



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



In the matter of:

)	ISCR Case No. 14-01612
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

12/09/2014

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the case file and pleadings, I conclude that Applicant failed to provide adequate documentation to mitigate security concerns for foreign influence under Guideline B and foreign preference under Guideline C. Eligibility for access to classified information is denied.

Statement of the Case

On October 22, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance for his employment with a defense contractor. (Item 3) Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM). (Item 4) After reviewing the results of the interview, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On June 10, 2014, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for foreign influence under Guideline B and foreign preference under Guideline C. (Item 1) The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense*

Industrial Personnel Security Clearance Review Program (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective in the DOD on September 1, 2006.

Applicant answered the SOR on June 19, 2014, admitting all allegations under both guidelines with explanation. He elected to have the matter decided on the written record. (Item 2) Department Counsel submitted the Government's written case on August 4, 2014. Applicant received a complete file of relevant material (FORM) on September 9, 2014, and was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. He did not provide any additional information in response to the FORM. I was assigned to case on November 14, 2014.

Findings of Fact

I thoroughly reviewed the case file and the pleadings. I make the following findings of fact.

Applicant is 57 years old and has been employed as an environmental engineer by a defense contractor since 1990. Applicant served in the Army inactive reserves from October 1976 until October 1979 and received an honorable discharge. He received an associate's degree in 1981, a bachelor's degree in 1994, and a master's degree in 1999. Applicant first married in 1983 and was divorced in 2007. He has three stepchildren from this marriage. He married his present wife in May 2009, and he has a stepdaughter from this marriage. (Item 3, e-QIP, dated October 22, 2013; Item 4, Interview Summary, dated December 15, 2013)

Applicant admits the two foreign influence allegations in the SOR. He admits that his mother-in-law is a resident and citizen of the People's Republic of China (PRC), and that his stepdaughter is a United States citizen residing in the PRC. Applicant's present wife was born in the PRC but became a United States citizen. Her daughter was born in the United States and is a U.S. citizen. She is married and lives in China teaching English. Applicant states that the stepdaughter plans to move back to the United States in two years. There is no information in the case file concerning Applicant's and his wife's contact with the stepdaughter. Since he knows of her plans for the future, there must be some level of contact between Applicant's stepdaughter and Applicant and his wife. Applicant's mother-in-law is a citizen and resident of the PRC. She is a retired school teacher. Applicant's wife talks to her mother by phone weekly. Applicant has limited contact with her because of language issues. (Item 2, Response to SOR; Item 4 at 3)

The PRC has an authoritarian government dominated by the Communist Party. It has large and increasingly sophisticated military forces. The U.S. and the PRC have been rivals since the Cold War, with particular disagreements on the status of Taiwan. Despite political disagreements, the U.S. and the PRC have become major economic and trading partners. The PRC aggressively targets sensitive and protected U.S.

technology and military information, using worldwide intelligence operations. It is one of the most aggressive practitioners of industrial espionage. There are an estimated 2,000-3,000 PRC front companies operating in the U.S. to gather secret or proprietary information, U.S. citizens of Chinese ancestry are considered prime intelligence targets.

The PRC has a poor human rights record. It suppresses political dissent, and it practices arbitrary arrest, detention, forced confessions, torture, and mistreatment of prisoners. Travelers to the PRC can expect to be placed under surveillance, with their hotel rooms, telephones, and fax machines monitored and personal possessions, including computers, searched without their knowledge or consent.

Applicant was born and raised in the United States. He is a dual citizen of the United States and Italy. His grandparents are Italian immigrants who came to the United States in approximately 1917 and became United States citizens. Both are deceased. In 2012, Applicant applied for Italian citizenship at an Italian consulate in the United States. He was granted Italian citizenship and issued an Italian passport. His Italian passport does not expire until 2022. He has yet to use the passport. Applicant's sought Italian citizenship to preserve his heritage. He could eventually live in Italy after he retires and he wanted to travel to and from Italy without obtaining a visa. He did not obtain Italian citizenship to protect any financial interest in Italy. Applicant has not travelled to Italy and has no Italian military obligation. Applicant does not want to renounce his Italian citizenship or relinquish his Italian passport. He just obtained the Italian citizenship and passport, and he has possible plans to retire in Italy. He plans to use the passport in the future. Applicants stated that he is always a U.S. citizen first and his allegiance is solely to the United States. (Item 4 at 3-4)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered 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, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The 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 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.

