

KEYWORD: Foreign Influence

DIGEST: Applicant's foreign family ties have been mitigated and do not raise a security concern. Clearance is granted.

CASENO: 03-22855.h1

DATE: 06/23/2005

DATE: June 22, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-22855

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Department Counsel

FOR APPLICANT

Phillip Carter, Attorney At Law

McKenna, Long & Aldridge

SYNOPSIS

Applicant's foreign family ties have been mitigated and do not raise a security concern. Clearance is granted.

STATEMENT OF THE CASE

On August 27, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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 for the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on September 20, 2004, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on November 23, 2004. A notice of hearing was issued on December 21, 2004, scheduling the hearing for January 20, 2005. At the hearing the Government presented three exhibits. The Applicant presented nineteen exhibits and he testified on his own behalf. The official transcript (Tr.) was received on February 8, 2005.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the exhibits and the testimony. The Applicant is 47 years of age. He holds a bachelors Degree in Computer Science. He is employed as a Software Engineer for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant was born in the United States. He grew up, obtained his college and advanced degrees, worked in the defense industry for several years and held a security clearance. In the spring of 1999, he met his wife, who at that time was a citizen of the People's Republic of China. She was obtaining her Master's Degree in and was in the process of getting her residence in the United States. They were married in April 2000. She became a United States citizen in July 2004, at which time she renounced her Chinese citizenship. She also returned her Chinese passport to the Chinese Consulate. (*See Applicant's Exhibit D*). She now only possesses a United States passport. She is in the retail sales business.

The Applicant's step-mother-in-law, father-in-law, and two brothers-in-law are citizens of the People's Republic of China and reside in China. The Applicant's father-in-law was a doctor. He is semi-retired and works in a hospital in China now. The Applicant's step-mother-in-law recently retired from her work at a commercial bank. The Applicant's wife's natural mother was also a doctor but passed away in 1993. One of the Applicant's step-brothers works in the construction business, the other is a stock broker. The Applicant's spouse has more distant relatives in Northern China that she has visited once or twice but she is not close to them. None of the Applicant's spouse's family in China has ever worked for or is or has been affiliated with the Chinese Government nor have they ever been member of the Communist Party. The Applicant is aware of no one that his wife is associated with in China who has ever worked for the Government of China. Because of her work in the retail business, the Applicant's wife travels to Hong Kong about once a year to purchase fashion accessories.

The Applicant and his wife speak to their relatives in China on average about once a month or so. Because of the language barrier, the Applicant has minimal conversation with them. They do not correspond in writing or by e-mail. The Applicant's wife is close to her father but not close to any of her other relatives in China.

The Applicant traveled to the People's Republic of China in January 1999 for business and December 2002 for pleasure. During his trips he had no contact with anyone from the Chinese Government.

The Applicant has significant assets in the United States. They have no assets whatsoever in China. Neither he or his wife stand to inherit anything from anyone in China. They provide no financial support to anyone in China. He and his wife are saving up for a home. They sold a home in another state in the United States and have roughly \$300,000 available for a liquid down payment. They also have a large retirement saving. Their net total worth is a little over a million dollars. (*See Applicant's Exhibits E, F, G, H, I, J and K*).

In response to a hypothetical question asked the Applicant, that if he were ever put in a position where he had to choose between the United States and another country, what would he do, he stated that he would choose the United States without question. (Tr. p. 38). In response to another hypothetical question where he was asked, if his wife came to him and told him that the Chinese Government was threatening her father or in some way threatening to harm her father, unless he released classified information, what would he do. The Applicant stated that he would report this immediately to the program security office and would not be influenced in any way. (Tr. p. 41).

Mitigation.

Declarations from the Applicant's spouse, friends, coworkers and professional colleagues indicate that the Applicant is a man of impeccable character. He is exceptionally kind and loyal. He is considered honest, reliable, a dedicated and conscientious worker, and an overall trustworthy individual. (See Applicant's Exhibits C, M, N and R).

An old performance appraisal for the period from February 1992 to December 1992 notes that the Applicant's overall appraisal rating "far exceeds". (See Applicant's Exhibit P).

The Applicant has received a number of Certificates of Appreciation, Merit and Appreciation for his dedicated and outstanding work performance. (See Applicant's Exhibit Q).

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Foreign Influence

A security risk 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: (1) not citizens of the United States or (2) 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.

Condition that could raise a security concern:

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;

Conditions that could mitigate security concerns:

1. A determination that immediate family member(s), spouse, father, mother, sons daughters, brothers, sisters), cohabitant, or associates(s) in questions 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) and the United States;
3. Contact and correspondence with foreign citizens are casual and infrequent.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation

c. The frequency and recency of the conduct

d. The individual's age and maturity at the time of the conduct

e. The voluntariness of participation

f. The presence or absence of rehabilitation and other pertinent behavior changes

g. The motivation for the conduct

h. The potential for pressure, coercion, exploitation or duress

i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "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. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing 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 determination. The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

The Government must make out a case under Guideline B (Foreign Influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and her ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates a foreign preference and has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSIONS

Having considered the evidence in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR, and that Applicant's foreign influence has a direct and negative impact on her suitability for access to classified information.

The Applicant is a United States citizen who married a woman from the People's Republic of China. The Applicant's spouse is a United States citizen who renounced her Chinese citizenship and returned her Chinese passport. Although her immediate family, including her father, step-mother, and two brothers, are citizens of and reside in the People's Republic of China, she is not close to them. Thus, the Applicant has limited contact with them. Furthermore the Applicant is unable to communicate with them due to the language barrier. None of the Applicant's spouse's family members in China have ever been affiliated with, employed for, or agents of, the Chinese Government or members of the Communist Party. Therefore, mitigating condition 1 applies, *A determination that immediate family member(s), spouse, father, mother, sons daughters, brothers, sisters), cohabitant, or associates(s) in questions 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) and the United States.*

In addition, the Applicant's contact with his wife's family in China is limited and very infrequent. Mitigating condition 3 also applies, *Contact and correspondence with foreign citizens are casual and infrequent.* The Applicant has significant assets in the United States and none in China. Other than his wife's father, the Applicant and his wife have, for the most

part, no ties with China. The Applicant credibly testified that there is no situation that could ever occur that would force him to reveal classified information to any unauthorized individual no matter what their relationship to the Applicant. He has no foreign ties or contacts that could potentially influence him. Therefore, I find that there is no situation that could create the potential for foreign influence that could result in his compromise of classified information. Accordingly, the Applicant's request for a security clearance must be granted under Guideline B.

Considering all the evidence, the Applicant has met the mitigating conditions of Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guideline B.

FORMAL FINDINGS

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.

Subparas. 1.a.: For the Applicant

1.b.: For the Applicant

1.c.: For the Applicant

1.d.: For the Applicant

DECISION

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

Darlene Lokey Anderson

Administrative Judge