



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



In the matter of:)
)
) ISCR Case No. 20-02826
)
Applicant for Security Clearance)

Appearances

For Government: Patricia Lynch-Epps, Esq., Department Counsel
For Applicant: *Pro se*

02/25/2022

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the foreign influence security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On December 2, 2020, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B (foreign influence). Applicant responded to the SOR on December 29, 2020, and requested a hearing before an administrative judge. The case was assigned to me on October 25, 2021. The hearing was convened as scheduled on November 17, 2021.

Procedural and Evidentiary Rulings

Evidence

Government Exhibits (GE) 1 and 2 were admitted in evidence without objection. Applicant testified and submitted Applicant’s Exhibits (AE) A through Y. The objections to AE A through K were overruled and the documents admitted. AE L through Y were admitted without objection.

Request for Administrative Notice

Department Counsel requested that I take administrative notice of certain facts about the People's Republic of China (PRC or China) The request was not admitted in evidence but was included in the record as Hearing Exhibit (HE) I. Applicant's objection to certain parts of HE I was overruled, and I have taken administrative notice of the facts contained in HE I. I have also considered the facts contained in AE A through K. The most pertinent facts are summarized in the Findings of Fact, below.

Findings of Fact

Applicant is a 53-year-old employee of a defense contractor. He has worked for his current employer since 2017. He moved to another location with the same employer in 2018. He served about one to two months in the U.S. military before he was discharged for medical reasons in 1988. He has a bachelor's degree that he earned in 1991 and a master's degree that was awarded in 2008. He is married with two children. (Transcript (Tr.) at 30, 33, 43-45, 52, 63-65, 72, 92; Applicant's response to SOR; GE 1, 2)

Applicant is a native-born U.S. citizen. He had several girlfriends from China before he met his wife, who is also a Chinese citizen. He had two girlfriends from China when he was in graduate school. He had a third girlfriend that he met during a visit to China. He moved to China in 2009 to teach at a university and to be closer to his third girlfriend. That relationship did not last. His future wife was one of his students. His wife came to the United States on a student visa in 2012. He moved back to the United States in 2013. They married in 2017, and she is now a permanent resident of the United States (green card holder). Their children were born in the United States. (Tr. at 28, 34-43, 56, 66-88, 94-97; Applicant's response to SOR; GE 1, 2; AE L, M)

Applicant's wife's mother suffered from some form of mental illness. His parents-in-law divorced, and his mother-in-law passed away when his wife was young. His wife was primarily raised by her grandmother, who comes from a rural area and has no direct connection to the Chinese government or the Communist Party. Her grandmother visited them in the United States in about 2017 and stayed through his wife's pregnancy and the birth of their child in 2018. She visited again for a few months in about 2019. His wife's aunt visited them in the United States twice for a few months each time. His wife's grandmother and aunt do not speak English, and Applicant does not speak Mandarin, so their only real communication was through his wife. (Tr. at 43-48, 99-105, 111; Applicant's response to SOR; GE 1, 2)

Applicant's wife is not close to her father. She blames him for not helping her mother more. Applicant has never met nor spoken to him. Applicant also mentioned that he does not believe his father-in-law approved of the marriage. His father-in-law owns a small business and has no direct connection to the Chinese government or the Communist Party. Applicant stated that his father-in-law did not have to pay for his daughter's education in the United States. Out of a sense of obligation, his wife's father gifted his daughter about \$87,000 to be used as a down payment on the purchase of

Applicant's and his wife's home, which they bought for about \$540,000. (Tr. at 47-51, 106-109; GE 1, 2)

Applicant's and his wife's second child was born in 2020. They had no visitors from China for the birth because of the pandemic. Future visitors are less likely because China has made it more difficult for their citizens to travel overseas. (Tr. at 52; Applicant's response to SOR; AE J, K)

Applicant has not been to China since he left in 2013. His wife went to China in about 2017 to travel with her grandmother to the United States. Her last trip to China was in 2019 to update her national identification card. China would not renew the document at their consulates, and required their citizens to return to China to do so. Applicant and his wife have decided that unless the political situation changes in China, she will not return. She has applied for U.S. citizenship. (Tr. at 53-54, 57; AE L, M)

The PRC is a large and economically powerful country, with a population of over 1.4 billion people. The PRC has an authoritarian government, dominated by the Chinese Communist Party. The PRC has a poor record with respect to human rights and suppresses political dissent. Its practices include official repression of the freedoms of speech, religion, movement, association, and assembly; forced confessions; torture; mistreatment of prisoners; and arbitrary arrest, detention, and killings.

