



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



In the matter of:)	
)	
)	ISCR Case No. 19-03497
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: Christopher Harvey, Personal Representative

05/27/2022

Decision

COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline B, foreign influence. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On October 15, 2020, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, foreign influence. The DOD acted under Executive Order 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 adjudicative guidelines (AG), effective within the Department of Defense on June 8, 2017.

Applicant answered the SOR on November 9, 2020, and requested a hearing before an administrative judge. The case was assigned to me on October 21, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on

November 5, 2021, with a hearing date of December 15, 2021. The hearing was convened as scheduled. The Government offered exhibits (GE) 1 and 2, which were admitted into evidence without objection. The Government's exhibit list was marked as HE I and the discovery letter was marked as HE II. Applicant testified, called one witness, and offered exhibits (AE) A-K, which were admitted without objection. The record remained open and Applicant timely submitted her medical records as AE L, which were admitted without objection. DOHA received the hearing transcript (Tr.) on December 30, 2021.

Procedural Ruling

Department Counsel requested that I take administrative notice of certain facts relating to the People's Republic of China (PRC). Applicant did not object and the request was approved. The request and the attached documents were not admitted into evidence, but were included in the record as HE III. The relevant facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

The SOR alleged Applicant's mother is a resident and citizen of the PRC, that she served in the People's Liberation Army (PLA) from 1981 to 1983 as a colonel, and that she is still employed by the PLA as a doctor. The SOR also alleged that her father is a resident and citizen of the PRC. The SOR further alleged that one unnamed friend is a resident and citizen of the PRC and that six unnamed friends are citizens of the PRC. (SOR)

In Applicant's answer to the SOR, she admitted SOR allegation SOR ¶ 1.b. She denied the allegations in SOR ¶¶ 1.a, 1.c, and 1.d. Her admission is incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 33 years old. She was born in the PRC in 1988. She went to high school and college in the PRC, but she attended graduate school in the United States. She relocated to the United States upon her undergraduate college graduation in 2011. She received her master's degree in engineering in 2013. She became a naturalized U.S. citizen in 2016. She has worked for her government-contractor employer since 2017. She is single, never married. (Tr. 36; GE 1-2)

Applicant served in the U.S. Army for approximately nine months from 2015 and into 2016, before she was discharged and medically retired for having a medical condition that was incompatible with further military service. She was diagnosed with paranoid schizophrenia. She currently receives treatment for this condition in the form of monthly therapy sessions with a psychologist and quarterly appointments with a psychiatrist. She is prescribed Aripiprazole for her condition. (this condition was not alleged in the SOR as a Guideline I, psychological conditions concern, and I therefore will not consider this evidence for disqualification purposes, but I may consider it as it

relates to Applicant's credibility, the applicability of any mitigating conditions, and as part of a whole-person assessment). Applicant receives both a disability pension and medical care from the Department of Veterans Affairs (VA). (Tr. 36-37, 61-63; AE A, K, pp. 2, 3 of 211)

Applicant's mother is 58 years old and is a resident and citizen of the PRC. From 1981 to 2006, she served as an attending physician in the civilian cadre of the PLA. She achieved the rank of a colonel-equivalent. She retired from that position and receives a government pension. She continues to work at a PLA hospital. Applicant has video chat contact with her mother at least once a week. Her parents sent her at least \$50,000 to help her make a down payment on her U.S. home. (Tr. 39, 45-46, 50-51, 66-67; GE 1-2; AE J)

Applicant's father is 58 years old and is a resident and citizen of the PRC. He works in an administrative role for a government-owned airline. He plans to retire from his position in approximately two and a half years. When he retires he will receive a government pension. Applicant has video chat contact with her father at least once a week. Once her father retires, Applicant's parent's intent is to move to the United States to live with Applicant. (Tr. 48-51, 66-67; GE 1-2)

Department Counsel acknowledged that the gravamen of this case was Applicant's relationship with her parents who live in the PRC, not with the seven unnamed friends alleged in the SOR. Applicant testified that she had lost contact with all her friends years ago. She only has once-a-year contact with a cousin. Based upon the lack of specificity regarding the friends in question, and the paucity of evidence regarding Applicant's contact with these friends, I find for Applicant on SOR ¶¶ 1.c and 1.d. (Tr. 14, 40, 53)

Applicant wanted to come to the United States as a young child. Her father shared in her dream to immigrate to the United States. She believes the PRC is a corrupt government that prevents freedom of speech. The reason she enlisted in the Army in 2015, even though she held a master's degree in engineering, is because she was told by a friend that enlisting could lead to earlier citizenship for her through the Military Accessions Vital to the National Interest (MAVNI) program. (MAVNI allows certain non-citizens to join the U.S. military and apply for immediate citizenship. See stilt.com/blog/2021/06/mavni-program/) She used this program to gain early citizenship. She also wanted to become a doctor. (Tr. 36-38, 41)

