

DATE: May 4, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-05917

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a naturalized United States citizen whose mother and father reside in the People's Republic of China. He has frequent telephone contact with them, and he, his wife, and his children visit them in China annually. He has failed to mitigate the foreign influence security concerns that result from his family ties to China. Clearance is denied.

STATEMENT OF THE CASE

On March 17, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating they were unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline B (foreign influence). Applicant submitted a response to the SOR that was received by DOHA on May 5, 2004, and requested a hearing. Applicant admitted the allegations contained in SOR subparagraphs 1.a., 1.b., and 1.c., and denied those contained in subparagraphs 1.c. and 1.d.

The case was assigned to me on November 10, 2004. A notice of hearing was issued on February 9, 2005, scheduling the hearing for February 28, 2005. The hearing was conducted as scheduled. The government submitted three documentary exhibits that were marked as Government Exhibits (GE) 1-3. GE 1 was admitted in evidence and made part of the record case without objection. Administrative notice was taken of GE 2 and GE 3 without objection. Applicant testified, called three witnesses to testify on his behalf, and submitted one document that was marked as Applicant's Exhibit (AE) 1, and admitted in evidence and made part of the record without objection. The transcript was received on March 10, 2005.

FINDINGS OF FACT

Applicant's admissions to the allegations contained in the SOR are incorporated herein. In addition, after a thorough review of the pleadings, testimony, and exhibits, I make the following findings of fact:

Applicant is 43 years old, married, and the father of two sons, ages seven and five. Applicant obtained a bachelor of science degree from the University of Shanghai in 1984, married his wife in the People's Republic of China (PRC) in November 1986, and they immigrated to the United States from the PRC in 1989, so he could attend school in the U.S. and obtain a masters in business administration (MBA) degree, which he did in 1992. Applicant continued to work at the university where he obtained his MBA as an information technology coordinator from March 1992 to March 1997. He became a U.S. citizen on September 9, 1999. His wife became a naturalized U.S. citizen in July 1999. Applicant surrendered his PRC issued passport when he became a U.S. citizen.

Applicant was awarded a master of science degree in software engineering in March 1997, and was hired by his present employer, a defense contractor, that same month. He is now working as a program manager, and is responsible for routinely managing 30 to 50 personnel. He apparently works primarily on projects dealing with the U.S. Navy and U.S. Marine Corps. His work assignments, at least before his security clearance was withdrawn in 2004, provided him with access to secret and sensitive information. There is no indication he ever engaged in any activity that might have created a security concern. His witnesses and the letter from his technical delivery manager attest to his reputation as an honorable, loyal, dedicated, and trustworthy employee and individual. None of the references, all of whom have known Applicant for many years, suggested any reason why Applicant should not be granted a security clearance.

Applicant's initial entry into the U.S. was sponsored by his uncle, who, although he apparently is a U.S. citizen, is also a retired Lieutenant General from the Taiwan military who resided in Taiwan when he sponsored Applicant. Applicant's explanation about his uncle's U.S. citizenship is somewhat sketchy, but apparently the uncle assisted the U.S. military in World War II during the invasion of the Philippine Islands. According to Applicant, the uncle was granted U.S. citizenship during the 1940s as a reward for the assistance he provided. Applicant only met this uncle on one occasion when the uncle came to visit in the PRC during the late 1980s. The uncle's sponsorship of Applicant's entry into the U.S. was done in response to Applicant's request after the uncle offered financial assistance to Applicant. Applicant used to exchange cards with the uncle but has now lost contact with him.

Applicant's parents are citizens and residents of the PRC. His father is 75 years old, a physician, and is retired from a teaching position at the University of Shanghai. His mother is 74 years old, and is a retired psychology teacher. Applicant has no siblings or other close relatives in the PRC. Applicant's parents used to visit him annually in the U.S. for periods of two to three months. Their last visit was in January 2003, and Applicant does not believe they will ever return to visit in the U.S. because of their declining health. Neither of his parents have ever been members of the communist party.

Applicant contacts his parents by telephone about once a week. He also communicates by e-mail with them two to three times a week. Since his parents have stopped coming to the U.S. to visit, Applicant has begun visiting them in the PRC. He visited them in 2003, and again in December 2004 for ten days. He anticipates that he will continue to visit with them in the PRC in the future. Applicant's wife and children have also visited his parents in the PRC, with their last visit occurring during the summer of 2004.

Although Applicant's parents are aware of his employment and the fact that it involves U.S. government contracts, he has instructed them to not ask him what he does. He testified as follows about the instructions he gave his parents while he was apparently working on a particularly sensitive project:

Yeah. Also I call my parents because in 2001, I'm heavily involved Navy and Marine contract. It was huge. So I told my parents, "Keep me as very low profile. And don't talk to anyone, even relative, your relative or your friend, what's I'm doing in (employer's name omitted). Just don't say anything. 'He's a good worker.' That it." (Tr. p. 43)

Applicant's wife does not have any immediate relatives living in the PRC. Her parents immigrated to the U.S. and have now both become naturalized U.S. citizens. Her two sisters have also become U.S. citizens. One of the sisters is employed by the U.S. State Department and the other is married to a U.S. Army officer.

