



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



In the matter of:)	
)	
)	ISCR Case No. 14-02199
)	
Applicant for Security Clearance)	

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

09/29/2015

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny her eligibility for a security clearance to work in the defense industry. Her parents are U.S. registered aliens living in the United States. She has an uncle living in the People’s Republic of China whom she has not talked with in 16 years. On her Electronic Questionnaires for Investigations Processing (e-QIP) she did not list two jobs each lasting two weeks. The foreign preference and personal conduct security concerns have been mitigated. Clearance is granted.

History of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on August 6, 2014, the DoD issued an SOR detailing security concerns. DoD adjudicators could not

¹ 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 (AG) effective within the DoD on September 1, 2006.

make the preliminary affirmative finding that it is clearly consistent with the national interest to grant or continue Applicant's security clearance. On September 9, 2014, Applicant answered the SOR and elected to have the matter decided without a hearing. Defense Office of Hearings and Appeals (DOHA) Department Counsel submitted the Government's case in a File of Relevant Material (FORM), dated April 15, 2015. The FORM contained four attachments. On May 21, 2015, Applicant responded to the FORM and the documents were admitted as Items A—J. Department Counsel did not object to the material.

The Government offered for administrative notice a summary memorandum containing facts about the People's Republic of China (China) found in official U.S. Government documents. The Government also provided for administrative notice the source documents from which the facts in the summary memorandum were derived. (Item 4)

Findings of Fact

In Applicant's Answer to the SOR, she admitted, with explanation, the allegations in the SOR. I incorporate Applicant's admissions to the SOR allegations. After a thorough review of the record, pleadings, and exhibits, I make the following findings of fact.

Applicant is a 36-year-old electrical engineer who has worked for a defense contractor since August 2013, and seeks to obtain a security clearance. Coworkers, supervisors, and friends state: she is hard working, punctual, trusted to work unsupervised, and completes her work on time. (Items I and J)

Applicant was born in the Peoples' Republic of China (PRC). In May 1999, she and her parents moved to the United States. (Item 3) In July 2005, she became a naturalized U.S. citizen. From August 2001 through August 2005, she attended community college in the United States, obtaining her Associate's degree in June 2005. (Item 3) From August 2005 through August 2008, she attended a U.S. technical university and in July 2008, obtained her Bachelor's degree. (Item 3)

Applicant's parents are U.S. registered aliens who live in the United States. They intend to become U.S. citizens, but their lack of English proficiency has so far prevented them from becoming citizens. Her father has a brother, who is 70 and retired, who is a citizen and resident of the PRC. Her father talks to his brother once a year. Applicant has not talked to her uncle since moving to the United States 16 years ago. (Item 2)

For two weeks, from February 13, 2012 to February 29, 2012, Applicant was a probationary employee. She was terminated because her experience with computer-aided design (CAD) programs did not meet the company's expectations. (Item G) From May 20, 2013 to June 11, 2013, she was a probationary employee at a different company. After two weeks she was discharged as "not qualified for job, but worked to best of ability." (Item D) She had been hired as an entry level electrical engineer, but the position required mid-level engineering skills. (Item B) Applicant had difficulty learning a

complicated system within the short period of time she was employed. (Item B) The position offered minimal training with high expectations. (Item B) Neither termination was due to Applicant's misconduct.

On Applicant's April 2013 Declaration for Federal Employment,² she did not indicate she had been fired from any job in the prior five years. On her December 2013 e-QIP, she did not list her two weeks employment in 2012 and answered "no" when asked if she had been fired from a job during the previous seven years. (Item 3) Applicant does not believe she was fired from either job. Each employer wanted a more experienced engineer and let her go because her skills did not match the companies' expectations.

The Federal Protective Service (FPS) had made an unfavorable determination of Applicant's fitness for contracted service to a General Service Administration (GSA) contract. In February 2015, FPS notified her that the unfavorable finding had been overturned and had determined she was fit to provide services to a GSA contract. (Item H)

China

The Peoples Republic of China (the PRC) is a repressive, totalitarian government with foreign policy goals antithetical to the U.S., although it has cooperated with the U.S. in the global war on terrorism in recent years. Its authoritarian government is dominated by the Chinese Communist Party. The PRC possesses large and increasingly sophisticated military forces, which include strategic nuclear weapons and missiles. In foreign relations, the PRC and the United States have been rivals since the Cold War, with particular disagreement on the status of Taiwan, and The PRC continues to resist what it considers U.S. superpower dominance, despite improving economic relations.

