KEYWORD: Foreign Influence

DIGEST: Applicant is 50 years old and has worked as a senior engineer for a defense contractor since 2003. He was born in the People's Republic of China (PRC) and immigrated to the U.S. on an educational scholarship. He became a naturalized U.S. citizen in 1996. His mother and father are citizens and residents of PRC. His in-laws are citizens and residents of PRC and live there half of the year and live in the U.S. as legal residents for half of the year. Even though his relationship to his foreign family is close and their contact is frequent, Applicant established he has more substantial ties to the U.S. In the process, he demonstrated that his relatives do not pose an unacceptable risk. Clearance is granted.

CASENO: 06-24575.h1

DATE: 05/31/2007

DATE: May 31, 2007

In re:	)	
----------	)	ISCR Case No. 06-24575
SSN: ----------	)	
Applicant for Security Clearance	)	

DECISION OF ADMINISTRATIVE JUDGE
JACQUELINE T. WILLIAMS

APPEARANCES

FOR GOVERNMENT
Caroline H. Jeffreys, Esq., Department Counsel

FOR APPLICANT
Pro Se

SYNOPSIS

Applicant is 50 years old and has worked as a senior engineer for a defense contractor since 2003. He was born in the People's Republic of China (PRC) and immigrated to the U.S. on an educational scholarship. He became a naturalized U.S. citizen in 1996. His mother and father are citizens and residents of PRC. His in-laws are citizens and residents of PRC and live there half of the year and live in the U.S. as legal residents for half of the year. Even though his relationship to his foreign family is close and their contact is frequent, Applicant established he has more substantial ties to the U.S. In the process, he demonstrated that his relatives do not pose an unacceptable risk. Clearance is granted.

STATEMENT OF THE CASE

On April 9, 2004, Applicant executed Security Clearance Application (SF 86).[1] On January 16, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR)[2] to Applicant, detailing the basis for its decision–security concerns raised under Guideline B (Foreign Influence) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense for SORs issued after September 1, 2006. The revised AG was provided to Applicant when the SOR was issued.

In a sworn, written statement, dated February 8, 2007, Applicant responded to the SOR allegations and requested a hearing. The case was assigned to me on March 7, 2007. A Notice of Hearing was issued on March 12, 2007, scheduling the hearing for April 10, 2007. The hearing was conducted as scheduled. At the hearing, the Government offered one exhibit, Ex. 1. Applicant offered six exhibits, Exs. A-F. All exhibits were admitted into the record without objections. Prior to the hearing, the Government submitted seven documents for administrative notice. At the hearing, these documents were not objected to and they were all admitted into the record, marked as Exs. I-VII. The transcript (Tr.) was received on April 19, 2007.

MOTION TO AMEND STATEMENT OF REASONS

At the hearing, the Government moved to amend the SOR by adding a sentence to subparagraph 1.b and adding a new allegation, subparagraph 1.c. Applicant admitted the amended allegations as be true. In the absence of objection, the Government's request was granted. The SOR is amended as follows:

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[1]Ex. 1 (Security Clearance Application, dated April 9, 2004).

[2]Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (Directive).

1.b. Applicant also traveled to China in 2005 and 2006.[3]

1.c. Applicant's mother-in-law and father-in-law are citizens and residents of China. They also are legal residents of the United States. They spend half of their time living and residing in the United States, and half of their time living and residing in China.[4]

FINDINGS OF FACT

Applicant admitted the factual allegations pertaining to foreign influence under Guideline B, subparagraphs 1.a through 1.c. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following findings of fact:

Applicant is 50 years old and has worked as a senior engineer for a defense contractor since 2003.[5] He was born in PRC and he graduated from a PRC university with a bachelor's degree in 1982.[6] He immigrated to the U.S. in 1982 on an educational scholarship at a well-known university and graduated with a master's degree in 1988.[7]

Applicant became a naturalized U.S. citizen in 1996. He married in the U.S. 17 years ago, and his two children, aged 16 and 10, were born in the U.S.[8] He has a strong attachment to the U.S. as well as roots in his community. He owns real property in the U.S. and has lived in his current house for the past seven or eight years.[9] He has bank accounts in the U.S., including retirement accounts. His children go to the local public schools.

Applicant's mother and father are both citizens and residents of PRC. His parents are both in their 80s. His mother is a retired teacher and his father is a retired engineer.[10] On October 21, 1992, at the age of 63, his mother was diagnosed with thyroid cancer, stage 1.[11] He testified that his

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[3]Tr. 53.

[4]Tr. 57-58.

[5]Tr. 34.

[6]Tr. 36.

[7]Tr. 35.

[8]Tr. 45.

[9]Tr. 71-72.

[10]Tr. 15.

[11]Ex. C (Lab test results for Applicant's Mother).

father is also in very poor heath.[12] He talks to his parents about once a week, for five to ten minutes.[13] Although his parents get a small pension, they sold their house to a developer and received enough money to live comfortably.[14] If necessary, he and his brother supplement their income.[15] He and his brother purchased an apartment for his parents and upon their demise, his brother will live in the residence. His brother lives in Australia. The apartment is in the name of his parents, and is not in Applicant's name. Applicant has no assets in PRC.

Applicant's mother-in-law and father-in law are citizens and residents of PRC. His in-laws are in their 70s. They also are legal residents of the U.S. They spend half of their time living and residing in the U.S., and half of their time living and residing in PRC. They are both retired university professors.[16] He speaks to his in-laws by telephone about once a month.[17]

From 1986 when he began his educational studies in the U.S. through 1998, a period of 13 years, Applicant did not visit PRC. Applicant traveled to PRC in 1999, 2000, 2001, 2003, 2005, and 2006 to visit his ailing and sick parents. He visited and stayed with his parents for two-weeks during each of the trips. Since his in-laws live in the same city, he sees them as well.

Applicant submitted four affidavits attesting to his character. Two affidavits are from colleagues at work who support his application for a security clearance.[18] A third affidavit is from the principal of a local Chinese School. He indicates that Applicant has volunteered as the director and treasurer of the school board since 2005.[19] The fourth affidavit is from the president of the Applicant's home owners' association, who states "[Applicant] has been elected twice and is serving as a board member of our home owner association for past the four years. He actively participates in the planning of neighborhood improvement measures, addressing safety issues, enforcing community bylaws, communicating with the neighbors, and encouraging the passage of community initiatives."[20]

The PRC is a repressive, totalitarian government with foreign policy goals antithetical to the U.S. 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

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[12]Tr. 15.

[13]Tr. 38-39.

[14]Tr. 47.

[15]Tr. 16, 47.

[16]Tr. 51, 67.

[17]Tr. 50.

[18]Ex. D (Character letters for Applicant).

[19]The school's primary objectives are teaching students to comprehend and exercise basic Chinese conversation, reading, writing, and understanding of the Chinese culture.

[20]Ex. D, *supra*, note 13 at 4.

against its citizens in the U.S. However, under PRC law, citizens who become naturalized citizens of other countries lose their PRC citizenship.

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.[21] The Government has the burden of proving controverted facts.[22] The burden of proof is something less than a preponderance of evidence.[23] 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.[24] Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.[25]

No one has a right to a security clearance[26] and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."[27] Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.[28] The decision to deny an individual a security

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[21]ISCR Case No. 96-0277 (July 11, 1997) at 2.

[22]ISCR Case No. 97-0016 (December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.

[23]*Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

[24]ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.

[25]ISCR Case No. 93-1390 (January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.

[26]*Egan*, 484 U.S. at 531.

[27]*Id*.

[28]*Id*.; Directive, Enclosure 2, ¶ E2.2.2.

clearance is not necessarily a determination as to the loyalty of an applicant.[29] 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

I have carefully considered all the facts in evidence and the legal standards, and I reach the following conclusions.

Under Guideline B, a security risk may exist for an individual with divided loyalties or foreign financial interests. The person may be manipulated or induced to help a foreign person, group, organization, or a government in a way that is not in the interests of the U.S., or is vulnerable to pressure or coercion by any foreign interest. His parents are in their 80s and both have bad health. They recently sold a piece of property and are now well off financially. His parents' health has always been his main concern. However, his parents encouraged him to attend the university in PRC and to come to the U.S. to continue his education. His brother immigrated to Australia. His parents are proud of their sons and their lifestyles. His in-laws live in both PRC and the U.S. Neither his parents nor in-laws are likely to be vulnerable to foreign exploitation. Assuming *arguendo* that they were exploited in PRC, Applicant's strong ties to the U.S. would not make him vulnerable to exploitation or coercision by PRC in the event his parents and in-laws were targeted. Applicant is an American citizen and his loyalties are only to the U.S. If he had to choose, he would exhibit behavior favorably only to the U.S., even if it means that harm would come to those in PRC that he loved. Consequently, Foreign Influence Disqualifying Conditions ¶ 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. However, Applicant's contact with his parents or in-laws in PRC does not create a heightened risk for him or them.

Various factors can mitigate the foreign influence security concerns. The fact that his parents are citizens and residents of PRC does not constitute an unacceptable security risk. Applicant visits his parents to support them with his love and respect during their advancement as senior citizens. For the past 20 years, Applicant has developed strong ties to the U.S., which include real estate ownership, bank accounts, his marriage in the U.S. and the birth of his children here. Applicant has a profession here that he is extremely proud of and that he excels at. Once Applicant became a naturalized U.S. citizen, he lost his PRC citizenship. Thus, it is unlikely that Applicant would be sought out as a spy for PRC while he resides in the U.S. or visits PRC. Moreover, in the unlikely event that Applicant is approached by PRC while he is in the U.S., he is aware of the protocol in place to report such a transgression. If he had to choose between divulging information about the U.S. in order to protect his parents and in-laws, he would not jeopardize his U.S. citizenship. It is highly unlikely that Applicant would jeopardize his relationships and loyalties in the U.S. in any way. Applicant can be trusted to resolve any conflict of interest with relatives in PRC in favor of the U.S. Thus, Foreign Influence Mitigating Conditions (FI MC) ¶ 8(a) (*the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the*

[29]Executive Order 10865 § 7.

interests of a foreign individual, group, organization, or government and the interests of the U.S.) and FI MC ¶ 8(b) (*there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest*) apply. Accordingly, allegations 1.a through 1.c of the SOR are concluded in favor of Applicant.

I considered carefully all the potentially disqualifying and mitigating conditions in this case in light of the "whole person" concept, keeping in mind that any doubt as to whether access to classified information is clearly consistent with national security must be resolved in favor or the national security. Applicant is a mature individual who has lived in the U.S. for more than 20 years. He has strong ties to this country, which include his education, real estate, bank and retirement accounts. He

married in the U.S. and his children are U.S. citizens by birth. Applicant can be trusted to resolve any conflict of interest with relatives in PRC in favor of the U.S. I conclude Applicant has mitigated the potential security concerns arising from his personal ties to PRC.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 2. Guideline B (Foreign Influence): FOR APPLICANT

Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant

DECISION

In light of all of the circumstances in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Jacqueline T. Williams
Administrative Judge