

KEYWORD: Foreign Influence

DIGEST: Applicant married a woman whose mother and siblings are citizens and residents of China, a country that is ruled by an authoritarian government with a poor record of human rights. Clearance is denied.

CASENO: 02-24752.h1

DATE: 02/23/2006

DATE: February 23, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-24752

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL H. LEONARD

APPEARANCES

FOR GOVERNMENT

Stephanie C. Hess, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant married a woman whose mother and siblings are citizens and residents of China, a country that is ruled by an authoritarian government with a poor record of human rights. Clearance is denied.

STATEMENT OF THE CASE

On August 18, 2004, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating the reasons why DOHA proposed to deny or revoke a security clearance for Applicant. [\(U\)](#) The SOR, which is in essence the administrative complaint, alleged a security concern under Guideline B for foreign influence based primarily on Applicant's marriage to a woman who is a native of China. Applicant replied to the SOR on August 24, 2004, and requested a hearing. The case was assigned to another administrative judge on April 22, 2005, and it was reassigned to me June 20, 2005. A notice of hearing was issued scheduling the hearing for August 2, 2005. Applicant appeared without counsel and the hearing took place as scheduled. The record was left open to allow Applicant to submit additional documentary evidence. Those post-hearing exhibits were timely received and admitted, without objections, as Exhibits D and E. DOHA received the transcript on August 17, 2005.

FINDINGS OF FACT

In his Answer to the SOR, admitted the allegations in subparagraphs 1.a, 1.b, and 1.c, and he denied the allegation in subparagraph 1.d. In addition, he provided a brief explanation to each allegation. Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the record, I make the following findings of fact:

Applicant is a 46-year-old married man and a native-born U.S. citizen. He has a bachelor's degree in computer information systems/computer networking and is now pursuing a master's degree. He is seeking a security clearance for his job as a network administrator for a company that engages in defense contracting. Also, his background includes about 10 years of military service, both active duty and reserve.

Applicant is married to a 40-year-old woman who is a native of the People's Republic of China (PRC or China). He met her in about March 2000 via an Internet dating service. They became acquainted by exchanging email on a daily basis. In about May 2000, Applicant and his future bride began calling each other. Applicant then decided to travel to China so he could meet her, and he made his first trip to China in about June 2000, staying for about two weeks. He made his second trip to China during December 2000 - January 2001. During this trip, Applicant decided he wanted to marry, and the couple married on January 10, 2001, in China.

Thereafter, the necessary immigration-related paperwork was completed and processed to allow Applicant's wife to immigrate to the U.S. She arrived here during 2001, and the couple married in a state civil ceremony on August 2, 2001. She became a permanent resident of the U.S. in September 2002, and she intends to become a U.S. citizen as soon as she is able.

Applicant's wife is a graduate of a Chinese university where she studied music. Before immigrating to the U.S., she worked in the family's small business. She now teaches piano lessons to a few students on a part-time basis (Exhibit A). Her focus and the vast majority of her time and energy are spent taking care of and raising the couple's two young children who are both native-born U.S. citizens. According to Applicant, his wife had no interest in politics when she was living in China and her attitude has not changed since immigrating to the U.S. Applicant and his wife purchased a home in October 2004 (Exhibit C), and their main goal is to raise their son and daughter to the best of their abilities (Transcript at 58).

Applicant's wife has family members who are citizens and residents of China. Her father passed away when she was about 12 years old. Her mother is a 74-year-old retired homemaker. Applicant's wife has two brothers and three sisters in China. Both brothers are involved in the family business as well as one sister. The other two sisters are housewives, and there is also a sister-in-law who is a housewife. In addition to the siblings, Applicant's wife has a 30-year-old niece who is an employee of a shipping company.

Applicant's contact with his wife's family members in China has been limited. On two occasions he had dinner with the family when he was in China. Other than that, he may speak a few words of Chinese to his wife's mother or another family member during a telephone call. His wife remains in contact with her family in China via the telephone. When she first arrived in the U.S. in 2001, she called her family (usually her mother) on a weekly basis. Over time, the frequency decreased and she now speaks with her mother by telephone on a regular basis ranging from every two to three weeks to once per month or so. Her contact with her siblings is limited, but she stays in periodic contact with her niece.

Other than the two trips to China mentioned above, Applicant has not traveled to China. Before he made either trip to China, Applicant sought and received a security briefing from the military reserve unit he belonged to at the time. Applicant did not experience any problems with Chinese authorities during either trip. Applicant and his wife plan on traveling to China for the 2008 Summer Olympics.

A former supervisor testified and provided favorable character evidence on Applicant's behalf. In summary, the supervisor has not seen anything in Applicant's character or lifestyle that would cause him to think Applicant could not be trusted with a security clearance. Exhibit E consists of two letters from people who currently work with Applicant. Both letters are highly favorable, and express the opinion that Applicant is an honorable, ethical, and loyal employee and person who earned their trust and respect.

