



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



In the matter of:)	
)	
)	ISCR Case No. 20-00983
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicole Smith, Esq., Department Counsel
For Applicant: *Pro se*

11/16/2022

Decision

Curry, Marc, Administrative Judge:

Applicant failed to mitigate the foreign influence security concern generated by his relationship with his wife, a citizen of the People’s Republic of China (PRC), and her parents, who are both PRC citizens and residents. Clearance is denied.

Statement of the Case

On February 26, 2021, the Department of Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a statement of reasons (SOR), alleging security concerns under Guideline B (foreign influence). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; DOD 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* (AG), effective within the DOD on June 8, 2017.

The SOR informed Applicant that, based on information available to the Government, DCSA CAS adjudicators could not make the affirmative finding that it was clearly consistent with the national interest to grant or continue his security clearance,

and it recommended that his case be submitted to an administrative judge for a determination whether his clearance should be granted, continued, denied, or revoked.

On March 10, 2021, Applicant answered the SOR, admitting the allegations, and requesting a hearing. On May 18, 2021, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. On June 14, 2022, DOHA scheduled the hearing for July 25, 2022. The hearing was held as scheduled. I received two Government exhibits (GE 1 - GE 2) and three Applicant exhibits (AE A - AE C). Applicant informed me that AE B, which he provided to me and Department Counsel was incomplete. Upon his request, I left the record open for an additional day for him to provide a complete copy of AE B. Department Counsel did not object, and I incorporated it into the record.

At Department Counsel's request, I took administrative notice of the facts set forth in 25 documents (Hearing Exhibits (HE) I through HE XXV). I received the transcript (Tr.) of the hearing on August 4, 2022.

Findings of Fact

Applicant is a 65-year-old married man with three adult children. Three previous marriages ended in divorce. (GE 1 at 30-31) He earned a high school diploma and has earned some community college credits. (Tr. 23) He has been supporting the military as an information technology contractor since 1984, and has held a clearance for approximately 20 years. (Tr. 19, 22)

Applicant's wife is a native of the People's Republic of China. (PRC) Applicant is her third husband. Her previous marriages ended in divorce. Applicant's wife has permanent legal residence status in the United States and lives with him. (Tr. 37) He met her through an online dating app in 2014. (Tr. 25) She was a legal U.S. resident at the time. (Tr. 25) Applicant and his wife married approximately two years later on Valentine's Day of 2016.

Currently, Applicant's wife splits her time working part-time as an online Mandarin tutor and at an assisted living facility. When Applicant met her, she was spending the majority of her time living in the PRC working as a university professor, specializing in mental wellness for the elderly. (Tr. 28) Applicant's wife continued to spend the majority of her time in the PRC after they married. (Tr. 29-30) Applicant's wife retired in March 2021 after she became eligible to receive a PRC-government pension. (Tr. 30)

Applicant's wife owns a condominium in PRC worth approximately \$140,000. (Answer at 2)] She brought it shortly after she divorced her first husband. (Tr. 35) She already owned the property when she married her second husband, with whom she was married when she immigrated to the United States approximately ten years ago. When they divorced in a U.S. state court, her second husband formally acknowledged that he had no ownership right to the condominium. The PRC, however, will not allow her to sell the condominium without the agreement of the second husband. Applicant's wife has

been unable to locate the second husband and suspects he is deceased. When she traveled to the PRC most recently in 2017, the PRC government agreed to allow her to sell the condominium if she obtained a certified copy of the divorce decree. (Tr. 46) Applicant's wife obtained one, but has been unable to return to the PRC since the COVID crisis. (Tr. 39) While the sales process has been pending, Applicant's wife has been renting it. Applicant does not know how much his wife is receiving in rental payments. (Tr. 36)

Applicant's wife intends to become a United States citizen, but is waiting until after she sells the condominium. Per Applicant, if she became a U.S. citizen, it would complicate the sales process because PRC law discourages foreigners from engaging in PRC real estate transactions. (Tr. 38)

Applicant's stepson is in his mid-twenties. (GE 1 at 34) He is a citizen of the PRC. He immigrated to the United States with his parents approximately ten years ago. Subsequently, he graduated from high school and college in the United States. Currently, he lives in the United States in a townhouse owned by his mother and Applicant, and pays them rent. (Tr. 80)

Applicant's parents-in-law are citizens and residents of the PRC. Applicant's father-in-law worked for the PRC's department of agriculture. (Tr. 30) He is retired. Applicant is not sure what his mother-in-law did for a living. Applicant's parents-in-law are in extremely poor health. His wife talks to them approximately every other day and uses her Chinese pension to pay their medical expenses. (Tr. 41, 43)

Applicant's wife maintains a bank account in PRC to help her parents. (Tr. 31) The account has a balance of approximately \$24,000. (Tr. 31) Her PRC pension is deposited into this account.

