



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 12-05591
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah A. Minster, Esquire, Department Counsel
For Applicant: *Pro se*

01/29/2013

Decision

MALONE, Matthew E., Administrative Judge:

Applicant failed to mitigate the security concerns raised by his personal ties to citizens of the Peoples Republic of China (China). His request for a security clearance is denied.

Statement of the Case

On January 25, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for his job with a defense contractor. After reviewing the completed background investigation, Department of Defense (DOD) adjudicators were unable to find that it is clearly consistent with the national interest for Applicant to have access to classified information.¹

¹ Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

On August 31, 2012, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed at Guideline B (Foreign Influence).² Applicant timely responded to the SOR and requested a decision without a hearing. On October 11, 2012, Department Counsel issued a File of Relevant Material (FORM)³ in support of the preliminary decision to deny Applicant's request for a clearance. Applicant received the FORM on October 23, 2012, and had 30 days to file a response to the FORM. The record closed after Applicant did not respond to the FORM before the deadline. The case was assigned to me on December 18, 2012.

Findings of Fact

Under Guideline B, it was alleged that Applicant is married to a citizen of China who now lives in the United States (SOR 1.a); and that Applicant's wife's parents are citizens of and reside in China (SOR 1.b). Applicant admitted both allegations and provided additional remarks. (FORM, Item 4) In addition to the facts established by Applicant's admissions, I have made the following findings of fact.

Applicant is 26 years old. He was born, raised, and educated in the United States. After graduating from college in 2009, he was hired by a company that specializes in teaching English at locations in China. From June 2009 until April 2011, he lived and worked in China as an English language instructor. After a brief period of unemployment following his return to the United States, Applicant was hired as a linguist by a defense contractor for whom he still works. (FORM, Item 5)

While Applicant was living and working in China, he lived with his Chinese girlfriend and her parents until he returned to the United States. In June 2010, Applicant married his girlfriend, and he sponsored her application for permanent U.S. residence when they both returned to the United States in April 2011. (FORM, Item 5)

Applicant's wife is an only child. Her parents are native-born citizens of China who still reside there. Her father is a professor at a state-run university. Her mother is a doctor at a state-run hospital. Both are members of the Chinese Communist Party, the dominant political entity there. (FORM, Items 4 and 5)

Applicant averred in his Answer that he only has casual contact with his wife's parents, and that they intend to immigrate to the United States. Applicant did not provide any information to support this claim. He also claimed his wife wishes to renounce her Chinese citizenship and "wants to become a citizen of the United States as soon as possible." (FORM, Item 4)

² See Directive, Enclosure 2. See also 32 C.F.R. § 154, Appendix H (2006).

³ See Directive, Enclosure 3, Section E3.1.7. The FORM included five documents (Items 1 - 5) proffered in support of the Government's case. The FORM also presented 12 documents (Ex. I - XII) in support of Department Counsel's request that I take administrative notice of certain facts regarding China and its relations with the United States.

Applicant appears to be a mature, responsible person who has not engaged in any adverse conduct. Nor is there any information in this case from which to question his judgment, loyalty, or willingness to protect classified information. He has been active in his community and in local politics in the United States. His application for clearance appears to be accurate and comprehensive. He averred that he was candid and forthright about his foreign contacts and ties of affection when he was interviewed by a Government investigator during his background check.⁴ Other than his relation by marriage to three Chinese citizens, Applicant has no interests or assets abroad. (Answer; Response to FORM)

Based on my review of the information presented in support of Department Counsel's administrative notice request, I take notice of the following facts regarding the Peoples Republic of China:

China is an increasingly industrialized world economic and military power. The country has a population in excess of one billion people who are governed by an authoritarian, communist regime. Geographically vast and demographically diverse, the country has significant natural resources to help support its growing economy. China devotes most of its industry and domestic production to its military forces, and it has a strategic nuclear arsenal. China is in direct competition with the United States in many geopolitical and economic areas, and it is known to actively collect military, economic, and industrial information from and about the United States. In 2008, it was reported to Congress that China was the leading threat to the security of U.S. technology.

However, China and the U.S. also are major trading partners and share other common interests. After the terrorist attacks of September 11, 2001, the two countries worked closely in counter-terrorism efforts. China and the U.S. also have worked closely on regional issues, especially those involving North Korea. However, U.S.-China relations are sometimes complicated by events in Taiwan and Hong Kong. China is one of the most active collectors of U.S. defense information and technology.

