

KEYWORD: Foreign Influence

DIGEST: Applicant, age 38, is a naturalized U. S. Citizen who was born and raised in mainland China. Her mother and sister are citizens of the People's Republic of China (PRC), but both have permanent resident alien status in the United States. Another sister and brother live in the U.S. Applicant came to the U.S. in 1986, received a college degree in 1993, has been gainfully employed since graduation, and has worked for a federal contractor since April 2001. Applicant admitted the SOR allegations but has mitigated the security concerns under Guideline B (Foreign Influence). Clearance is granted.

CASE O: 02-27999.h1

DATE: 02/01/2005

DATE: February 1, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-27999

DECISION OF ADMINISTRATIVE JUDGE

CHRISTOPHER GRAHAM

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, age 38, is a naturalized U. S. citizen who was born and raised in mainland China. Her mother and sister are citizens of the People's Republic of China (PRC), but both have permanent resident alien status in the United States. Another sister and brother live in the U.S. Applicant came to the U.S. in 1986, received a college degree in 1993, has been gainfully employed since graduation, and has worked for a federal contractor since April 2001. Applicant admitted the SOR allegations but has mitigated the security concerns under Guideline B (Foreign Influence). Clearance is granted.

STATEMENT OF THE CASE

On August 18, 2004, the Defense Office of Hearings and Appeals (DOHA), issued a Statement of Reasons (SOR) to Applicant alleging facts which raise security concerns under Guideline B (Foreign Influence). The SOR detailed reasons why DOHA could not find that it is clearly in the national interest to grant or continue a security clearance. [\(1\)](#)

In a sworn written statement, dated August 28, 2004, Applicant answered the SOR (Answer) and elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted a file of relevant material (FORM) in support of the government's preliminary decision, a copy of which was received by Applicant on August 26, 2004. Applicant was afforded the opportunity to file objections and submit material in refutation, extenuation, or mitigation by October 10, 2004. Applicant timely submitted an Answer to the SOR and a sworn statement which were received on September 13, 2004. Interrogatories sent to Applicant were answered on November 18, 2004. The case was assigned to me on January 21, 2005.

FINDINGS OF FACT

Applicant has admitted the two factual allegations pertaining to foreign influence under Guideline B as stated in the SOR. These admissions are incorporated herein as findings of fact. After a thorough review of the record as a whole, I make the following additional findings of fact:

Applicant is a 38-year-old employee of a federal contractor. She is divorced, her mother and a sister live in Hong Kong, and another sister and a brother live in the U.S. (2) She is estranged from her father who lives somewhere in the PRC and whom she has not seen since 1997. (3) She came to the U.S. in 1986, graduated from a major university in 1993, with a degree in electrical engineering, and has made one trip to Hong Kong (1993) to visit her mother and sister since coming to the U.S. (4)

Applicant has worked for six employers since college. (5) An older sister came to the U.S. in 1980 and was her sponsor in 1986. An uncle lives in the U.S. Her mother and sister came to the U.S. in 1995 or 1996, received resident alien status, returned to Hong Kong after a year, as she did not like living in the U.S., and Applicant remains in touch with them by weekly telephone calls. (6) Applicant has cousins in PRC but does not know them. (7) She has a cousin, a citizen and resident of Canada, with whom she keeps in frequent communication. (8)

In sworn answers to interrogatories, Applicant denied she would be open to coercion, influence or pressure because she has relatives living in Hong Kong. (9) She stated she would sever relations with these relatives if she or they were pressured, and that she would notify appropriate U.S. officials. (10) Neither she nor members of her family have any connection or employment with the Chinese government. (11) Applicant has no contacts with any Chinese embassy or consulate employee. (12)

Her telephone conversations with her mother and sister living in PRC are to inquire about health and family matters. (13) She stated: "I will not do anything to harm the USA even if my mother and sister are put in jeopardy. I am loyal to the USA. (T)his is my country. (T)he USA has given me the opportunity for a much better life. I will protect this country for the freedom of opportunity we have." (14)

China, an authoritarian communist regime, has an abysmal record of human rights abuses of its citizenry. Further, China is considered one of the more active countries when it comes to espionage activities in the United States. However, China has also been trying to transform its economy to more of a free enterprise system. A key to this effort has been to

gain entry into global markets (particularly the U.S.), in exchange for increased cooperation with the west and reforms in its internal affairs. Nonetheless, China's internal practices as well as its interests as an emerging superpower are often at odds with the United States national interests. Therefore, any contacts in China by a person with access to classified information warrant more scrutiny than contacts with countries whose interests and forms of government are more closely aligned with ours. [\(15\)](#)

POLICIES

The Directive sets forth adjudicative guidelines [\(16\)](#) to be considered in evaluating an Applicant's suitability for access to classified information. The Administrative Judge must take into account both disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in ¶ 6.3 of the Directive: nature and seriousness of the conduct and surrounding circumstances; frequency and recency of the conduct; age of the Applicant; motivation of the applicant, and the extent to which the conduct was negligent, wilful, voluntary, or undertaken with knowledge of the consequences involved; absence or presence of rehabilitation; and probability that the circumstances or conduct will continue or recur in the future. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Having considered the SOR allegations and having reviewed the record evidence as a whole, I conclude the relevant adjudicative guidelines to be applied here are those conditions listed under guideline B (foreign influence), Directive, ¶ E2.A2.1.2.1. *An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present, in a foreign country.*

Under Guideline B, security concerns arise when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. These situations create the potential for foreign influence that might, in turn, result in a compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure. [\(17\)](#)

BURDEN OF PROOF

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest [\(18\)](#) for an Applicant to either receive or continue to have access to classified information. The government bears an initial burden of proving, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If the

government meets its burden, it establishes a prima facie case that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden then shifts to the Applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, the Applicant bears a heavy burden of persuasion. [\(19\)](#)

A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. The Government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the Government. [\(20\)](#)

CONCLUSIONS

The Government has established its case under Guideline B by showing that Applicant has close ties of affection to individuals who are citizens of and are living in a foreign country. As alleged in SOR subparagraph 1.a., Applicant's mother and sister are Chinese citizens. The following Guideline B disqualifying condition applies. Directive, ¶ E2.A2.1.2.1. *An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present, in a foreign country.*

The dispositive issue is whether, in light of the foregoing, Applicant's mother and sister are vulnerable to coercion by the Chinese government for purposes of compromising U.S. national interests through the Applicant. While coercion is possible solely because her mother and sister live in Hong Kong, she has no close ties of affection with other relatives who may live in the PRC. Her mother is an elderly pensioner, neither her mother or sister have ever been associated with the Chinese government, and they live in Hong Kong, China's economic gateway to the west. Both relatives have resident alien status in the U.S. and lived in this country for a year. Applicant has a brother and sister in the U.S., one a citizen of the U.S., and the other working toward citizenship. There is no current probability of coercion

Applicant has lived in this country for 19 years. She graduated from a prestigious university with an electrical engineering degree. She has worked for federal contractors in the past and has been gainfully employed since graduation. She has no contact with her father or other relatives living in China. She has traveled to Hong Kong and China once in 1993. Her only foreign contact is her mother and sister and I that they have no influence on her. Applicant has sworn allegiance to the United States. Directive, ¶ E2.A2.1.2.1., *supra*, applies. Mitigating conditions that apply are: Directive, ¶ E2.A2.1.3.2. *Contacts with foreign citizens are casual*; and Directive, ¶ E2.A2.1.3.5. *Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.*

I have carefully weighed all of the evidence. And I have applied the disqualifying and mitigating condition as listed under each applicable adjudicative guideline. I have also considered the whole person concept as contemplated by the Directive ¶ 6.3, and as called for by a fair and commonsense assessment of the record before me as required by Directive ¶ E2.2.3. Notwithstanding the concerns and practices of the Chinese government, I am convinced Applicant's foreign connections do not pose a security risk. I conclude Guideline B for the Applicant.

FORMAL FINDINGS

Formal Findings regarding each SOR allegation as required by Directive ¶ E3.1.25 are as follows:

Paragraph 1., Guideline B: FOR THE APPLICANT

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is granted.

Christopher Graham

Administrative Judge

1. This action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated

February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified.

2. Item 4 (*Security Clearance Application dated May 13, 2002*) at 1-2.
3. Item 5 (*Applicant's Sworn Statement dated August 28, 2002*) at 3.
4. *Id.* at 1-2; Item 6 (*Interrogatories dated November 15, 2003*) at 1.
5. Item 4 at 2-3.
6. Item 5 at 2-3.
7. *Id.* at 3.
8. *Id.* at 4.
9. Item 6 at 9.
10. *Id.* at 9.
11. *Id.* at 9.
12. *Id.* at 10.
13. *Id.* at 10.
14. *Id.* at 11.
15. Item 7 (*Annual Report to Congress, 2000 - NACIC*); and Item 8 (*Technology Collections Trends in the US Defense Industry - 2004*).
16. Directive, Enclosure 2.
17. Directive, E2.A2.1.1.
18. See *Department of the Navy v. Egan*, 484 U.S. 518 (1998).
19. See *Egan*, 484 U.S. at 528,531.
20. See *Egan*; Directive ¶ E2.2.2.