

KEYWORD: Foreign Influence

DIGEST: Applicant has failed to meet her burden of demonstrating that her parents and parents-in-law, who are citizens and residents of China, are not in a position to be exploited by a foreign power. She and her husband maintain weekly contact with both her parents and parents-in-law. Both Applicant's parents and parents-in-law receive pensions from the Chinese government. They have visited Applicant and her husband on more than one occasion pursuant to visas authorized by the Chinese government. Applicant and her husband have also traveled to China to visit them. Clearance is denied.

CASENO: 02-23885.h1

DATE: 08/12/2004

DATE: August 12, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-23885

DECISION OF ADMINISTRATIVE JUDGE

ROGER E. WILLMETH

APPEARANCES

FOR GOVERNMENT

Stephanie C. Hess, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has failed to meet her burden of demonstrating that her parents and parents-in-law, who are citizens and residents of China, are not in a position to be exploited by a foreign power. She and her husband maintain weekly contact with both her parents and parents-in-law. Both Applicant's parents and parents-in-law receive pensions from the Chinese government. They have visited Applicant and her husband on more than one occasion pursuant to visas authorized by the Chinese government. Applicant and her husband have also traveled to China to visit them. Clearance is denied.

STATEMENT OF THE CASE

On August 11, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to the applicable Executive Order [\(1\)](#) and Department of Defense Directive, [\(2\)](#) issued a Statement Reasons (SOR) to Applicant. The SOR details security concerns under Guideline B (Foreign Influence). The SOR states that DOHA was unable to find that it is clearly consistent with the national interest to grant her access to classified information and recommends that her case be submitted to an Administrative Judge.

On August 26, 2003, Applicant answered the SOR and requested a hearing. The case was assigned to me on January 30, 2004. A notice of hearing was issued on February 20, 2004 and the hearing was held on March 3, 2004. During the hearing, two Government exhibits (Govt Ex), two Applicant exhibits (Ap Ex), and the testimony of three Applicant witnesses, including Applicant, were received. The transcript (Tr) was received on March 9, 2004.

FINDINGS OF FACT

Having thoroughly considered the evidence in the record, I make the following findings of fact:

Applicant is a 39-year-old senior software engineer who is employed by a government contractor. She was born in the People's Republic of China (China). Applicant received an undergraduate degree in engineering and was employed by the China Textile Institute, a governmental organization, from 1988-1990 (SOR ¶ 1.g).

Applicant married a software engineer, a citizen and resident of China, and they relocated to the United States in 1990 because her husband's employment. They have two children, both of whom were born in the United States. Applicant received further education in the United States in English, finance, and information technology, before obtaining her current position. Her husband became a citizen of the United States in 1999 and she became a U.S. citizen in June 2000.

On February 5, 2002, Applicant submitted a security clearance application (SF 86). Following an interview with a Defense security Service (DSS) special agent, Applicant renounced her Chinese citizenship and surrendered her Chinese passport. On May 30, 2002, Applicant provided a sworn statement to the same DSS special agent in which she said: "if I come across something that might hurt my family simply because of their geographical location, I would consider making up a story to get them away from that location as to prevent any harm from coming to them" (SOR ¶ 1.h).

In 1994, Applicant returned to China with her daughter for a three month visit with family and friends. In 2001, she returned there with her husband and children for a three week visit that included a three day trip to Tokyo (SOR ¶ 1.f).

Applicants parents are citizens and residents of China. They are both in their seventies and are retired. Applicant's father was a professor and her mother was an engineer. Both worked for the government and receive pensions. Applicant is their only child and maintains weekly contact with them by telephone. They visited her for approximately six months in 1996-97 and for approximately one year in 1999-2000 (SOR ¶ 1.a).

Applicants parents-in-law are citizens and residents of China. They are both retired and receive pensions from their jobs with the government. Applicant and her husband maintain weekly contact with them by telephone. Her parents-in-law visited them for approximately six months in 1995 and for approximately one year in 1998 (SOR ¶ 1.b).

Applicant has a cousin who is a citizen and resident of China and works for the Chinese Treasury Department. She sees her cousin once a year during the cousin's annual business trip to the United States. Applicant's cousin lived in the

United States in 1996-1999 while working for the World Bank. Applicant had monthly contact with her cousin's husband, a Chinese citizen, when he worked in the United States in 2001-2002 (SOR ¶ 1.d).

Applicant has relatives and friends who are citizens and residents of China with whom she generally maintains contact no more than once a year (SOR ¶ 1.c). She has other relatives and friends who are citizens of China, Taiwan, or Canada and who currently reside in the United States. She maintains contact with them every few months (SOR ¶ 1.e).

The People's Republic of China is a totalitarian communist regime whose interests are inimical to those of the United States. China has conducted extensive political, military, and economic espionage against the United States.

POLICIES

Department Counsel is responsible for presenting witnesses and other evidence to establish facts alleged in the SOR that have been controverted. Directive E3.1.14. The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision. Directive E3.1.15.

