

DATE: December 29, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-13109

DECISION OF ADMINISTRATIVE JUDGE

JOHN GRATTAN METZ, JR

APPEARANCES

FOR GOVERNMENT

D. Michael Lyles, Esquire, Department Counsel

James B. Norman, Esquire, Deputy Chief Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is not potentially subject to foreign influence through her parents-in-law, who are citizens and residents of the People's Republic of China (PRC), or her parents, who are citizens of the PRC, but legal permanent residents of the U.S. She demonstrated that none of them are foreign agents or otherwise so situated as to present a pressure point on Applicant. Clearance granted.

STATEMENT OF THE CASE

Applicant challenges the 19 January 2006 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of her clearance because of unresolved foreign influence concerns. [\(1\)](#) On 20 February 2006, Applicant answered the SOR, and requested a hearing. DOHA assigned the case to me 20 March 2006, and I convened a hearing 6 June 2006. DOHA received the transcript 15 June 2006.

FINDINGS OF FACT

Applicant admitted the allegations of the SOR. Accordingly, I incorporate those admissions as findings of fact. She is a 36-year-old software engineer for a defense contractor, and seeks access to classified information. She has not previously held a clearance.

Applicant was born in the People's Republic of China (PRC) in 1963. She grew up in China, and was educated there, receiving her undergraduate degree in electrical engineering in 1985. Between 1985 and 1990, she taught at a public university in the PRC. She married a PRC national in December 1988.

In 1990, she and her husband immigrated to the U.S. to pursue post-graduate education, and to enjoy the freedom they could not have in the PRC. She obtained her master's degree in electrical engineering in May 1994. Applicant's husband

became a U.S. citizen in August 2002. Applicant herself became a U.S. citizen in November 2002, and obtained her U.S. passport the same month. When she became a U.S. citizen, she surrendered her PRC passport--which U.S. immigration law required her to keep current--to the PRC embassy.

Applicant and her husband have two sons--ages 6 and 12--both U.S. born. They own their home in the U.S. and all their financial assets are here. Before becoming a U.S. citizen, she returned to the PRC for family visits in 1996 and 2002. She traveled to the PRC on her U.S. passport in 2005. She and her husband have no intention of returning to the PRC to live.

Applicant's parents, both 68 years old, are citizens of the PRC, who have resided with her in the U.S. as legal permanent residents since 2002. They intend to apply for U.S. citizenship as soon as they become eligible. They are both retired engineers. They travel to the PRC periodically to visit family and receive the medical treatment they are entitled to as part of their pensions. When in the PRC, they stay in a small apartment they own.

Applicant's parents-in-law, both in their seventies, are citizens and residents of the PRC. She is a retired engineer; he is a retired accountant for a private company. Applicant has occasional contact with them by telephone.

Applicant's employment references (A.E. B, C) consider her an excellent engineer who is very careful with the company data she handles. Her facility security officer (A.E. A) considers her extremely security conscious, and reports that she has received regular security briefings.

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 BURDEN OF PROOF

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. ⁽²⁾

CONCLUSIONS

The government established a case for disqualification under Guideline B, by demonstrating that Applicant's parents are citizens of the PRC residing in the U.S. as legal permanent residents. ⁽³⁾ However, Applicant mitigated the resulting security concerns. Neither the allegation that Applicant traveled to the PRC before becoming a U.S. citizen (SOR 1.c.)

nor her travel to the PRC in 1996 and 2006 raises any independent security concern under Guideline B. Similarly, although Applicant's parents residing in the U.S. have not yet lost their PRC citizenship, their status as legal permanent residents of the U.S. minimizes the potential that they might serve as a point of influence against Applicant.

The government also established security concerns because her parents-in-law are citizens and residents of the PRC. However, she mitigated the concerns. Although Applicant's parents-in-law are citizens and residents of the PRC, neither is an agent of the PRC, nor in a position to be exploited by the PRC against Applicant. (4) Applicant described them as having been retired for many years, with no contact with the government. She has only occasional contact with them. (5) Under these circumstances, I conclude that there is little likelihood that Applicant could be pressured over her family in the PRC. She has met her burden of demonstrating that none of those family members are so situated as to present a point of influence. Further, the "whole person" analysis warrants a similar conclusion. Applicant and her husband have put down substantial roots in the U.S. They have no intention to ever live in the PRC again. Her children are native-born U.S. citizens. Her husband and children are in the U.S., as are their financial interests. Accordingly, I conclude Guideline B for Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraph a: For Applicant

Subparagraph b: For Applicant

Subparagraph c: For 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.A2.1.3.3. Contact and correspondence with foreign citizens are casual and infrequent;