



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



In the matter of:)
)
) ISCR Case No. 14-00117
)
Applicant for Security Clearance)

Appearances

For Government: Blank, Ray T., Jr., Esquire, Department Counsel
For Applicant: *Pro se*

10/16/2015

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings and exhibits, Applicant's eligibility for access to classified information is granted.

Statement of the Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on April 21, 2013. The Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) on March 20, 2014, detailing security concerns under Guideline B, foreign Influence. The action was taken under Executive Order 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 for Determining Eligibility for Access to Classified Information* (AG), implemented on September 1, 2006.

Applicant received the SOR on April 8, 2014. He submitted a notarized, written response to the SOR allegations dated April 12, 2014, and he requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a file of relevant material (FORM) and mailed Applicant a complete copy on July 20, 2015. Applicant received the FORM on August 1, 2015. He had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He submitted a response dated August 4, 2015. The Defense Office of Hearings and Appeals (DOHA) assigned this case to me on September 1, 2015. The Government submitted eight exhibits, which have been marked as Items 1-8 and admitted into the record. Applicant's response to the SOR has been marked as Item 2, and the SOR has been marked as Item 1. His written response to the FORM is admitted into the record as Applicant Exhibit A (AE A).

Request for Administrative Notice

Department Counsel submitted a request that I take administrative notice of certain facts relating to the Peoples's Republic of China (PRC). The facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute, and they are set out in the Findings of Fact below.

Findings of Fact

In his Answer to the SOR, Applicant admitted part of the factual allegation in ¶ 1.a of the SOR. His admission is incorporated herein as findings of fact. He denied the remaining part of ¶ 1.a of the SOR. He also provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 60 years old, works as a pipe fitter and escort for a DOD contractor. He began his current employment in April 2013. In the 10 years prior to completing his e-QIP, Applicant worked many short-term contract jobs in the construction industry, including federal contract jobs in the PRC and Iraq. Applicant held a security clearance in the past. The record lacks any evidence that he violated the rules for handling classified information. While in the PRC, Applicant received several cease and desist orders for associating with Chinese nationals. Applicant's only association with foreign nationals was with the woman who would become his wife. His clearance was never revoked, although in 2008, there was an attempt to revoke his security clearance. At that time, he was dating his now wife. He had reported his contact with her, and he received approval for meeting with his wife from the United States Government. The investigative summary reflects that supervisors and coworkers advised that he always handled classified information properly.¹

¹Item 2; Item 4; Item 6; Item 7; AE A.

Applicant graduated from high school. He married his first wife in 1986, and they divorced in 2008. They have one daughter, who is 32 years old. He married his current wife in 2010 in the PRC. His current wife was born and raised in rural PRC. She received permanent resident status (green card) in the United States in December 2012. She is eligible to apply for her United States citizenship in December 2015. She resides in the United States with Applicant. She currently works as a hostess and waitress in the restaurant industry. Her parents, who were her only immediate family, are deceased.²

When Applicant thought he would deploy overseas, his wife returned to the PRC shortly after receiving her green card. She stayed with extended family members. During her stay in the PRC, she sold clothing at a small shop. Neither his wife nor her extended family work for the Government of the PRC or are involved in politics. Her more distance family members in the PRC live a quiet life. Since her return to the United States in 2014, Applicant's wife has become more involved with Applicant's family, and she works.³

Between 2008 and April 2010, Applicant traveled numerous times to the PRC. During these trips, his current wife was living in the PRC. His wife was not involved in politics in the PRC. She did not work for the Government of the PRC. Applicant's wife does not own property in the PRC, nor does she have a bank account or other financial interests in the PRC.⁴

Administrative Notice

People's Republic of China

I take administrative notice of the following facts. The PRC is an authoritarian, communist party-led state. Human rights violations continue to be problematic. Concerns regarding the PRC's weapons development, theft of classified technology information between 1979 and 1999, and industrial espionage activities remain. The PRC continues to have active intelligence operations in the United States, which seek to obtain military and industrial secrets through Americans of Chinese ancestry. On the other hand, the PRC supports the United States's anti-terrorism position and activities. The United States and the PRC have developed joint trade agreements, resulting in the sale of goods to each other, and work together on environmental issues. The PCR enjoys a most favored nation status in trading with the United States The PRC has opened its doors to outside investment.

