



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



In the matter of:)
)
) ISCR Case No. 19-00573
)
)
Applicant for Security Clearance)

Appearances

For Government: Tara Karoian, Department Counsel
For Applicant: Shirin Asgari, Attorney At Law

September 26, 2019

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of the Case

On October 12, 2015, Applicant submitted a security clearance application (SF-86). On March 11, 2019, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline B, Foreign Influence. (Item 1.) The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); dated July 8, 2017.

Applicant answered the SOR on April 26, 2019, and requested a hearing before an administrative judge. The case was assigned to me on July 31, 2019. The Defense Office of Hearings and Appeals issued a notice of hearing on July 29, 2019, and the hearing was convened as scheduled on August 21, 2019. The Government offered two exhibits, referred to as Government Exhibits 1 and 2, which were admitted without objection. The Applicant offered nine exhibits at the hearing, referred to as Applicant's

Exhibits A through I, which were admitted without objection. Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on September 9, 2019.

Request for Administrative Notice

The Government requested I take administrative notice of certain facts relating to the Peoples Republic of China (PRC). Department Counsel provided an 11-page summary of the facts, supported by 14 Government documents pertaining to China. The documents provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports. (HE-I) They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

Findings of Fact

Applicant is 53 years old. He is married with three children. He has a Master's degree in Mechanical Engineering, and a Master's degree in Business Administration, as well as several certifications. (Applicant's Exhibit D, E, F and G.) He is employed with a defense contractor as a Manufacturing Engineer Manager. He is seeking to retain a security clearance in connection with his employment.

Guideline B – Foreign Influence

Applicant was born in Hong Kong in 1965. He grew up there and came to the United States as a teenager in February 1985. He obtained his college education here and then his U.S. citizenship in 1991. That same year he was hired by his current employer and has been working for this defense contractor for the past 29 years. Applicant has received numerous awards and accolades from his employer for his dedicated community and company outreach. (Applicant's Exhibit H.) He has an impeccable work history, as he has progressed over the years from an Engineer to the Manager of Manufacturing Engineering. Applicant has never applied for a security clearance before. (Tr. p. 54.)

Applicant is married to a naturalized American citizen and has three native-born American children. His only foreign contact with anyone in China is with his father-in-law, who is a retired middle school teacher. He is 80 years old and his health situation is up and down. Applicant's father-in-law has no affiliation with the Chinese government or military. Applicant's wife telephones her father in China about once a week to check on him. Applicant has almost zero contact with his father-in-law, as he only talks with him when he travels to visit him in China. Applicant last traveled to China in May 2019 and returned in June 2019. During that trip he took his family, including his wife and children. He has no plans for future travel to China. (Tr. p. 57.)

Applicant's father-in-law knows that he works for a U.S. company, but does not know what kind of work Applicant does, and does not know that he works for a defense contractor, or that he has applied for a security clearance. (Tr. p. 58.)

Applicant credibly testified that he cannot be coerced into divulging any national security secrets. Applicant has never been approached, confronted, or contacted by any foreign entity attempting to obtain protected information. He stated that if his father-in-law or anyone else in China or Hong Kong was detained by the Chinese government in an effort to extort protected information from the Applicant, he would immediately report it to the U.S. authorities. Applicant states that he is loyal to the U.S. and that his limited relationships with any foreign member of Hong Kong or China cannot threaten him to do anything against the interests of the United States. (Tr. pp. 59 - 60.)

Three witnesses testified on behalf of the Applicant. Each of them know the Applicant from work, and have either supervised him at some point, or worked with him for many years, or both. They also participate with him in several professional social groups within the company. Applicant is described as “dynamic,” “highly respected,” and a “leader.” Besides his outstanding work product, he is involved with the Toastmasters Club, sponsored by the company, the Asian-Pacific Professional Network, and is the founder of a community Martial Arts Club. Applicant is considered to be a loyal, responsible, and trustworthy individual. He is highly recommended for a security clearance. (Tr. pp. 28 - 48.)

Letters of recommendation from five professional colleagues of the Applicant attest to his outstanding character that demonstrates high morals, hardwork, responsibility and trustworthiness that inspires others around him. He is said to embrace the diversity in the workplace with an ability to work effectively and efficiently with sound moral integrity and ethical principles at all times. He is considered to be an exceptional individual and an excellent team player. He is said to be a fully engaged citizen of the U.S. and a strong technical leader in the defense industry. (Applicant's Exhibit A.)

Notice

I have taken administrative notice of the following information concerning the People's Republic of China (PRC). Targeting and collection of US political, military, economic, and technical information by foreign intelligence services continues unabated. China is one of the most aggressive collectors of U.S. economic information and technology. China's intelligence services, as well as private companies and other entities, frequently seek to exploit Chinese citizens or persons with family ties to China who can use their insider access to corporate networks to steal secrets using removable media devices or e-mail. Chinese actors are the world's most active and persistent perpetrators of economic espionage. Chinese attempts to collect U.S. technological and economic information will continue at a high level and will represent a growing and persistent threat to U.S. economic security. The nature of the cyber threat will evolve with continuing technological advances in the global information environment. (HE I)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the whole-person concept. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies for access to classified information seeks to enter into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

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 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.

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

- (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
- (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.

Applicant's has only one foreign family member, his father-in-law who is a resident and citizen of Hong Kong. Applicant maintains some contact with him, although it is very limited. However, Applicant's ties to his foreign father-in-law in Hong Kong may pose a heightened security risk for the United States Government. The evidence is sufficient to raise the above disqualifying conditions.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 and two of them are applicable in this case.

- (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

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation

Family ties in a foreign country raises a prima facie security concern that required the applicant to “present evidence of rebuttal, extenuation or mitigation sufficient to meet the burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him.” Thus, Applicant bears the burden to establish that his relatives are not vulnerable to influence, coercion, exploitation, or duress. In this case, Applicant carefully explains that his only family in China is his father-in-law. Applicant has no regular contact with him. His father-in-law knows nothing about the Applicant’s job or that he is applying for a security clearance. Their conversations are minimal, casual, and infrequent at best. His father-in-law is not affiliated in any way with any foreign government. Applicant has no other family members or friends or associates of any kind in Hong Kong. It is recognized that Applicant is at a higher risk of being targeted for Chinese intelligence gathering since he works for a defense contractor.

Applicant’s family ties are here in the United States. His wife and three children are Americans. He has made his permanent home here and is loyal and dedicated to the American ways. He has accomplished his educational goals, has excelled at work and has been promoted over the years, and has engaged in his community by reaching out to others. He has lived the American dream. Thus, it can be assumed that he will continue to place the interest of the U.S. paramount, and always protect the U.S. from any risk of terrorism, and/or any situation that could place the interests of the U.S. in jeopardy. Under the circumstances, Applicant has met this burden and has established two mitigating conditions set forth above under Guideline B.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of the applicant’s conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual’s age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis.

Applicant is obviously an extraordinary individual who shows maturity, intelligence and good judgment, and mentors and inspires others at the company. He performs outstanding on his job, and has the endorsement of his supervisor and many other professional colleagues. It is noted that while he was born in China, he is an American by choice. With his American wife and three children as his closest familiar ties, he has established his own life here in the United States. No significant security risk remains evident.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Foreign Influence security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraph 1.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Darlene Lokey Anderson
Administrative Judge