

DATE: November 10, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-23812

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL J. BRESLIN

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Ellen Mendelson, Esq., Attorney-at-Law

SYNOPSIS

Applicant is a 48-year-old naturalized citizen of the United States, employed by a defense contractor since 2001. She was born in the People's Republic of China (P.R.C.), emigrated to the United States in 1989, and became a U.S. citizen in 1995. Applicant's mother and two brothers are citizens and residents of the P.R.C. Applicant is close to her mother and maintains regular contact, including visits to the P.R.C. in 1997, 1999, 2001, and 2003. Applicant does not have regular contact with her brothers. Applicant's sister is a citizen of the P.R.C. but lives in the United States. Applicant has not mitigated the security concerns arising from having relatives who are citizens and residents of the P.R.C. Clearance is denied.

STATEMENT OF THE CASE

On November 21, 2001, Applicant submitted a security clearance application. 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"), the Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On March 26, 2004, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under the Directive, Guideline B, Foreign Influence.

Applicant answered the SOR in writing on April 8, 2004. She elected to have a hearing before an administrative judge.

The case was originally assigned to another administrative judge, but was reassigned to me on August 11, 2004. With the concurrence of the parties, I conducted the hearing on September 16, 2004. I granted the government's motion to amend ¶ 1.a of the SOR by striking the word "sisters" and substituting the word "brothers." Tr. at 63-64. The government introduced two exhibits. Applicant presented six exhibits and the testimony of two witnesses, and testified on her own behalf. DOHA received the transcript on September 30, 2004.

FINDINGS OF FACT

Applicant admitted the factual allegations in ¶ 1.b and ¶ 1.d of the SOR. Applicant's Answer to SOR, dated April 8, 2004, at 1-2. Those admissions are incorporated herein as findings of fact. She denied the allegations in ¶ 1.a and ¶ 1.c of the SOR. *Id.* After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant is 48 years old. Ex. 2 at 1. She was born in the People's Republic of China and completed high school there. Ex. 2 at 1; Tr. at 19. She emigrated to the United States in 1989 (Tr. at 19) and became a naturalized citizen in 1995. Applicant was graduated from college in the United States in 2001 with a bachelor of science degree. Ex. 2 at 2; Tr. at 20.

Applicant has worked for a defense contractor since graduating from college. Ex. 2 at 3; Tr. at 18. She began as a software engineer associate and was promoted to software engineer in June, 2003. Tr. at 18. Applicant's supervisors praise her job performance, citing her loyalty, dependability, and responsiveness. Ex. A, B, and D. She is very conscientious about maintaining the security of confidential information. Tr. at 45-46. Her personal references attest that she is a hard-working individual with high morals, and completely loyal to the United States. Ex. C, E, and F.

Applicant's late father lived in the P.R.C. Ex. 2 at 4; Tr. at 21. He was a marine diesel mechanic. Tr. at 21. Applicant's mother is 76 years old, and still lives in the P.R.C. Ex. 2 at 4; Tr. at 22. Applicant traveled to the P.R.C. to see her mother in 1997, 1999, 2001, and 2003. Tr. at 22-23. Her mother has never worked outside the home and does not have a pension. Tr. at 22. She relies on private funds and her sons for support. Tr. at 30. Applicant calls her mother four or five times a year to check on her well-being. Applicant's Answer to SOR, *supra*. She also sends her mother birthday cards. Tr. at 29. Applicant denied any present intent to visit her mother in the P.R.C. again, out of concern for her security clearance. Tr. at 38.

Applicant also has two brothers who are citizens and residents of the P.R.C. Ex. 2 at 4-5; Tr. at 24. Her eldest brother is 51 years old, married with one child, and the owner of a beauty school and shop in the P.R.C. Tr. at 24. Her youngest brother is 45 years old, married with one child, and an internal design architect in the P.R.C. Tr. at 25. Applicant does not stay in contact with her brothers. Tr. at 25, 26. She last saw them while visiting her mother in China in early 2003. Tr. at 26.

Applicant also has an older sister who is a citizen of the P.R.C. but who lives in the United States. Ex. 2 at 5; Tr. at 26-27. Applicant last visited her sister about one year ago. Tr. at 32. Applicant stays in touch with her sister by telephone about once each month. Tr. at 32; Applicant's Answer to SOR, *supra*.

Applicant had a friend in the P.R.C. whom she stayed in contact for several years. Applicant's Answer to the SOR, *supra*. However, for personal reasons Applicant no longer communicates with her former friend and does not know where she is living. Tr. at 38-39.

