



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



In the matter of:)
)
) ISCR Case No. 14-01788
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: Catie E. Young, Esq.

November 6, 2014

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant’s mother, brother, mother-in-law, husband’s two brothers, two sisters, and their families are citizens and residents of the People’s Republic of China (China). Security concerns raised under Foreign Influence with respect to Applicant’s mother and brother were not mitigated.

Statement of the Case

Applicant submitted her electronic Security Clearance Application (e-QIP) on November 5, 2013. On June 27, 2014, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under the guideline for Foreign Influence. The action was taken under Executive Order (EO) 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 after September 1, 2006.

Applicant answered the Statement of Reasons on July 21, 2014, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on September 2, 2014. A notice of hearing was issued to Applicant on September 4, 2014, scheduling a hearing for October 14, 2014. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 2, which were admitted without objection. The Government also presented a letter sent to Applicant dated August 28, 2014, marked Hearing Exhibit (HE) I, to document that it forwarded copies of its exhibits to Applicant. Applicant testified on her own behalf. She presented Applicant Exhibits (AE) A through I, which were admitted without objection. The record was left open for receipt of additional documentation. On October 15, 2014, Applicant submitted AE J through M. Department Counsel had no objections to AE J through AE M, and they were admitted. DOHA received the transcript of the hearing (Tr.) on October 24, 2014.

Procedural Rulings

Request to take Administrative Notice

The Government requested I take administrative notice of certain facts relating to China. Department Counsel provided a 12-page summary of the facts, with citations to 20 Government documents pertaining to China, marked HE II. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, and not subject to reasonable dispute. They are set out in the Findings of Fact.

Findings of Fact

Applicant is 50 years old. She was born in the People's Republic of China. She attended school there and earned a bachelor's degree at a public university in Beijing. She paid no tuition for her education, because it was provided by China. She was employed by a university in China from 1986 to 1989. Applicant married in 1987. Applicant's spouse moved to the United States that same year to study at a university. Applicant remained in China to work until January 1990, when she joined her husband in the United States. Applicant and her husband were both naturalized as United States citizens on April 16, 2002. Applicant has two daughters, ages 22 and 18. She has been employed by a government contractor since October 2013 and seeks a security clearance in connection with her employment. Applicant testified that she previously applied for and received a security clearance in connection with her employment in 2005. (GE 1; GE 2; AE A; AE B; AE I; AE J; Tr. 36-43, 46, 48-52.)

The Government alleged that Applicant is ineligible for a clearance because her mother, brother, mother-in-law, husband's two brothers, and husband's two sisters and their families are citizens and residents of China. Applicant admitted all allegations in SOR subparagraphs 1.a through 1.d. (Answer.)

Applicant's mother is a citizen and resident of China. She is 80 years old. She worked as a nurse in a state-run hospital. She retired in 1987. Applicant has a loving

relationship with her and speaks to her on a weekly basis by phone for approximately 30 minutes each call. Applicant does not regularly send her mother financial support, but indicated that she sent approximately \$1,000 in 2003; \$1,000 in 2004, and an undisclosed amount after her father passed away in 2006. Applicant's mother was a member of the Communist party, but Applicant is unsure of her current status. Applicant's father is deceased, but formerly worked as a lawyer for the Chinese Government. He was a member of the Communist party and worked in a memorial for one of China's former leaders. Applicant's mother is supported by her retirement funds she receives from the Chinese government. Applicant's mother is aware of her field of work, but Applicant has never discussed her employment or her security clearance with her mother. (GE 1; GE 2; Tr. 24-28, 67-77, 85.)

Applicant's brother is a citizen and resident of China. He is 51 years old. He works in a private plastic manufacturing company. He is married and has one son, age 24. Applicant speaks to her brother approximately five times per year by phone. She speaks with her brother's wife less than five times per year. She has no contact with her nephew. No one in her brother's family works for the Chinese government. They are not aware of her employment or security clearance status. (GE1; GE 2; Tr. 23-24, 28-35, 80-81.)

Applicant's mother-in-law, husband's two brothers, and husband's two sisters and their families are citizens and residents of China. Applicant's father-in-law is deceased. Her in-laws are all farmers and have no connections to the Chinese government. Applicant does not speak with them by phone. She sees them when she travels to China. They speak a different dialect of Chinese from Applicant and she is unable to communicate with them easily. Applicant's husband speaks to his parents every two weeks. He has sent them money, totalling approximately \$3,000, on a few occasions. (GE 1; GE 2; Tr. 56- 62, 81.)

Applicant travels to China to see her mother and in-laws approximately every two years. She is planning a trip to China this fall. Her husband and children have accompanied her on some, but not all of her trips to China. She has always complied with travel reporting requirements. She testified that she would report any contact by a foreign national. (Tr. 52-56, 70.)

Applicant has lived in her current hometown since 1994. She purchased a home there in 1995 and has equity in her home. She has two bank accounts with a balance of approximately \$10,884, and a retirement savings account in the United States valued at \$229,271. She has no assets in China and does not stand to inherit anything in China. Her oldest daughter is employed in the United States. Her younger daughter attends a U.S. college. She has no extended relatives in the United States. She testified that she has no loyalty to China. (GE 2; AE K; AE L; AE M; Tr. 62-66, 68, 87.)

