

KEYWORD: Foreign Influence

DIGEST: The government has established a case of foreign influence that Applicant has not mitigated because he has not shown that his mother and his friend are not in a position to be exploited by a foreign power in a way that could force Applicant to choose between the person(s) involved and the United States. (U.S.) In addition, Applicant's evidence under subparagraph 1.b. raises more questions than answers because of the lack of detail regarding his foreign employment between March 1998 and February 2000. Clearance is denied.

CASENO: 03-04320.h1

DATE: 08/02/2004

DATE: August 2, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-04320

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

APPEARANCES

FOR GOVERNMENT

Marc E. Curry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The government has established a case of foreign influence that Applicant has not mitigated because he has not shown that his mother and his friend are not in a position to be exploited by a foreign power in a way that could force Applicant to choose between the person(s) involved and the United States. (U.S.) In addition, Applicant's evidence under subparagraph 1.b. raises more questions than answers because of the lack of detail regarding his foreign employment between March 1998 and February 2000. Clearance is denied.

STATEMENT OF CASE

On October 15, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, amended April 4, 1999, 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 for Applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant furnished his answer to the SOR on October 31, 2003. Applicant elected to have his case decided on a written record. The Government provided Applicant a copy of the File of Relevant Material (FORM) on January 13, 2004. Applicant received the FORM on January 29, 2004. His response to the FORM was due by February 28, 2004. No response was received. The case was assigned to me on March 10, 2004.

FINDINGS OF FACT

The SOR alleges foreign influence under Guideline B. Applicant admitted all the factual allegations and requested a decision without a hearing. Applicant is 31 years old and employed as consultant by a defense contractor. He seeks a secret security clearance.

Applicant's employment background indicates he was a web developer, an office manager and a book keeper for approximately four months in 1997. He has been with his current employer for more than three years.

Applicant completed a security clearance application (SCA, item 4) in August 2002, indicating he was born in the Peoples Republic of China (PRC) on October 7, 1972. Applicant became a naturalized United States (U.S.) citizen on November 20, 1995. He currently has a valid U.S. passport. Applicant attended two regional colleges with no indication he graduated from either one. Applicant has never had foreign property interests but between March 1998 and February 28, 2000, he was employed by a Hong Kong-based export firm. (1) His job was to make certain the foreign firm maintained connections with U.S. manufacturers.

According to his SCA, Applicant traveled to the PRC on four occasions. On three of those occasions (item 5, sworn statement) since graduating from college in 1997, (2) he went to see his mother. Born in the PRC in November 1938, Applicant's mother is 65 years old. She was employed by the PRC government as an engineer (drawing pictures and diagrams of machinery) until approximately 1992, when she retired. Applicant maintains monthly telephone contact with her, and although he does not provide money to her on a regular basis, he gave her a gift of \$1,000.00 during his last visit.

According to his sworn statement, Applicant traveled to Taiwan to visit a friend. Applicant stated in item 4:

I have a personal friend [name], who resides in Taiwan. I met [friend] in the U.S. when she here attending college(.) She is currently a student in Taiwan doing graduate work. I maintain a couple of times yearly e-mail contact with [friend], and went to visit her for two weeks during the fall of 1999(.) I plan to maintain continued contact with [friend] in the future(.)

In his sworn statement, Applicant also discussed his loyalty to the U.S. government. He indicated he belongs to no foreign organization advocating the overthrow of the U.S. Applicant would not deliberately refuse to uphold any U.S. law. When he became a U.S. citizen, he denounced all other countries, including the PRC. He did not plan to use his present job to subvert the interests of the U.S in favor of the interests of a foreign country.

Applicant never served in the PRC military nor has he ever served in some other capacity for the PRC in place of military service. He has never sought foreign office.

Applicant's father, a doctor, is a U.S. citizen and resides in the area. All of the family of Applicant's father lives in the U.S.

POLICIES

Enclosure 2 of the Directive sets forth policy conditions which must be given binding consideration in making security clearance determinations. These conditions must be considered in every case according to the pertinent guideline; however, the conditions are in no way automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security case presents its own unique facts and circumstances, it should not be assumed that the conditions exhaust the entire realm of human experience or that the conditions apply equally in every case. In addition, the Judge, as the trier of fact, must make critical judgments as to the credibility of witnesses. Conditions most pertinent to evaluation of the facts in this case are:

Foreign Influence (Guideline B)

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 a resident or present in a foreign country;

2. Conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government.

Mitigating Conditions (MC):

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 U.S;

3. Contact and correspondence with foreign citizens are casual and infrequent.

General Policy Factors (Whole Person Concept)

Every security clearance case must also be evaluated under additional policy factors that make up the whole person concept. Those factors (found at page 2-1 of Enclosure 2 of the Directive) include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 behavioral changes; (7) the motivation for the conduct; and, (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Burden of Proof

As set forth in the Directive, every personnel security determination must be a fair and impartial overall commonsense decision based upon all available information, both favorable and unfavorable, and must be arrived at by applying the standard that the granting (or continuance) of a security clearance under this Directive may only be done upon a finding that to do so is clearly consistent with the national interest. In reaching determinations under the Directive, careful consideration must be directed to the actual as well as the potential risk involved that an applicant may fail to properly safeguard classified information in the future. The Administrative Judge can only draw those inferences or conclusions that have a 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.

The Government must establish a *prima facie* case under the foreign influence guideline that establishes doubt about a person's judgment, reliability and trustworthiness. Then, the burden shifts to applicant to refute, explain, mitigate, or extenuate the facts. An applicant has the ultimate burden of persuasion to demonstrate he qualifies for a security clearance.

CONCLUSIONS

Security concerns are triggered 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. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual vulnerable to coercion, exploitation, or pressure.

The government has established a *prima facie* case under the Guideline B (DC 1) because Applicant's 65-year-old mother, retired from an engineer's job with a government operated company, is a close family member (DC 1) who is a resident-citizen of the PRC. (1.a.) Applicant engages in monthly e-mail contact and has visited his mother on three occasions in the PRC since graduating from college. (1.c.) Finally, he gave her \$1,000.00 on his last trip to the PRC.

The surrounding circumstances of Applicant's association with his friend (a resident-citizen of a foreign country) also falls within the scope of DC 1 because Applicant: (1) met her in the U.S.; (2) maintains twice yearly contact; (3) visited with her for two weeks in 1999. (1.d.); and intends to continue contact with her in the future.

Applicant has explained in his SCA that he worked as an office manager for the foreign-based firm (1.b.) so that he could maintain contact with U.S. manufacturers. The location of Applicant's employment between March 1998 and February 2000 and his laconic explanation of the details of his job as office manager are insufficient to remove the security concerns of foreign influence, particularly when weighed and balanced against his travel to the PRC (1.c.) and his travel to Taiwan in the spring of 1999. (1.d.)

Under the mitigating conditions (MC) of the foreign influence guideline, security concerns raised by DC 1 may be mitigated by a determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sister's), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign poser in a way that force the individual to choose between loyalty to the person(s) involved and the U.S. (MC 1) The Appeal Board of DOHA (ISCR Case No. 02-14995) has held that MC 1 cannot be applied unless "there is sufficient credible evidence that an applicant's family members, cohabitant or associates in question are (a) not agents of a foreign power, and (b) not in a position to be exploited by a foreign power in a way that could force the applicant to choose between the person(s) involved and the United States." The record reflects Applicant's mother is 65 years old and 10 years removed by retirement from a company that was owned by the PRC. The record supports a reasonable finding his mother is not an agent of a foreign government. Though it is unlikely she is (at age 65) in a position to be exploited by a foreign power in a way that could force Applicant to choose between his mother and the U.S., an applicant has the substantial burden of presenting mitigating evidence on both prongs of MC 1. Because no credible evidence has been presented under the second prong (b) of MC 1, subparagraph 1.a. is found against Applicant.

The lack of mitigating evidence regarding Applicant's friend also removes MC 1 from consideration. However, unlike the circumstances with Applicant's mother, there is a lack of evidence regarding both prongs of MC 1. Here again, an applicant has the heavy burden of producing substantial evidence in explanation and extenuation under the mitigating conditions. Applicant was given an opportunity to respond to the FORM by providing details regarding the extent of his relationship with his friend, e.g., to show his relationship is not close within the meaning of DC 1, and/or that the friend is not an agent of a foreign power nor in a position to be exploited within in the ambit of MC 1, and declined to so.

Having weighed and balanced all the evidence, specifically the lack of mitigating evidence under subparagraphs 1.a, 1.b., 1.c., and 1.d, as well as the lack of evidence providing more detail about Applicant's current job, Appellant's evidence is insufficient to meet his ultimate burden of demonstrating he is not the subject of foreign influence. In finding against Applicant under the foreign influence guideline, I have evaluated the evidence as a whole, considering the general policy factors under the whole person concept.

FORMAL FINDINGS

Paragraph 1 (foreign preference, Guideline B): AGAINST THE APPLICANT.

- a. Against the Applicant.
- b. Against the Applicant.
- c. Against the Applicant.
- d. Against the 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 Applicant a security clearance.

Paul J. Mason
Administrative Judge

1. The record is silent as to whether he was working in the U.S. or overseas.
2. His SCA (item 4) does not indicate he graduated from college.