POLICIES

In Executive Order 12968, *Access to Classified Information*, § 3.1(b) (August 4, 1995), the President provided that eligibility for access to classified information shall be granted only to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." A person granted access to classified information enters into a special relationship with the government. 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.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guideline at issue in this case is:

Guideline B, Foreign Influence: A security risk may exist when an individual's immediate family, including cohabitants,

or other persons to whom he 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, ¶ 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.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." Directive, ¶ E2.2.1. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. *Id.* An administrative judge should consider the following factors: (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. *Id.*

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. Directive, ¶ E3.1.14. Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. Directive, ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2.

The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. Exec. Ord. 10865, § 7. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

CONCLUSIONS

I considered carefully all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

The Government's evidence and Applicant's admissions constitute substantial evidence of a potentially disqualifying condition under Guideline B of the Directive. Paragraph E2.A2.1.2.1 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. The evidence indicates that Applicant's mother and two brothers are residents of the P.R.C., and Applicant's sister is a citizen of the P.R.C.

These circumstances "could create the potential for foreign influence that could result in the compromise of classified information." Directive, ¶ E2.A2.1.1. 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 it 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).

These security concerns raised by Applicant's relatives who are citizens or residents of the P.R.C. may be mitigated 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." Directive, ¶ E2.A2.1.3.1. In this case, Applicant's mother, brothers and sister are not "agents of a foreign power." See 50 U.S.C.A. § 1801(b).

In assessing whether relatives are vulnerable to exploitation, it is helpful to consider several factors, including the character of the government of the relevant foreign country. The People's Republic of China is an authoritarian state controlled by the Chinese Communist Party. Ex. 3 at 1. It has a poor record of protecting human rights. *Id.* The real possibility exists that the government of the P.R.C. would attempt to exploit or pressure its residents to act adversely to the interests of the United States.

It is important to consider also the vulnerability to duress of Applicant's relatives in the P.R.C. Applicant's mother is 76 years old and Applicant is concerned about her health. She has some private funds but relies on her sons for support. Under these circumstances, Applicant's mother is vulnerable to governmental pressure or duress. Applicant's brothers are not and have never been employed by the government or the military, nor do they rely upon a government pension. Her brothers own and operate their own businesses and seem to be more financially sufficient. Her brothers may also be vulnerable to governmental pressure, although to a lesser extent. Finally, Applicant's sister is a citizen of the P.R.C., but lives in the United States. Under the circumstances, she is less vulnerable to coercion or pressure from the government of the P.R.C.

Another significant factor is Applicant's vulnerability to pressure or duress applied indirectly through her ties with her relatives. Applicant has strong familial and emotional ties to her mother in the P.R.C. Although she does not have frequent or regular contact with her brothers, I find some ties of familial obligation exist. Applicant has some ties to the United States. She has lived here since 1989, has been a citizen since 1995, and has worked for her present employer for several years. All her financial interests are in the United States.

Determining suitability for a security clearance requires a predictive judgment—it is an attempt to determine who might pose a security risk at some future time, based on certain established guidelines. As noted above, the decision to deny an individual a security clearance is not a judgment about an applicant's loyalty. Exec. Or. 10865 § 7. It is merely a determination that the applicant has not met the strict guidelines set out by the President.

I have balanced all the factual circumstances and applied them to the adjudicative criteria established in the Directive. I considered the likelihood that the government of the P.R.C. would exploit Applicant's relatives, their vulnerability to pressure, coercion, or duress, and Applicant's ties of affection or obligation to her relatives and to the United States. Although the circumstances are not of Applicant's making, I find this situation creates the potential for foreign influence that could result in the compromise of classified information. I conclude the mitigating condition set out in ¶ E2.A2.1.3.1 of the Directive does not apply. Applicant has not mitigated the security concerns arising from her family ties to relatives who are citizens or residents of the P.R.C.

Paragraph 1.c of the SOR also alleges Applicant maintains regular contact with friends who are citizens and residents of the P.R.C. Although Applicant had one such friend at the time she submitted her security clearance application, Applicant broke off that relationship so it no longer poses a security concern.

FORMAL FINDINGS

My conclusions as to each allegation in the SOR are:

Paragraph 1, Guideline B: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: Against Applicant

DECISION

In light of all of 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 Applicant. Clearance is denied.

Michael J. Breslin

Administrative Judge