

KEYWORD: Foreign Influence

DIGEST: The Applicant is a naturalized American citizen from the People's Republic of China (PRC), who has lived in the United States since 1990. Her parents and sister are also American citizens. The Applicant's brother continues to live in the PRC, but her relationship with him is infrequent and casual. The Applicant's husband is a Permanent Legal Resident of the United States from the PRC. His parents live in Sweden. None of the persons are agents of a foreign power or in a position to influence the Applicant to make a decision adverse to the United States. Adverse inference is overcome. Clearance is granted.

CASENO: 02-30503.h1

DATE: 01/28/2005

DATE: January 28, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-30503

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant is a naturalized American citizen from the People's Republic of China (PRC), who has lived in the United States since 1990. Her parents and sister are also American citizens. The Applicant's brother continues to live in the PRC, but her relationship with him is infrequent and casual. The Applicant's husband is a Permanent Legal Resident of the United States from the PRC. His parents live in Sweden. None of the persons are agents of a foreign power or in a position to influence the Applicant to make a decision adverse to the United States. Adverse inference is overcome. Clearance is granted.

STATEMENT OF THE CASE

On April 26, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on May 14, 2004, and requested that the Decision be made without a hearing. The Department Counsel submitted the File of Relevant Material (FORM) to the Applicant on August 4, 2004. The Applicant was given 30 days after receipt of the FORM to submit any additional information to the Administrative Judge. The Applicant acknowledged receipt of the FORM on August 10, 2004, and elected not to submit any additional information. The case was received by the undersigned for Decision on November 1, 2004.

FINDINGS OF FACT

The Applicant is 45, married and has a Bachelor of Science degree. She is employed by a defense contractor as a Software Engineer, and she seeks to obtain a DoD security clearance in connection with her employment in the defense sector.

The Government opposes the Applicant's request for a security clearance, based upon the allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR. They are based on the Applicant's Answer to the SOR, the exhibits and the live testimony.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because she has contacts or connections with a foreign country that may make her vulnerable to coercion, exploitation or pressure.

The Applicant came to the United States in 1990 to continue her education. She has lived in the United States continuously since that time and became an American citizen in 1996. Her mother, father and sister are also naturalized American citizens living in the United States.

The Applicant's brother continues to live in the People's Republic of China. From 1990 to 1996 they had no contact at all. During tourist visits to the PRC in 1996 and 2001, the Applicant visited her brother as a matter of courtesy. These are the only contacts she has had with her brother since she moved to the United States. (Item 3 at 1 and Item 5 at 2.) The Applicant's mother has filed a petition for the Applicant's brother to emigrate to the United States. (Item 3 at 3.)

The spouse of the Applicant is a citizen of the PRC. He has taken and passed the immigration test. (Item 3 at 5.) His parents are also citizens of the PRC. In 2001 they resided in the PRC. As of 2004 they are living with the Applicant's husband's sister in Sweden. The sister is a citizen of Sweden. (Item 3 at 2.)

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance

determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Guideline B (Foreign influence)

Conditions that could raise a security concern:

(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;

Conditions that could mitigate security concerns include:

(1) A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States;

(3) Contact and correspondence with foreign citizens are casual and infrequent.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

a. The nature, extent and seriousness of the conduct

b. The circumstances surrounding the conduct, to include knowledgeable participation

- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence."

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may have foreign connections that make the Applicant vulnerable to coercion, or pressure.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the

seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...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."

CONCLUSIONS

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 granting 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.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant's brother is a citizen of the PRC, and continues to live there; that she visited him twice in 14 years; that her husband is a Permanent Legal Resident of the United States waiting to become a citizen; and that her in-laws are citizens of the PRC, currently living in Sweden (Guideline B).

The Applicant, on the other hand, has successfully mitigated the Government's case. The Applicant's relationship with her brother is very attenuated. Except for her brother, the rest of the Applicant's family are American citizens. Her contacts with him have been perfunctory. Under the particular circumstances of this case, they are casual and infrequent.

The Applicant's husband has applied to be an American citizen and has passed the test. His parents, while still citizens of the PRC, currently live in Sweden with his sister, a Swedish citizen. They are not agents of a foreign power, or in a position to be coerced by a foreign power.

Disqualifying Factor 1 applies to this case: (*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*). That factor is, however, overcome by the application of Mitigating Factors 1 (*A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between*

loyalty to the person(s) involved and the United States) and 3 (Contact and correspondence with foreign citizens are casual and infrequent).

On balance, it is concluded that the Applicant has successfully overcome the Government's case opposing her request for a DoD security clearance. Accordingly, the evidence supports a finding for the 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 the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1: For the Applicant.

Subparagraphs 1.a. through 1.f.: 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 the Applicant.

Wilford H. Ross

Administrative Judge