As requested by Department Counsel, I took administrative or official notice of certain matters about China and the nature of its government (Exhibits 4, 5, 6, 7, 8, 9, and 10).

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's security-clearance eligibility, including disqualifying conditions (DC) and mitigating conditions (MC) for each applicable guideline. In addition, each clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, and the factors listed in ¶ 6.3.1. through ¶ 6.3.6. of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

BURDEN OF PROOF

The only purpose of a security-clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽²⁾ There is no presumption in favor of granting or continuing access to classified information.⁽³⁾ The government has the burden of proving controverted facts.⁽⁴⁾ The U.S. Supreme Court has said the burden of proof in a security-clearance case is less than the preponderance of the evidence.⁽⁵⁾ The DOHA Appeal Board has followed the Court's reasoning on this issue establishing a substantial-evidence standard.⁽⁶⁾

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"Substantial evidence is more than a scintilla, but less than a preponderance of the evidence." Once the government meets its burden, an applicant has the burden of presenting evidence of refutation, extenuation, or mitigation sufficient to overcome the case against him.⁽⁸⁾ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁹⁾

As noted by the Court in *Egan*, "it should be obvious that no one has a 'right' to a security clearance," and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹⁰⁾ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

CONCLUSIONS

Under Guideline B for foreign influence,⁽¹¹⁾ a security concern 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 U.S. or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. In foreign influence cases, it is also appropriate to consider the significance of an applicant's spouse's ties to a foreign country.⁽¹²⁾ It is presumed an applicant has ties of affection for, or obligation to, his spouse's immediate family members.⁽¹³⁾

Here, based on the record evidence as a whole, the government established its case under Guideline B. Applicant's wife has several immediate family members who are citizens and residents of China. It also appears she has close ties of affection or obligation to both her mother and niece, but less for her siblings. Although this is all perfectly normal, it places Applicant in the position of having presumed ties of affection or obligation to his wife's family members in China. These circumstances raise a security concern under DC 1.⁽¹⁴⁾

I reviewed the mitigating conditions under Guideline B and conclude that only MC 5⁽¹⁵⁾ applies. Applicant receives some credit in mitigation under MC 5 because neither he nor his wife has business or financial interests in China. The remaining MC do not apply. In particular, I gave consideration to MC 1,⁽¹⁶⁾ but it does not apply. It does appear that the Chinese family members are not agents of the Chinese government or any other foreign power.⁽¹⁷⁾ But that does not end the analysis, as Applicant must show the family members in China are not in position to be exploited.

In deciding if an applicant has met the second prong of MC 1, it is proper to consider how the foreign country at issue is governed. The focus is not the country or its people, but its rulers and the nature of the government they impose. This

approach recognizes it is nonsensical to treat North Korea as if it were Norway. Here, we know the following about the PRC: (1) China is an authoritarian state in which the Chinese Communist Party is the paramount source of power (Exhibit 9); (2) China has various methods by which it attempts to acquire U.S. technology for military purposes (Exhibit 7); and (3) China's record of human rights, according to a 2004 report from the U.S. State Department, remains poor and the government continues to commit numerous and serious abuses (Exhibit 9). Given these circumstances, which are beyond Applicant's control, the family members in China are in a position where there is a potential for them to be exploited in a way that could force Applicant to choose between loyalty to his wife's family and the interests of the U.S. Accordingly, Applicant is unable to successfully mitigate this security concern, and Guideline B is decided against him.

Although I decided this case against Applicant, this decision should not be construed as an indictment of his loyalty and patriotism to the U.S., as those matters are not at issue. Instead, the clearly-consistent standard requires I resolve any doubt against Applicant, and his ties to China, an authoritarian state with a poor record of human rights, creates such doubt. To conclude, Applicant failed to meet his ultimate burden of persuasion to obtain a favorable clearance decision. In reaching my decision, I considered the record evidence as a whole, the whole-person concept, the clearly-consistent standard, and the appropriate factors and guidelines in the Directive.

FORMAL FINDINGS

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

SOR ¶ 1-Guideline B: Against Applicant

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against 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 Applicant. Clearance is denied.

Michael H. Leonard

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
3. ISCR Case No. 02-18663 (March 23, 2004) at p. 5.
4. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
5. *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).
6. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
7. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
8. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
9. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.
10. *Egan*, 484 U.S. at 528, 531.
11. Directive, Enclosure 2, Attachment 2.
12. ISCR Case No. 01-02452 (November 21, 2002) at p. 8.
13. ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at *8 (February 20, 2002).
14. 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.
15. E2.A2.1.3.5. Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.
16. E2.A2.1.3.1. 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.
17. 50 U.S.C. § 1801(b) defines the term "agent of a foreign power."