Applicant's friend, colleague, and husband each wrote letters of support on her behalf. They attest to her commitment, honesty, reliability, and expertise on the job and in her personal life. They believe she is trustworthy. She was selected as employee of the month by one employer. Her 2006 performance review rated her as "good to

excellent.” She has achieved certificates for completing a number of professional education classes. (AE C; AE D; AE E; AE F; AE G; AE H.)

China

China has an authoritarian government, dominated by the Chinese Communist party. China’s People’s Liberation Army (PLA), which is the consolidated military organization for China’s land, sea, strategic missiles, and air forces, is pursuing long-term and comprehensive modernization of its military forces.

China utilizes a large, well-organized network of enterprises, defense factories, research institutes, and computer networks to facilitate the collection of sensitive information and export-controlled technology. The U.S. Department of Defense’s Annual Report to Congress on Military and Security Developments Involving the People’s Republic of China 2012 identified China as one of the world’s most active collectors and persistent perpetrators of economic espionage. China uses state-sponsored industrial/technical espionage to increase the level of technologies and expertise available to support military research, development, and acquisition. The National Counterintelligence Executive (NCE) found that China’s intelligence services, as well as private companies and other entities, frequently seek to exploit Chinese citizens or persons with family ties to China who can use their insider access to corporate networks to steal secrets using removable media devices or e-mail.

The Department of Justice has filed an increasing number of cases and obtained convictions in espionage or illegal technology transfers involving China. There have been at least 26 major cases since 2006 which have been linked to China’s illegal acquisition of various technologies involving guidance and control, energy, aerospace, nuclear, innovative materials, and computer-aided manufacturing and design.

China engages in violations of human rights. Repression and coercion against organizations and individuals involved in rights advocacy is routine. There is severe official repression of the freedoms of speech, religion, association, and harsh restrictions on the movement of certain ethnic groups. Security personnel may at times place foreign visitors under surveillance. Visitors are expected to register with the police within 24 hours of arrival in China. (HE II.)

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 are to be 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, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable clearance 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 as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

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 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 following conditions could raise security concerns under AG ¶ 7 in this case:

(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

(d) sharing living quarters with a person or persons, regardless of their citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure or coercion.

AG ¶ 7(a) requires the presence of family members (or business or professional associates, friends, or other persons) who are citizens and/or residents of a foreign nation, for which there is substantial evidence of a heightened risk. The heightened risk required to raise one of these disqualifying conditions is a relatively low standard. Heightened risk denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or substantial assets in a foreign nation. China is a country that actively collects industrial information, engages in industrial espionage, and commits human rights abuses. Therefore a heightened risk is present. Applicant's mother, brother, mother-in-law, husband's two brothers, two sisters, and their families are all citizens and residents of China. The evidence is sufficient to raise security concerns under AG ¶ 7(a).

Applicant's husband, with whom she shares a residence, has an emotional connection to his family in China, as demonstrated by his calls to them every two weeks and by sending them money occasionally. Such relationships could potentially create a heightened risk of foreign inducement, manipulation, pressure or coercion on Applicant due to her bonds to her husband and China's history of efforts to commit industrial espionage. AG ¶ 7(d) therefore applies.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8, including:

(a) the nature of the relationships with foreign persons, the country in which these people 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.

Applicant is an apparently loyal U.S. citizen with no allegiance to the government of China. However, she is in a difficult position because her mother, whom she loves, is a citizen of China, and may still be a member of the Communist party. Her mother is supported by retirement funds she receives from the Chinese government. Applicant keeps in close contact with her mother and occasionally sends her monetary gifts. Although her communications with her brother and his wife are less frequent, occurring approximately five times per year, they represent a familial bond to him, which does not reduce the likelihood that their ties could create a risk for foreign influence or exploitation. Her frequent trips to China further indicate her close ties to her family there. Although Applicant has longstanding ties to the United States, including a home, retirement savings, and long-time friendships, and she has fully met her reporting requirements concerning her foreign contacts and travel, the concerns raised by her close contact with her mother and brother are not mitigated. The protection of the national security is the paramount consideration and any doubt must be resolved in favor of national security. I am unable to find any of the mitigating conditions to be fully applicable to mitigate security concerns alleged under SOR ¶¶ 1.a and 1.b.

AG ¶ 8(b) partially applies because of Applicant's long-standing loyalties in the United States. AG ¶ 8(c) applies to her infrequent contact with her in-laws. Despite the presence of some mitigation, it is insufficient to overcome the significant security concerns generated by Applicant's family in China.

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 a security clearance 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 pertinent facts and circumstances surrounding this case. I have incorporated my comments under Guideline B and C in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but warrant additional comment.

Applicant has strong ties to China through her mother and brother, whom she loves. Her mother is supported by retirement pay from the Chinese government. China actively collects industrial information, engages in industrial espionage, and commits human rights abuses. While Applicant has a reputation for being honest and trustworthy, and is well respected by those that know her personally and professionally, the security concerns remain undiminished. Applicant has not demonstrated that the potential for conflicts of interest, pressure, coercion, exploitation, or duress are mitigated by the record evidence.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	Against APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For 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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Jennifer I. Goldstein
Administrative Judge