



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



In the matter of:)
)
) ISCR Case No. 22-01070
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: [Redacted], Personal Representative.

10/26/2022

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the foreign influence security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On June 29, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B, foreign influence. Applicant responded on July 29, 2022, and requested a decision based on the written record in lieu of a hearing. On August 31, 2022, Department Counsel requested a hearing before an administrative judge. The case was assigned to me on September 19, 2022. The hearing was convened as scheduled on October 6, 2022.

Procedural and Evidentiary Rulings

Evidence

Government Exhibit (GE) 1 was admitted in evidence without objection. The objection to GE 2 was sustained. Applicant testified, called five witnesses, and

submitted Applicant's Exhibits (AE) A, A-1 through A-15, B, and C, which 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. Without objection, I have taken administrative notice of the facts contained in HE I. Pertinent facts are summarized in the Findings of Fact.

Findings of Fact

Applicant is an employee of a defense contractor, where he has worked since 2020. He is applying for a security clearance for the first time. He has a bachelor's degree from a Chinese university and a master's degree and a PhD from a U.S. university. He is married with two adult children. (Transcript (Tr.) at 24, 29-30; GE 1; AE A-1)

Applicant was born in a rural area of China to parents who were farmers. He married his wife in China in the late 1980s. He came to the United States in the early 1990s to attend college. His wife and older child followed him to the United States about six months later. Applicant became a U.S. citizen in the mid-2000s. His older child became a U.S. citizen the following year, and his wife the year after that. His younger child was born in the United States. Since China does not recognize dual citizenship, Applicant, his wife, and his children are U.S. citizens only. (Tr. at 22-30; Applicant's response to SOR; GE 1; AE A, A-1, A-4, A-9)

Applicant's parents are deceased. His four siblings and his parents-in-law are citizens and residents of China. His siblings and their spouses are farmers in the rural area of China where Applicant lived in his youth. His parents-in-law are elderly. His father-in-law is retired. His mother-in-law did not work outside the home. None of his family in China have any direct connection to the Chinese government or the Communist Party. (Tr. at 28, 34-35, 39-41; Applicant's response to SOR; GE 1; AE A-1)

Applicant has not visited China since 2016, and with his parents deceased, he has no immediate plans to return. He is not particularly close to his siblings, having spent his adult life in college away from the rural area where he grew up and in the United States. None of his family have ever visited him in the United States. He talks to them several times a year, mostly on holidays or special occasions. He does not send them money or otherwise support them. His wife visited her parents in China with their younger child in 2018. His wife talks to her parents about every few months. His wife has health problems that make traveling difficult. She has no immediate plans to visit China. (Tr. at 33-39; GE 1; AE A-1)

Applicant does not own any assets or property in China. He has lived in the same house in the United States since the late 1990s. He owns the home outright without a

mortgage. His assets and net worth in the United States total about \$2 million. (Tr. at 24-25, 31-32; GE 1)

Applicant expressed his complete allegiance to the United States, which he considers his home. His immediate family, including an infant grandchild, are all in the United States. He credibly testified that he would report any attempt to use his family in China to coerce or intimidate him into revealing classified information. (Tr. at 25-26, 33-34, 41-42)

Applicant called five witnesses, and he submitted documents and letters attesting to his excellent job performance and strong moral character. He is praised for his trustworthiness, professionalism, reliability, work ethic, friendliness, helpfulness, dependability, honesty, reliability, leadership, professionalism, integrity, and loyalty to the United States. (Tr. at 43-55; AE A, B, C)

The People's Republic of China (PRC)

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.

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 siblings and in-laws 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 it 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; 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.

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).

I also considered the strong ties Applicant has to the United States. His immediate family have been in the United States for about 30 years (wife and older child) or were born in the United States (younger child and grandchild). He is not particularly close to his siblings, having spent his entire adult life living somewhere other than the rural area where he grew up. That connection is even less since his parents passed away. He has not visited China since 2016, and with his parents deceased, he has no immediate plans to return. His relatives in China are farmers, and his in-laws are retired. He has lived in the same house in the United States since the late 1990s. He does not have any assets in China, and he has about \$2 million in assets in the United States. He credibly professed his allegiance to the United States and that he would report any attempt to use his family in China against him.

I find 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 his Chinese family members. I further find there is no conflict of interest, because Applicant has such deep and long-standing relationships and loyalties in America, that he can be expected to resolve any conflict of interest in favor of the United States. AG ¶ 8(a) is partially applicable. AG ¶ 8(b) is applicable.

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 have incorporated my comments under Guideline B in my whole-person analysis.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant 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:	For Applicant
Subparagraphs 1.a-1.b:	For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge