



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



In the matter of:)
)
-----) ISCR Case No. 17-01420
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

05/08/2019

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to revoke her eligibility for access to classified information. A Chinese citizen by birth and a U.S. citizen since 2000, Applicant met her burden to present sufficient evidence to rebut, explain, extenuate, or mitigate the security concern for foreign influence based on her family ties to China. Accordingly, this case is decided for Applicant.

Statement of the Case

Applicant completed and submitted a Questionnaire for National Security Positions (SF 86 format) on February 25, 2016.¹ This document is commonly known as a security clearance application. After a background investigation, on July 14, 2017, the Department of Defense Consolidated Adjudications Facility, Fort Meade, Maryland, sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant her eligibility for access to classified

¹ Exhibit 1.

information. The SOR is similar to a complaint. It detailed the factual reasons for the action under the security guideline known as Guideline B for foreign influence due to her family ties to China, the country of her birth.

Applicant answered the SOR on August 2, 2017. She admitted the SOR allegations with explanations. She also requested an in-person hearing before an administrative judge.

The case was assigned to me on December 13, 2017. The hearing took place as scheduled on April 18, 2018. Both Department Counsel and Applicant offered documentary exhibits, which were admitted as Government Exhibits 1-4 and Applicant's Exhibits A-G. I took administrative or official notice, which is similar to judicial notice, of certain facts concerning the country of China per Department Counsel's written request.² The essential facts about China are discussed below. The hearing transcript was received on May 3, 2018.

Findings of Fact

Applicant, a native of China, is a 56-year-old employee who is seeking to retain a security clearance at the secret level, which was granted to her in 2006,³ for her job as a software quality engineer. She has worked for the same aerospace company since 2004. Before that, she worked as a software engineer for a large U.S. company. She has a good employment record based on a highly favorable letter of recommendation from a technical fellow who serves as the technical lead for a team of 200 engineers.⁴ Among other things, the letter described Applicant as a sought after software engineer "due to her dedication, attention to detail, and hard work." The letter also described Applicant as "a dedicated American citizen who enjoys being active in the community and just wants the best for her [children]."

Applicant earned a bachelor's degree from a Chinese university of science and technology in 1983. She was then employed as a software and hardware engineer. She lived with her parents until her marriage to a citizen of China in 1987. Applicant has lived in the United States since 1990, when she and her then husband came here via her husband's student visa so he could pursue further education. In due course, she became a permanent resident of the United States, and she obtained U.S. citizenship in 2000. Her marriage ended in divorce in 2004. She had two children during the marriage, both of whom are native-born U.S. citizens. Her 23-year-old daughter is a recent college graduate who has plans to attend medical school. Her 19-year-old son is a college student who studies computer science.

² Exhibit 4.

³ Exhibit 1; Tr. 6-7.

⁴ Exhibit B.

The SOR concerns Applicant's family ties to China via her father, mother, and two sisters. These are the same family members as when Applicant was granted a security clearance in 2006. The relevant details are set forth below.

Applicant's mother and father, now both in their 80s, came to the United States in 2002 via Applicant's sponsorship. They were granted permanent resident status in November 2002.⁵ They lived with Applicant when they were not visiting their other daughter in the United States. Neither speaks English, and neither was employed in the United States. It was not unusual for her parents to travel back and forth between the United States and China. They returned to China in 2012 or 2013 due to her father's declining health.⁶ Applicant's father has been retired for more than 20 years from his job as a manager for the same company she worked for in China.⁷ Likewise, Applicant's mother has been retired for more than 20 years from her job as a department-store manager.⁸ Applicant speaks to her parents by telephone weekly. Applicant's parents are aware that she works as a software engineer for an aerospace company, but that is the extent of their knowledge.⁹

In addition to her parents, Applicant has two sisters who are both citizens of China. One sister lives in the United States and has been a permanent resident since 2011.¹⁰ Her sister has a job working in a college library. Her sister's husband is employed as a professor at the same college. Another sister lives in China, and she is employed as a civil engineer for a Chinese engineering firm.

Applicant's financial interests are here with the exception of a bank account in China. In addition to her annual salary, Applicant has the following financial assets in the United States: (1) her home with a market value of about \$400,000 with a mortgage loan balance of about \$100,000; (2) a 401(k) account with a balance of about \$700,000 to \$800,000; (3) two residential rental properties which are unencumbered by mortgage loans; (4) approximately \$250,000 in IRA accounts; and (5) \$75,000 to \$100,000 in bank accounts.¹¹ She opened a bank account in China sometime after her parents return in the event she wanted to provide financial assistance to them.¹² She made an initial deposit of about \$25,000 to \$30,000, and has since made no further deposits. The

⁵ Exhibits D and E.

⁶ Tr. 51.

⁷ Tr. 47.

⁸ Tr. 48.

⁹ Tr. 53-54.

¹⁰ Exhibit F.

¹¹ Tr. 62-69.

¹² Tr. 57-59.

account is in her name, but her parents have a debit or ATM card to access the account if necessary.

