

KEYWORD: Foreign Influence

DIGEST: Applicant is a naturalized citizen of the U.S. He came to the U.S. as a college student from the People's Republic of China (PRC). Applicant has a Ph.D. in nuclear physics. Both of his children are residents and citizens of the U.S. His parents, two brothers, and a sister are citizens and residents of PRC. He provides approximately \$2,000.00 per year in financial support to his retired parents. None of his relatives are involved with the Chinese government. He is not vulnerable to foreign influence because of his strong attachment to the U.S.-extensive personal, professional, and economic ties-and because his family is not in a position to be exploited in a way that could force Applicant to choose between loyalty to these family members and his loyalty to the U.S. Clearance is granted.

CASENO: 02-16593.h1

DATE: 02/25/2005

DATE: February 25, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-16593

DECISION OF ADMINISTRATIVE JUDGE

JACQUELINE T. WILLIAMS

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a naturalized citizen of the U.S. He came to the U.S. as a college student from the People's Republic of China (PRC). Applicant has a Ph.D. in nuclear physics. Both of his children are residents and citizens of the U.S. His parents, two brothers, and a sister are citizens and residents of PRC. He provides approximately \$2,000.00 per year in financial support to his retired parents. None of his relatives are involved with the Chinese government. He is not vulnerable to foreign influence because of his strong attachment to the U.S.-extensive personal, professional, and economic ties-and because his family is not in a position to be exploited in a way that could force Applicant to choose between loyalty to these family members and his loyalty to the U.S. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant under Executive Order 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 (the "Directive"). On December 3, 2003, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision: security concerns under Guideline B (Foreign Influence).

Applicant answered the SOR by letter on January 18, 2004. [\(1\)](#)

Department Counsel submitted the government's written case on May 27, 2004. Department Counsel provided a complete copy of the file of relevant material (FORM) to Applicant, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on June 25, 2004. Applicant submitted additional information for consideration, an unsworn statement, dated July 2, 2004. This case was assigned to another Administrative Judge on August 6, 2004. However, because of caseload consideration, the case was reassigned to me on February 1, 2005.

FINDINGS OF FACT

Applicant admitted in part each of the factual allegations contained in the SOR and offered mitigating circumstances. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, I make the following findings of fact:

Applicant is 47 years old and was born and raised in PRC.⁽²⁾ He came to the United States to further his college education in December 1982.⁽³⁾

The first three-quarters of Applicant's tuition was paid by a university in PRC. His tuition was about \$5,000.00, which was in the form of a loan from the World Bank; he also received \$300.00 per month for living expenses for about one year.⁽⁴⁾ The first year that he was in the U.S., he had contact with the managers of the student loan program that sent him to the U.S.⁽⁵⁾ The contact regarded financial matters only.⁽⁶⁾ He has had no contact with representatives of foreign governments or organizations since then.⁽⁷⁾ He wrote a letter to the Chinese consulate in New York and offered to repay the tuition and stipend; he did not receive a response.⁽⁸⁾ He feels no further obligation regarding the money he received from PRC and he would refund the money if asked.⁽⁹⁾

Applicant became a naturalized United States citizen on June 8, 2000. He has been divorced twice. Both of his ex-wives were born in PRC.⁽¹⁰⁾ Currently, his ex-wives are citizens and residents of the United States.⁽¹¹⁾ He married his first wife in PRC, and they divorced in 1989 in the United States.⁽¹²⁾ He married his second wife in 1989 in the United States and was divorced in the U.S. in 1995.⁽¹³⁾ Both of his children were born and raised in the United States.⁽¹⁴⁾

Applicant received grants from a prominent university in the U.S. in about 1991 or 1992.⁽¹⁵⁾ He earned his doctoral degree (Ph.D.) in nuclear physics⁽¹⁶⁾ in 1993 in the United States; after his educational studies, he became a research scientist and is now a database engineer.⁽¹⁷⁾

Applicant's parents are citizens and residents of PRC.⁽¹⁸⁾ His father is a retired store clerk.⁽¹⁹⁾ His mother is a retired textile worker.⁽²⁰⁾ Applicant telephones his parents about five or six times per year.⁽²¹⁾ He sends his parents about \$2,000.00 per year to assist with their living and medical care.⁽²²⁾ There is no evidence in the record that either of his parents has connections to the Chinese government, military, or security services. Applicant states about his parents that "my parents are both retired long time ago and are leading their late years of their private life. During their whole lifetime, they have never been involved in any political activities or never been agents of any government power. They are not in any position, which could be exploited by any foreign power."⁽²³⁾

Applicant's siblings are citizens and residents of PRC.⁽²⁴⁾ One brother is a taxi driver and his other brother is a transportation driver.⁽²⁵⁾ His sister works in a factory cafeteria.⁽²⁶⁾ He does not send money to his siblings.⁽²⁷⁾ There is no evidence in the record that any of his siblings has connections to the Chinese government, military, or security services.⁽²⁸⁾

Applicant has visited his family in PRC during the following periods: two or three weeks from December 2002 to January 2003; three weeks in October 2000; three weeks in December 1999; and one month in 1986. [\(29\)](#)

Prior to his current job, he worked on various projects at the Department of Energy (DOE) for approximately 14 years. He had training in information security and security risk management at DOE. [\(30\)](#) Applicant opined that "I understand if I run into a situation where someone tries to use my extended family members-identified by him as his parents, brothers, and sister-as hostages for the ransom of information concerning national security of United States, I would not be the only one to deal with it. I will have my government[s] [sic] stand next to me to help me and help me to make the right decisions." [\(31\)](#)

PRC is a repressive, totalitarian government with foreign policy goals antithetical to the U.S. It has an active, effective intelligence service that targets U.S. intelligence and economic information and operates against its citizens in the U.S. [\(32\)](#)

Applicant has no cultural ties with PRC. [\(33\)](#) He does not receive Chinese publications and he does not belong to any cultural organizations. [\(34\)](#)

Applicant has no financial interests outside the United States; he owns no property outside the United States. [\(35\)](#) Applicant has substantial assets in the United States, including a career, home, financial, investments. [\(36\)](#)

POLICIES

Enclosure 2 of the Directive sets forth Adjudicative Guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the Adjudicative Guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Conditions).

Based on a consideration of the evidence as a whole, I find the following adjudicative guideline most pertinent to an evaluation of the facts of this case:

Guideline B - Foreign Influence:

The Concern: A security risk may exist 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 could create the potential for foreign influence that could result in the 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. Directive, paragraph E2.A2.1.1.

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to these adjudicative guidelines, are set forth and discussed in the conclusions below.

An administrative judge need not view the Adjudicative Guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in Section E2.2, Adjudicative Process, of the Directive, are intended to assist the administrative judge in reaching fair and impartial decisions.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person" concept, all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The adjudicative process factors which an administrative judge should consider are: (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 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, paragraph E2.2.

In the decision-making process, the burden of producing evidence initially falls on the government to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. If the government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation, or mitigation sufficient to overcome the doubts raised by the government's case and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated on trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. Because of this special relationship, the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions are predictive in nature and must often address potential, rather than actual, risk of compromise of classified information.

Finally, Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance 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." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. Nothing in this Decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty, or patriotism.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

Guideline B, Foreign Influence

Paragraph E2.A2.1.2.1 of the Directive provides that it may be a disqualifying condition if "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." Paragraph E2.A2.1.3.1 defines "immediate family members" to include a spouse, father, mother, sons, daughters, brothers, and sisters. Applicant has immediate family members-his parents, two brothers, and a sister-who are citizens and residents of China. Applicant maintains telephone contact with this parents about five or six times per year; he has infrequent contact with his siblings. Pursuant to paragraph E2.A2.1.1, these circumstances "could create the potential for foreign influence that could result in the compromise of classified information." While the-

mere possession of family ties with persons in a foreign country is not, as a matter of law, automatically disqualifying . . . [it] does raise a prima facie security concern sufficient to require an applicant to present evidence of rebuttal, extenuation or mitigation sufficient to meet the applicant's burden of persuasion that is clearly consistent with the national interest to grant or continue a security clearance for the applicant. ISCR Case No. 99-0424, 2001 DOHA LEXIS 59 at **33-34 (App. Bd. Feb. 8, 2001).

I conclude this potentially disqualifying condition applies.

