



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



In the matter of:)	
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)	ISCR Case No. 14-02546
)	
Applicant for Security Clearance)	

Appearances

For Government: David Hayes, Esquire, Department Counsel
For Applicant: *Pro se*

November 13, 2015

Decision

MOGUL, Martin H., Administrative Judge:

On July 23, 2014, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B for Applicant. (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 within the Department of Defense for SORs issued after September 1, 2006.

Applicant replied to the SOR (RSOR) in writing on November 13, 2014, and she requested that her case be decided on the written record in lieu of a hearing. (Item 1.) On April 15, 2015, Department Counsel issued the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant.¹ In the FORM, Department Counsel offered four documentary exhibits. (Items 1-4.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on July 22, 2015. Applicant submitted

¹The FORM incorrectly identified Applicant as a male; Applicant is a female. (Item 2.)

no additional evidence. The case was assigned to this Administrative Judge on September 3, 2015. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Request for Administrative Notice

Department Counsel requested in the FORM that I take administrative notice of certain facts relating to the country of People's Republic of China (PRC) that were reviewed in the FORM. The documents upon which the facts were based have been referred to in the FORM as source documents I through XX. The brief summary of the facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, the admitted documents, and the FORM, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 39 years old, and she was born in the PRC. She came to the United States in 1992, and became a naturalized United States citizen in January 2006. Applicant is married, and her spouse, who was born in the PRC, is now a naturalized United States citizen. Applicant and her husband have two children, who are United States citizens. Applicant received a Bachelor's degree in 1998 from a United States university. She has owned a home in the United States since 2009. (Item 2.)

Applicant has been employed as an accountant since August 2013 by a DoD contractor, and she seeks a DoD security clearance in connection with her employment in the defense sector.

Guideline B, Foreign Influence

The SOR lists two allegations, (1.a. and 1.b.) regarding Foreign Influence, under Adjudicative Guideline B, which will be reviewed in the same order as they were listed on the SOR.

1.a. The SOR states that Applicant's mother is a citizen and resident of the PRC. Applicant admitted this allegation in his RSOR. (Item 1.)

1.b. The SOR states that Applicant's father is a citizen and resident of the PRC. Applicant admitted this allegation in his RSOR. (Item 1.)

Applicant also wrote in her RSOR that both of her parents have been retired for many years, and she has maintained limited contact with her parents, consisting mainly of "greetings." (Item 1.)

In Applicant's Personal Subject Interview ² (PSI) it was identified that her mother is a retired opera singer. In the PSI and Applicant's Security Clearance Application, Applicant indicated that her father is an engineer for an electronics technology company. However, in her RSOR, as reviewed above, she contradicted this information by writing that her father has been retired for many years. (Items 1, 2, 4.) Applicant indicated that she has contact with her parents once a month by telephone and email. (Item 4.)

Applicant traveled to the PRC for 30 days in July and October 2010, to visit her parents. In July and August 2013, Applicant again traveled to the PRC with her children for 45 days to visit her parents. (Item 4.)

Current Status of the PRC

I take administrative notice of the following facts regarding the PRC. The PRC, the most populous country in the world, is economically powerful, and is an important trading partner of the United States. It is run by the Communist Party, which controls all aspects of the PRC government. It has strong military forces, and has its own foreign-policy. Although there has been some cooperation, there has been much more conflict with the United States in the past. The PRC has an extremely large army, a sophisticated defense establishment, and space capability. The PRC has launched satellites, has ballistic missiles, and has nuclear weapons, as well as diplomatic and military dispute with the Republic of China (Taiwan), foreshadows a possible military conflict, which the United States opposes as a resolution of the conflict. The PRC has an abysmal human rights record, which includes arbitrary killings; detention or incarceration without notice in mental facilities; torture; arbitrary arrest, detention or exile; no right to a public, fair trial; a politically controlled judiciary; lack of due process; restrictions on free speech, on religious freedom, on freedom of travel, on freedom of assembly; and no rights of privacy in family, home or correspondence.

The PRC engages in espionage against the United States through an extensive network of businesses, personnel, and specific programs designed to acquire advanced U.S. military technology. One approach is to covertly conduct espionage by personnel from government ministries, commissions, institutes, and military industries, independently of the PRC intelligence services. This is believed to be the major method of PRC intelligence activity in the United States. It also tries to identify ethnic Chinese in the United States who have access to sensitive information, and sometimes is able to enlist their cooperation in illegal technology information transfers.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief

²Applicant was given the opportunity to comment in a post FORM response on the accuracy of the Personal Security Interview or to object to it, but no response was given. Applicant has therefore waived any objection to the Personal Subject Interview.

introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 over-arching 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 applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to 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 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 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.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. The applicable conditions in this case include: 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.” This applies because Applicant’s parent’s are citizens and residents of the PRC, a country of heightened risk. While Applicant by her RSOR seemed to attempt minimize her contact and attachment with her parents, her extended and frequent trips to the PRC to visit her parents makes her relationship with them close and continuing.

I find AG ¶ 7(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 . . . and the individual’s desire to help a foreign person, group, or country by providing that information” is also applicable in this case.

AG ¶ 8 provides conditions that could mitigate security concerns. Because of Applicant’s close and continuing relationship with her parents, both of whom are citizens and residents of the PRC, I cannot find that AG ¶ 8(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,” is applicable to this Applicant. I also do not find that any other mitigating factor is applicable to this case.

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 the facts and circumstances surrounding this case. Based on the reasons cited above as to why the disqualifying conditions apply under Guideline B, and why no mitigating conditions apply, I find that the record evidence leaves me with significant questions and doubts as to Applicant's eligibility and suitability for a security clearance under the whole-person concept. For all these reasons, I conclude Applicant has not mitigated the security concerns under the whole-person concept.

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 B:	AGAINST APPLICANT
Subparagraphs 1.a. and 1.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.

Martin H. Mogul
Administrative Judge