

SYNOPSIS

_____ Applicant, a 26-year-old engineer with a major defense contractor, emigrated at age 14 to the U.S. from the Peoples Republic of China to join his mother who had come to the U.S. two years earlier. He was educated in a U.S. high school and university and has held an interim security clearance without incident for the past two years. He mitigated security concerns arising from his ties to his father and paternal grandparents, who are citizens of and residing in the Peoples Republic of China. He has long connections with the U.S., has fully complied with all security requirements during the two years he has held a clearance, and knows security requirements. Although he has traveled to the PRC three times in the past ten years to visit family, he has not done so since joining his company and does not intend to do so again. Clearance is granted.

STATEMENT OF THE CASE

On March 9, 2007, the Defense Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry* 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) to 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 Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated March 26, 2007, Applicant responded to the allegations set forth in the SOR, and requested a hearing. The case was assigned to me on June 6, 2007. A Notice of Hearing was issued June 7, 2007, for a hearing held on June 27, 2007. The Government introduced three exhibits at the hearing and requested that administrative notice be taken of 15 official government documents. The Applicant introduced seven exhibits. All exhibits were admitted into evidence and notice was taken of facts identified in the administrative notice request. The Applicant testified on his own behalf. The transcript was received on July 18, 2007.

FINDINGS OF FACT

_____ Applicant admitted all allegations under Foreign Influence (Guideline B) except for an allegation regarding his mother's citizenship. The admissions are incorporated herein as findings of fact. After a complete review of the evidence in the record and upon due consideration of the record the following additional findings of fact are made:

Applicant is a 26-year-old employee of a major defense contractor working as a software developer since April 2005. He emigrated to the U.S. from the Peoples Republic of China (PRC) in 1995 when he was 14 years old to join his mother who had immigrated in 1992. His parents were divorced in the PRC in 1988. He had been raised by his maternal grandparents most of his young life as his mother worked. After the divorce his father obtained custody as required by Chinese law. He was then raised by the paternal grandparents for several years during which time he had little contact with his father (Tr. 51).

Applicant's mother wanted to bring him to the U.S. for his education when she emigrated but his father would not agree until three years later. When he came he and his mother lived with an aunt who had emigrated earlier. He has lived all 12 of his years since reaching maturity in the U.S. He is a graduate of a public high school and a leading engineering school in electrical engineering. While attending college he worked either full time or part time in information technology for several companies. He is now enrolled in a master's degree program in computer science. His employer hired him after reviewing his impressive resume on the internet.

Applicant became a U.S. citizen in 2004. His mother became a U.S. citizen in 2006. She lives in the U.S. (Exh. C), and is married to a U.S. citizen. He visits her at least once a year. Her husband works for an automobile manufacturing company. She is employed as an accountant which was her work in the PRC. His maternal grandmother is in the U.S. as a permanent resident although still a citizen of the PRC. Her husband was in the Red Army during the revolution and is deceased. His grandmother, mother, several of her sisters and their families all live in the same U.S. city.

Applicant's father still lives in the PRC. He is a retired a factory worker and now works part-time as a musician on a radio station in the far northeastern part of the PRC. He last saw his father in 2004 and 2005 when he visited in the PRC. Over the past ten years he has had fewer contacts with him. His father was never in the PRC military but is a member of the communist party, the only party in the PRC. He telephones them 3-4 times a year using a phone card. He told his father the name of the company for which he works and that he is working to support U.S. Government programs but he asked no questions about it (Tr. 48).

Applicant's paternal grandparents also live in the PRC in the same area of the country as the father. They are retired from a family business. His grandmother is a lawyer. Both are members of the communist party. His grandfather was in the Red Army during the civil war and spent five years in a re-education camp during the cultural revolution. When he was released he ran a community health center. They receive a government pension. Applicant telephones them twice a year using a phone card, so they do know his phone number or his address. They may have been told by his father the name of the company for which Applicant works but they have never inquired (Tr. 18).

Applicant's aunt also lives in the PRC. She is a nurse, and he has had limited contact with her during his trips. In 1995 and 1997 when he was visiting he got a ride from the airport with her. He has had no contact with her since then.

Applicant has a girl friend from South Korea whom he met in 2005. When he became friendly with her, he advised his security office within a week of initiating the friendship (Tr. 46). He visited her and her family in South Korea in 2006. She graduated from a major east coast state university in 2007 and is now working for a Korean bank in New York. She plans to resign to attend graduate school. She does not intend to become a U.S. citizen.

Applicant made three trips to the PRC in summers of 1997 and 1999, and in February 2005 (Exh. 1). The last trip was with a U.S. passport and first two were using a PRC passport which he destroyed when he became a U.S. citizen (Exh. G and Tr. 22 and 64). He was not employed in the defense industry when he made those trips. He was employed when he went to South Korea in 2006

and did report the trip to his company security office both before and after he returned from the trip. Before leaving he was given a security briefing on South Korea and his security obligations while traveling overseas. He has no future plans to visit the PRC or South Korea. Now that he works in the U.S. defense industry he has no plans to see his relatives in the PRC. He is closer to his numerous family members who are all in the U.S. and they are the only family that he has a continuing desire to see (Tr. 49).

Applicant has held an interim security clearance since December 2005 when he was first employed by his company. He has had no security violations. Applicant has been briefed on security requirements by his company (Tr. 77). He follows the rules on all company requirements including those relating to security (Exh. A). He knows the proper procedures for reporting matters of security concern to the cognizant security officials (Tr. 78). He has a keen interest in preserving U.S. technology.

Applicant is highly regarded by his program manager and government team leader as an outstanding worker whose honesty and candor is beyond reproach. He is deemed to be the “top performer on the team” and “completely honest” (Exhs. A and B).

Applicant’s salary is \$65,000 per annum. It was raised from \$54,000 after evaluations during the two years of his employment. He owns no property except an automobile. He lives in a rented room in a home having given up an apartment to pay for his continuing education. He has savings accounts of approximately \$8,000. He neither provides any financial support for his relatives in the PRC nor do they provide any funds to him.

Applicant loves his work, and is very proud of his U.S. citizenship and education. He speaks flawless English. He has a strong belief in democracy and will do what he can to support it (Tr. 25). He appreciates the responsibilities and opportunities which he has been given.

POLICIES

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has “the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position that will give that person access to such information.” *Id.* at 527. An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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. (Revised Adjudicative Guideline (AG) ¶ 2 a) Security clearances are granted only when “it is clearly consistent with the national interest to do so.” Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue a clearance. “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.” (AG ¶ 2 b) “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b).

CONCLUSION

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors and conditions above, I conclude the following with respect to all allegations set forth in the SOR:

_____ Conditions under Guideline B that could raise a security concern and may be disqualifying include contact with a foreign family member 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 (AG ¶ 7a). Based on the evidence of record, including Applicant’s family members living abroad, the Government established a basis for concern over foreign influence. The Applicant has the burden to establish security suitability through evidence which refutes, mitigates, or extenuates the disqualification and demonstrates that it is clearly consistent with the national interest to grant a security clearance. ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

By virtue of the relationships of the foreign family members, Applicant’s contacts, though infrequent, cannot be deemed casual. The fact that some relatives live in the PRC and the history of that country as to economic and military espionage as well as their membership in the communist party by the three closest relatives makes it a heightened risk. Mitigating conditions (MC) that might be applicable are a determination that the nature of the relationships with foreign persons, the country in which the persons are located, or the positions or activities of those persons in that country are such that is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual group or government and the interests of the U.S. (AG ¶ 8a). The other relevant MC is that the individual has such deep and longstanding relationships and loyalties in the U.S., that he can be expected to resolve any conflict of interest in favor of the U.S. (AG ¶ 8b).

While Applicant’s father and his paternal grandparents live in the PRC, his father is employed in an area totally unrelated to national security and defense. His grandparents are elderly and fully retired. They are all members of the communist party but that is the only party permitted to exist in the PRC. Thus, because of the closeness in affinity of the relationships, I cannot find that any of the particular MC’s under Guideline B are applicable. However, he has minimized the risk involved in those relationships by lessening the telephone contacts to fewer than 3-4 times a year and by using telephone calling cards and not his home phone.

The government conceded at the hearing that the allegation in the SOR that Applicant’s mother was a citizen of the PRC had been mitigated by proof of her acquiring U.S. citizenship in 2006. The government also conceded that the concerns relating to the aunt in the PRC and the girl friend were lessened by virtue of minimal contact as to the aunt and the fact that the girl friend was

not a family member. Thus, the principal concern of the government is the citizenship and residence of Applicant's father and paternal grandparents.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. The "whole person" concept recognizes that we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

Applicant is a person of substance and veracity who is well educated. He has a responsible position of trust, and he is doing an excellent job for his company. He provided sincere and credible testimony as to his relationship with his family, his motivations, and his loyalty to the U.S. He is still a young person, but has established a successful life building financial and educational ties to the U.S. He has a strong financial stake in the U.S. His contacts with his family living abroad are minimal. He has no deference to or loyalty to his country of origin.

Certainly the PRC is an acknowledged collector of military and defense information and this is a matter of concern to the U.S. as illustrated in the documents about which I have taken administrative notice (AN IV, V, and VI). There is also evidence that South Korea is an active collector of information (An XII, and XVI). There is evidence of human rights violations in both countries. Applicant understands this concern and recognizes the responsibility he has to act prudently. Thus, he has determined not to travel to the PRC in the future. He has demonstrated his ability to comply with security requirements as evidenced by the precautions he took in traveling to South Korea in 2006 and concerning his friendship with a foreign citizen. All of his maternal relatives with whom he is close live in the U.S., and they are his main familial support. He knows well the problems in the PRC as witnessed by his grandfather during the cultural revolution.

Although Applicant is a young man, he made a very solid impression during the hearing in this proceeding as being mature beyond his years. He has much to offer the U.S. from his education and work as illustrated by the confidence expressed in him by his supervisors. He is totally integrated into U.S. society. He expresses himself forthright in the responses given at the hearing in this proceeding and candidly discussed his family including those aspects of the family which might not be beneficial to the outcome of this proceeding.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that it is clearly consistent with the national interest to grant clearance to Applicant. Clearance is granted.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

_____ Paragraph 1 Guideline B: FOR APPLICANT

Subparagraph 1.a.: For Applicant
Subparagraph 1.b.: For Applicant
Subparagraph 1.c.: For Applicant
Subparagraph 1.d.: For Applicant
Subparagraph 1.e.: For Applicant
Subparagraph 1.f.: For Applicant

DECISION

After full consideration of all the facts and documents presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Charles D. Ablard
Administrative Judge