

DATE: December 10, 2007

In Re:

SSN: -----

Applicant for Security Clearance

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) ISCR Case No. 07-02485
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**DECISION OF ADMINISTRATIVE JUDGE
BARRY M. SAX**

APPEARANCES

FOR GOVERNMENT

Jennifer I. Goldstein, Esquire, Department Counsel

FOR APPLICANT

Robert Bohn, Esquire, McKenna Long & Aldrich

SYNOPSIS

This 49- year-old software engineer was born in China in 1958, and came to the U.S. 20 years ago with her husband and baby. She completed her education, raised a family and became a part of American society. The only allegations in the Statement of Reasons pertain to her having family members in China. Recently, her mother and father have emigrated to the U.S. Her connections with China are minimal compared with her ties to the U.S. She understands her security responsibilities and she avers prompt reporting of any improper contacts. Her history in the U.S. indicates her willingness and ability to meet these responsibilities. Mitigation has been established. Clearance is granted.

STATEMENT OF THE CASE

On June 29, 2007, 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 July 30, 2007, 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 matter was assigned to me on September 12, 2007. On October 9, 2007, a Notice of Hearing was issued setting the hearing for November 7, 2007. At the hearing the Government introduced two (2) exhibits (Government's Exhibit (GX) 1 - 2). At the hearing, the Government also offered six (6) Official Notice Documents (ON) 1 - 6. The Applicant testified and introduced twenty-four (24) exhibits (Applicant's Exhibits (AX) A - X. All exhibits and Official Notice documents were admitted. The transcript (Tr) was received at DOHA on November 20, 2007.

FINDINGS OF FACT

Applicant is a 49-year-old computer engineer linguist/translator for a defense contractor. The SOR contains nine (9) allegations under Guideline B (Foreign Influence). Applicant answered all allegations, most with comments and explanations. All specific admissions are accepted and incorporated herein as Findings of Fact.

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

Guideline B (Foreign Influence)

1.a. Applicant's husband is a citizen of the People's Republic of China (China). He resides with Applicant in the U.S. He came to the U.S. in 1988 to pursue his post graduate degree. Applicant came the next year with their baby son. They both graduated with Engineering degrees from the same university. They both became Permanent Residents in 1992. Her husband began the naturalization process, but he postponed completing the process because of his elderly and very ill 77-year-old father in China, who is too frail to travel to the U.S. It is easier and faster for her husband to go to China, if his father suddenly became ill, if he was still able to use a Chinese passport. American citizens must obtain a visa (Tr at 43-46).

He is a legal Permanent Resident and intends to apply for U.S. citizenship when the need for quick travel no longer exists. He has visited China only three times since first coming to the U.S. in 1988. This includes one business trip for his company. He is very active in community affairs in his home area (AX U), as are their children (AX V and AX W).

1.b. - Applicant's mother is a citizen of China and a resident of the U.S. She retired from teaching school about 15 years ago. She and her husband applied to emigrate to the U.S. in 2003. They were approved and moved to the U.S. prior to the hearing (Response to SOR, Attachment 3).

1.c. - Applicant's father is a citizen of China and a resident of the U.S. He retired about 15 years ago. He and his wife applied to emigrate to the U.S. in 2003. They were quickly approved and moved here shortly before the hearing (*Id.*).

1.d. Applicant's brother is a citizen and resident of China. He used to be a teacher, but for the last 10 years has been self employed as a free lance screen writer and artist. They speak only a few times a year.

1.e. and 1.f. - Applicant's mother-in-law and father-in-law are citizens and residents of China. She is 73, and lives on a pension. Her primary task is to take care of her elderly and ailing husband, who is 77. Applicant has no personal contact with her in-laws. Her husband has visited his parents in China only a few times in the last 20 years (Tr at 83).

1.g. - Applicant had telephonic contact with her parents once or twice a month. She visited her parents, when she traveled to China. However, both parents now reside in the U.S.

1.h. - Applicant has telephonic contact with her brother several times a year. They talk about family matters and do not discuss the nature of her employment.

1.i. - Applicant had only limited contact with her in-laws when she visited China.

1.j. - Applicant was employed for a short time by an Institute of Meteorology and Measurements as an Engineer from 1987 to 1989. This was almost 20 years ago and was right after she graduated from school. She helped make industrial thermometers. This was at a time when the government owned almost all industries and businesses.

1.k. - Applicant traveled to China in 1998, 2000, 2002, 2003, 2004, and August 2006. With her parents now in the U.S., she no longer has any need to travel to China (Tr at 54).

Applicant was born in China in 1958. She came to the U.S. in the late 1980s, with her oldest son, who was naturalized in 2002. She completed her education, began her career, and has two sons, 19 and 14, the youngest of which was born in the U.S. The 19-year-old is now in college here. Their home is worth about \$1.1 million (AX Q), her salary is about \$107,00 per year, she has about \$112,000 in a Company Savings Plan, her husband has about \$522,000 in his Company Stock Plan (AX O), and the two of them have about \$225,00 in an IRA (AX S). Applicant and her husband left any assets they had in China when they left more than two decades ago (Tr at 47).

She has received numerous letters of praise and recommendation from work supervisors and colleagues (Response to SOR, Attachments 1 and 2; AX A, from a man who has held a DoD Secret security clearance for 20 years; AX B, AX C, AX J, and AX W and Tr at 38-42); Certificates of Recognition of Exceptional Performance (Attachments 4, 5, 7, and 9), and positive work evaluations (Attachment 6)

Even though she has not yet received a security clearance, she has received company-wide training, program, and manuals, on the protection of company sensitive information and material (Tr at 37, 38). She always follows procedures (*Id.*). She strongly avers that if improperly contacted, regardless of source, she would immediately report the contact to Homeland Security and her Company's Security Officer (Tr at 60, 61). She identifies most strongly with the United States and very little with China (Tr at 64-66). Referring first to her children, "It's their country, it's my country, it's our country. So they are going to be here forever. I will remain here for the rest of my life, with my whole family" (Tr at 66).

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, Enclosure 2 at Section 2, pages 18, 19). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

Each of 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.

Once 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.

The 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."

Official Notice Documents

The Government has introduced a number of Official Notice Documents pertaining to China. The Official Notice documents discuss the official U.S. concern with China - that it a large and vibrant country of 1.3 billion people with an economy expanding at about 10% a year. China has an authoritarian Communist government with a poor human rights record, the suppression of political dissent. China possesses large and sophisticated military forces, including nuclear weapons and missiles. According to the Intelligence Threat Handbook, "The United States is a primary intelligence target of China, because of the U.S. role as a global superpower, its substantial military, political, and economic power in the Pacific Rim and Asia."

Another official document states: China uses legal and illegal means, including espionage, to obtain such [military-related] technologies (ON VI). Over the past year, the United States has convicted and sentenced a number of individuals for illegally exporting critical technology to China (*Id.*). The covers sheet to the Government submission of Official Notice Document abstracts concerns from all six documents, all of which I give considerable weight.

China is clearly one of those countries deemed to be of the highest order of risk of seeking to violate U.S. security interests. Under DOHA Appeal Board precedent, it is clear that Applicant has a particularly heavy burden of establishing she is not at risk of being subjected to pressure or coercion

CONCLUSIONS

Applicant is a 49-year-old computer engineer. She was born in China in 1958 and emigrated to the U.S. in 1989, with her oldest son, a year after her husband had arrived here. She became a U.S. citizen in 2001. Applicant has made herself a part of American society, albeit with Chinese roots.

Applicant describes herself as follows:

After all, I am a mom with two wonderful children growing up in this country. My commitment, obligation, loyalties, and love [for] the U.S. precede any other interests. I, as parent, educate them to be a contributor and leader to the U.S. society. We have obligations, responsibilities, rights, and privileges here. My older son and I vote. I also try to set a good example for my children by being a role model. No foreign group, organization, or government can influence me by any means to do anything that can negatively affect the bright future of my children. No one can choose their birth place, but my husband and I chose to live in this country and made the choice for our children for a better life. We were uprooted in China long ago and have established the foundation for our life with our children here" (Attachment to Response to SOR)

In summary, my foreign contact is so casual and infrequent that it will not create a risk for foreign influence or exploitation, or put me in a position of having to choose between the interests of any foreign group, organization, or government and the interests of the United States. There is no

conflict of interest because I don't have any obligations to any foreign person, group, government, or country. Just in case such conflict of interest emerges in the future, my longstanding relationships and loyalties [to] the United States will enable me to resolve it in favor of the U.S. interest" (*Id.*).

As is the case with all Applicants who have reported family and relatives in foreign countries, Applicant faces the logically difficult, if not impossible, task of proving a negative; i.e., that something that has not happened in the past is at risk of happening in the future. What she can establish is who she is and how she is likely to act in the future.

In the words of others who know her in a work context, Applicant is "trustworthy, stands by her commitments, and has demonstrated a high level of performance and professionalism (Attachment 1 to Response to SOR). Similar comments are made by other colleagues as well (*Id.*, at Attachment 2.) As to financial matters, Applicant has documented her financial ties to the U.S. - her current net worth as well in excess of \$1 million (GX 2).

The Concern: Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or indeed to help a foreign person, group, organization or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interests. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

Disqualifying Condition - 7.(a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.

Mitigating Conditions - 8.(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.; and 8.(b) there is no conflict of interest, either because of the individual's sense of loyalty or obligation to the foreign person, group, organization, or country is so minimal or the individual has such deep and longstanding relationships and loyalties that the individual can be expected to resolve any conflict of interests in favor of the U.S. interest.

As established by Applicant's own words and conduct, and the highly favorable comments from others in positions of considerable security significance, she has (1) demonstrated an unequivocal preference for the United States, (2) renounced her Chinese citizenship upon becoming an American, (3) never renewed her now expired Chinese passport; and (4) has shown strong and long lasting ties to the United States and its interests. I conclude that no "heightened risk" has been shown that she would ever act improperly in a national security context. (Guideline B: Foreign Influence at 7.(a). To the contrary, even with her remaining ties to China, the record demonstrates that she "can be expected to resolve any conflict of interest in favor of the U.S. interest" (*Id.*, at 8.(b)).

In addition, the totality of the record, evaluated under the "whole person" concept, shows Applicant to be woman of strength and integrity, dedicated to her adopted homeland, and determined to protect the life she has made here for herself and her family. Overall, and considering her in the light of the whole person concept, I conclude she currently possesses the judgment, reliability, and trustworthiness required of someone seeking a security clearance.

FORMAL FINDINGS

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are

Paragraph 1	Fore the Applicant
Subparagraph 1.a.	For the Applicant
Subparagraph 1.b.	For the Applicant
Subparagraph 1.c.	For the Applicant
Subparagraph 1.d.	For the Applicant
Subparagraph 1.e.	For the Applicant
Subparagraph 1.f.	For the Applicant
Subparagraph 1.g.	For the Applicant
Subparagraph 1.h.	For the Applicant
Subparagraph 1.i.	For the Applicant
Subparagraph 1.j.	For the Applicant
Subparagraph 1.k.	For the Applicant

DECISION

Under 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 the Applicant.

BARRY M. SAX
ADMINISTRATIVE JUDGE