The PRC has a well-documented history of human rights abuses in violation of internationally recognized norms, stemming both from the authorities' intolerance of dissent and the inadequacy of legal safeguards for basic freedoms. Abuses have included arbitrary and lengthy incommunicado detention, forced confessions, torture, and mistreatment of prisoners as well as severe restrictions on freedom of speech, the press, assembly, association, religion, privacy, and

worker rights. (GE 2, p. 9)

The PRC aggressively pursues technology acquisition efforts directed against the U.S. and other countries. In so doing, it employs all types of people, organizations, and collection operations, including PRC scientists, students, business people, bureaucrats, as well as professional civilian and military intelligence operatives. (GE 3, p. 2) The PRC also tries to identify ethnic Chinese in the United States who have access to sensitive information, and sometimes is able to enlist their cooperation in illegal technology or information transfers. (GE 3, p. 21)

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon 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. Considering the evidence as a whole, Guideline B, pertaining to foreign influence, with its respective DC and MC, is most relevant in this case.

BURDEN OF PROOF

The sole 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⁾ The government has the burden of proving controverted facts.⁽³⁾ The burden of proof in a security clearance case is something less than a preponderance of evidence,⁽⁴⁾ although the government is required to present substantial evidence to meet its burden of proof.⁽⁵⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁶⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁽⁷⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁸⁾

No one has a right to a security clearance⁽⁹⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹⁰⁾ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.⁽¹¹⁾

CONCLUSIONS

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 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.

Security clearance decisions are not loyalty determinations and should not be construed as such. Instead, the issue is whether it is clearly consistent with the national interest to grant a security clearance in a particular case. No suggestion has been made, and there is no reason to doubt, that Applicant is anything but a loyal, honorable, and faithful U.S. citizen. However, the analysis does not stop there.

Applicant's parents are citizens and residents of the PRC. His father is 75 years old and is a retired university professor. Although the father no longer works at the university, he subsists on the pension he receives from the university. Applicant's mother is 74 years old and a retired teacher. The parents visited with Applicant in the U.S. on a regular basis through January 2003. Health concerns make it unlikely the parents will ever visit the U.S. again. However, beginning in 2003, the parent's visits to the U.S. were replaced by Applicant, his wife, and their children visiting the parents in the PRC. Applicant's last visit to the PRC occurred in December 2004, and he anticipates visiting there again in the future.

Additionally, Applicant has frequent telephone and e-mail contact with his parents.

Disqualifying Condition (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* applies based upon Applicant's close ties of affection and obligation with his parents. However, there is no evidence to indicate that either Applicant or his wife have any other close relatives in the PRC or other foreign countries. Applicant's father-in-law, mother-in-law, and both his sisters-in-law, are naturalized U.S. citizens residing in the U.S. Although, the uncle who sponsored Applicant's entry into the U.S. is apparently still living, and residing in Taiwan, Applicant has for all intents and purposes lost contact with that uncle. Accordingly, SOR subparagraphs 1.d. and 1.e. are decided for Applicant.

Applicant has not provided any information upon which to base a finding that any mitigating condition applies to his parents and their residence in the PRC. Specifically, there is no evidence supporting application of Mitigating Conditions (MC) 1: *A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, . . . are not . . . 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* or MC 3: *Contact and correspondence with foreign citizens are casual and infrequent.*

The presence of Applicant's parents in the PRC clearly places them in a position where they can be exploited by the PRC government. That government has a long history of human rights abuses, and it aggressively pursues technology and information transfers through almost any means imaginable. Applicant himself recognized the danger posed by his parent's presence in the PRC when he found it necessary to caution them to not discuss his employment while he was working on an apparently highly sensitive Navy and Marine Corps contract.

Applicant's annual visits with his parents, first with them coming to the U.S. and now with him and his family going to the PRC, along with his frequent telephone and e-mail contact with them negates any possibility of finding that his contacts are casual and infrequent. The remaining Guideline B mitigating conditions have no applicability to the facts of this case.

In all adjudications the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

Considering all relevant and material facts and circumstances present in this case, the whole person concept, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, I find that Applicant has failed to mitigate the security concern that arises from his parents' residence in the PRC. Guideline B is decided against Applicant.

FORMAL FINDINGS

SOR ¶ 1-Guideline B: Against Applicant

Subparagraph a: Against Applicant

Subparagraph b: Against Applicant⁽¹²⁾

Subparagraph c: Against Applicant⁽¹³⁾

Subparagraph d: For Applicant

Subparagraph e: For 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.

Henry Lazzaro

Administrative Judge

1. This action was taken under Executive Order 10865 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. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
4. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
5. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
6. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
7. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
8. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
9. *Egan*, 484 U.S. at 528, 531.
10. *Id* at 531.
11. *Egan*, Executive Order 10865, and the Directive.
12. Although the specific SOR allegation is that Applicant's parents visit him in the U.S., the concern is obviously the close relationship exhibited by those visits. The replacement of the parent's visit to the U.S. by Applicant and his family visiting the PRC warrants finding against Applicant on this subparagraph.
13. While Applicant's father is retired from the university, he is still dependent upon the university for his subsistence. Therefore, the concern expressed in this subparagraph remains, and a finding against Applicant is warranted.