



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of: )  
 )  
----- ) ISCR Case No. 07-04212  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government:  
Jeff Nagel, Esquire, Department Counsel

For Applicant:  
Virginia M. Gomez, Esquire  
McKenna, Long and Aldridge, LLP

March 19, 2008

**Decision**

LOKEY-ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Security Clearance Application (SF-86) on February 18, 2005. On September 26, 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, which detailed reasons why DOHA 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 the Applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

The Applicant responded to the SOR in writing on November 13, 2007, and requested a hearing before a DOHA Administrative Judge. This case was assigned to

the undersigned on January 9, 2008. A notice of hearing was issued on January 31, 2008, scheduling the hearing for February 19, 2008. Administrative Notice was taken of the political climate existing in the People's Republic of China. At the hearing the Government presented two exhibits, referred to as Government Exhibits 1 and 2. The Applicant presented twenty-six exhibits, referred to as Applicant's Exhibits A through Z. He also testified on his own behalf. The official transcript (Tr.) was received on February 27, 2008.

### **FINDINGS OF FACT**

The Applicant is 43 years old and has a PhD in Engineering. He is employed by a defense contractor as an Engineer and is seeking to obtain a security clearance in connection with his employment.

The Government opposes the Applicant's request for a security clearance, on the basis of allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR:

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant was born in the People's Republic of China (PRC) in 1964. He attended a University in the PRC. At the age of twenty-four, in 1988, he came to the United States to further pursue his education. At that time he was on a joint fellowship with a University in the PRC and a University in the United States to do a three month research project. The University in the PRC paid for his living expenses and the University in the United States paid for his office and equipment. He then applied to a PhD program at a University in the United States and attended there. He became a permanent resident of the United States in 1993, and a naturalized United States citizen in 1999. He possesses a valid United States passport. (See Applicant's Exhibit X).

In 1993, he married a citizen of the PRC who later became a naturalized United States citizen. They have two children who were born in the United States.

In 1996, the Applicant began working for his current employer. He went through a rigorous selection process and was selected as a technical fellow which is a fairly prestigious position within the company before one becomes an executive of the company. Prior to working in the defense industry he was a assistant professor at a university in the United States.

The Applicant has several family members who are citizens and residents of the PRC that he maintains contact with. His elderly mother, step-father, sister, brother-in-law, an uncle and two aunts are citizens and residents of the PRC. The

Applicant's mother, a retired factory worker, with an elementary school degree, also holds a green card from the United States. She had planned on moving to the United States until the Applicant's step-father was diagnosed with cancer. She decided to stay in China to take care of him. The Applicant speaks to her about four times a year. The Applicant has strong feelings of affection for his mother. The Applicant's father passed away in 1990.

His step-father is a retired researcher formerly employed by a government owned social science institute, who was and still may be a member of the Communist Party. (See Government Exhibit 2). The Applicant's brother-in-law may also be a member of the Communist Party. (See Government Exhibit 2). In response to interrogatories dated September 4, 2007, the Applicant confirmed the accuracy of a personal statement he provided the DoD on January 10, 2007. He corrected several inaccuracies in the statement on the addendum page but did not make any corrections concerning his step-father and brother-in-law's association with the Communist Party. In the statement, the Applicant indicates that his step-father and brother-in-law are members of the Communist Party but that he does not know if they are actively involved in political matters. (See Government Exhibit 2). At the hearing, however, the Applicant stated that he had really never discussed the issue with his step-father and brother-in-law and does not know for sure if they are members of the Communist Party. (Tr. p. 45). His step-father is a stranger to him. (Tr. p. 47). The Applicant stated that he does not have evidence to dispute the statement and he cannot possibly deny that they are not Communist. (Tr.p. 80). In essence, they might be, the Applicant does not know. (Tr. p. 80).

His sister is a retired bus driver and an office clerk who receives a pension from her job. The Applicant speaks to his sister by telephone about two or three times a year. (Tr. p. 53). Her husband, the Applicant's brother-in-law is a road construction site manager. The Applicant does not consider himself to be close to his sister because he and his sister were raised separately. He was raised by his parents and she was raised by their grand-parents. (Tr. p. 54). His sister and brother-in-law know that the Applicant is an Engineer and they know the name of the company he works for.

The Applicant speaks to his uncle on his mom's side and his two aunts in China about once a year or once every two years. (Tr. p. 56).

At most once a year, the Applicant sends several hundred dollars to China to his family there. (Tr. p. 44). The Applicant has no assets or property, bank accounts, nor does he stand to inherit anything in China.

The Applicant has traveled to China on four separate occasions since 2000; in February 2000, December 2003, June 2005 and January 2007. On each occasion, he traveled to China for the purposes of visiting his mother and sightseeing. He has taken his children to China on three occasions and they speak a little Chinese. His mother has visited him in the United States on two occasions.

The Applicant's in-laws reside in the United States and they are naturalized citizens of the United States. The Applicant owns a home in the United States. He also has two separate retirement accounts from two different companies and some IRA accounts. He has a banking account that includes both a savings and checking account, and educational accounts for his children. (See Applicant's Exhibit R, S, T, U, V and W).

I have taken official notice of the fact that the People's Republic of China is a Communist country and that its politics, society and human rights records remain inconsistent with United States system of democracy and freedom. It is the most populous country in the world, is economically powerful, and is an important trading partner of the United States. It has strong military forces, and has its own foreign-policy. The PRC engages in espionage against the United States through an extensive network of businesses, personnel, and specific programs designed to acquire advanced U.S. military technology. One approach is to covertly conduct espionage by personnel from government ministries, commissions, institutes, and military industries, independently of the PRC intelligence services. This is believed to be the major method of PRC intelligence activity in the United States. It also tries to identify ethnic Chinese in the United States who have access to sensitive information, and sometimes is able to enlist their cooperation in illegal technology information transfers.

Numerous letters of recommendation from professional and personal colleagues of the Applicant attest to the Applicant's intelligence, good judgment, reliability, trustworthiness, dedication as an employee, loyalty and adherence to security rules and regulations. (See Applicant's Exhibits A, B, C, D, E and F).

Applicant's performance evaluations for 2004, 2005, 2006 and 2007 reflect that he either "met expectations", "exceeded expectations" or "far exceeded expectations" in every category. (See Applicant's Exhibits I, J, K and L).

The Applicant has received numerous awards for his outstanding contributions in the work environment. (See Applicant's Exhibits M, N, O, P and Q).

## **POLICIES**

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human

experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

### Foreign Influence

6. 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 induced 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 interest. Adjudication under this guideline 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.

#### Condition that could raise a security concern:

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.

#### Conditions that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct

- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

The Government must make out a case under Guideline B (foreign influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates that he has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The mere possession of a foreign passport raises legitimate questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

## CONCLUSIONS

Having considered the evidence in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR, and that Applicant's foreign contacts have a direct and negative impact on his suitability for access to classified information.

With respect to Guideline B, the evidence establishes that he is vulnerable to foreign influence. 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* applies. None of the mitigating factors apply.

The Applicant was born and raised in the People's Republic of China. As an adult, at the age of twenty-four, he came to the United States to pursue better educational opportunities. He was influenced by, and spent more than half of his life in China. His mother, step-father, sister, brother-in-law, uncle and two aunts, with whom he maintains contact, are citizens and residents of China. Although on the surface it appears that none of them are closely associated with the Chinese government or any government, nor do they appear to be in a position to place foreign influence on the Applicant, or are in a position to be exploited by the Chinese Government or any government in a way that could force the Applicant to choose between loyalty to them and loyalty to the United States, his sworn statement of his personal interview indicates that his step-father and brother-in-law are members of the Communist Party. This presents a risk that the United States cannot afford to take. The possibility that the Applicant could have a close family member who is a member of the Communist Party is extremely alarming and places the United States at a heightened security risk. The Applicant could be a target for an attempt at exploitation. Furthermore, the Applicant has traveled to China on four separate occasions within the last eight years, and has taken his children to China on three occasions to visit their foreign relatives there. Clearly, he has not cut his ties with China.

I have also considered the fact that the PRC is the largest collector of espionage against the United States in the world. Their covert methods include extensive networks of businesses, personnel, and specific programs designed to acquire advanced United States military technology. The PRC tries to identify ethnic Chinese in the United States who have access to sensitive information, and sometimes is able to enlist their cooperation in illegal technology information transfers. Based on the foregoing, the Applicant's foreign contacts raise a significant security concern. Guideline B is found against the Applicant.

Considering all the evidence, the Applicant has not met the mitigating conditions of Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Guideline B.

## **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:           Against the Applicant.  
Subparas.   1.a.:   Against the Applicant  
              1.b.:   Against the Applicant  
              1.c.:   Against the Applicant  
              1.d.:   Against the Applicant.

## **DECISION**

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson  
Administrative Judge