

KEYWORD: Foreign Influence

DIGEST: Applicant is a United States citizen and a software test engineer for a defense contractor. His wife, who he married in 2000, is a permanent resident alien (green card) of the United States from China working on her United States citizenship. Applicant's wife's parents are retired doctors and her brother a cook who are citizens of and reside in China They do not speak English, just Cantonese. Applicant has not met his in-laws and has not spoken to them because of the language difficulty. Applicant's wife speaks to her parents about every other month. There is very limited contact between Applicant's wife and her Chinese friends both in China and the United States. Clearance is granted.

CASENO: 03-22424.h1

DATE: 01/11/2005

DATE: January 11, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-22424

DECISION OF ADMINISTRATIVE JUDGE

THOMAS M. CREAN

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a United States citizen and a software test engineer for a defense contractor. His wife, who he married in 2000, is a permanent resident alien (green card) of the United States from China working on her United States citizenship. Applicant's wife's parents are retired doctors and her brother a cook who are citizens of and reside in China. They do not speak English, just Cantonese. Applicant has not met his in-laws and has not spoken to them because of the language difficulty. Applicant's wife speaks to her parents about every other month. There is very limited contact between Applicant's wife and her Chinese friends both in China and the United States. Clearance is granted.

STATEMENT OF THE CASE

On October 12, 2004, the Defense Office of Hearing and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to not grant a security clearance to Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb 20, 1990), 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 (Directive). Applicant acknowledged receipt of the SOR on October 19, 2004. The SOR alleges security concerns under Guideline B (Foreign Influence) of the Directive.

Applicant answered the SOR in writing on October 21, 2004. He admitted all of the allegations, except one, under Guideline B. He requested a hearing before an administrative judge. The request for a hearing was received by DOHA on October 25, 2004. Department Counsel was prepared to proceed with the case on November 10, 2004, and the case was assigned to me on November 12, 2004. A notice of hearing was issued on November 16, 2004. The hearing was held on December 20, 2004. Six government exhibits and the testimony of the Applicant and one witness were received during the hearing. The transcript was received on December 29, 2004.

FINDINGS OF FACT

Applicant is a 44-year-old software test engineer for a defense contractor. Applicant is a United States citizen born in Korea when his father served there in the United States Army. He was educated in the United States. Applicant had a security clearance while serving on active duty in the United States Army.

Applicant married his wife in 2000 and they have two young children. His wife was born and raised in China and came to the United States in 1996 on a student visa. She received her master's degree from a U.S. university and started working for a computer business. She is a permanent resident alien and is working to become a naturalized U.S. citizen. Her father and mother are both in their seventies and retired doctors in China. Her parents are in poor health and her father has mental problems attributable to old age. Her brother is also in China but is not a university graduate and employed as a cook. She has a sister who lives in and is a citizen of Canada. No one in her family works for the Chinese government.

Applicant's wife talks to her parents and her Canadian sister about every two months. She talks to her brother infrequently. She also occasionally calls an uncle in China, who is a doctor, to inquire about her father's health. She is not close with her sister and only visited her once in Canada. Applicant does not talk to his wife's parents, brother, or sister, as they do not speak English, only Cantonese. Applicant does not speak Cantonese. He tried to speak to his in-laws once but he was unsuccessful. Applicant has never been to China and his wife has not returned to China since her arrival in the United States. Applicant and his wife do not intend to travel to China in the foreseeable future. Applicant's wife does not even think she will visit China on the death of her parents.

Applicant's wife has some Chinese friends that she meet while a student in the United States. They all reside in the United States. Applicant and his wife have little contact with his wife's Chinese friends. Applicant's wife talked to a friend from China when the friend was on a visit to the United States. She has friends in China but does not communicate with them.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander-in-Chief, the President has "the authority to ... control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position ... that will give that person access to such information." *Id.* At 527. The President has restricted eligibility for access to classified information 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 judgement, 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." Exec. Or. 12968, *Access to Classified Information* § 3.1 (b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶¶ 6.3.1 through ¶¶ 6.3.6

"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: (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 applicant'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 of recurrence. Directive ¶¶ E2.2.1.1 through E2.2.1.9.

The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* 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). "[S]ecurity clearance determination should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

CONCLUSIONS

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

Under Guideline B (Foreign Influence), a security concern exists when an individual has contacts with citizens of other countries or financial interest in other countries that make an individual vulnerable to coercion, exploitation, or pressure. Directive ¶ E2.A2.1.1. Applicant's in-laws and his wife's friends bring this matter under Foreign Influence Disqualifying Condition 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*). Immediate family members are *father, mother, sons, daughters, brothers, sisters*. Directive E2.A2.1.3.1. Applicant's in-laws are not his immediate family members. There is a reputable presumption, however, that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse. ISCR Case No. 01-03120 at 8 (App. Bd. Feb 20, 2002). It is reasonable to consider the significance of Applicant's wife's ties to her family in China and the possible effects on Applicant's conduct under Guideline B. ISCR Case No. 01-02452 at 8 (App. Bd. Nov. 21, 2002). Applicant has never met his in-laws and does not speak with them so he does not have close ties of affection or obligation to them. Applicant's wife does have close ties of affection or obligation to her parents that are attributable to Applicant. She talks to them every two months and does inquire about their health. She does not have close ties with her brother in China or her sister in Canada. She also does not have close ties of affection or obligation with her Chinese friends who reside either in the United States or in China. I conclude the Foreign Influence Disqualifying Condition has been established only as to Applicant's wife's parents in China.

The Foreign Influence Mitigating Conditions that may apply are Directive E2.A2.1.3.1. (*a determination that the immediate family members(s),...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*); and Directive E2.A2.1.3.3. (*contact and correspondence with foreign citizens are casual and infrequent*). Applicant's in-laws are elderly and in poor health, do not work for a foreign government, and are not in a position to be exploited in such a way as to force Applicant to choose between loyalty to his wife's parents and the United States. Applicant has no contact with his in-laws and his wife has only infrequent and casual contacts with her parents. Her ties to them are so limited that she does not think she will even return to China for their funerals. I conclude Applicant has mitigated the Foreign Influence Disqualifying Condition.

I carefully considered all of the circumstances in light of the "whole person" concept. I conclude Applicant is eligible for access to classified information.

FORMAL FINDINGS

Formal findings For and Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Thomas M. Crean

Administrative Judge