Applicant owns a home outright in the United States that is valued at approximately \$450,000. She has cash in bank accounts in the amount of approximately \$100,000. Her retirement account contains approximately \$36,000. Her current salary is approximately \$107,000. Her VA disability payment is approximately \$3,000 monthly. Since coming to the United States, she has traveled back to the PRC only once in 2018 to visit family. She has no intentions to return to the PRC in the future. Applicant owns no property in the PRC. She is involved in her community. (Tr. 38, 40, 54-55, 57-59; AE B-E, G)

Applicant presented the testimony of a coworker who has known Applicant since 2017. In addition to knowing her through work, she has socialized with Applicant on a few occasions. She believes Applicant is straight forward and friendly. She also believes Applicant is a hard worker and a good employee. She believes Applicant is trustworthy and would place the interests of the United States above any other interests. Applicant also presented 11 awards she received from her employer for being a key contributor to the mission. (Tr. 30-34; AE F)

People's Republic of China

The PRC has an authoritarian government, dominated by the Chinese Communist Party. The PRC has a poor record with respect to human rights, suppresses political dissent, and its practices include arbitrary arrest and detention, forced confessions, torture, and mistreatment of prisoners. Repression and coercion, particularly against organizations and individuals involved in rights advocacy and public interest issues, are routine. (HE III)

Along with Russia, the PRC is the most aggressive country in targeting sensitive and protected U.S. technology, and economic intelligence. It has targeted the U.S. with active intelligence gathering programs, both legal and illegal. In China, authorities have monitored telephone conversations, facsimile transmissions, e-mail, text messaging, and internet communications. Authorities opened and censored mail. The security services routinely monitored and entered residences and offices to gain access to computers, telephones, and fax machines. All major hotels had a sizable internal security presence, and hotel guestrooms were sometimes bugged and searched for sensitive or proprietary materials. (HE III)

As recently as July 2020, PRC consulate employees helped PLA officers evade and obstruct U.S. law enforcement activities to conceal their military affiliations. Multiple U.S. criminal indictments since 2015 involve PRC nationals, naturalized U.S. citizens, or permanent resident aliens from the PRC, and U.S. citizens, procuring and exporting controlled items to China. (HE III)

Policies

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 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, these guidelines are applied 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(a), the entire process is a careful weighing 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.” 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, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that 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 ¶ 7:

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 mother and father are residents and citizens of the PRC. Her mother worked as a physician for the PLA for over 25 years and continues to receive a pension from that work. She also currently works at a PLA hospital. Her father works for a PRC-owned airline. Applicant is very close to her parents as reflected by their weekly communications and her parents' willingness to help her financially. Because of these facts, there exists a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. The same situation also creates a potential conflict of interest for Applicant. AG ¶¶ 7(a) and 7(b) have been raised by the evidence.

Conditions that could mitigate foreign influence security concerns are provided under 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; and

(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.

Based upon the documented action of the PRC in attempting to gain intelligence from U.S. sources, the evidence does not support that it is unlikely that Applicant could

be placed in a position to choose between the interests of her family in the PRC and those of the United States. Additionally, her mother's affiliation with the PLA, and her parent's dependence on their PRC's government pensions, place Applicant in a susceptible position. Applicant has established ties to the United States. However, it is difficult to determine, based upon the evidence, that she has a deep and longstanding relation with the United States, such that she would resolve all conflicts in favor of the United States should the PRC pressure her parents living in China. As stated above, the protection of the national security is the paramount consideration and any doubt must be resolved in favor of national security. I am unable to find either of the mitigating conditions to be fully applicable. Despite the presence of some mitigation, it is insufficient to overcome the significant security concerns that exist.

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 the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (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.

The PRC has an authoritarian government, a bad human rights record, and a very aggressive espionage program aimed at the United States. The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the United States. Here, the PRC checks all the blocks. There is no reason to question Applicant's loyalty and devotion to this country. However, she has not overcome the vulnerability to pressure, coercion, exploitation, and duress created by her relatives living in the PRC and her mother's significant close connection to the PLA.

Applicant has done nothing whatsoever to question her loyalty and devotion to this country. In fact, her decision to serve in the U.S. Army was admirable, even if it was cut short by her mental health condition. However, she has simply been unable to overcome the heavy burden of showing that she is not subject to influence by the PRC, through her parents living in China. Her vulnerability to foreign pressure, coercion, exploitation, or duress remains a concern.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not 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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a – 1.b:	Against Applicant
Subparagraphs 1.c – 1.d:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge