

KEYWORD: Foreign Influence, Personal Conduct

DIGEST: Applicant is 49 years old and works as a training specialist/analyst for a defense contractor since 2003. He was married twice. His first marriage ended in divorce. His second marriage is to a citizen of the People's Republic of China, living here in the U.S. His parents-in-laws are citizens and residents of PRC. In his security clearance application, Applicant deliberately omitted information. He offered rebuttal to the omissions, but it was not credible. He has not mitigated the foreign influence or personal conduct security concerns. Clearance is denied.

CASENO: 03-08958.h1

DATE: 02/21/2006

DATE: February 21, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-08938

**DECISION OF ADMINISTRATIVE JUDGE**

**JACQUELINE T. WILLIAMS**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is 49 years old and works as a training specialist/analyst for a defense contractor since 2003. He was married twice. His first marriage ended in divorce. His second marriage is to a citizen of the People's Republic of China, living here in the U.S. His parents-in-laws are citizens and residents of PRC. In his security clearance application, Applicant deliberately omitted information. He offered rebuttal to the omissions, but it was not credible. He has not mitigated the foreign influence or personal conduct security concerns. Clearance is denied.

**HISTORY OF CASE**

On December 2, 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. <sup>(1)</sup> The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline B (foreign influence) and Guideline E (personal conduct).

In a sworn statement dated December 20, 2004, Applicant responded to the SOR allegations. In his Answer, Applicant elected to have his case decided on the written record. Department Counsel submitted the government's file of relevant material (FORM) on April 1, 2005. The FORM was mailed to Applicant on April 5, 2005, and received on April 12, 2005. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He did not submit a response to the FORM.

In the FORM, the government moved to amend the SOR by adding a new allegation under Guideline E and the new

allegation is identified as ¶ 2.b. In the absence of an objection from Applicant, the government's motion to amend the SOR is granted. The case was assigned to me on May 18, 2005.

## FINDINGS OF FACT

Applicant admitted the allegations in ¶ 1 of the SOR and denied the allegations in ¶ 2. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant is 49 years old and works as a training specialist/analyst for a defense contractor since 2003.<sup>(2)</sup> He served in the U.S. Army (E-4) from 1982 to 1986.<sup>(3)</sup> His status in the Army is now, "inactive reserve duty." In 1993, he graduated from a U.S. university with a Doctorate in Education (Ed.D). He received a M.Ed. degree from the same U.S. university in January 1990.<sup>(4)</sup>

He has been married twice. While stationed in Germany, he met and married his first wife in 1984. Their marriage ended in divorce in 2001.<sup>(5)</sup> There is one child of the marriage.

Applicant married his current wife in 2002, here in the U.S. His wife is a citizen of the People's Republic of China (PRC).<sup>(6)</sup> His parents-in-law are residents and citizens of PRC.

On July 13, 1999, he submitted a SF 86<sup>(7)</sup> and another one was submitted on January 24, 2003. In the SF 86, dated July 1999, Question 32 asked: "To your knowledge, have you ever had a clearance or access authorization denied, suspended, or revoked, or have you ever been debarred from government employment?" He responded "yes" and relayed an event occurring on August 1, 1985 as follows:

Until she met me [first wife], she had an intense hatred for Americans, and especially the US Armed Forces and US Government. I think it was due mainly to her dislike for alleged CIA actions in Chile involving Pinochet and for US involvement in the Vietnam war. As the marriage progressed while still living in Frankfurt, I found myself moving more and more towards her way of thinking. . . . Becasue [sp] of my potential vulnerability, I decided to tell my commander

and ask them to suspend my security access and clearance. It was done so at my request. I did not want to find myself in a compromising position.

In a report, dated August 21, 1985, the company commander recommended that Appellant's security clearance be revoked because the allegations in the report alleged the following:

[Appellant] was investigated by the U.S. Army Intelligence (USAI) after receiving information that the [Applicant] bragged about being in contact with the Chinese Embassy and that the [Applicant] submitted paperwork through the IG to be reclassified as a conscientious objector. Further [Applicant] was diagnosed as having an Adjustment Disorder with Depressed Mood. It has further been alleged that the [Applicant's] wife was a former member of the Communist Party. Background history on [Applicant's] wife, which was filled out when they decided to get married, can no longer be found in the Company orderly room.

In the SF 86, dated January 24, 2003, Question 32 asked: "To your knowledge, have you ever had a clearance or access authorization denied, suspended, or revoked, or have you ever been debarred from government employment?" He responded "no." Allegedly, his clearance was suspended, not because of a self-initiated report, but rather because military intelligence received information that he allegedly contacted the Chinese embassy.<sup>(8)</sup> When the military attempted to

question him about this contact, Applicant, through his military defense counsel, asserted his right under Article 31 since Applicant was a military member subject to the Uniform Code of Military Justice.<sup>(9)</sup>

In both SF 86s, Question 14 asked: "Have you had contact with a foreign government, its establishments (embassies or consulates), or its representatives, whether inside or outside the U.S., other than on official U.S. Government business?" He responded "yes" in each SF 86.<sup>(10)</sup> His answer in the earlier SF 86 stated that on August 1, 1981 he "[v]isited the embassy [Chinese] there while in Malta to ask about Chinese language training possibilities. I never returned due to a job change." In the 2003 SF 86, he indicated that he visited the Chinese embassy in 1985 in order to seek a tutor in Chinese.<sup>(11)</sup>

PRC is a repressive, totalitarian government with foreign policy goals antithetical to the U.S. It has an active, effective intelligence service that targets U.S. intelligence and economic information and operates against its citizens in the U.S.<sup>(12)</sup>

## 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 and Guideline E, personal conduct, with their 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.<sup>(13)</sup> The government has the burden of proving controverted facts.<sup>(14)</sup> The burden of proof is something less than a preponderance of evidence.<sup>(15)</sup> 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.<sup>(16)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(17)</sup>

No one has a right to a security clearance<sup>(18)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(19)</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>(20)</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.<sup>(21)</sup> 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.

Based upon consideration of all the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline B, Foreign Influence: A security risk may exist when an individual's immediate family, including cohabitants, or other persons to whom he 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. Contact 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.<sup>(22)</sup>

Guideline E, Personal Conduct: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guideline are set forth and discussed in the conclusions below.

## CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a prima facie case for disqualification under Guideline B, foreign influence. Similarly, the government has established a prima facie case for disqualification under Guideline E, personal conduct.

### Guideline B, Foreign Influence

Paragraph E2.A2.1.2.1 of the Directive provides that it may be a disqualifying condition if (*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*). Paragraph E2.A2.1.3.1 defines "*immediate family members*" to include (*a spouse, father, mother, sons, daughters, brothers, and sisters*). Applicant has immediate family members, his wife, a citizen of PRC and his mother- and father-in-law are residents and citizens of PRC. The record is devoid as to whether he maintains regular contact with his in-laws. But I will assume that even if he has minimal contact with his parents-in-law, his wife appears to have obvious bonds of affection to her parents. In fact, his wife traveled to PRC for approximately four to six weeks in the Winter of 2002 to visit family and friends. These circumstances "could create the potential for foreign influence that could result in the compromise of classified information."<sup>(23)</sup> While the-

mere possession of family ties with persons in a foreign country is not, as a matter of law, automatically disqualifying . . . [it] does raise a prima facie security concern sufficient to require an applicant to present evidence of rebuttal, extenuation or mitigation sufficient to meet the applicant's burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for the applicant.<sup>(24)</sup>

I conclude this potentially disqualifying condition applies. Similarly, it may be disqualifying where an applicant (*shar[es] living quarters with a person . . . if the potential for adverse foreign influence of duress exists*).<sup>(25)</sup> Applicant's

wife, who he lives with, was born in PRC and is a citizen of PRC. It is possible his wife a foreign power could improperly influence or exert pressure upon her, here or when she visits her parents who are citizens and residents of PRC. Under the circumstances, I find this potentially disqualifying condition applies.

Under the Directive, the security concerns arising from possible foreign influence may be mitigated under certain circumstances. There record contains virtually no information as to the: occupation of his wife and parents-in-law; what, if any relationship, any of them have with the PRC or whether or not they are agents of a foreign power; and whether the contact with his parents-in-law is casual and infrequent. Thus, I find that none of the mitigating conditions apply under Guideline B, ¶ 1.a through 1.d.

### **Guideline E, Personal Conduct**

Here, based on the record evidence as a whole, the government established its case under Guideline E. Paragraph E2.A5.1.2.2 of the Directive provides that it may be a disqualifying condition if (*the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*). I am convinced Applicant fraudulently and deliberately omitted information in his SF 86 dated July 13, 1999. I conclude this potentially disqualifying condition applies.

On the security application, he responded "yes" to Question 32 and listed that he personally requested the suspension of his security access and clearance in 1985. In truth, his collateral security access and clearance was suspended as a result of a military investigation and his company commander recommended that his clearance be revoked based on the following: (1) Applicant bragged about being in contact with the Chinese Embassy and submitted paperwork to be reclassified as a conscientious objector; (2) Applicant was diagnosed as having an adjustment disorder with depressed mood; and (3) allegation that his ex-wife was a former member of the Community Party. [\(26\)](#)

I conclude that his behavior was more than carelessness and a deliberate attempt to mislead the government. Moreover, PC DC E2.A5.1.2.5 (*personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail*), applies. I conclude that PC DC E2.A5.1.2.2 and PC DC E2.A5.1.2.5 apply here.

I have reviewed all the personal conduct mitigating conditions and conclude none apply. Falsification of a security clearance application is a serious matter and it is not easily mitigated or explained away. Accordingly, Guideline E is decided against Applicant.

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 considered all the evidence provided and also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I find Applicant has failed to mitigate the security concerns raised by the foreign influence concerns and personal conduct concerns. Therefore, I am persuaded by the totality of the evidence that it is not clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guideline B and Guideline E are 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 (Guideline B, Foreign Preference) **AGAINST APPLICANT**

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant



Paragraph 2 (Guideline E, Personal Conduct) AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: 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 deny a security clearance for Applicant. Clearance is denied.

Jacqueline T. Williams

Administrative Judge

1. <sup>0</sup>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. Item 5, Security Clearance Application (SF 86), dated January 24, 2003, at 1-2.
3. Item 4, Electronic version of Security Clearance Application (SF 86), dated July 13, 1999, at 8.
4. Item 4, *supra* note 3, at 3.
5. Item 5, *supra* note 2, at 3.
6. *Id.*
7. Item 4, *supra* note 3.

8. Item 6, Memorandum, dated May 10, 1985; Item 7, *supra* note 8.
9. Item 6, *supra* note 5; *see also* Item 15, 10 U.S.C. § 831 (compulsory self-incrimination prohibited).
10. Item 4, *supra* note 3, at 9; Item 5, *supra* note 2 at 6.
11. Item 5, *supra* note 2, at 6.
12. Item 14, U.S. Department of State, *Country Reports on Human Rights Practices on China 2003*.
13. <sup>0</sup>ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
14. <sup>0</sup>ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, ¶ E3.1.14.
15. <sup>0</sup>*Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
16. <sup>0</sup>ISCR Case No. 94-1075 (August 10, 1995) at pp.3-4; Directive, Enclosure 3, ¶ E3.1.15.
17. <sup>0</sup>ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, ¶ E3.1.15
18. <sup>0</sup>*Egan*, 484 U.S. at 531.
19. <sup>0</sup>*Id.*
20. <sup>0</sup>*Id.*; Directive, Enclosure 2, ¶ E2.2.2.
21. <sup>0</sup>Executive Order 10865 § 7.
22. Directive, ¶ E2.A2.1.1.
23. Directive, ¶ E2.A2.1.1.
24. ISCR Case No. 99-0424, 2001 DOHA LEXIS 59 at \*\*33-34 (App. Bd. Feb 8, 2001).
25. Directive, ¶ E2.A2.1.2.2.
26. Directive, ¶ E2.A5.1.2.2.