

KEYWORD: Foreign Influence

DIGEST: Applicant is 45 years old and has worked as a software engineer for a defense contractor since 2001. He was born in the People’s Republic of China (PRC) and immigrated to the U.S. to pursue further education in 1986. He became a naturalized U.S. citizen in 2002. He mitigated security concerns based on his parents who are in their 70s and two brothers who live in PRC by demonstrating his strong ties in the U.S. for more than 20 years. He has a strong relationship with his company and his community. Clearance is granted.

CASENO: 07-00029.h1

DATE: 06/30/2007

DATE: June 30, 2007

In re:)	
)	
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SSN: -----)	ISCR Case No. 07-00029
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
JACQUELINE T. WILLIAMS**

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 45 years old and has worked as a software engineer for a defense contractor since 2001. He was born in the People's Republic of China (PRC) and immigrated to the U.S. to pursue further education in 1986. He became a naturalized U.S. citizen in 2002. He mitigated security concerns based on his parents who are in their 70s and two brothers who live in PRC by demonstrating his strong ties in the U.S. for more than 20 years. He has a strong relationship with his company and his community. Clearance is granted.

STATEMENT OF THE CASE

On February 29, 2004, Applicant executed a Security Clearance Application (SF 86).¹ On February 25, 2007, the Defense Office of Hearings and Appeals (DOHA) declined to grant a security clearance and 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 March 9, 2007, Applicant responded to the SOR allegations and requested a hearing. The case was assigned to me on April 5, 2007. A Notice of Hearing was issued on April 11, 2007, scheduling the hearing for April 25, 2007. The hearing was conducted as scheduled. At the hearing, the Government offered one exhibit, Ex. 1. Applicant offered four exhibits, Exs. A-D. All exhibits were admitted into the record without objections. Prior to the hearing, the Government submitted seven documents about PRC for administrative notice. At the hearing, these documents were not objected to and they were admitted into the record and marked as Exs. I-VII. The transcript (Tr.) was received on May 4, 2007.

FINDINGS OF FACT

Applicant admitted the factual allegations under subparagraphs 1.a and 1.d. Those admissions are incorporated herein as findings of fact. He denied the factual allegations under subparagraphs 1.b and 1.c. 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 45 years old and has worked as a software engineer for a defense contractor since 2001. He was born in PRC and graduated from a PRC university with a bachelor's and a master's degree in science. He immigrated to the U.S. in 1986 on a teaching certificate offered by a well-known university. He graduated with a second master's degree in science in 1988. He became a naturalized U.S. citizen in November 2002. He is single and has never married.

Applicant's mother and father are citizens and residents of PRC, living in the countryside.³ His parents are in their 70s and are retired textile engineers.⁴ He sends his "parents money to help

¹Ex. 1 (Security Clearance Application, dated February 29, 2004).

²Pursuant 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).

³Tr. 28.

⁴Tr. 25, 36.

make their lives easier, since their combined retirement pay is only \$200.00 a month.”⁵ Between 2002 and 2005, Applicant sent his parents \$17,500, which breaks down as follows: 2002/\$2,000; 2003/\$6,000; 2004/\$1,500; 2005/\$8,000. He did not send them money in 2006. He does not anticipate sending them money in 2007.⁶ He stated that: “[t]hey use most of the money I send them to improve or fix the old house they bought when they moved there. And I don’t have any plan to have any financial investments in China.”⁷ He talks to his mother by telephone about five to six times a year.⁸ He rarely talks to his father.⁹

Applicant stated that his relationship with his parents is not close.¹⁰ His grandparents raised him until he was eight and recounted:

. . . when I joined my parents and the brothers, almost 1,000 miles away. Both of my parents were abusive. Beating and scolding their children were commonplace, and often for no reason. I dreaded weekends, since they would be home all day. It felt like walking on eggshells every day. The sad thing about this is they didn’t even realize they were abusing their children.¹¹

Upon graduating from high school at age 14, he left his family and never lived with them again except for visits during school breaks from college and some holidays.¹² The PRC policy at the time was “any high school graduate must go to countryside to live and work as a farmer if he or she is not the only child in the family.”¹³ He lived in the countryside for a year and nine months.¹⁴ He was then accepted at a PRC university at the age of 16, and received two degrees from that school.¹⁵

Applicant’s two brothers are citizens and residents of PRC. His oldest brother is a principal and teacher at a small private high school, in one of the poorest areas of China. This brother is

⁵Tr. 32.

⁶Ex. A (Summary of checks).

⁷Tr. 32.

⁸Tr. 34.

⁹Tr. 35.

¹⁰Tr. 26.

¹¹*Id.*

¹²Tr. 27.

