

DATE: December 27, 2006

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 06-18098

DECISION OF ADMINISTRATIVE JUDGE

ARTHUR E. MARSHALL, JR.

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 49 years old and is a technical fellow who has worked for the same defense contractor since 1995. He and his wife are naturalized U.S. citizens. His mother, three siblings, and mother-in-law remain residents and citizens of the People's Republic of China, and a brother is a resident and citizen of Japan. Although his contact with his mother and siblings in China is infrequent, Applicant has failed to introduce sufficient facts to permit an examination of their relationships with that government. The lack of such facts, combined with the frequent contact maintained between his wife and her mother, and his contact with his brother in Japan, fail to mitigate the foreign influence security concerns raised. Clearance is denied.

STATEMENT OF THE CASE

On August 29, 2006, the Defense Office of Hearings and Appeals (DOHA), 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 Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR). That SOR detailed reasons why, pursuant to Guideline B (Foreign Influence), it 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. In his response, dated September 7, 2006, Applicant admitted all eight of the allegations contained in the SOR. Additionally, he requested an administrative determination based on the written record.

The Government's case was submitted on October 4, 2006, and a complete copy of the file of relevant material (FORM) [\(1\)](#) was provided to Applicant. He received a copy of the FORM on October 17, 2006, and was afforded the opportunity to file objections and submit evidence in refutation, extenuation, or mitigation. He declined to submit any responsive information within 30 days after receipt of the FORM. I was assigned this case on November 29, 2006.

FINDINGS OF FACT

Applicant's admission to all of the allegations set forth in the SOR are incorporated herein. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant is 49 years old and is a technical fellow working for a defense contractor. He has been employed by his current employer since May 1995. He was born in a city within the Hunan Province of the People's Republic of China (PRC). He was raised in that country and eventually went to the United Kingdom for graduate studies. He received a Doctor of Philosophy degree from Cambridge University in England in 1986, a year after marrying his present wife in Shanghai, PRC.

Around 1990, Applicant and his wife emigrated to the United States and, at some indeterminate time, applied for United States citizenship. In 1992, they had a son, a citizen of the United States of America by virtue of his birth in this country. In 1995, Applicant commenced his present employment and moved into his present home. On October 11, 1999, his passport from PRC expired and, on November 10, 1999, he and his wife became naturalized United States citizens.

Remaining in PRC is Applicant's mother, a retired accountant who formerly was employed by a county government within the Hunan Province. There is no evidence as to whether she receives a government pension or other benefits for her governmental service. Like their mother, two of Applicant's brothers and his sister are citizens and residents of PRC. Applicant is in contact with these relatives about three times per year. He visited them in PRC once, from December 30, 2004, to January 5, 2005. Applicant also has a mother-in-law living in PRC. His wife maintains telephonic contact with her mother one to two times per month.

Applicant has a third brother, a citizen and resident of Japan. He has not visited him in the past seven years, if ever, but they speak telephonically at least once a month. There are no other facts regarding this brother, his work, or his relationship to the governments of Japan or PRC.

Because Applicant chose not to provide additional information regarding his family or his life, and because he chose to have a determination based solely on the record, there are few relevant facts of record. Only three additional facts are noted by Applicant. In his SOR response, he stated:

1. All the reasons listed in the Statement of Reasons are normal family contacts.

All my relatives are ordinary people with ordinary jobs. None of my relatives is an agent of any foreign power and none of them is in a position to be exploited by a foreign power in any way to force me to betray my loyalty to the United States. (E2.A1.1.3.1)

2. My contacts with my relatives are casual and infrequent. For example, during the 16 years since I came to the US in 1990, I only visited my relatives in China once in 2004 (E2.A2.1.3.3)

3. I have reported all my contacts with my relatives in my application for the security clearance. (E2.A2.1.3.4)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and

surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. 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.

