

KEYWORD: Foreign Influence, Personal Conduct

DIGEST: Based on an assessment of him as a whole person, Applicant mitigated security concerns over foreign influence as he is fully integrated into U.S. society and became a naturalized U.S. citizen in December 2000. Notably, his mother, also a naturalized U.S. citizen since 1996, works as a civilian for a military organization and has been granted a security clearance. While his father, grandfather and his wife’s parents are citizens and residents of China. I conclude it is improbable that foreign pressure on his relatives could create a situation that could result in the compromise of classified information as Applicant attests he would report any attempt to the appropriate U.S. official. Also, Applicant’s failure to register with the U.S. Selective Service at 18 was not a deliberate disregard of U.S. legal requirements. Clearance is granted.

CASENO: 06-17838.h1

DATE: 07/11/2007

DATE: July 11, 2007

In Re:)	
)	
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SSN: -----)	ISCR Case No. 06-17838
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
KATHRYN MOEN BRAEMAN**

APPEARANCES

FOR GOVERNMENT
Candace Le’i, Esquire, Department Counsel

FOR APPLICANT
Pro Se

SYNOPSIS

Based on an assessment of him as a whole person, Applicant mitigated security concerns over foreign influence as he is fully integrated into U.S. society and became a naturalized U.S. citizen in December 2000. Notably, his mother, also a naturalized U.S. citizen since 1996, works as a civilian for a military organization and has been granted a security clearance. While his father, grandfather and his wife's parents are citizens and residents of China. I conclude it is improbable that foreign pressure on his relatives could create a situation that could result in the compromise of classified information as Applicant attests he would report any attempt to the appropriate U.S. official. Also, Applicant's failure to register with the U.S. Selective Service at 18 was not a deliberate disregard of U.S. legal requirements. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on November 16, 2006. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant eligibility to Applicant that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.¹ The SOR alleged specific concerns over foreign influence (Guideline B) in paragraph 1 and over Personal Conduct (Guideline E) in paragraph 2 based on the revised ("new") Adjudicative Guidelines (AG)² issued on December 29, 2005, and implemented by the Department of Defense, effective September 1, 2006. Applicant replied to the SOR allegations in an Answer notarized on December 2, 2006, and requested a hearing.

On January 17, 2007, Department Counsel noted the case was ready to proceed. The matter was assigned to another judge on January 24, 2007. Subsequently, a Notice of Hearing, issued on February 22, 2007, set the matter for March 8, 2007, at a location near where Applicant works and lives. On February 21, 2007, Applicant waived the 15 day notice requirement in the Directive. (TR 12) The case was re-assigned to me on March 5, 2007, because of the unavailability of the previous judge.

At the hearing the Government withdrew part of SOR allegation i.e. as Applicant did not travel to China in November 2003; instead he traveled to Canada. (Answer; TR 14-17) The Government offered exhibits (Exhibits 1-2) which were admitted into evidence without objection; also admitted was Exhibit 3 which included five documents for Administration Notice (AN) (Exhibits I-V). (TR 12; 20-22) Applicant testified, called two witnesses, but submitted no exhibits. The transcript (TR) was received on March 19, 2007.

FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following additional Findings of Fact:

¹ This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.

² Applicant did receive a copy of the DoD Directive 5220.6 which was sent with his Statement of Reasons (SOR) on September 29, 2006. (TR 8; 14)

Applicant, a 29-year-old employee, began working for a defense contractor (Employer #1) in State #1 in August 2004. In September 2004 he completed a Security Clearance Application (Standard Form 86). He was born in the Peoples Republic of China (China) and became a U.S. citizen in December 2000 and was issued a U.S. passport. (Exhibit 1; TR 41)

While his mother and father were born in China, his mother initially came to the U.S. in 1985 on a student visa to get a master's degree. She became a naturalized U.S. citizen in September 1996. Applicant and his father joined her in 1988 when he was ten years old. Applicant received his education in the U.S. He has a B.S. and M.S. in engineering from a state university. (Exhibits 1, 2; TR 25; 28-29)