The PRC engages in espionage against the United States and is one of the two most active collectors of U.S. economic intelligence and technology. The PRC also sometimes uses coercion or blackmail to manipulate its citizens overseas to conduct influence operations on behalf of the PRC, such as threatening ethnic Uyghurs living in the United States with imprisonment of their family members in China. Additionally, the PRC targets individuals in other countries to support its acquisition of foreign technology. The PRC's "Thousand Talents Program" seeks to recruit individuals primarily, but not exclusively, from relevant diaspora populations and recent emigrants from the PRC, as well as foreign national experts whose recruitment the PRC views as necessary to its scientific and technical modernization, especially with regard to defense technology.

Applicant does not disagree with the nature of the PRC's government. He agrees that China is a hostile power and a dangerous country that is becoming more dangerous. His position is that the Government's theory of coercion does not make sense; that force of threats against loved ones is too risky for a rational adversary to consider; and that "secrecy creates a shield against coercion." He did an expansive research of reported spying and espionage cases and found that coercion against loved ones is extremely rare. A study concluded that "[p]eople coerced into espionage rarely make ideal agents." (Tr. at 13-15, 26-27, 121-138; AE A-K)

Applicant also asserted that in the extremely unlikely event that the PRC attempts to use his wife or his wife's family to coerce him into revealing classified information, he will immediately report it to the FBI. His wife agrees that would be the

only way to protect their children's future, and it is also the best chance to resolve the situation without any harm to their family or national security. (Tr. at 111-112)

Applicant submitted letters and documents attesting to his excellent job performance and strong moral character. He is praised for his patriotism, trustworthiness, loyalty, dependability, and devotion to the United States. He is strongly recommended for a security clearance. (AE O-Y)

Policies

This case is adjudicated under Executive Order (EO) 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); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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 national security eligibility will be resolved in favor of the national security."

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." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters 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 safeguard

classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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 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. The following 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;
- (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; and
- (e) shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

Applicant's wife is a citizen of China and a U.S. permanent resident. His wife's father and grandmother are citizens and residents of China. In-laws represent a class of persons who are contemplated by the Directive as presenting a potential security risk. As a matter of common sense and human experience there is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse. See, e.g., ISCR Case No. 09-06831 at 3 (App. Bd. Mar. 8, 2011).

China has an authoritarian government, dominated by the Communist Party, with a poor human rights record, and aggressively targets the U.S. for espionage. Applicant's Chinese connections create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion, both directly to him and through his wife. AG ¶¶ 7(a), 7(b), and 7(e) have been raised by the evidence.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

(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;

(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.

There is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). I considered the totality of Applicant's ties to China and the adversarial relationship China has with the United States. See, e.g., ISCR Case No. 17-03450 at 3 (App. Bd. Feb. 28, 2019). Because of that adversarial relationship, Applicant has a "very heavy burden" of persuasion as to mitigation. See, e.g., ISCR Case No. 17-04208 at 5 (App. Bd. Aug. 7, 2019). In foreign influence cases, the nature of the foreign government and its intelligence-gathering history are important considerations. There is a rational connection between an applicant's family ties in a country whose interests are adverse to those of the United States and the risk that the applicant may fail to protect classified information. See, e.g., ISCR Case No. 12-08412 at 2-3 (App. Bd. Sep. 11, 2015).

Applicant is not close to his mother-in-law as she does not speak English, and he does not speak Mandarin. His wife is not close to her father, and Applicant has never met nor spoken to him. Applicant's primary association with his in-laws is through his wife. Applicant and his wife accepted \$87,000 from her father to be used as a down payment on the purchase of Applicant's and his wife's home.

Applicant is a native-born U.S. citizen, as are his two children. His wife is applying for U.S. citizenship and does not intend to return to China for a visit unless the political situation changes in China. His in-laws have no direct connection to the Chinese government or the Communist Party.

Applicant presented a rational position that the Government's theory of coercion does not make sense; that force of threats against loved ones is too risky for a rational adversary to consider; and that "secrecy creates a shield against coercion." He did an expansive research of reported spying and espionage cases and found that coercion against loved ones is extremely rare. He also asserted that in the extremely unlikely event that the PRC attempts to use his wife or his wife's family to coerce him into revealing classified information, he will immediately report it to the FBI.

Applicant's position is not without some merit, as coercion is rare. However, it does occur, and there is little that China would not do to further its goals. A Guideline B adjudication is not a judgment on an applicant's character, patriotism, or loyalty to the United States. It is a determination as to whether an applicant's circumstances foreseeably present a security risk. See ISCR Case No. 19-00831 at 5 (App. Bd. July 29, 2020). The concern here pertains to the risk to his Chinese relatives. Through no fault of his own, or for that matter his wife and in-laws, Applicant failed to meet the "very heavy burden" of persuasion as to mitigation.

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. I also considered Applicant's favorable character evidence.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the foreign influence security concerns.

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 1, Guideline B:	Against Applicant
Subparagraphs 1.a-1.c:	Against Applicant

Conclusion

It is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge