



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



In the matter of:)	
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)	ISCR Case No. 14-02431
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel

For Applicant: Ronald P. Ackerman, Esquire

May 6, 2015

Decision

ROSS, Wilford H., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigation Processing (e-QIP), on December 5, 2013. (Government Exhibit 1.) On September 12, 2014, the Department of Defense issued a Statement of Reasons (SOR) detailing the 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; 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 within the Department of Defense for SORs issued after September 1, 2006.

Applicant submitted an Answer with Attachments to the SOR on November 11, 2014, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on February 2, 2015. I received the case assignment on February 18, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 24, 2015, and I convened the hearing as scheduled on March 27, 2015. The Government offered Government Exhibit 1, which was received

without objection. Applicant testified on her own behalf, and submitted Applicant Exhibits A through G, which were also admitted without objection. DOHA received the transcript (Tr.) of the hearing on April 7, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Procedural Ruling

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to the People's Republic of China (China). (Tr. 12-13.) The request and the referenced documents were not admitted into evidence but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

Applicant is 37, married, and has a master's degree, and a doctorate. Her husband is an American citizen. She has one native-born American child. She is employed by a defense contractor and seeks a security clearance in connection with her employment in the defense industry. This is her first application for a security clearance. (Government Exhibit 1 at Section 17; Applicant Exhibit C; Tr. 23-24, 42-43.)

Applicant admitted allegations 1.a and 1.b in the SOR. Those admissions are findings of fact. Regarding allegation 1.c, she admitted that her father-in-law is a citizen and resident of China. She denied that her brother-in-law is one, stating that he is a citizen of Switzerland. She also provided additional information to support her request for eligibility for a security clearance.

Paragraph 1 (Guideline B - Foreign Influence)

The Government alleges in this paragraph that Applicant is ineligible for clearance because she has foreign contacts and interests that could lead to the exercise of poor judgment, unreliability or untrustworthiness on her part, or make her vulnerable to pressure or coercion.

Applicant was born in China in 1977. She moved to the United States in 2000, at the age of 22, to continue her education. She received her master's degree and doctorate from an American university, the last in 2005. After graduation she began teaching at another American university. She and her husband were married in 2005. In 2007, because she was married and her husband lived in a different city, Applicant moved and began teaching at a third American university, where she received tenure and is currently an associate professor. She began working for her defense contractor employer in 2011. (Tr. 16-18, 40-42, 57-58.)

Applicant is an only child, and her daughter is her parents' only grandchild. She has no other relatives in China. In order to be close to their daughter and grandchild Applicant's parents have moved to the United States, intending to remain here permanently. They moved to the United States in October 2014. Applicant filed petitions for her parents to become permanent residents of the United States with United States Citizenship and Immigration Services (USCIS) in January 2015. They have no plans to return to China. (Attachment to Answer at 6-9; Applicant Exhibits A and B; Tr. 18-23, 45-50, 54-57.)

As stated, Applicant's husband is a naturalized American citizen. He and his mother immigrated from China about 20 years ago. She is also an American citizen. Applicant has one brother-in-law, who is a citizen of Switzerland and lives there with his family. Applicant provided documentary evidence supporting that fact. Applicant's husband contacts his brother on a quarterly basis. (Government Exhibit 1 at Sections 18 and 19; Applicant Exhibit D; Tr. 27-29, 50-51.)

Applicant's father-in-law is a citizen and resident of China. Applicant's husband's parents are divorced, and he is not close to his father. Applicant has only met her father-in-law twice, once was at her marriage. She has no continuing contact with him. Her husband is not close to his father, contacting him on a quarterly basis. The father has never visited the United States. Applicant and her husband have no intention of sponsoring his father to come to the United States. (Government Exhibit 1 at Section 18; Tr. 26-27, 51-53.)

Applicant and her husband own two houses in the United States. Combined with their investments in the United States, Applicant's net worth is approximately \$1.2 million. They have no assets in China. (Attachment to Answer at 20-36; Applicant Exhibits E and F; Tr. 29-32.)

Regarding her ever returning to China Applicant stated, "There is no chance I would return to China because my whole family is here – my husband, my daughter. My parents are immigrating here. So, I have all my family members here in the United States." (Tr. 38-39.)

Administrative Notice

Applicant has contacts with China. Accordingly, it is appropriate to discuss the current situation in China.¹ China is the most populous country in the world, with an authoritarian government dominated by the Chinese Communist Party (CCP). China's military arm, the People's Liberation Army (PLA) is pursuing comprehensive transformation and modernization of its forces to improve its capacity for power projection. Department of Defense publication *Annual Report to Congress: Military and*

¹All of the following statements are supported by the documents submitted by the Department Counsel in support of his request for administrative notice and its attachments.

Security Developments Involving the People's Republic of China 2012 states at page 10:

Chinese actors are the world's most active and persistent perpetrators of economic espionage. Chinese attempts to collect U.S. technological and economic information will continue at a high level and will represent a growing and persistent threat to U.S. economic security. The nature of the cyber threat will evolve with continuing technological advances in global information environment. (Attachment IV.)

The United States is also concerned about the human rights situation in China. Incidents of concern include arbitrary and unlawful killings by security forces, physical abuse and torture of prisoners, arbitrary arrest and detention, denial of fair public trials, and other incidents of concern. (U.S. Department of State, *Country Reports on Human Rights Practices for 2013: China (includes Tibet, Hong Kong, and Macau)*. (Attachment I.)

Mitigation

Applicant has never held a security clearance. However, she is knowledgeable of her security responsibilities. Her immediate supervisor states, "[O]ver the past three years since she has been with us, she has not committed a single security related incident." The writer further states, "[Applicant] has shown excellent technical skills and strong work ethic and integrity." (Attachment to Answer at 10; Tr. 53-54.)

A coworker states, "She [Applicant] has consistently demonstrated honesty, reliability, and accountability in all aspects of her work." Another coworker writes, "[B]ased on her personality, sense of ethics, and moral attitudes, [Applicant] is, in my opinion, a person worthy of the trust required to receive a DoD clearance." (Attachment to Answer at 11-14; Tr. 34-36.)

Applicant has also received various commendations for her work. They show that she is respected by her employer, as well as it's customers. She is stated to be a person who has "demonstrated strong initiative and abilities in acquiring new skills to support projects." (Attachment to Answer at 15-19; Applicant Exhibit G; Tr. 37-38.)

Policies

Security clearance decisions are not made in a vacuum. 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 to be used as appropriate 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 AG ¶ 2(a) 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, "Any 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, and has the ultimate burden of persuasion as to obtaining 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. Security clearance decisions include, by necessity, consideration of the possible risk that the 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.

Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination 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

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the applicant's conduct and the continued holding of a security clearance. If such a case has been established, the

burden then shifts to the applicant to go forward with evidence in rebuttal, explanation or mitigation, which is sufficient to overcome or outweigh the Government's case. The applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

Paragraph 1 (Guideline B - Foreign Influence)

The concern under Guideline B is styled as follows at 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.

Applicant has family connections to China, specifically her parents and her father-in-law, that can be viewed under a heightened risk standard. The following Disqualifying Conditions apply to this case 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; 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.

Applicant has provided compelling evidence to show that the following Mitigating Conditions under AG ¶ 8 also apply to this case, given her particular background:

(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.; 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 U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.

Applicant proved that she is a conscientious and patriotic citizen, and member of the defense industry. She has lived in the United States for more than fifteen years, receiving two advanced degrees here. Her new child is an American citizen, as are her husband and his mother. She has substantial family and financial ties in the United States that significantly outweigh her husband's tenuous relationship to China in the person of his father. Applicant's parents have moved to the United States, and intend to stay here permanently, thereby obviating security concerns on that score. As stated, her net worth in the United States is over \$ 1 million.

Based on my analysis of the available information, Applicant has overcome the adverse inference arising from her parents' being Chinese citizens, now living in the United States. The security significance of her father-in-law is seriously reduced by her American citizen husband's lack of family relations or contact with his father. As stated, Applicant's brother-in-law is actually a citizen of Switzerland and resides there. Guideline B is found for Applicant.

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. 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 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. My Guideline B analysis is applicable to the whole-person analysis as well. I have also specifically examined the intelligence activities of China. The evidence shows that Applicant is a patriotic American citizen. Applicant testified about the importance to her of being a citizen of the United States, and her pride in being a member of the defense industry. Though she has never held a security clearance, she is knowledgeable about security and understands her responsibility. I find that there is little or no "potential for pressure,

coercion, exploitation, or duress” as set forth in AG ¶ 2(a)(8). Using the whole-person standard, Applicant has mitigated the security significance of her alleged foreign connections and is eligible for a security clearance.

On balance, it is concluded that Applicant has successfully overcome the Government's case opposing her request for a DoD security clearance. Accordingly, the evidence supports a finding for Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

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:	FOR APPLICANT
Subparagraphs 1.a through 1.c:	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 access to classified information is granted.

WILFORD H. ROSS
Administrative Judge