Applicant's mother came to the U.S. from China in 1985 to attend school and earned a masters degree in education. She and Applicant's father were divorced in 1989. She went to work for a defense language agency in 1992 and was a team leader; she chaired the Chinese Language Department for five years. In that job she has a security clearance. She became a U.S. citizen in 1996. His stepfather is a U.S. citizen and a former U.S. Army officer. (Exhibits 1, 2; TR 25; 28-29; 59-70)

Foreign Influence

After he became a naturalized U.S. citizen, Applicant in summer 2001 returned to China to visit his grandparents³ with whom he was very close. During his stay he met the woman who later became his wife. (Exhibit 1; TR 25-26) Applicant explained his current contacts in China as follows:

- Applicant's father remains a citizen and a resident of China as he returned there in 1993 after he was divorced from Applicant's mother. Applicant has contact with him by telephone twice a year on holidays and his birthday. He does not send money to his father. (Exhibit 1; TR 26; 32) His father taught at a university before he came to the U.S. He retired when he returned and invests in the stock market. (TR 30) While his mother has urged him to have contact with his father, she testified that his contact is very limited. (TR 69-70) (SOR 1.a.)
- Applicant's grandfather, now 93 years old, is a citizen and resident of China. Before he retired he was a university administrator. Applicant has contact with him by telephone twice a year on holidays and his birthday. Applicant stayed with him in 2001, 2002 and 2003 when he visited China. He does not send gifts or money to his grandfather. (Exhibit 1; TR 26; 33-34; 42-43; 70) While Applicant has limited contact with his grandfather, his mother explained that she has frequent contact with her father as he is 93 and is lonely. He has a retirement stipend, so Applicant's mother does not send him any money. (TR 65-70) (SOR 1.b., 1.e.)
- Applicant's wife is a citizen of China, but a resident of the U. S. Whom he met when he visited China in July 2001. At the time he completed his SF 86 in 2004, he disclosed his relationship with her as she was a citizen of China who was then studying for an MBA in

³ On his security form, he disclosed that his grandmother was a citizen of China and resided; however, she died in 2004. (Exhibit 1; TR 26)

Canada and also visited him in the U.S. He visited her in Canada as well as in China twice in 2002 and again in 2003. (Exhibit 1; TR 26) She came to the U.S. in 2004 on a student visa. (TR 35) He married her in September 2004. (TR 18-19) She returned to China in 2004 to visit her parents. (TR 35) She got her Green Card in 2005 or 2006 based on her marriage to a U.S. citizen. She intends to become a U.S. citizen. (TR 38-39; 58-59) She works as an auditor for an accounting firm. (TR 40; 58) She clarified and confirmed Applicant's reports of his visits to China and Canada to visit her and his limited contacts with his relatives in China. She recalled that Applicant had sent a \$1,000 gift to his father in 2004 or 2005 with the assistance of her father. (TR 45-58) (SOR 1.c., 1.e.)

- Applicant's wife has parents who live in and are citizens of China with whom she was contact by telephone twice a week. Applicant rarely has contact with them. Her father is a lawyer and her mother works in the private sector as an office assistant. (Answer; Exhibit 2; TR 35) She calls her parents three times a week as she is an only child. Her father who is 55 is a partner in a large law firm in China and her mother who is 51 works as an office assistant for a not-for-profit organization. When she visited them in 2004 and 2005, her parents give her money -- \$10,000 on each visit. They gave her \$6,000 in 2006. Because Applicant and his wife plan to buy a home, her parents will provide additional money in 2007: her parents will provide \$50,000 for the down payment. Her parents own their own apartment in China and have other investments. They plan to visit her in the U.S. in 2007. Her parents have never been approached by anyone seeking information about her husband. (TR 45-58) (SOR 1.d.)

If any of Applicant's relatives in China were approached by someone seeking information about Applicant, he would report any contact to the U.S. government agency. He himself never received any requests or threats by a foreign national that should have been reported or might have been of security concern when he traveled in China. (TR 38)

**Is the foreign country known to target United States citizens
to obtain protected information?**

The Government provided for Administrative Notice several documents regarding China including a State Department Background Note on China, a country report on human rights practices from 2005, a Select Committee of the U.S. House of Representatives report, an annual report on foreign economic collection and industrial espionage, and an *Intelligence Threat Handbook* that included a section on China ("Threat Handbook"). (AN I to V) The *Threat Handbook* observed, "There is no evidence that the PRC considers Chinese-Americans to be more vulnerable to approach than any other group." The PRC uses "whatever feelings of obligation the targeted individual may have toward China, family members in China, old friends in China, etc." PRC's approach is "not to try to exploit a perceived vulnerability but to appeal to an individual's desire to help China out in some way." (AN V at 21) Department Counsel argued that security concerns exist because of China's poor human rights records, its possession of strategic nuclear weapons and missiles, its being a rival of the U.S. since the Cold War, and its having actively targeted the U.S. with legal and illegal intelligence-gathering programs for economic intelligence. (TR 73-74)

Failure to Register for the Draft

When Applicant was 18, he did not know under U.S. law it was mandatory to register for the draft. He relied on his mother to explain such requirements to him; she testified credibly she did not understand what “draft” meant. At 26 after he got the SOR, he learned for the first time he should have registered, but then when he attempted to register on line he learned he was too late as he had passed the upper age limit of 25. (Exhibit 2; TR 26-27; 39-40; 41; 60-70)

Applicant’s mother explained she did not understand the requirement of her son to register for the draft. She did not understand what the word “draft” meant at the time he applied to go to college in 1996. She thought it meant he had to join the military and she did not feel he was mature enough to do so. (TR 59-70) (SOR 2.a.)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below :

Guideline B - Foreign Influence

6. The concern: Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including , but not limited to, such considerations as to whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

Guideline E: Personal Conduct

15. *The Concern.* Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and a candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue

an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Foreign Influence

Applicant mitigated the Government's security concerns over possible foreign influence raised by Applicant's close ties of affection to citizens of China, his father, his grandfather and his wife's parents. The security concern under Guideline B, Foreign Influence, requires an assessment under disqualifying condition (DC) 7.(a.) of the security risk⁴ that may exist when an individual's family member "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." Applicant has visited his relatives in China, but only on a limited and infrequent basis. He reported these visits to his company, but he never experienced any pressure that raised a security concern. Given the fact that both his own relatives are retired and he has limited contact with him, they seem an unlikely target of the government of China. Applicant has limited contact with his wife's parents. While his wife's parents do work in China, she reported they have never been pressured for information about Applicant. On the other hand, their generosity to the couple raises another concern: (7. e.) A substantial business, financial, or property interest in a foreign country. . . .which could subject the individual to heightened risk of foreign influence or exploitation.

While I have considered these concerns, I conclude Applicant has presented evidence to meet the burden of mitigating⁵ those circumstances either under the mitigating conditions (MC) outlined in the revised guidelines or by a whole person analysis. Applicant's only family ties to China are his

⁴ **7. Conditions that could raise a security concern and may be disqualifying include:**

- (a.) contact with a foreign family member, business or professional associate, friend, or a 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;
- (e.) A substantial business, financial, or property interest in a foreign country. . . .which could subject the individual to heightened risk of foreign influence or exploitation.

⁵ **8. Conditions that could mitigate security concerns include:**

- (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 U.S.
- (c.) contact and correspondence with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation;
- (e.) The individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups or organizations from a foreign country;
- (f.) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate or pressure the individual.

father and grandfather, both retired, with whom he has limited contact and only intermittent visits. One notable element in assessing these security concerns is the fact that Applicant's mother has worked for the U.S. military for more than 15 years and has a security clearance. While his wife has contacts frequently with her parents, both report no evidence of any foreign duress or influence on Applicant and/or his immediate family in China. On balance, both he and his wife have substantial professional incomes, they are not dependent and would not be influenced by the financial gifts of his wife's parents.