The Chinese government has an abysmal human rights record. Officials continue to engage in suppression of personal and electronic expressions of political dissent. Arbitrary arrest and detention, forced confessions, torture, and other prisoner mistreatment are commonplace. Government and law enforcement practices are largely unchecked by any independent judicial review.

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁵ and consideration of the pertinent criteria and adjudication policy in the adjudicative

⁴ I note that the only information of substance provided by Department Counsel in support of the SOR, aside from Applicant's admissions, consisted of Applicant's eQIP and the documents for administrative notice. The record did not contain interrogatories or a summary of the interview to which Applicant referred in his Answer.

⁵ Directive. 6.3.

guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the “whole-person” concept, those factors are:

- (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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁶ for an applicant to either receive or continue to have access to classified information. Department Counsel must produce sufficient reliable information on which DOHA based its preliminary decision to deny or revoke a security clearance for an applicant. Additionally, Department Counsel must prove controverted facts alleged in the SOR.⁷ If the Department Counsel meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.⁸

Because no one is entitled to a security clearance, an applicant bears a heavy burden of persuasion to establish that it is clearly consistent with the national interest for the applicant to have access to protected information.⁹ A person who has access to such information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, there is a compelling need to ensure each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the nation's interests as his or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of the Government.¹⁰

⁶ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁷ Directive, E3.1.14.

⁸ Directive, E3.1.15.

⁹ See *Egan*, 484 U.S. at 528, 531.

¹⁰ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

Analysis

Foreign Influence

The facts established by Department Counsel's information and by Applicant's admissions raise security concerns about possible foreign influence based on Applicant's relationships with his wife and her parents. Specifically, as stated in AG ¶ 6,

[f]oreign 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 whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

The Government presented sufficient information to establish the following AG ¶ 7 disqualifying conditions:

(a) contact 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 sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information; and

(d) sharing 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.

China's human rights record, combined with its history of aggressive espionage against the United States, indicates a willingness by the Chinese government to exert pressure on Applicant through his ties of affection in China. Applicant's wife's Chinese citizenship, and her parents' Chinese citizenship and residence in that country, present a heightened risk of exploitation by a foreign government. Although Applicant has averred that his contacts with his wife's parents are casual, he lived with them for more than two years. Also, his Chinese language proficiency facilitates continued communication with them after his return to the United States. Further, even though Applicant is not directly related to his parents-in-law and his wife resides with him in the United States, there is a rebuttable presumption that, because he is close to his wife, he would be affected by actions involving her parents.

The foregoing is sufficient to establish a *prima facie* case for disqualification and shift the ultimate burden of persuasion to the Applicant. Of the mitigating conditions listed at AG ¶ 8, the following are pertinent to the facts and circumstances of this case:

(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.;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., 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.

AG ¶ 8(a) does not apply because Applicant has not presented information showing that his personal interests in this regard (his ties to his wife and her parents, all of whom are associated with a country that presents a heightened risk of exploitation) would not be placed in conflict with his obligation to protect U.S. interests should he have access to classified information.

As to AG ¶ 8(b), Applicant grew up in the United States and was educated here. I accept his claim that he is a loyal U.S. citizen, and it is a reasonable assumption that he has longstanding ties and relationships in this country. However, this mitigating condition does not apply because Applicant's obligations to his wife and her parents cannot be characterized as minimal when compared to any relationships he may have in the United States.

Finally, I conclude AG ¶ 8(c) does not apply. Applicant's ties to his wife and her parents are not casual. Actual contact may be infrequent, but Applicant has not presented sufficient information to support such a finding. On balance, Applicant has not met his burden of persuasion in response to the Government's information. The security concerns about possible foreign influence are not mitigated.

Whole-Person Concept

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guideline B. I have also reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is a 26-year-old U.S. citizen. His eQIP and his Answer present background information that supports a reasonable assumption that he has longstanding ties and relationships in this country. He was raised and educated here, and, until 2009, had never had any personal or other

interests outside the United States. However, his recent marriage to a Chinese citizen, and the presumed ties to his wife's parents living in China, present an unacceptable risk to the national interest were Applicant to have access to classified information. Decisions involving such circumstances do not assign blame or presume misconduct by the Applicant. However, the Government has a compelling interest in protecting its sensitive information. This requires that any doubts about the risks associated with Applicant's foreign contacts be resolved based on substantial reliable evidence in response to the Government's case. Because Applicant has not presented such information, those doubts have not been satisfied and his request for a security clearance must be denied.

Formal Findings

Formal findings 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

Conclusion

In light of all available information, it is not clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

MATTHEW E. MALONE
Administrative Judge