

KEYWORD: Foreign Influence

DIGEST: Applicant is a naturalized U.S. citizen whose mother, sister, and two brothers are resident citizens of the People's Republic of China. He failed to mitigate foreign influence security concerns. Clearance is denied.

CASE NO: 02-27840.h1

DATE: 06/03/2004

DATE: June 3, 2004

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-27840

**DECISION OF ADMINISTRATIVE JUDGE**

**JAMES A. YOUNG**

**APPEARANCES**

**FOR GOVERNMENT**

Marc E. Curry, Esq., Department Counsel

**FOR APPLICANT***Pro Se***SYNOPSIS**

Applicant is a naturalized U.S. citizen whose mother, sister, and two brothers are resident citizens of the People's Republic of China. He failed to mitigate foreign influence security concerns. Clearance is denied.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 7 November 2003, DOHA issued a Statement of Reasons<sup>(1)</sup> (SOR) detailing the basis for its decision—security concerns raised under Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing on 15 November 2003 and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on 22 March 2004. A complete copy of the file of relevant material (FORM) was provided to Applicant, and he was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on 5 April 2004 and responded on 12 April 2004. The case was assigned to me on 28 April 2004.

**FINDINGS OF FACT**

Applicant is a 49-year-old network administrator for a defense contractor. He was born in the People's Republic of China (PRC). In 1988 he married a citizen of the PRC. Item 4 at 1-3. In 1990, Applicant and his wife moved to the U.S. so she could be with her family. Item 5 at 2. Their son was born in the U.S. in 1991. Item 4 at 4. Applicant and his wife became naturalized U.S. citizens in 1999. Item 5 at 1.

Applicant's father is deceased. His mother, two brothers, and one sister are citizen residents of the PRC. Applicant's mother is a retired bank teller. His siblings are all retired factory workers. Applicant does not provide any financial assistance to them, nor does he have any financial interests in the PRC. Applicant contacts his mother once a month by telephone. He does not contact his siblings directly. Applicant has never worked for the PRC government and has no personal or cultural ties to the PRC. Item 5 at 1-2; Response.

## POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec.

Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

## CONCLUSIONS

In the SOR, DOHA alleged Applicant's mother (¶ 1.a.) and siblings (¶ 1.c.) are citizen residents of the PRC, and he has telephone contact with his mother once a month(¶ 1.b.). A security risk may exist when an applicant's immediate family, or other person to whom he may be bound by affection, influence, or obligation, are not citizens of the U.S. or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Directive ¶ E2.A2.1.1.

The Government established by substantial evidence and Applicant's admissions each of the allegations contained in the SOR. Applicant has immediate family members who are citizen residents of a foreign country. DC E2.A2.1.2.1. Applicant established to my satisfaction that his foreign family members are not agents of a foreign power. But the inquiry in a foreign influence case is not limited to consideration of whether the foreign contacts are agents of a foreign power. Applicant still must demonstrate that his family members are not in a position to be exploited by a foreign power. "Although there has been increased cooperation between the U.S. and the PRC since the terrorist attacks of 11 September 2001, the PRC is still a totalitarian state with a human rights record of abuses that 'have been among the most visible and constant points of contention in Sino-U.S. relations since the 1989 Tiananmen Square crackdown.'" <sup>(2)</sup> ISCR Case No. 02-26976 at 4 (Young, A.J., May 6, 2004). Under all the circumstances of this case, Applicant failed to establish that his family members are not in a position to be exploited by the PRC in a way that would force Applicant to choose between loyalty to his family and loyalty to the U.S. I find against Applicant.

## FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline B: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

**DECISION**

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 a security clearance for Applicant. Clearance is denied.

**James A. Young**

**Administrative Judge**

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.
2. Although I was not asked to take administrative or official notice, these facts are known to this agency through its cumulative expertise in deciding security clearance cases involving foreign influence. *See* ISCR Case No. 99-0452 at 4 (App. Bd. Mar. 21, 2000); Gary J. Edles and Jerome Nelson, *Federal Regulatory Process: Agency Practices and Procedures* § 6.9 (1995).