

DATE: February 8, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-07882

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 44-year-old vice president of engineering for a federal contractor. He and his wife were born in the People's Republic of China (China) and became naturalized citizens of the U.S. in 2002. Applicant's parents, sister and mother-in-law are citizens and residents of China. Applicant stays in contact with his parents on a regular basis and with his sister and mother-in-law to a lesser extent. Applicant has failed to mitigate the security concerns raised by foreign influence considerations. Clearance is denied.

STATEMENT OF CASE

On May 3, 2004, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline B, foreign influence considerations.

In a sworn statement, dated May 29, 2004, Applicant responded to the SOR allegations, and elected to have his case decided on the written record in lieu of a hearing. In his SOR response, Applicant admitted all the allegation contained in the SOR. Department Counsel submitted the government's case on September 22, 2004. A file of relevant material (FORM) was received by Applicant on October 25, 2004. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the FORM and did not submit additional information. The case was assigned to me on December 10, 2004.

FINDINGS OF FACT

Applicant is a 44-year-old vice-president of engineering for a federal contractor. He has been employed with the same company since 1992. Applicant was born in China and became a naturalized citizen of the U.S. in 2002. Applicant has been married since 1987. His wife is also from China and also became a naturalized citizen of the U.S. in 2002. Applicant and his wife have two children born in the U.S.

Applicant's parents and sister are citizens of China and reside there. Applicant communicates with his parents monthly by telephone. Applicant's mother is a retired engineer, his father is retired, but works part-time as an engineer for the railroad system. No information was provided regarding whether they receive a pension, and, if so, from what source. Applicant's sister is a housewife, and he contacts her approximately twice a year. Applicant's mother-in-law is a citizen and resident of China. Applicant contacts his mother-in-law approximately twice a year and she visited him and his wife in the U.S. in 1995. His mother-in-law's occupation was not provided. Applicant's parents visited him in the U.S. in 1996. Applicant traveled to China in 2001 to visit his family, and stayed for approximately one month. No information was provided about who Applicant visited while in China.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Considering the evidence as a whole, Guideline B, pertaining to foreign influence, with its respective DC and MC, apply in this case. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. 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.

The sole purpose of a security clearance determination 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 is something less than a preponderance of evidence.⁽⁴⁾ 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.⁽⁵⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁶⁾

No one has a right to a security clearance⁽⁷⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽⁸⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽⁹⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽¹⁰⁾ 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.

CONCLUSION

Under Guideline B, "[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 interest in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure."⁽¹¹⁾

China is recognized as a country that has traditionally been considered hostile to U.S. national interests and has used its intelligence services to harm the interests of the U.S.⁽¹²⁾ The Chinese have expended significant resources to do so,⁽¹³⁾ and are among the most active information collectors and participants in industrial espionage.⁽¹⁴⁾

⁽¹⁵⁾

China is an authoritarian state whose power is centralized in the Chinese Communist Party. China historically has a poor human rights record and its citizens lack freedom to peacefully express opposition to the political system or to freely change those in charge of the government.⁽¹⁶⁾ The Chinese government is responsible for committing numerous and serious abuses of human rights.⁽¹⁷⁾ Those seeking to discuss change or who express dissenting political views are subject to arrest and harassment.⁽¹⁸⁾ China does not have an independent judiciary nor are their citizens afforded due process rights.⁽¹⁹⁾

Based on the allegations in the SOR, 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*), must be evaluated in determining whether it is clearly consistent with the national

interest to grant a security clearance to Applicant under Guideline B. In this case, DC 1 applies because Applicant's parents, sister, and mother-in-law are all citizens of China and reside there.

I have considered all the potentially mitigating conditions under Guideline B in this case. I specifically considered MC 1 (*A determination that the immediate family members(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associates(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 United States*), and conclude it does not apply. No information was provided to show whether Applicant's family has any ties or not with the government. No information was provided to show what Applicant's mother-in-law's occupation is and whom she is employed by. Even if all of Applicant's family are not agents of a foreign power, each one is still a citizen of China and subject to its laws and government practices.

I have also specifically considered MC 3 (*Contact and correspondence with foreign citizens are casual and infrequent*), and conclude it does not apply. Applicant maintains close contact with his parents with whom he talks twice a month. Although he doesn't speak often with his mother-in-law, they maintain enough of a relationship that she visited them in the U.S. Applicant has some contact with his sister.

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 life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I have considered all the evidence in this case in evaluating Applicant's risk and vulnerability in protecting our national interests. Applicant's parents, sister and mother-in-law are Chinese citizens. With the limited information provided, the contact Applicant has with his relatives creates a position of vulnerability for him. These facts raise reasonable doubts about Applicant's ability to protect classified information unfettered by concerns about family members who may be subject to the interests of a foreign government and thus, his suitability for access to classified information. Absent substantial information to resolve those doubts, which Applicant failed to provide, and considering the whole person, I find Applicant has failed to mitigate the security concerns. Therefore, I am persuaded by the totality of the evidence in this case, that it is not clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guideline B is decided against Applicant.

FORMAL FINDINGS

Formal Findings for or 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, Foreign Influence (Guideline B) AGAINST THE APPLICANT

Subparagraph 1.a. Against the Applicant

Subparagraph 1.b. Against the Applicant

Subparagraph 1.c. Against the Applicant

Subparagraph 1.d. Against the Applicant

Subparagraph 1.e. Against the Applicant

Subparagraph 1.f. Against the Applicant

DECISION

In light of all the circumstances as 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.

Carol. G. Ricciardello

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, 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, ¶ E3.1.14.
4. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
5. ISCR Case No. 94-1075 (August 10, 1995) at pp.3-4; Directive, Enclosure 3, ¶ E3.1.15.
6. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, ¶ E3.1.15
7. *Egan*, 484 U.S. at 531.
8. Id.
9. Id.; Directive, Enclosure 2, ¶ E2.2.2.
10. Executive Order 10865 § 7.
11. Directive, ¶ E2.A2.1.1.
12. Item 10, Operational Security, Intelligence Threat Handbook, Adversary Foreign Intelligence Operations, p.1 (May 8, 2003)
13. Item 10, supra.
14. Item 7, Annual Report to Congress on Foreign Economic Collection and Industrial Espionage, 2000, National Counterintelligence Center, p 15.
15. Item 10 U.S. Dept. of State, *China, Country Reports on Human Rights Practices 2003*, p. 1 (February 25, 2004).
16. Item 10, supra.
17. Item 10, supra.
18. Item 10, supra.

19. Item 10, supra at 2.