

DATE: April 14, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-22158

DECISION OF ADMINISTRATIVE JUDGE

MATTHEW E. MALONE

APPEARANCES

FOR GOVERNMENT

Marc E. Curry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a naturalized U.S. citizen who was born and raised in mainland China. His wife was also born in China, and is a naturalized U.S. citizen as well living with him in the U.S. His parents, his wife's parents, and one of his two brothers are all citizens of and living in China. His other brother is a Chinese citizen, but lives in Brazil. Applicant admitted the SOR allegations, but has failed to provide any information to mitigate or extenuate the resulting Guideline B (Foreign Influence) security concerns. Clearance is denied.

STATEMENT OF THE CASE

On August 8, 2003, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline B (Foreign Influence). The SOR further informed Applicant that, based on information available to the Government, DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to continue Applicant's security clearance. ⁽¹⁾

On October 23, 2003, Applicant answered the SOR (Answer) and requested a determination without a hearing. DOHA Department Counsel submitted a file of relevant materials (FORM) in support of the government's preliminary decision, a copy of which was sent to Applicant on January 12, 2004. Applicant received the FORM on February 2, 2004, and had until March 3, 2004, to submit any response, rebuttal, or objection to the FORM; however, Applicant did not submit anything further in his own behalf. The case was assigned to me on March 22, 2004.

FINDINGS OF FACT

Applicant has admitted all of the allegations in the SOR. ⁽²⁾ His admissions are incorporated herein, and, after a thorough review of the pleadings and exhibits, I make the following additional findings of fact:

Applicant is 40 years old and has worked as a network engineer for a defense contractor since March 1996. He

submitted a Security Clearance Application (SF-86) in April 2000. Applicant was born in the Peoples Republic of China (PRC, also known as mainland China) and became a naturalized U.S. citizen in February 2000. There is no information available about when he first came to the United States, although he has been here since at least January 27, 1995, the date of his marriage. Applicant's wife was also born in the PRC and is a naturalized U.S. citizen.⁽³⁾

Applicant's parents and two older brothers are also native-born Chinese. His parents and one brother still live in the PRC. The other brother lives in Brazil. Applicant's wife's parents are PRC citizens and still live there.

Applicant has returned to the PRC at least twice-in November 1995 and February 1997. Both visits were for pleasure and lasted about a month.⁽⁴⁾

Applicant holds two masters degrees from a U.S. university. He studied for those degrees between September 1986 and December 1990.⁽⁵⁾

POLICIES

The Directive sets forth adjudicative guidelines⁽⁶⁾ 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 Section 6.3 of the Directive. 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 factors to be applied here are those disqualifying and mitigating conditions listed under Guideline B (Foreign Influence).

BURDEN OF PROOF

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁽⁷⁾ 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.⁽⁸⁾

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 judgement, 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.⁽⁹⁾

CONCLUSIONS

Under Guideline B (Foreign Influence), 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.⁽¹⁰⁾ Here the concern is focused on Applicant's close ties of affection to his relatives, all but one of whom (his wife) are citizens of and live in a foreign country.

Department Counsel has presented sufficient evidence in the FORM to establish a *prima facie* case for disqualification

under Guideline B. The Applicant has close ties of affection-his parents, two brothers, and his wife's parents-who are citizens of and resident in a foreign country. Guideline B disqualifying condition (DC) 1⁽¹¹⁾ applies here. Applicant has admitted, without any explanation or discussion, the facts as alleged in the SOR. Further, despite being provided full and fair opportunity to do so, he has not responded to the government's case as outlined in the FORM. Applicant has the burden of going forward with evidence to rebut, mitigate or extenuate the security concerns raised by the government's information. Because he has failed to provide any such information, there is no basis in this record for application of any of the Guideline B mitigating conditions. Accordingly, based on the available information, I conclude Guideline B against the Applicant.

I have carefully weighed all of the evidence, and I have applied the disqualifying and mitigating conditions as listed under each applicable adjudicative guideline. I have also considered the whole person concept as contemplated by the Directive in Section 6.3, and have made a fair and commonsense assessment of the record before me as required by Directive Section E2.2.3. These facts raise reasonable doubts about Applicant's ability to protect classified information unfettered by concerns about family members who may be subject to the interests of a foreign government and, thus, his suitability for access to classified information. Absent substantial information to resolve those doubts, which Applicant failed to provide, I cannot conclude it is clearly consistent with the national interest to grant Applicant's request for a security clearance.

FORMAL FINDINGS

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

Paragraph 1, Foreign Influence (Guideline B): AGAINST THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

DECISION

In light of all 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 the Applicant. Clearance is denied.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. FORM, Item 3.
3. FORM Item 4.
4. Id.
5. Id.
6. Directive, Enclosure 2.
7. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
8. *See Egan*, 484 U.S. at 528, 531.
9. *See Egan*; Directive E2.2.2.
10. Directive, E2.A2.1.1.

11. 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;