

KEYWORD: Foreign Influence

DIGEST: This 44-year-old native-born American employee of a defense contractor engineer has two grown children from an earlier marriage. In 1999, he met and in 2000, he married a citizen of the Peoples Republic of China. She has learned English and is attending a university in the U.S. She has parents and siblings remaining in the PRC. Her relationship with her family remains warm but increasingly less close. Applicant is clear about his obligation to protect U.S. security interests. Mitigation has been established. Clearance is granted.

CASENO: 02-28128.h1

DATE: 01/21/2005

DATE: January 21, 2005

In Re:

SSN:-----

Applicant for Security Clearance

ISCR Case No. 02-28128

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 44-year-old native-born American employee of a defense contractor engineer has two grown children from an earlier marriage. In 1999, he met and in 2000, he married a citizen of the Peoples Republic of China. She has learned English and is attending a university in the U.S. She has parents and siblings remaining in the PRC. Her relationship with her family remains warm but increasingly less close. Applicant is clear about his obligation to protect U.S. security interests. Mitigation has been established. Clearance is granted.

HISTORY OF THE CASE

On February 9, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons

why DOHA could not make the preliminary affirmative finding required under the Directive that it

is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and

determine whether a clearance should be granted, denied or revoked.

On April 1, 2004, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge after a hearing. The matter was assigned to me for resolution on June 28, 2004. A Notice of Hearing was issued on August 4, 2004, setting the hearing for August 27, 2004. At the hearing, the Government introduced three exhibits (GX 1 - GX 3) and the Applicant introduced 10 exhibits (AX A - AX J). The transcript was received at DOHA on September 13, 2004.

FINDINGS OF FACT

Applicant is a 54-year-old engineer for a defense contractor. The February 9, 2004 SOR contains six allegations under Guideline B (Foreign Influence). In his April 1, 2004 Response to the SOR, Applicant *admits* allegation 1.a., adding that it is incomplete, and denying all other allegations as "irrelevant." The admitted part of the allegation 1.a. is accepted and incorporated herein as a Findings of Fact.

After considering the totality of the evidence, I make the following additional FINDINGS OF FACT as to the present status of each SOR allegation:

Guideline B (Foreign Influence)

1.a. - Applicant's wife is a citizen of the People's Republic of China (PRC) who currently resides in the United states. She is in the process of becoming a U.S. citizen.

1.b. - Applicant's wife owns a condominium in the PRC, valued at approximately \$15,000 to \$20,000. She receives rental income from the condominium of about \$200 per month.

1.c. - Applicant's sister-in-law is a citizen of the PRC, currently residing in the PRC. His wife has telephonic contact with her sister approximately once a month.

1.d. - Applicant's parents-in-law are citizens of the PRC, currently residing in the PRC. His wife has monthly telephonic contact with her parents.

1.e. - Applicant traveled to the PRC from October 1999 to November 1999, in May 1999, and from March 1999 to April 1999.

1.f. - Applicant's wife traveled to the PRC in December 2001.

POLICIES

Each adjudicative decision must also include an assessment of nine generic factors relevant in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowing participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent 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 (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

Because each security case presents its own facts and circumstances, it should not be assumed that the factors cited above exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable financial judgment and conduct.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of

whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. In reaching the fair and impartial overall common sense determination based on the "whole person" concept required by the Directive, the Administrative Judge is not permitted to speculate, but can only draw those inferences and conclusions that have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make

critical judgments as to the credibility of witnesses.

In the defense industry, the security of classified information is entrusted to civilian workers

who must be counted on to safeguard classified information and material twenty-four hours a day.

The Government is therefore appropriately concerned where available information indicates that an applicant for a security clearance, in his or her private life or connected to work, may be involved

in conduct that demonstrates poor judgment, untrustworthiness, or unreliability. These concerns include consideration of the potential, as well as the actual, risk that an applicant may deliberately

or inadvertently fail to properly safeguard classified information.

An applicant's admission of the information in specific allegations relieves the Government

of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons. If the Government meets its burden (either

by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence

of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

A person seeking access to classified information enters into a fiduciary relationship with the

Government based upon trust and confidence. As required by DoD Directive 5220.6, as amended,

at E2.2.2., "any doubt as to whether access to classified information is clearly consistent with the interests of national security will be resolved in favor of the nation's security."

CONCLUSIONS

Guideline B (Foreign Influence)

Applicant is a 44-year-old native-born U.S. citizen, born in 1960. He has a wife and two children, 14 and 18 years old as of the date of the Response to the SOR. Both children are from an earlier marriage (1983- 1999) (GX 1) and are U.S. citizens by birth. After his earlier divorce, he looked into international internet dating and was eventually connected to his present wife, who was born in the PRC in 1968. He met her during a trip to the PRC in 1999 and returned twice

more to further visit with her. They became engaged, and she came to the U.S. in April 2000, where they were married in June 2000.