Thus, despite the concerns over China economic espionage and human rights record, I conclude any risk would appear to be slight and clearly manageable under MC (a.). Applicant is a U.S. citizen who was educated here and his mother has long had a security clearance. Notably, the *Threat Handbook* indicates that PRC's approach is "not to try to exploit a perceived vulnerability but to appeal to an individual's desire to help China out in some way." (AN V at 21) Given Applicant's deep ties to the U.S., there is no evidence that he would have any motivation to "help China out" by his efforts. While his wife remains a citizen of China, she is working for a U.S. company and has her green card and intends to become a U.S. citizen. Moreover, Applicant made evident that at any hint of any coercion or pressure on herself or his family, he would immediately report such coercion to a corporate security officer. Thus, I find there is no substantial likelihood that he would be subject to duress merely because of these family ties. While he traveled to China, that travel alone does not raise a security concern. His trips were with his U.S. passport which he fully disclosed to his employer and on his security form.

While his wife's family have made substantial gifts to his father and to the couple, they have substantial resources and the couple themselves both work as professionals. Consequently, in comparing the value of the gifts to their other income, they fall within MC (f.) as the value of the foreign financial interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate or pressure the individual.

Also I have evaluated him under the whole person adjudicative process guidelines:

(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 voluntariness of the participation; (6) the presence or absence of rehabilitation and other pertinent 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. (AG 2. Adjudication Process)

Looking at all of these circumstances, I conclude Applicant has overcome foreign influence security concerns. Given his strong and lengthy ties to the U.S. since he has lived in the U.S. since 1988 and became a U.S. naturalized citizen in 2000, there is limited potential for coercion, exploitation or duress. Since Applicant came to the U.S., he has seen no indicators that the government of China has tried to exploit his relationship with his relatives in China. If he did he would report any attempts to U.S. officials. While China does have a bad record on human rights and has a history of having targeted plans for economic intelligence, it is a country in transition from a planned economy to a market economy began at the end of 1978. After review all of the evidence I conclude, there is little potential for pressure, coercion, exploitation, or duress.

Security clearance decisions are predictive judgments about an applicant's security eligibility in light of the applicant's past conduct and present circumstances. *Department of Navy v. Egan*, 484 U.S. 518, 528-29 (1988). Contacts with citizens of other countries are relevant to security determinations only if they make an individual potentially vulnerable to coercion, exploitation, or pressure through threats against those foreign relatives. Acts indicative of foreign influence warrant careful scrutiny. After considering the Adjudicative Process factors and the Adjudicative Guidelines, I conclude these ties are not of such a nature as to create any tangible risks of undue pressure on Applicant, so foreign influence security concerns are mitigated. Thus, I resolve SOR paragraph 1 and subparagraphs 1.a. and 1.e. in Applicant's favor.

Personal Conduct

Under Guideline E, conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. In this case Applicant admits he failed to register with the U.S. Selective Service when he was 18 as he did not know about this obligation, and his mother did not understand the process. She testified credibly that she thought to register was to enroll in the military. He tried to take corrective action later, but was over 25, so could not do so. While none of the personal conduct guidelines really address this type of failure to comply with U.S. law, I found his and his mother's explanation credible that it was a failure to act, and not a deliberate disregard of U.S. legal requirements.

An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's intent or state of mind at the time the omission occurred.⁶ Based on Applicant's credible testimony and review of him as a whole person, I conclude that Guideline E in favor of Applicant.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline B	FOR APPLICANT
Subparagraph 1.a.:	For Applicant
Subparagraph 1.b.:	For Applicant
Subparagraph 1.c.:	For Applicant
Subparagraph 1.d.:	For Applicant
Subparagraph 1.e.:	For Applicant
Paragraph 2. Guideline E	FOR APPLICANT
Subparagraph 2.a.:	For Applicant

⁶ See ISCR Case No. 03-09483 at 4 (App. Bd. Nov.17, 2004)(explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant a security clearance to the Applicant.

Kathryn Moen Braeman
Administrative Judge