¹³*Id.*

¹⁴*Id.*

¹⁵Tr. 28.

divorced and has a son.¹⁶ His younger brother is an electrical engineer at a broadcasting company. He is also married and has a son.¹⁷ He talks to his older brother about four or five times a year. He talks to his younger brother about twice a year.¹⁸ He stated:

My relationship with my two brothers is also more biological then [sic] by affection or bond. Since I came to the States, I had virtually no contact with both of my brothers prior to 2003, except during my visit to China in 1995.¹⁹

Since Applicant immigrated to the U.S. in 1986, he has visited China only three times in more than 20 years. He has not had any contact with the Chinese government officials during any of his visits.²⁰ He first visited PRC in April 1995. His second visit was in September 2003. His last visit to PRC was in April 2006. Applicant traveled to China in April 2006 for his mother's 70th birthday celebration. He has no plans to visit China in 2007. According to local custom, he stated that his mother's 70th birthday was celebrated in 2006, one year prior to her actual 70th birthday. His father's 70th birthday was celebrated in 2004, two years prior to his actual 70th birthday. He stated:

My activities during my visits to China were mostly just visiting family and old friends and eating good food with them. I never discussed the specifics of my job with anyone during my trips to China. And I never took any work related materials when I visited China.²¹

Applicant had casual contact with Chinese Embassy representatives in about April 2000 while attending a luncheon. He also went to the Chinese Embassy in Washington, D.C., in about October 1999 with the president of a PRC university, his former professor, and with three other Chinese professors.

Applicant submitted four character witnesses at the hearing. The first witness is a retired Army Lieutenant Colonel. As a civilian, he has worked with Applicant for the past two years.²² He believes Applicant is honest and a valuable asset to the projects they work on at work.²³ The second

¹⁶Tr. 25.

¹⁷Applicant's Answer, dated, March 9, 2007.

¹⁸Tr. 35.

¹⁹Tr. 28.

²⁰Applicant's Answer, note 16, *supra*.

²¹Tr. 30.

²²Tr. 40-41.

²³Tr. 42-44.

witness is a project manager and she hired Applicant in 2001.²⁴ She testified that Applicant does an outstanding job as a team leader at work.²⁵ She sees him every day and at times, several times a day. She believes he is honest and trustworthy.²⁶ The third witness is a dance instructor at a well-known university as well as at a privately owned studio.²⁷ He has known Applicant for 12 years and they are roommates.²⁸ He believes Applicant is honest, trustworthy, and dependable.²⁹ The fourth witness is a software programmer and he met Applicant at work in 2001. They socialize at work at lunchtime and have gone to games and other social events with other coworkers outside of work.³⁰ This witness too believes that Applicant is honest, trustworthy, and dependable.³¹

Two colleagues provided affidavits attesting to Applicant's integrity, loyalty, and professionalism. They both recommend him for a security clearance.³² Another colleague, the first witness to testify, also provided a written endorsement for Applicant being granted a security clearance.³³

Applicant has strong ties to the U.S. He owns a house with his best friend.³⁴ He has a retirement plan, and other bank accounts. He has developed close relationships through the years with friends at work. He has a career that he excels in and really enjoys.³⁵

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

POLICIES

²⁴Tr. 47.

²⁵*Id.*

²⁶Tr. 47-50.

²⁷Tr. 52.

²⁸*Id.*

²⁹Tr. 52-54.

³⁰Tr. 56.

³¹Tr. 56-57.

³²Ex. C (Character letter, dated March 10, 2007); Ex. D (Character letter, dated March 8, 2007).

³³Ex. B (Character letter, dated March 8, 2007).

³⁴Tr. 21.

³⁵Tr. 22.

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.³⁶ The Government has the burden of proving controverted facts.³⁷ The burden of proof is something less than a preponderance of evidence.³⁸ 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.³⁹ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁴⁰

No one has a right to a security clearance⁴¹ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁴² Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁴³ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁴⁴ 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.

³⁶ISCR Case No. 96-0277 (July 11, 1997) at 2.

³⁷ISCR Case No. 97-0016 (December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.

³⁸*Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³⁹ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.

⁴⁰ISCR Case No. 93-1390 (January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.

⁴¹*Egan*, 484 U.S. at 531.

⁴²*Id.*

⁴³*Id.*; Directive, Enclosure 2, ¶ E2.2.2.

⁴⁴Executive Order 10865 § 7.

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.

Applicant's parents and his two brothers are citizens and residents in PRC. PRC is a country that exploits its citizens and engages in espionage. Therefore, Applicant's relatives living in PRC pose a potential security threat and are in a position likely to create a heightened risk of exploitation by the PRC government. Consequently, 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.

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. Although they are his biological parents, he was raised by his grandmother, who is now deceased. He does not have a lot of love and affection for his parents. For the past 20 years, Applicant has developed strong ties to the U.S., which include real estate ownership, bank and retirement accounts. Applicant has a profession here that he is extremely proud of and that he excels in. 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. 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 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.d 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 of the national security. Applicant presents a highly credible case that he would not be influenced by anything

contrary to the best interests of the U.S. He is biologically related to his parents, but he does not have a lot of love and affection for them and theirs is not a close familial relationship. He was raised by his grandparents. He has infrequent contact with his sibling. His residence in the U.S. for more than 20 years and his career record as a trusted employee, refute the risk that he would take any action that would jeopardize U.S. security interests. He has assimilated into U.S. customs and culture, and has become a model employee of a major defense contractor. 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. I find that it is clearly consistent with the national interest to grant clearance to Applicant.

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
Subparagraph 1.d:	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