She learned English, entered a junior college, and is now attending a four-year state university, where she is learning American history and political science (Tr at 53). She studied English and became proficient enough to enroll in a junior college, where she receives good grades. She applied for naturalization in August 2004 (AX C) and understands that, under Chinese law, when she becomes a U.S. citizen, she will automatically lose her PRC citizenship (AX D). Applicant first received a DoD security clearance in 1986 (GX 1 at Question 31).

The SOR's stated concerns deal with Applicant's recent marriage to a citizen of the PRC now residing in the United States, but with close family members remaining in the PRC. The case file does not contain a sworn statement by Applicant, so the basic factual allegations in the SOR come only from Applicant's security clearance application (SF 86), signed in April 2002 (GX 1).

The discussion and details behind the allegations are found only in Applicant's hearing testimony and the testimony of his witnesses. From the latter, we learn that one witness was a witness when Applicant and his wife we married, socializes with Applicant and his wife, think highly of her, and don't think either is a risk to U.S. national security (Tr at 34). Applicant's 18-year-old daughter describes a very close family relationship with her stepmother (Tr at 42). A third witness is married to Applicant's sister. He spent 22 years in the U.S. Air Force and is familiar with security concerns (Tr at 45). Applicant's wife was a business woman in the PRC (Tr at 61). She talks about wanting to become a U.S. citizen (Tr at 48).

Applicant's wife explained her interest in becoming a U.S. citizen. She has sold what little property she had in the PRC (Tr at 56). The proceeds went to her parents (Tr at 57). As part of her family obligations, she now sends them up to \$400 per month. Her father works with nuts and bolts. He is not anything like an engineer (Tr at 59). Her mother is retired (Tr at 60). Her sister is in advertising (Tr at 60). The longer she is in the U.S., the less contact she has with her family in the PRC. None of them have any connection with the PRC government and none have come to the U.S. (Tr at 73).

She works for an airline but cannot access the planes yet because she is not a citizen (Tr at 64). She has a number of American friends (Tr at 65). She wants to become a citizen because she "loves America" (Tr at 74). Besides being married to an American, this country has given her "a lot of benefits" and she does not plan to ever return to the PRC (Tr at 74). She intends to obtain a U.S. passport as soon as she becomes a citizen since she will automatically lose her PRC citizenship, thereby invalidating her PRC passport (Tr at 76).

Applicant testified on his own behalf. He is very proud of his wife and what she has accomplished in only four years (Tr at 81). He believes she will be a "good citizen" (Tr at 82). She has been a good wife and is interested mostly in becoming a citizen and getting a good job here (Tr at 82). Applicant has worked in aerospace for almost two decades and has received praise and award for his contributions (Tr at 82, 83). He has no interest in China beyond that being where his wife is from (Tr at 83). He has been an American and part of American culture since he was born. His lack of knowledge about the Chinese language prevents anything beyond the most basic communications with anyone else in

his wife's family (Tr at 85). He wasn't looking for anyone specifically from China (*Id.*). Applicant sees his relationship with his in-laws as being "a distant kind of relationship, . . . not close" (Tr at 95). If ever asked to do anything against U.S. interests, he would not even hesitate to refuse and report the contact (Tr at 96 - 99).

For much of Applicant's career, he has worked in supporting U.S. military and security interests. At age 44, there is nothing in the record to suggest any lack of commitment to his stated allegiance and loyalty to the U.S. and to the interests of his American family. He owes no allegiance to the PRC or any other country.

While any relatives in a foreign country may present a risk, the Directive does not make this factor an automatic bar to holding a security clearance. Fairness and commonsense require an analysis of the entire record and an overall common sense determination. The PRC is cited in official Government documents (GX 2 and GX 3) as a country substantially involved in economic espionage in the United States, but the overall record does not suggest that the PRC government is aware of the marriage, is aware of Applicant and his career, or has shown any interest in what he does.

The lack of any past improper contacts is not evidence establishing that it will not happen in the future, but it is a positive factor that should be considered along with all other evidence, including, but not limited to, Applicant's statement that his allegiance is to the United States only. Based on the totality of the record, I conclude (1) that Applicant has done nothing to suggest any preference for the PRC, and (2) there is minimal risk that Applicant's relatives will be pressured into contacting Applicant for improper purposes. In addition, based on his lifelong connections with, and dedicated service to, this country, there is even less risk that Applicant would respond to any such contact by agreeing to act against U.S. interests.

A security risk may exist when an individual's immediate family ". . . are (1) not citizens of the United States or (2) may be subject to duress." These situations may create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of foreign countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Disqualifying Condition - 1. An immediate family member . . . is a citizen of, or resident or present in, a foreign country.

Mitigating Condition - 1. A determination that the immediate family member(s) . . . in question would not constitute an unacceptable security risk.

The totality of the record does not suggest the presence of a security risk.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Guideline B (Foreign Influence) For the Applicant

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.c. For the Applicant

Subparagraph 1.d. 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 a security clearance for Applicant.

Barry M. Sax

Administrative Judge

