

DATE: April 14, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-11551

DECISION OF ADMINISTRATIVE JUDGE

MATTHEW E. MALONE

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a naturalized U.S. citizen born and raised in mainland China. His wife lives with him in the U.S., but is still a citizen of China. His parents, brother and his wife's parents are all citizens of and living in China. Applicant has failed to mitigate the resulting Guideline B (Foreign Influence) security concerns. Clearance is denied.

STATEMENT OF THE CASE

On November 4, 2003, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline B (Foreign Influence). The SOR further informed Applicant that, based on information available to the Government, DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to continue Applicant's security clearance. [\(1\)](#)

On December 1, 2003, Applicant answered the SOR (Answer) and requested a determination without a hearing. DOHA Department Counsel submitted a file of relevant materials (FORM) in support of the government's preliminary decision, a copy of which was sent to Applicant on January 16, 2004. Applicant was informed he had until February 28, 2004, to submit any response, rebuttal, or objection to the FORM; however, Applicant did not submit anything further in his own behalf. The case was assigned to me on March 22, 2004.

FINDINGS OF FACT

Applicant has admitted all of the allegations in the SOR. His admissions are incorporated herein as facts. After a thorough review of the pleadings and exhibits, I make the following additional findings of fact:

Applicant is 35 years old and has worked as an engineer for a defense contractor since June 2002. He submitted a Security Clearance Application (SF-86) in November 2002. Applicant was born in the Peoples Republic of China (PRC,

also known as mainland China) and came to the United States in 1990 when he was about 25 years old. He became a naturalized U.S. citizen in 2001. ⁽²⁾

Applicant's parents and brother are also native-born Chinese and still live in the PRC. None of his relatives has any apparent connection to the Chinese government; his father was a civil engineer and his mother a nurse, and both retired about eight years ago. Applicant's brother is a business consultant for a private corporation. Since 1990, Applicant has only seen his parents and brother once, when he traveled to China in 2000 for a one-month visit. Otherwise, he speaks with them by telephone once each month. ⁽³⁾

Applicant's wife has also been in the United States since about 1990. She is a permanent resident alien and is applying for naturalization as a U.S. citizen. She was or still is employed by a major U.S. electronics and engineering company with defense department contracts and she has traveled back to China "a few times on business trips." ⁽⁴⁾

Applicant's mother- and father-in-law are also native Chinese still living in China. Neither has any ties to the Chinese government and have been retired for about 10 years from their jobs as a math teacher and factory worker. Applicant has seen them once since he came to the United States and speaks to them by telephone about once a year. ⁽⁵⁾

The PRC is a communist regime with a history of aggressive intelligence gathering efforts directed at the United States. Of particular note is the economic espionage in which that country engages through exploitation of technology transfers and information contacts in the defense and aerospace industries. ⁽⁶⁾

POLICIES

The Directive sets forth adjudicative guidelines ⁽⁷⁾ to be considered in evaluating an Applicant's suitability for access to classified information. The Administrative Judge must take into account both disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Having considered the SOR allegations and having reviewed the record evidence as a whole, I conclude the relevant adjudicative guidelines to be applied here are those conditions listed under Guideline B (Foreign Influence).

BURDEN OF PROOF

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest ⁽⁸⁾ for an Applicant to either receive or continue to have access to classified information. The government bears an initial burden of proving, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If the government meets its burden, it establishes a *prima facie* case that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden then shifts to the Applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, the Applicant bears a heavy burden of persuasion. ⁽⁹⁾

A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. The Government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the Government. ⁽¹⁰⁾

CONCLUSIONS

Under Guideline B (Foreign Influence), security concerns arise 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 create the potential for foreign influence that might, in turn, result in a 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. ⁽¹¹⁾ Here the concern is focused on Applicant's close ties of affection, all but one of whom (his wife) are citizens of and live in a foreign country. His wife is still a citizen of a foreign country but lives with Applicant in the United States.

Department Counsel has presented sufficient evidence in the FORM to establish a *prima facie* case for disqualification under Guideline B. The Applicant has close ties of affection-his parents, a brother, Applicant's wife and her parents-who are citizens of and resident in a foreign country. Guideline B disqualifying condition (DC) 1 ⁽¹²⁾ applies here.

Applicant's position in response to the SOR invokes Guideline B mitigating condition (MC) 1 ⁽¹³⁾ and MC 3. ⁽¹⁴⁾ He posits that none of his relatives is associated with or in a position to be exploited by the PRC government. He also asserts that his contact with his and his wife's relatives is casual and infrequent. ⁽¹⁵⁾ As to the latter claim, I agree only that his contact with his wife's family is probably casual and infrequent. However, Applicant speaks with his parents and his brother monthly, which, in light of the distances and costs involved, is frequent contact with people to whom Applicant is close in his relationship. Applicant's other claim that his parents, brother and in-laws are not tied to the PRC government is probably true. Nonetheless, absent significant information to the contrary, their presence in the PRC, a communist regime with a history of aggressive espionage activities against U.S. commercial and military interests, poses an unacceptable risk of compromise through coercion of Applicant's family. Having reviewed all of the information from the government and from the Applicant, there is no basis for application of any Guideline B mitigating conditions and I conclude this guideline against Applicant.

I have carefully weighed all of the evidence, and I have applied the disqualifying and mitigating conditions as listed under each applicable adjudicative guideline. I have also considered the whole person concept as contemplated by the Directive in Section 6.3, and as called for by a fair and commonsense assessment of the record before me as required by Directive Section E2.2.3. 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, I cannot conclude it is clearly consistent with the national interest to grant Applicant's request for a security clearance.

FORMAL FINDINGS

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

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

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.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. FORM Item 4.
3. FORM, Item 3.
4. Id.
5. Id.
6. FORM, Item 5.
7. Directive, Enclosure 2.
8. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
9. *See Egan*, 484 U.S. at 528, 531.
10. *See Egan*; Directive E2.2.2.
11. Directive, E2.A2.1.1.
12. Directive, E2.A2.1.2.1. 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;
13. Directive, E2.A2.1.3.1. 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;
14. Directive, E2.A2.1.3.3. Contact and correspondence with foreign citizens are casual and infrequent;
15. FORM, Item 3.