There is no evidence that Applicant has been accused of or cited for a security infraction or security violation since granted eligibility in 2006. Likewise, there is no evidence that she has otherwise mishandled sensitive or classified information or failed to perform security-related duties or responsibilities. At the hearing, she expressed a good understanding of security-related matters.¹³

Concerning the country of China, Department Counsel's request for administrative notice contains an extensive discussion of the security concerns associated with China. The most pertinent of those facts are the following: (1) China is an authoritarian state in which the Chinese Communist Party is the paramount authority; (2) China (along with Russia) is the most aggressive collector of intelligence (both industrial and military) related to U.S. information and technology; and (3) China has a poor record of human rights regarding respect for the integrity of the person, respect for civil liberties, respect for political rights, corruption and lack of transparency in government, worker rights, as well as discrimination, societal abuses, and human trafficking. The maltreatment and oppression of the people in Tibet is but one example of China's poor human-rights record.

Law and Policies

This case is adjudicated under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective June 8, 2017.¹⁴

It is well-established law that no one has a right to a security clearance.¹⁵ As noted by the Supreme Court in *Department of the Navy v. Egan*, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."¹⁶ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security. In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.¹⁷ The Appeal Board has

¹³ Tr. 56-57.

¹⁴ The 2017 AG are available at <http://ogc.osd.mil/doha>.

¹⁵ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance"); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

¹⁶ 484 U.S. at 531.

¹⁷ 484 U.S. at 531.

followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.¹⁸

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.¹⁹ An unfavorable clearance decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.²⁰

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.²¹ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.²² An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.²³ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²⁴

Discussion

The gravamen of the SOR under Guideline B for foreign influence is whether Applicant's ties to China should disqualify her from access to classified information. Under Guideline B for foreign influence,²⁵ the suitability of an applicant may be questioned or put into doubt due to foreign contacts and interests. The overall concern under the guideline is:

Foreign contacts and interests, including but not limited to business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations

¹⁸ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

¹⁹ Directive, ¶ 3.2.

²⁰ Directive, ¶ 3.2.

²¹ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

²² Directive, Enclosure 3, ¶ E3.1.14.

²³ Directive, Enclosure 3, ¶ E3.1.15.

²⁴ Directive, Enclosure 3, ¶ E3.1.15.

²⁵ AG ¶¶ 6, 7, and 8 (setting forth the concern and the disqualifying and mitigating conditions).

such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.²⁶

The guideline notes several conditions that could raise a security concern under AG ¶ 7. The following are potentially applicable in this case:

AG ¶ 7(a) contact, regardless of method, 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; and

AG ¶ 7(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology.

The starting point for the analysis is the country of China. Suffice it to say, the U.S. Government views the behavior of the Chinese government as presenting a serious national security concern, and the heightened-risk element is satisfied too. Given Applicant's family ties to China, the Government has established its case under Guideline B. The above disqualifying conditions are raised by the evidence.

The guideline provides that certain facts and circumstances may mitigate foreign influence concerns. Given the evidence here, I considered the following mitigating conditions:

AG ¶ 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 United States;

AG ¶ 8(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

AG ¶ 8(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and

²⁶ AG ¶ 6.

could not be used effectively to influence, manipulate, or pressure the individual.

China's relationship with the United States and the heightened risk it presents place a heavy burden on Applicant to mitigate the security concern. With that said, Applicant has multiple indicators of a mature, stable, responsible, and trustworthy person. She was serious, candid, and credible at the hearing. She appears to have cooperated fully and provided truthful information about her family ties to China during the security clearance process. She made a good impression upon me during the hearing.

I have considered the totality of Applicant's ties to China. Applicant came to the United States more than 25 years ago in 1990, and she has since established and made her life here. She has a long employment record in the United States, she gave birth to two children in the United States, and her adult children are pursuing their lives and educations in the United States. In addition to her children, she has a sister who lives and works in the United States as well as a brother-in-law. Her parents resided in the United States for about a decade until returning to China for health reasons in about 2012 or 2013. Her financial assets, which are substantial, are in the United States except for a bank account in China she established to assist her parents. The value and routine nature of her Chinese bank account is such that it is unlikely to pose a conflict, and it is unlikely to be used to influence, manipulate, or pressure Applicant. AG ¶ 8(f) is applicable.

Other than her parents return to China, little has changed since Applicant was favorably adjudicated for a security clearance in 2006. Applicant has since had more time to establish her ties and connections to the United States, and to demonstrate that she adheres to security rules and requirements for her employment with a defense contractor. Given the totality of facts and circumstances, I conclude that it is unlikely Applicant will be placed in a position of having to choose between the interests of the United States and the interests of the Chinese government or her family members who have Chinese citizenship. I further conclude there is no conflict of interest, because Applicant has developed such deep and long-standing relationships and loyalties in the United States that she can be expected to resolve any potential conflict of interest in the favor of the United States. AG ¶ 8(a) is partially applicable. AG ¶ 8(b) is applicable.

Following *Egan* and the clearly consistent standard, I have no doubts or concerns about Applicant's reliability, trustworthiness, good judgment, and ability to protect classified or sensitive information. In reaching this conclusion, I weighted the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also considered the whole-person concept. Accordingly, I conclude that she met her ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

Formal Findings

The formal findings on the SOR allegations are:

Paragraph 1, Guideline B: For Applicant

Subparagraphs 1.a – 1.b: For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant eligibility for access to classified information.

Michael H. Leonard
Administrative Judge