Applicant's home is worth approximately \$525,000. (Tr. 48) He has \$40,000 in a checking account and \$6,000 deposited in a savings account. (Tr. 49)

Administrative Notice

The PRC is an authoritarian state in which the Chinese Communist Party. (HE I at 1) is the paramount authority. (HE I at 1) The PRC is one of the most active collectors of illicitly gained technology in the world. (HE 1 at 1) The PRC National Intelligence law of 2017 forms the baseline of the modern data collection regime and compels all PRC firms and entities to support, assist, and cooperate with the PRC intelligence services, creating a legal obligation for those entities to turn over data collected abroad and domestically to the PRC. (HE IV at 6) The PRC government has the legal and physical capability to compel any Chinese citizen to turn over information. (HE IV at 1) The PRC has expansive efforts in place to acquire U.S. technology, and continues to use cyber espionage to support its strategic development goals. (HE V at 1) Most cyber operations against U.S. private industry that have been detected are focused on cleared defense contractors or information technology firms. (HE V at 40)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

Analysis

Guideline B, Foreign Influence

Under this guideline, “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.” (AG ¶ 6) The PRC is one of the most active practitioners of espionage against the U.S. government and U.S. businesses in the world. Theft of trade secrets, military secrets, and intellectual property is not only encouraged by the PRC government; it is legally authorized by the PRC National Intelligence Law of 2017. One method of espionage is the coercion of foreign nationals and their family members to divulge sensitive information. Under these circumstances, Applicant’s relationship with his wife, a PRC foreign national and his parents in-law, both PRC citizens and residents, triggers the application of 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 county if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.”

Applicant lives with his wife. Consequently, AG ¶ 7(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,” also applies to their relationship.

Although Applicant’s stepson is a citizen of the PRC, he has been living in the United States since high school, graduating from both high school and college here. I conclude that Applicant’s relationship with his stepson does not trigger a security concern, and resolve subparagraph 1.b in Applicant’s favor.

Applicant’s spouse retired from her position as a professor at a university in the PRC. I resolve subparagraph 1.f in her favor.

Given that Applicant’s father is retired from the PRC government’s department of agriculture, and is in extremely poor health, his former employment does not increase the overall security concerns. I resolve subparagraph 1.g in Applicant’s favor.

The PRC, an authoritarian state, is a strategic competitor dedicated to undermining U.S. goals, cyber-attacking U.S. military and U.S. infrastructure, and stealing U.S. business’ trade secrets. Consequently, 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,” is inapplicable.

Applicant worked in positions supporting the military for nearly 40 years. He has held a security clearance for at least half of that time. However, “even a person of the highest character can experience circumstances under which he or she can be tempted to place the well-being of foreign relatives over the interests of the U.S.” (ISCR Case No. 17-04208 at 5 (App. Bd. Aug. 17, 2019). Consequently, given the depth, scope, and intensity of the PRC’s hostile espionage activities against the United States and U.S. interests, and their history of targeting PRC foreign nationals to achieve these objectives, I cannot conclude that 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,” applies.

The potential that the PRC may seek to exploit Applicant through his wife’s PRC property interests is equally as high as the possibility that the PRC may seek to exploit him through his in-laws who are PRC citizens and residents. However, the value of his wife’s PRC interests is minimal in relation to their U.S. property interests, and as such, renders it “unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure” Applicant. (AG ¶ 8(f)) Consequently, I resolve subparagraphs 1.d and 1.e in Applicant’s favor.

In sum, Applicant has not met the “very, heavy burden” standard for mitigating the extraordinary security risk posed by his in-laws who are citizens and residents of the PRC. (See, e.g., ISCR Case No. 12-012317 at 3-4 (App. Bd. Jan. 9, 2014)) Consequently, I conclude that it is not clearly consistent with the national interest to continue Applicant’s access to classified information.

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(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.

I considered the whole-person factors when I evaluated Applicant’s credibility under the foreign influence section of the Decision, and they do not warrant a favorable conclusion.

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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c:	Against Applicant
Subparagraphs 1.d – 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant

Conclusion

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

Marc Curry
Administrative Judge