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.⁽²⁾ The government has the burden of proving controverted facts.⁽³⁾

The burden of proof is something less than a preponderance of evidence.⁽⁴⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against

him.⁽⁵⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁶⁾

No one has a right to a security clearance⁽⁷⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽⁸⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽⁹⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽¹⁰⁾ 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.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all legal precepts, factors, and conditions, I find that Guideline B (Foreign Influence) of the Directive applies with respect to the allegations set forth in the SOR:

Guideline B - Foreign Influence. 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.⁽¹¹⁾

With respect to Guideline B (Foreign Influence), the Government has established its case. Applicant admits that his mother, two brothers, and a sister are citizens and residents of PRC, and that he has a brother who is a citizen and resident of Japan. The citizenship and residency of these family members raises a security concern under Foreign Influence Disqualifying Condition (FI DC) E2.A2.1.2.1 (*[a]n 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*).

When, as here, the Government's initial burden has been met and a disqualifying condition raised, the burden shifts to the Applicant to go forward with evidence in rebuttal, explanation, or mitigation which is sufficient to overcome or outweigh the Government's case. With regard to his mother, Applicant has only acknowledged that she is a former accountant, retired from employment with a county government within the Hunan Province, PRC. He provides no information with regard to his siblings or either their employment or their relationship with their national governments. Instead, he makes the blanket statement that his relatives are "ordinary people with ordinary jobs. None of my relatives is an agent of any foreign power and none of them is in a position to be exploited by a foreign power in any way," without providing sufficient facts for an independent assessment of their potential for causing him duress, or their vulnerability to coercion, exploitation, or pressure. Because Applicant has failed to provide any substantial facts regarding these individuals upon which security risk assessment can be made, Foreign Influence Mitigating Condition (FI MC) E2.A2.1.3.1 (*[a] determination that the family member(s), (spouse, father, mother, sons, daughters, brothers,*

sons), cohabitant, or associate(s) in question 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) cannot be applied.

Applicant has depicted his personal contacts with his family as casual and infrequent. He maintains contact with his mother and siblings in PRC about three times a year, and has only visited them in the PRC one time since he emigrated to this country, 16 years ago. There is no evidence showing that there is additional contact or that he maintains alternative contact by sending gifts or money. Based on these facts, FI MC E2.A2.1.3.3 (*[c]ontact and correspondence with foreign citizens are casual and infrequent*) applies with regard to Applicant's blood relatives in PRC. The same cannot be said, however, with regard to his third brother or his mother-in-law. He regularly maintains contact with his brother in Japan, at least once a month by telephone. While there is no evidence from which to ascertain their degree of sibling intimacy, such contact, based on the few facts available, is brotherly, regular, and not infrequent. Similarly, his wife maintains contact with Applicant's mother-in-law in PRC one or two times a month. Because the relationship between spouses and their foreign relatives can be ascribed to an applicant in these cases, [\(12\)](#)

such regular contact, without more information, must be found to be regular and intimate. Therefore, FI MC E2.A2.1.3.3 does not apply to these two relatives.

In this matter, Applicant's foreign contacts are family, not associates or friends. Consequently, FI MC E2.A2.1.3.2 (*[c]ontacts with foreign citizens are a result of official United States Government business*) does not apply. For similar reasons, and because there is no issue questioning Applicant's disclosure of his relatives' citizenship, FI MC E1.A2.1.3.4 (*[t]he individual has promptly reported to proper authorities all contacts, requests, or threats from persons or organizations from a foreign country, as required*) does not apply. There is also no question in this matter concerning Applicant having foreign investments or holdings abroad, obviating consideration of FI MC E2.A2.1.3.5 (*[f]oreign financial interests are minimal and not sufficient to affect the individual's security responsibilities*).

Also integral to assessments of this kind is an examination of the countries at issue. The government expressed no particular urgency with regard to Japan, a constitutional monarchy with a prime minister as head of the government, except the general concern regarding any foreign influence. It presented copious information, however, with regard to PRC. [\(13\)](#) PRC is an authoritarian state whose power is centralized in the Chinese Communist Party. [\(14\)](#) PRC historically has a poor human rights record and its citizens lack freedom to peacefully express opposition to the political system or to freely change those in charge of the government. [\(15\)](#) The Government is responsible for committing numerous and serious abuses of human rights. [\(16\)](#) Those seeking to discuss change or who express dissenting political views are subject to arrest and harassment. [\(17\)](#) PRC does not have an independent judiciary nor are their citizens afforded due process rights. [\(18\)](#) Consequently, concerns regarding vulnerability to coercion, exploitation, or pressure are valid.

I have considered all the evidence in this case, and the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. Applicant is a mature, exceptionally well-educated man, who quickly and successfully assimilated to life in the United States. He and his wife emigrated to this country as adults from PRC, and their son was born in this country. Applicant has held the same job and lived in the same home for over a decade.

Outside of their life in the United States are Applicant's mother, two brothers, a sister, and his mother-in-law, who are residents and citizens of PRC. There is also a brother, a former citizen of PRC, who is now a resident and citizen of Japan. With the limited information Applicant has provided, a careful assessment of their relationships with associates and the governments of PRC and Japan, respectively, cannot be made. [\(19\)](#) Further, the close and regular contact Applicant's wife has with her mother, and the contact Applicant maintains with his brother in Japan, create a position of potential vulnerability for all involved. This vulnerability could be exploited by the authoritarian PRC government or foreign agents in a way that could force Applicant to choose between his loyalty to his wife, family, mother-in-law, and his loyalty to the U.S.

Although there is no basis in the record to question Applicant's character or integrity, the DOHA Appeal Board has determined that even good people can pose security risks. [\(20\)](#)

Here, after considering the whole person with the scant facts available, I find Applicant has failed to mitigate the foreign influence security concerns raised. Consequently, based on the totality of the evidence in this case, it is not clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guideline B is decided against

Applicant. Clearance is denied.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.2.5 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B: AGAINST THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.c: Against the Applicant

Subparagraph 1.d: Against the Applicant

Subparagraph 1.e: Against the Applicant

Subparagraph 1.f: Against the Applicant

Subparagraph 1.g: Against the Applicant

Subparagraph 1.h: Against the Applicant

DECISION

In light of all 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.

Arthur E. Marshall, Jr.

Administrative Judge

1. ⁰ The Government submitted a seven page brief with nine attached items in support of its case.
2. ISCR Case No. 96-0277 at 2 (App Bd Jul 11, 1997).
3. ISCR Case No. 97-0016 at 3 (App Bd Dec 31, 1997), Directive, Enclosure 3, ¶ E3.1.14.
4. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
5. ISCR Case No. 94-1075 at 3-4 (App Bd Aug 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.
6. ISCR Case No. 93-1390 at 7-8 (App Bd Jan 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.
7. *Egan*, 484 U.S. at 531.
8. *Id.*
9. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
10. Executive Order 10865 § 7.
11. Directive, Enclosure 2, Attachment 2, Guideline B, ¶ E2.A2.1.1.

12. There is a rebuttable presumption in these matters that Applicant has ties of affection for, or obligation to, his spouse's family. *See, e.g.* ISCR Case No. 01-26893 (App. Bd., Feb. 20, 2002).

13. Ex. 5 (U.S. Dep't of State, *China: Country Reports on Human Rights Practices - 2005*, October 4, 2006),

Ex. 6 (U.S. Dep't of State, *Consular Information Sheet - China*, October 4, 2006); Ex. 7 (CI Center, *Espionage/Spy Case: Chi Mak and Tai Wang Mak*, October 4, 2006). Ex. 8 (NACIC *Annual Report to Congress*, 2000), and Ex. 9 (Defense Security Service, *Technology Collection Trends In The US Defense Industry*, 2004).

14. Ex. 5, *supra*, note 13.

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. For example, there is no evidence of record regarding Applicant's mother's past government employment or a description of his siblings' work and associations, despite evidence that their contact with Applicant is infrequent.

20. ISCR Case No. 01-26893 (October 16, 2002), at 8.