Similarly, pursuant to paragraph E2.A2.1.2.3, it may be disqualifying where "[r]elatives . . . are connected with any foreign government." The record in this case does not indicate that any of Applicant's family in PRC are connected with the government of PRC. Thus, I find this potentially disqualifying condition does not apply.

Under the Directive at paragraph E2.A2.1.3.1, the security concerns arising from possible foreign influence may be mitigated under certain circumstances. These security concerns may not be disqualifying where it is determined that "the immediate family members . . . 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 involved and the United States." Applicant states about his parents that "my parents are both retired long time ago and are leading their late years of their private life. During their whole lifetime, they have never been involved in any political activities or never been agents of any government power. They are not in any position, which could be exploited by any foreign power."⁽³⁷⁾ He reiterated the following about his family in PRC-

I have my parents, my brothers, and my sister being citizens and residing in the People's Republic of China. None of them are any agents of any foreign power. None of them are in a position either financially or politically could be exploited by any foreign power in a way that could force me to choose between loyalty to them and the

United States. My contacts with them are minimal because I cannot in any way to provide much more help to them (except my parents).⁽³⁸⁾

None of Applicant's relatives are employees or officers of the government.⁽³⁹⁾ There is no evidence indicating any one of them is an "agent of a foreign power."⁽⁴⁰⁾

Applicant has extensive ties to the United States. Applicant has lived in the U.S. for the past 22 years. His children are citizens and residents of the U.S. He works at a profession that he enjoys here in the U.S. Moreover, he has worked for defense contractors since graduating with his doctoral degree without any adverse incidents. He has a house here in the U.S. and he has other financial investments here. Moreover, Applicant says regarding disclosure of classified information that "[d]isclosure of classified material means to me that I have to risk my own career (I will lose of my job), my integrity (I took the oath and promise to safe guard all the sensitive/classified information), and even my own personal life (without a job, personal wealth I will have no life)."⁽⁴¹⁾ Considering the extent of his ties to the United States, I find Applicant is not vulnerable to pressure or duress through his relatives in PRC. I conclude the mitigating condition set out in paragraph E2A2.1.3.1 of the Directive applies.

I considered carefully all the facts and circumstances in this case in light of the "whole person" concept. Applicant is a mature individual who has spent the majority of his adult life in the United States. The personal, professional, and economic ties that bind him to the United States far outweigh his connections with relatives in PRC. I conclude Applicant has mitigated any potential security concerns arising from Applicant's family ties in PRC.

FORMAL FINDINGS

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

Paragraph 1, Guideline B: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

DECISION

In light of all of 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.

Jacqueline T. Williams

Administrative Judge

1. Item 3 (Answer to SOR, dated January 18, 2004) at 1.
2. Item 4 (Security Clearance Application (SF 86), dated January 23, 2002) at 1.
3. Item 5 (Statement of Subject, dated October 10, 2003) at 1.
4. *Id.*, at 2.
5. *Id.*, at 1.
6. *Id.*
7. *Id.*, at 1-2.
8. *Id.*, at 2.
9. *Id.*, at 2.
10. Item 4, *supra*, at 3
11. *Id.*
12. *Id.*
13. *Id.*
14. Item 5, *supra*, at 2.
15. *Id.*, at 2.
16. Unsworn statement of Applicant, dated July 2, 2004.
17. Item 5, *supra*, at 2.
18. *Id.*, at 1.

19. *Id.*, at 2.
20. *Id.*
21. *Id.*
22. *Id.*, at 1.
23. Item 3, *supra*, at 1.
24. Item 5, *supra*, at 1.
25. *Id.*
26. *Id.*
27. *Id.*
28. Item 3, *supra*, at 1-2.
29. *Id.*
30. Unsworn Statement of Applicant, dated July 2, 2004.
31. *Id.*
32. U.S. Department of State, *Country Reports on Human Rights Practices 2001*.
33. Item 5, at 1.
34. *Id.*
35. *Id.*, at 2.
36. *Id.*, at 2.
37. Item 3, *supra*, at 1.
38. Item 3, *supra*, at 2.
39. *Id.*
40. *See* 50 U.S.C.A. § 1801(b).
41. Unsworn Statement of Applicant, dated July 2, 2004.