

DATE: November 30, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 06-03977

**DECISION OF ADMINISTRATIVE JUDGE**

**JOHN GRATTAN METZ, JR**

**APPEARANCES**

**FOR GOVERNMENT**

Daniel F. Crowley, 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 are foreign agents or otherwise so situated as to present a pressure point on Applicant. Clearance granted.

**STATEMENT OF THE CASE**

Applicant challenges the 21 March 2006 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of unresolved foreign influence concerns. [\(1\)](#) On 28 March 2006, Applicant answered the SOR, and requested a hearing. DOHA assigned the case to me 18 May 2006, and I convened a hearing 31 July 2006. DOHA received the transcript 9 August 2006.

**FINDINGS OF FACT**

Applicant admitted the allegations of the SOR. Accordingly, I incorporate those admissions as findings of fact. He is a 39-year-old database 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 1966. He grew up in China, and was educated there, receiving his undergraduate degree in 1989. In 1990, he and his wife--also a PRC national--immigrated to the U.S. to pursue post-graduate education. He obtained his doctoral degree in June 1997.

Applicant's wife became a naturalized U.S. citizen in November 2003. He became a naturalized U.S. citizen in December 2003. They have two children, both born in the U.S., and own their own home here. They have no intention of ever returning to the PRC to live.

Applicant's parents and siblings are citizens and residents of the PRC. His in-laws are also citizens of the PRC.

However, his mother-in-law is a legal permanent resident of the U.S. and lives with Applicant and his wife, to be near her grandchildren.

Applicant's father is 65 years old, and has been a fisherman all his life. He never went to school--the fallout from a family misadventure in 1952 that branded Applicant's family an "anti-revolutionary" family in the early years of the communist regime.

Applicant's family is from a very small island off the coast of China--so small that the only means of transportation to the island was by ferry. His grandfather owned a small commercial fishing company there. When the communists came to power, he objected to their confiscation of personal property, and in 1952 tried to flee to Taiwan with his wife and son--then about 11. They were caught, Applicant's grandfather was shot, and his grandmother and father were forced to return to the island. In addition to being denied an education, Applicant's father was never allowed to fish by himself after the escape attempt, and the family experienced other kinds of discrimination well into the 1970s. Although Applicant and his sister eventually obtained their educations, Applicant was encouraged by his parents to immigrate to the U.S. because he would never be treated completely fairly if he remained in the PRC.

Applicant's mother is a life-long housewife. His brother is a fishmonger; his sister an accountant for a private construction company. His in-laws were both middle school mathematics teachers, but they separated in approximately 2000, when she learned that he had had an affair. She decided to live with Applicant and his wife to be near her grandchildren. She has not been back to the PRC except to finalize her separation from her husband. Applicant has returned to the PRC twice, in 1999 and 2002, both times before he became a U.S. citizen. The latter trip was to see the home his parents were moving to. The island where he grew up was reachable only by ferry, and the population of the island had dropped so much over the years that the government discontinued the ferry service in 2002, requiring the residents to relocate. Since the 2002 visit, Applicant has had little contact with his parents or siblings.

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 allegations that Applicant's father-in-law is a citizen and resident of the PRC (SOR 1.c.) and his mother-in-law is a citizen of the PRC and a legal permanent resident of the U.S. (SOR 1.d.) fail 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, particularly where his father-in-law is permanently separated from his mother-in-law. In similar fashion, Applicant's travel to the PRC in 1999 and 2002 (SOR 1.e.) has no independent security significance under Guideline B.

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 have no connection to the government. His brother is a fishmonger, his sister is an accountant--again, neither has any connection to the government. Applicant has infrequent contact with his family members in the PRC. This limited contact presents an extremely narrow avenue of pressure a foreign government may exert on Applicant.<sup>(5)</sup> Further, in more than 16 years in the U.S., Applicant has been back to the PRC only twice--for short visits. In addition, under the particular family history of Applicant's father, common sense suggests that Applicant is even less likely to be pressured, and his family less positioned to be pressured, than most. I conclude that there is little likelihood that Applicant could be pressured through 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

Subparagraph d: For the Applicant

Subparagraph e: 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;