Eligibility for access to classified information is predicated upon an individual meeting adjudicative guidelines discussed in Enclosure 2 of the Directive. An evaluation of whether an applicant meets these guidelines includes the consideration of a number of variables known as the "whole person concept." Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a decision. This assessment should include 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. Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of national security. Directive E2.2.2.

Enclosure 2 provides conditions for each guideline that could raise a concern and may be disqualifying, as well as further conditions that could mitigate a concern and support granting a clearance. The following guideline is applicable to this case:

Guideline B: Foreign Influence

A security risk may exist when an individual's immediate family, including co-habitants, 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.

Conditions that could raise a security concern and may be disqualifying include 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 (Disqualifying Condition 1).

They also include E2.A2.1.2.3, relatives, co-habitants, or associates who are connected with any foreign government (Disqualifying Condition 3).

Conditions that could mitigate security concerns include E2.A2.1.3.1, a determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters) co-habitant, 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 (Mitigating Condition 1). They also include E2.A2.1.3.3, contact and correspondence with foreign citizens are casual and infrequent (Mitigating Condition 3).

CONCLUSIONS

Given the pervasive role of the government in China, Applicant's relatives and friends who are citizens and residents of China may include those who are connected to the government. This raises Disqualifying Condition 3. However, Applicant's contact with these persons is generally no more than once a year and is therefore mitigated in accordance with Mitigating Condition 3. Therefore, I find in favor of Applicant with regard to SOR ¶ 1.c.

Applicant's contact with relatives and friends, who are citizens of China, Taiwan, or Canada and currently reside in the United States, is generally more often than once a year. However, it is still casual and infrequent in accordance with Mitigating Condition 3. Therefore, I find in favor of Applicant with regard to SOR ¶ 1.e.

Applicant's employment by the China Textile Institute occurred before she came to the United States and became a U.S. citizen. The record fails to establish a disqualifying condition with respect to that employment. The same is true with respect to her statement to a DSS special agent (SOR ¶ 1.h). Therefore, I find in favor of Applicant with regard to SOR ¶ 1.g and h.

Applicant's parents and parent-in-law, with whom she maintains close ties, are both citizens and residents of China. All of them live on pensions provided by the Chinese government, a government that has abused its own citizens and that is engaged in espionage against the United States. This establishes Disqualifying Condition 1.

Although the record does not indicate that any of them are agents of a foreign power, it fails to demonstrate that they are not in a position to be exploited by a foreign power. To the contrary, Applicant's parents and parents-in-law are reliant upon retirement income from the Chinese government. They have visited Applicant and her husband on more than one occasion pursuant to visas authorized by the Chinese government. Applicant and her husband have also traveled to China to visit them. Such exposure could leave them vulnerable to exploitation by a foreign power which has not been hesitant to treat its citizens harshly in order to further its own ends.

Applicant relies on decisions of Administrative Judges in other ISCR cases in support of her application. Although such decisions may be cited as persuasive authority, they are not legally binding on an Administrative Judge in another case. ISCR Case No. 98-0761 (December 27, 1999) at p. 4. Security clearance adjudications are individualized determinations where the Administrative Judge is duty bound to apply the law as represented by the Adjudicative Guidelines to the facts of the particular case in keeping with the "whole person" concept. ISCR Case No. 01-20700 (December 19, 2002) at p. 5.

Although there is no basis in the record to question Applicant's character and integrity, the DOHA Appeal Board has recognized that "an applicant with good character and personal integrity can pose a security risk because the applicant has close relatives in a country hostile to the United States." ISCR Case No. 01-26893 (October 16, 2002) at p. 8. Family ties in a foreign country raise a prima facie security concern that requires the applicant "to present evidence of rebuttal, extenuation or mitigation sufficient to meet the burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance." ISCR Case No. 99-0532 (February 27, 2001) at p. 6. This is especially critical given the espionage effort against the United States in which the People's Republic of China is engaged and the threat to the national interest of the United States that it represents. Applicant has failed to meet her burden of persuasion in this case. Therefore, I find against Applicant with regard to SOR ¶ 1.a and b.

Applicant's relationship with a cousin, who is employed by the Chinese government, raises Disqualifying Condition 3. It also appears more than casual because of Applicant's direct contact with her every year. Her returns visits to China make her more vulnerable to coercion, exploitation, or pressure by the Chinese government and raise Disqualifying Condition 6. The record fails to mitigate these concerns. At best it leaves doubt that must be resolved against Applicant in accordance with E2.2.2. of the Directive. Therefore, I find against Applicant with regard to SOR ¶ 1.d and f.

FORMAL FINDINGS

Formal findings, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

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

Subparagraph 1.e: For Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: For Applicant

Subparagraph 1.h: For Applicant

DECISION

In light of all the evidence in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Signed

Roger E. Willmeth

Administrative Judge

1. Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified.