

KEYWORD: Foreign Influence

DIGEST: Applicant who immigrated from the PRC in 1980 and has immediate family members who are citizens and residents of the PRC, fails to mitigate security risks associated with the Government's foreign influence concerns over immediate family members in a country with a very limited history of respect for human rights and the rule of law. Clearance is denied.

CASENO: 03-21931.h1

DATE: 08/31/2004

DATE: August 31, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-21931

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Stephanie C. Hess, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant immigrated to the U.S. in 1980 from the Peoples Republic of China (PRC) and has immediate family members who are citizens/residents of the PRC and an extended family member who is a PRC citizen residing in the U.S. He fails to mitigate security risks associated with foreign influence concerns over the status of his family members connected to a country without any history of respect for human rights and the rule of law, and which has a reputation for targeting the U.S. for information gathering and acquiring advanced technologies. Clearance is denied.

STATEMENT OF THE CASE

On February 23, 2004, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance, and recommended referral to an administrative judge for determination whether clearance should be granted or continued.

Applicant responded to the SOR on February 27, 2004, and elected to have his case decided on the basis of the written record. Applicant was furnished the File of Relevant Material (FORM) on April 6, 2004, and received it on April 9, 2004. Applicant timely responded to the FORM within the 30 days provided him. The case was assigned to me February 11, 2004.

SUMMARY OF PLEADINGS

Under Guideline B, Applicant is alleged to (a) have parents who are citizens and residents of the PRC who he visits, (b)

a sister and brother who are citizens and residents of the PRC and (c) a father-in-law who is a citizen of the PRC currently residing in the United States. For his answer to the SOR, Applicant admitted each of the allegations without explanation.

FINDINGS OF FACT

Applicant is a 47-year-old senior system engineer who seeks a security clearance. The allegations covered in the SOR and admitted to by Applicant are incorporated herein by reference and adopted as relevant and material findings. Additional findings follow.

Applicant immigrated to the U.S. in 1980 in search of a better life and married his current spouse in 1984. Both he and his wife became naturalized U.S. citizens in 1994. They have two children who are U.S. citizens by birth.

Applicant's parents and siblings (sister and brother) remain citizens and residents of the PRC. Applicant maintains regular contact with them and visits them annually in the company of his spouse. Between 1994 and 2002, he traveled to the PRC on nine separate occasions to visit his family. His father-in-law currently resides in the US and has applied for US citizenship.

While not a country acclaimed to be hostile to U.S. persons and interests, the PRC maintains a relationship that is more competitive than cooperative. The PRC is known to use its intelligence services to gather information about the U.S. and to obtain advanced technologies. The PRC actively monitors international communications satellites from maintained intercept facilities, in addition to collecting information on U.S. military operations and exercises. Examples of PRC economic espionage are cited in an Annual Report to Congress in 2000 (official notice taken). Most of the examples of illegally exported technology to the PRC involved high tech equipment and devices used in missile and aircraft guidance systems, highly sensitive weapons parts, infrared cameras and missile microchips.

Established in 1949, the PRC with over 1.3 billion people is the world's most populous country. Today it continues to undergo rapid economic and social change. Political power, however, remains centralized in the Chinese Communist Party with little indication of any change in the foreseeable future. As a corollary of its authoritarian roots, the PRC has never been known for a positive human rights record among Western nations and international human rights groups. Part of this can be explained in terms of the PRC's lack of any cognizable tradition for respect for developing democracies and the rule of law.

Examples of human rights abuses are many in the Consular Information Sheet produced by the U.S. State Department (official notice taken). PRC security personnel, for example, are known to place foreign government officials, journalists, and business people with access to advance proprietary technology under surveillance. Hotel rooms and personal computing devices for these categories are sometimes searched.

Besides its poor human rights record, the PRC is reputed to sanction forced child labor, coercive abortions and sterilizations in the country's family planning programs. Labor unrest has sparked in the country as a result of the government's economic reforms and increased emphasis on productivity improvement in its state-owned enterprises. Continuing US-PRC disputes over Taiwan, Hong Kong and Tibet undermine improvements in US-China military relations. And PRC sponsored espionage aimed at U.S. military and economic interests increase the need for heavy security monitoring over sensitive U.S. industries. *See Issue Brief for Congress: China-U.S. Relations* (November 2002) (official notice taken).

POLICIES

The Adjudicative Guidelines of the Directive (Change 4) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Foreign Influence

The Concern: 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 are 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.

Disqualifying Conditions:

DC 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.

Mitigating Conditions:

MC 1: A determination that the immediate family members, co-habitant or associate 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 persons involved and the United States.

Burden of Proof

By virtue of the precepts framed by the Directive, a decision to grant or continue an Applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the SOR and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of proof shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

CONCLUSIONS

Applicant is an emigre from the PRC who became a naturalized U.S. citizen in 1994. His wife, who also immigrated from the PRC, became a naturalized U.S. citizen, resides with him and their two children in the U.S. While his father-in-law currently resides in the U.S., he has applied for U.S. citizenship (still pending). By contrast, Applicant's parents and siblings are citizens and residents of the PRC, a country known to engage in economic data collection in the U.S., and are in regular contact with Applicant and his spouse. Altogether, Applicant has visited his immediate family members in the PRC annually since 1994 and maintains regular contact with them. Security issues of concern to the Government center on (1) Applicant's status as a prior PRC citizen and resident, and (2) the current status of Applicant's parents and siblings as citizens and residents of the PRC, with whom he maintains regular contact, and (3) the status of Applicant's father-in-law, a citizen of the PRC and resident of the U.S..

Government urges security concerns over risks that Applicant's father-in-law (still a PRC citizen who resides in the U.S. and has applied for U.S. citizenship) and parents and siblings who are PRC citizens and residents might be subject to undue foreign influence by PRC authorities to access classified information in Applicant's possession or control. Because Applicant's immediate family members reside in the PRC, they present potential security risks covered by Disqualifying Condition (DC) 1 (immediate family members in a foreign country) of the Adjudication Guidelines for foreign influence. The citizenship/residence status of these relatives in the PRC pose some potential concerns for Applicant because of the risks of undue foreign influence that could compromise classified information under Applicant's possession and/or control. The Government's concerns have merit.

From what is known from the accounts of Applicant, neither his father-in-law who resides in the U.S. nor his parents and siblings who reside in the PRC have any financial or political affiliations with the PRC's government. Too little is known about Applicant's U.S. residing father-in-law or immediate family members residing in the PRC, however, to fully discern what foreign pressures or influence they might be vulnerable to at this time.

What is known about the PRC is that it is a country that historically has targeted the U.S. for economic and proprietary data collection, and one that lacks any demonstrated positive history of human rights and respect for the rule of law.

While the PRC has shown interest in bilateral cooperative efforts with the U.S. in efforts to combat terrorism and aid in the suppression of nuclear arms threats in the region, it remains a country in considerable flux amidst widespread controversies over forced child labor, family planning, labor unrest, sovereignty issues over Taiwan, Hong Kong and Tibet and PRC sponsored espionage aimed at U.S. military and economic interests. Human rights abuses and intensified campaigns against religious beliefs by PRC officials remain contentious issues between the U.S. and the PRC as well.

Because of the citizen/residence status of Applicant's immediate family members in the PRC and the U.S., respectively, and the lack of any documented information about their PRC government connections (if any) and situations, the potential for vulnerability of these family members remains a risk. The risk of a hostage situation is not an acceptable one in this case, and Applicant may not take advantage of any of the mitigation benefits available MC 1 (presence of immediate family in host country poses no unacceptable security risk) of the Guidelines. Overall, any potential security concerns attributable to Applicant's having family members who are citizens/residents and/or citizen of the PRC are insufficiently mitigated to permit safe predictive judgments about Applicant's ability to withstand risks of exploitation and pressure attributable to his immediate familial relationships in the PRC and the U.S. Unfavorable conclusions warrant with respect to the allegations covered by Guideline B.

In reaching my decision, I have considered the evidence as a whole, including each of the factors and conditions enumerated in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive.

FORMAL FINDINGS

In reviewing the allegations of the SOR in the context of the FINDINGS OF FACT, CONCLUSIONS and the FACTORS and CONDITIONS listed above, this Administrative Judge makes the following separate FORMAL FINDINGS with respect to Appellant's eligibility for a security clearance:

CRITERION B: (FOREIGN INFLUENCE): AGAINST APPLICANT

Sub-para. 1.a AGAINST APPLICANT

Sub-para. 1.b AGAINST APPLICANT

Sub-para 1.c 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 Applicant's security clearance.

Roger C. Wesley

Administrative Judge