATE: May 9, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-01820

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 39-year-old native-born American, recently married for the third time, in the Peoples Republic of China (PRC), to a native-born PRC citizen. His wife has recently been allowed entrance to the U.S. and hopes to eventually become a U.S. citizen. She has immediate family members still in the PRC. Applicant complied with all company security rules when traveling to the PRC. Applicant has a long history of service to his community and company and as a U.S. Marine. He understands his obligations and strongly avers that he would promptly report any improper contacts. Mitigation has been established. Clearance is granted.

STATEMENT OF THE CASE

On September 28, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding required under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether a clearance should be granted, denied or revoked.

On October 19, 2005, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge after a hearing. The case was assigned to me on November 22, 2005. A Notice of Hearing was issued on February 8, 2006, setting the hearing for March 8, 2006. The Government introduced five (5) exhibits. Applicant testified, called one other witness, and introduced four exhibits. The transcript was received at DOHA on March 17, 2006.

FINDINGS OF FACT

Applicant is a 39-year-old employee of a defense contractor. The February 24, 2005 SOR contains two (2) allegations

under Guideline B (Foreign Influence). Applicant admits both allegations. Both admissions are accepted and incorporated herein as Findings of Fact.

After considering the totality of the evidence, I make the following additional FINDINGS OF FACT as to the status of each SOR allegation.

Guideline B (Foreign Influence)

1.a. - Applicant's wife is a citizen of the Peoples Republic of China (PRC), who resides with him in the U.S. They met via an internet chat room in about 2003.

1.b. - Applicant's traveled to the PRC twice in 2003, twice in 2004, and in 2005 to visit his wife (then his fiancée).

POLICIES

Each adjudicative decision must also include an assessment of nine generic factors relevant in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowing participation; (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 pertinent 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 (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons.

If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

A person seeking access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. As required by DoD Directive 5220.6, as amended, at E2.2.2., "any doubt as to whether access to classified information is clearly consistent with the interests of national security will be resolved in favor of the nation's security."

CONCLUSIONS

Applicant is a 39-year-old native-born U.S. citizen. All of his immediate family members are also native-born U.S. citizens. He is a contract specialist for a U.S. Department of Defense (DoD) facility. He was previously married twice, from 1986 to 1989, and from 1994 to 2000, when he was divorced a second time. He sought personal contacts on the Internet, and made contact with women from several foreign countries before trying the PRC.

He married a third time, in 2005, to a woman he met on an Internet chat room. She was looking for someone with whom she could practice her English (GX 3 at Item 4). She had worked as an English to Chinese translator from January 2001 to December 2002 (GX 3 at page 8). Before Applicant went to the PRC the first time, in the summer of 2003, he submitted a Foreign Travel Briefing Statement to his security officer (AX D and Tr at 20, 21). In addition, he provided an affidavit to an agent of the Office of Personnel Management (GX 2).

As of February 2005, he had filed a form I-129F Petition for Fiance(e) Visa on her behalf with the U.S. Citizenship and

Immigration Service of the Department of Homeland Security (Government Exhibit (GX) 1, and Applicant's Exhibits (AX) A, AX B), and AX C. By July 2005, he had submitted a supplemental application identifying her as his wife (GX 3 at page 5). His wife is a native-born citizen of the PRC. She worked in the "Oral and Personal Care" industry (GX 3 at Item 6). They were married in the PRC on April 26, 2005 (GX 2 at Item 2). Prior to that time, he had not given her any money (GX 3 at Item 5). None of her family members are employed by the PRC government (GX 3 at Item 10). He first went to the PRC to visit her in July 2003 and they "hit it off" (Tr at 21), leading to their marriage in April 2005 (Tr at 22).

Applicants' testimony at the hearing adds some interesting information about the chat room connection. "It was just a room where people wanted to check their English writing and asked people from America to view their writing, if they're speaking, or writing, or typing their information correctly, if they're saying things correctly. We basically met that way" (Tr at 18). The contacts started slowly and then became more frequent and changed to a more one-on-one connection (Tr at 18-20). Applicant originally identified himself as an accountant (Tr at 28). She described herself as an "office manager translating documents from English to Chinese [for American products]" (Tr at 30).

Applicant's wife is 28 and has never been married before (Tr at 21). Her father is something like a building contractor and her mother handles payroll and other matters for their company (Id.). Her sisters are all married to Chinese husbands. Applicant submitted a copy of their marriage certificate in February 2006 and his wife is now awaiting her "permanent resident status" document. She plans to become a U.S. citizen as soon as possible (Tr at 32, 34). She calls her parents about every other month. As far as Applicant knows, his in-laws do not work for the PRC government (Tr at 33).

Applicant's wife stays mostly at home, caring for Applicant's children. Once she obtains a social security card, she hopes to take some college classes (Tr at 35). She doesn't yet know much about the U.S. and American life (Tr at 36). Because of her short time here, Applicant is her only real tie to this country.

Applicant was a U.S. Marine (Tr at 37). He received an Honorable Discharge as a Lance Corporal in 1988 (GX 1). He first received a DoD security clearance in 1998 (GX 1 at Item 31). Applicant understands that contacts over the Internet could be used by Chinese authorities for intelligence gathering activities (Tr at 39). He reiterated that his wife knew him only as an accountant when they established their relationship, and she learned he had been a Marine only a year or more later (Id.).

I have carefully considered all documentation, including the different official U.S. publications, all of which describe in considerable detail the basis for the Government's concerns about the PRC in general and PRC intelligence collection activities against the United States.

All clearance seekers with family in foreign countries have the burden of showing that the risk of improper intelligence activity is minimal and acceptable. The PRC is officially recognized as one of the most active gatherers of defense and industrial information in the United States, which means Applicant's burden of proof is even heavier than for someone with relatives in a friendly country such as Canada or Mexico (ISCR Case No. 01-26893 (October 16, 2002); Directive, Additional Procedural Guidance, Item 15).

There is no suggestion in the record that Applicant would voluntarily act against U.S. security interests. Applicant's evidence about his wife and in-laws is somewhat limited by the relative short period of time they have known each other. There is some evidence that his wife's parents are not agents of a foreign power, but there is no evidence one way or the other as to whether they are susceptible to pressure from the PRC government or intelligence agencies and might ask Applicant to act against U.S. security interests (ISCR Case No. 99-0511 (December 12, 2000) at pp 8, 9, and ISCR Case No. 00-0485 (February 1, 2002) at p.4). In this case, Applicant is not ethnic Chinese, and does not speak Chinese. Experience and common sense suggest that any contacts from the PRC would go through Applicant's wife, rather than directly.

The Concern: 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.

Disqualifying Conditions: (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; and (2). Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists.

Mitigating Conditions that could mitigate security concerns: (1) a determination that the immediate family member(s), . . . 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; or (2). that his contact and ties with her family are casual and infrequent;

Applicant has a solid record of service to his country in the private sector and as a Marine. He was circumspect identifying him self on the Internet and during their early relationship. The fact of Applicant's recent marriage to a PRC national who has family in the PRC necessarily raises questions, but the possible risks of his being asked to act improperly are far outweighed by the likelihood of his responding without hesitation to protect his country's security interests. Consequently, I conclude that it is clearly consistent with the national interest for Applicant to obtain or continue a DoD security clearance.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Guideline B (Foreign Influence) For the Applicant

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. 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.

BARRY M. SAX

ADMINISTRATIVE JUDGE