The PRC has an active, effective intelligence service that targets U.S. intelligence and economic information, and operates against its citizens in the U.S. The PRC obtains access to restricted technology through industrial espionage and the PRC operates an aggressive clandestine effort to acquire additional technologies. This is such a problem that the U.S. Immigration and Customs Enforcement officials have rated the PRC's espionage and industrial theft activities as the leading threat to the security of U.S. technology.

The PRC has a poor record with respect to human rights, suppresses political dissent, and its practices include arbitrary arrest and detention, forced confessions, torture, and mistreatment of prisoners. PRC authorities monitor telephone conversations, e-mail, text messaging, and Internet communication, open and censor mail, monitor and enter residences and offices to gain access to computers, telephones, and fax machines. All hotels have a sizable internal security presence and hotel guestrooms are sometimes bugged and searched for sensitive or proprietary material.

² Although Applicant is alleged to have falsified her Declaration for Federal Employment, the document is not part of the record.

Under PRC law, citizens who become naturalized citizens of other countries lose their PRC citizenship.

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 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 interests of 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 to obtain 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.

Section 7 of Executive Order (EO) 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 *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

The security concern under this guideline 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.

Three disqualifying conditions under AG ¶ 7 of the guideline 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;
- (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.

Guideline B 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.” ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Furthermore, “even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security.” ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29,

2002). Finally, friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, the nature of a nation's government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the U.S. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

Applicant has lived and worked in the United States since 1999. She obtained her post-high school education in the United States. She is a naturalized U.S. citizen. Her parents are U.S. registered aliens living with her in the United States; however, their English skills have prevented them from becoming citizens. She has one uncle in the PRC with whom she has had no communication during the past 16 years. Her father's communication with his brother is limited to once a year.

After considering the totality of Applicant's ties to the PRC, her father's ties to his brother, and her parents living in the United States, I conclude that Applicant's family ties are insufficient to raise an issue of a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion.

Even if there were sufficient disqualifying foreign influence factors, those factors could be mitigated. Security concerns under this guideline can be mitigated by showing that "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." AG ¶ 8(a).

Security concerns under this guideline can also be mitigated by showing "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." AG ¶ 8(b).

Applicant came to the United States in 1999 and been a naturalized U.S. citizen since 2005. Her professional life is in the United States. Applicant has significant professional and personal ties to the United States. In light of Applicant's close ties to the United States, it is unlikely that she would choose her uncle in the PRC over her life in the United States. I find mitigating condition AG ¶ 8(b) applies. Even if security concerns are not mitigated under 8(b), they are mitigated under the whole-person concept, *infra*.

Guideline E, Personal Conduct

The security concern under this guideline is as follows:

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 candid answers during the security clearance process or any other failure to cooperate with the security clearance process. (AG ¶ 15)

Applicant had two probationary jobs lasting two weeks each, one in 2012 and 2013. She was let go because her skill level did not meet the expectations of the companies. She was not let go because of misconduct. For one job she was let go because she was not qualified for the job, but had worked to the best of her ability. For the other job, she was hired as an entry-level engineer, but the company wanted an immediate-level engineer. The company's higher expectations were not met by her skills.

Applicant's responses on her e-QIP and Declaration of Federal Employment that she had not been fired from any job raised the question of whether the following disqualifying conditions under AG ¶ 16 apply:

- (a) deliberate omission concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and,
- (b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

During a two-week probationary period at new jobs, Applicant was let go. She was not fired for any type of misconduct. She did not engage in falsification either on either form. Neither of the disqualifying conditions apply. I resolve SOR paragraph 2 in Applicant's favor.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. An 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 have incorporated my comments under Guideline B and in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant has been in the United States for 16 years. In 2005, she became a naturalized U.S. citizen. Applicant's home and parents are in the United States. There is no evidence her uncle living in the PRC is involved with, under scrutiny, or has interests antithetical to the United States. After weighing the disqualifying and mitigating conditions under Guideline B, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on foreign influence.

Applicant was a probationary employee on two jobs lasting two weeks each. She was released from employment when her experience did not match the companies' expectations. Her explanations for her responses are accepted. She did not falsify her e-QIP or her Declaration for Federal Employment. Accordingly, I conclude she has carried her burden of showing that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from foreign influence and personal conduct.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by Section E 3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Foreign Influence:	FOR APPLICANT
Subparagraphs 1.a and 1.b:	For Applicant
Paragraph 2, Personal Conduct:	FOR APPLICANT

Subparagraphs 2.a – 2.f: 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 a security clearance. Eligibility for access to classified information is granted.

CLAUDE R. HEINY II
Administrative Judge