

DATE: May 5, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-08574

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant failed to mitigate security concerns over foreign influence raised because of his close ties to his parents and sister and her family who are citizens of the People's Republic of China ("China") and reside there. Also, these relatives and Applicant himself had positions with the government of China which heightens the potential for foreign influence by coercive or non-coercive means and raises security concerns. In addition, his former wife and one son are citizens of China, but live in the U.S. Thus, it remains possible that foreign pressure on his relatives could create a situation that could result in the compromise of classified information. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on February 24, 2004. (Item 1) The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. (1) The SOR alleges specific concerns over foreign influence (Guideline B) in paragraph 1. Applicant replied to the SOR allegations in an Answer notarized on March 15, 2004, and requested a decision without a hearing. (Item 3)

The case was assigned to Department Counsel prepared a File of Relevant Material (FORM) on July 13, 2004 which was forwarded to Applicant. The FORM included four documents for Official Notice (ON): Items 5-8). He received the FORM on August 2, 2004, and did not respond with any evidence before the deadline of September 1, 2004. On September 16, 2004, the case was assigned to me.

FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following additional Findings of Fact:

Applicant, a 51 years old, began working for a defense contractor (Employer #1) in State #1 in June 2002. In August

2002 he completed a Security Clearance Application (Standard Form 86) and requested a security clearance which he needs for the position. (Item 4)

Applicant was born in the People's Republic of China ("China") in 1954. He became a naturalized U.S. citizen in June 1999.

Foreign Influence

Applicant married in August 1984; they had a child born in China in 1986 and a child born in the U.S. in 1992. They were divorced in August 2001. (Item 4) He anticipates that the son born in China who returned to the U.S. in 1994 at age ten will eventually become a U.S. citizen. (Exhibit 3)

Applicant received a Ph.D. degree in July 1993 from a university in State #1. From August 1986 to 1996 when he became a naturalized U.S. citizen he carried an active passport from China that was in effect from 1986 to 1999. (Item 4)

When Applicant completed the SF 86 forms, he included information that his parents, (2) sister, and brother-in-law (3) are citizens of China and live in China. He is close to his parents and has weekly telephone contact with them. They visited him in the U.S. from June 2002 to March 2003; he went to China in 1995, 1998, and 2000 to visit them. His former wife and son are citizens (4) of China who live in the U.S. He also has a sister born in China but who became a naturalized citizen of the U.S. in 1999 and lives in the U.S. (Items 3, 4)

Before Applicant came to the U.S., he was employed as a college instructor at a government institute for chemical engineering managers. Earlier from 1969 to 1978 he worked on road repair in a city construction bureau. (Item 3)

Applicant attested that even if there were coercion or pressure on himself or his family, he would not be coerced as he loves and is loyal to the U.S. (Item 3)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below :

Guideline B - Foreign Influence

The concern: 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.

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Foreign Influence

Applicant failed to mitigate security concerns over foreign influence raised because of his close ties to his parents and one sister who are citizens of the People's Republic of China ("China") and live in China. His son and former wife who are citizens of China now live in the U.S. As these relatives and Applicant himself had positions with the Chinese government, they may continue to have ties to the government of China. Applicant lived a substantial portion of his adult life in China and worked for the government. His ties of obligation and affection to relatives and friends in the China are close, and he is in frequent contact with his parents. Under Guideline B, a security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he is bound by affection, influence or obligation, are not citizens of the United States or may be subject to duress. Based on the evidence of record, the Government has established a reason to deny Applicant a security clearance because of Guideline B-(5) (Foreign Influence). The Chinese citizenship and residency of Applicant's family members create the potential for foreign influence that could result in the compromise of classified information because it makes Applicant potentially vulnerable to coercion, exploitation, or pressure. His ties to his family still residing in China remain strong. Also, he has returned to the China regularly.

The possession of such ties raises a security concern sufficient to require Applicant to present evidence in rebuttal, extenuation, or mitigation sufficient to meet his burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him. Given these contacts, Applicant has a heavy burden to establish that these family members are not agents of a foreign government or otherwise not in a position to be exploited.

In his answer Applicant attested that even if there were coercion or pressure on himself or his family, he would not be coerced as he loves and is loyal to the U.S. However, Applicant submitted no additional evidence to support his claim other than this statement in his answer to the SOR. Thus, he has not overcome the Government's concern, particularly where he himself was a government employee in China. Thus, I cannot conclude that any Mitigating Condition (MC) applies under Guideline B. Applicant failed to mitigate-(6) the security concerns as he failed to present evidence to meet the very heavy burden-(7) those circumstances present.

Security clearance decisions are predictive judgments about an applicant's security eligibility in light of the applicant's past conduct and present circumstances. *Department of Navy v. Egan*, 484 U.S. 518, 528-29 (1988). Contacts with citizens of other countries are relevant to security determinations when they have the potential to make an individual vulnerable to coercion, exploitation, or pressure through threats against those foreign relatives. Acts indicative of foreign influence warrant careful scrutiny. After considering the Adjudicative Process factors and the Adjudicative Guidelines, I conclude these ties have the potential to create a risk of undue pressure on Applicant, so foreign influence security concerns remain. Thus, I resolve SOR paragraph 1 and subparagraphs 1.a. through 1.g. against Applicant.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline B AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g.: Against 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 the Applicant. Clearance is denied.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.
2. His father used to be an official of an institute of municipal civil infrastructure development design. However, his father is now 84 years old and has been retired for 20 years with declining health. (Item 3)
3. His sister and her husband are also retired; they were low-level workers. Their son recently graduated from college and works as an engineer in China. Applicant does not have regular contact with them. (Item 3)
4. In his March 2004 answer, he stated he does not know if his ex-wife is still a Chinese citizen. (Item 3)
5. Disqualifying Condition (DC) E2.A2.1.2.1, immediate family members, or persons to whom the individual has close ties of affection or obligation, who are citizens of, or resident in, a foreign country and DC E2.A2.1.2.3 also applies because Applicant himself and family members have had connections with the Government.
6. **Conditions that could mitigate security concerns include:** E2.A.2.1.3.1. 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 United States; E2.A.2.1.3.3. Contact and correspondence with foreign citizens are casual and infrequent.
7. The Government presented for Official Notice evidence to show the hostile nature of the relationship between the U.S. and China. (Items 5, 6, 7, 8) The Appeal Board in ISCR Case No. 01-26893 issued on October 16, 2002, outlined a standard that when there is hostility between a foreign government and the U.S. this circumstance places "a very heavy burden on Applicant " to show that family ties there do not pose a security risk.