²Item 2; Item 4; AE A.

³Item 4; AE A.

⁴Item 2; AE A.

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(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 access to classified information will be resolved in favor of 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. . . ." An applicant has the ultimate burden of persuasion for obtaining 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 an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 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

AG ¶ 6 expresses the security concern regarding foreign influence:

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 United States 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.

AG ¶ 7 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

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

Applicant's wife is citizen of the PRC. She also has permanent resident status with the United States, and she resides in the United States with Applicant. His marriage to a citizen of the PRC is not *per se* a reason to deny Applicant a security clearance, but must be considered in deciding whether to grant Applicant a clearance. The Government must establish that his marriage creates a risk of foreign exploitation, inducement, manipulation, pressure, or coercion by terrorists or would create a potential conflict of interest between his obligations to protect sensitive information and his desire to help his wife.

In determining if such a risk exists, I must look at Applicant's marriage, as well as the activities of the PRC Government. The risk that an applicant could be targeted for manipulation or induced into compromising classified information is real, not theoretical. Applicant's marriage and the activities of the PRC raise a heightened risk and a security concern because the monitoring and surveillance activities of the PRC government intrude upon the privacy of its citizens and upon business operations. The PRC government actively engages in espionage activities in the United States and targets

American-Chinese citizens by exploiting, manipulating, pressuring, or coercing them to obtain protected information.

Under the guideline, the potentially conflicting loyalties must be weighed to determine if an applicant can be expected to resolve any conflict in favor of United States interests. In determining if Applicant's contacts in the PRC cause security concerns, I considered that the PRC and the United States have a relationship, which includes working together on international security issues and trade. There is evidence that the PRC targets United States citizens for protected information. The human rights issues in the PRC continue to be a concern. While none of these considerations by themselves dispose of the issue, they are all factors to be considered in determining Applicant's vulnerability to pressure or coercion because his wife is a citizen of the PRC. Applicant's marriage raises a heightened risk under AG ¶¶ 7(a) and (b).

The foreign influence guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 8(a) through ¶ 8(f), and 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, 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.

Applicant's marriage is important to him and his contacts with his wife are those which are normal for any marriage. His wife is not involved in his work. Their lives intertwine as a married couple, but not in business. She does not, and has not, worked for the PRC government nor is she involved in political activities.

Applicant has worked overseas in China and Iraq on behalf of the United States Government. He has not chosen to live in these countries permanently. He still considers the United States his country and home, which he must defend. He has chosen to return to the United States and live the remainder of his life in the United States. His Chinese born and raised wife has chosen to leave her homeland and make the United States her home. Given his limited connections with the PRC and his statements that he would chose the interests of the United States over those of the PRC are credible. Applicant has mitigated the security concerns raised by his marriage.

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 an applicant's conduct and all relevant 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 decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is a pipe fitter who has worked in numerous jobs in the construction industry. These jobs lasted for the length of the work contract and provided little job permanency for him. He worked a contract job in the PRC for several years. He met his current wife while in the PRC. She was not and is not involved in politics in the PRC nor does she work for the Government of the PRC. Her immediate family, her parents, are deceased leaving the Government of the PRC without a means to force her to pressure Applicant into obtaining classified information. She is a permanent resident of the United States, living with him in the United States. She is becoming acclimated to life in the United States. She is accepted by his family, and she has a job in the restaurant industry. Her contact with the Government of the PRC is nonexistent and given the lack of family in the PRC, there is little likelihood that the PRC government can pressure her or Applicant to release classified information. Furthermore, Applicant has always followed the rules when handling classified information. As required, he reported his dating relationship with his wife and received approval from another United States government agency to continue meeting her.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his marriage to a foreign national under Guideline B.

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 F: FOR APPLICANT

Subparagraph 1.a: For Applicant

Conclusion

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

MARY E. HENRY
Administrative Judge