Analysis

Guideline B: 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 the 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 consideration 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 ¶ 6)

Applicant’s mother-in-law is a long time citizen and resident of PRC. His stepdaughter, while a United States citizen, resides in the PRC. He has little contact with his mother-in-law, but his wife talks to her by phone weekly. There is no information about contact with the stepdaughter, but there is some contact based on his knowledge of her plans to return to the U.S. His mother-in-law’s residence and citizenship in the PRC and his stepdaughter’s residence in the PRC raise the following Foreign Influence Disqualifying Conditions under AG ¶ 7:

- (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.

The mere existence of foreign relationships and contacts is not sufficient to raise the above disqualifying conditions. The nature of Appellant's contacts and relationships must be examined to determine whether it creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. "Heightened" is a relative term denoting increased risk compared to some normally existing risk that can be inherent anytime there are foreign contacts and relationships. The totality of an applicant's ties to a foreign country as well as to each individual family tie must be considered. The foreign influence security concern is not limited to countries hostile to the United States. The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States. Even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Friendly nations have engaged in espionage against the United States, especially in economic, scientific, and technical fields. The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an Applicant is at risk of coercion, persuasion, or duress. The PRC's authoritarian government, aggressive targeting of sensitive and protected U.S. technology and military information, poor human rights record, and intelligence targeting of U.S. citizens of Chinese ancestry places a heightened risk of exploitation, inducement, manipulation, pressure, or coercion on Applicant.

I considered Foreign Influence Mitigating Conditions under 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 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 or infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

None of these mitigating conditions apply. 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. Applicant did not present any information that rebuts this presumption. The presence of Applicant's mother-in-law and stepdaughter in the PRC creates a security concern. Applicant did not present any information that would negate the heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion because of the presence of the family members in the PRC and the intelligence activities of the PRC. Accordingly, Applicant has not met his heavy burden to show that his relationships with his family members in the PRC are not a security concern. I conclude Appellant has not mitigated security concerns for foreign influence with the PRC.

Guideline C, Foreign Preference

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he may be prone to provide information or make decisions that are harmful to the interests of the United States. (AG ¶ 9) The principal goal of the foreign preference assessment is to determine the risk, based on foreign associations, that information may be compromised if access to sensitive information is granted. It is not a measure of Applicant's loyalty to the United States.

Applicant was born in United States and is a United States citizen. In 2012, he applied for and received Italian citizenship based on his grandparent's birth in that country. He received an Italian passport in conjunction with his Italian citizenship. He has never been to Italy, and has never used the Italian passport to travel. However, he indicated a desire to live in Italy and use the passport after he retires. He indicated that he does not want to renounce his Italian citizenship or relinquish his Italian passport. These facts raise Foreign Preference Disqualifying Condition under AG ¶ 10

(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to: (1) possession of a current foreign passport; and

(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen.

I considered Foreign Preference Mitigating Conditions under AG ¶ 11:

(a) dual citizenship is based solely on parent's citizenship or birth in a foreign country);

(b) the individual has expressed a willingness to renounce dual citizenship;

(c) exercise of the rights, privileges, or obligation of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;

(d) use of a foreign passport is approved by the cognizant security authority; and

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

These mitigating conditions do not apply. Applicant was an adult and a U.S. citizen when he sought out and received Italian citizenship and an Italian passport. He based his desire for Italian citizenship on his grandparents being Italian immigrants and not on his parents' birth or his birth in that country. He stated he will not renounce his dual citizenship with Italy or relinquish his Italian passport. The Italian passport is current and in his possession and not due to expire until 2022. While Applicant states he will always be a U.S. citizen, his seeking Italian citizenship and an Italian passport, and his intent to possibly retire in Italy shows a potential preference for Italy. Applicant has not mitigated security concerns for foreign preference.

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(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 access to sensitive information must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. The whole-person concept requires consideration of all available information about Applicant to reach a determination concerning Applicant's eligibility for access to classified information.

The presence of Applicant's mother-in-law and stepdaughter in the PRC creates a heightened risk of foreign influence leading to the potential for vulnerability, pressure, or coercion of Applicant by China against the interest of the United States. Applicant's seeking and receiving Italian citizenship and an Italian passport as a U.S. citizen shows a preference for Italy over the United States. While access to classified information is not based on a finding of loyalty in the United States, Applicant showed a potential divided loyalty to Italy and the United States. His seeking of Italian citizenship enhances the security concern caused by the presence of his mother-in-law and stepdaughter in China. These facts leave me with questions and doubts about Applicant's eligibility and suitability for access to classified information. For all these reasons, I conclude Applicant has not mitigated his foreign preference for Italy, and foreign influence from China. Because Applicant has not mitigated the security concerns arising from foreign preference and foreign influence, access to classified information is denied.

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 C:	AGAINST APPLICANT
Subparagraphs 1.a - 1.c:	Against Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraphs 2.a – 2.b:	Against Applicant

Conclusion

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

THOMAS M. CREAN
Administrative Judge