

KEYWORD: Foreign Influence

DIGEST: Applicant is a 39 year-old, native born United States citizen, and all of his blood relatives, including his 3 year old son, are U. S. Citizens. Applicant's wife, born in the People's Republic of China (PRC), became a U. S. citizen in 2004. Applicant's parents in-law reside with him and his wife in the United States. His contact with his wife's family members who reside in the PRC is extremely limited. The evidence establishes that Applicant is not vulnerable to foreign influence because of his strong attachment to the U. S., and because his wife's family members are not in a position to be exploited in a way that could force him to choose between loyalty to these family members and his loyalty to the United States. Mitigation has been shown. Clearance is granted.

CASENO: 03-25411.h1

DATE: 07/26/2005

DATE: July 26, 2005

In Re:

SSN:-----

Applicant for Security Clearance

ISCR Case No. 03-25411

DECISION OF ADMINISTRATIVE JUDGE

MARTIN H. MOGUL

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esq., Department Counsel

FOR APPLICANT

B. Daniel Lynch, Esq.

SYNOPSIS

Applicant is a 39 year-old, native born United States citizen, and all of his blood relatives, including his 3 year old son, are U. S. Citizens. Applicant's wife, born in the People's Republic of China (PRC), became a U. S. citizen in 2004. Applicant's parents in-law reside with him and his wife in the United States. His contact with his wife's family members who reside in the PRC is extremely limited. The evidence establishes that Applicant is not vulnerable to foreign influence because of his strong attachment to the United States, and because his wife's family members are not in a position to be exploited in a way that could force him to choose between loyalty to these family members and his loyalty to the U. S. Mitigation has been shown. Clearance is granted.

STATEMENT OF THE CASE

On December 27, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4), issued a Statement of Reasons (SOR) to the Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. The SOR was based on Foreign Influence (Guideline B) concerns because of the foreign residency and citizenship of Applicant's wife's family.

Applicant filed a notarized response on January 10, 2005, to the allegations set forth in the SOR, and requested a hearing before a DOHA Administrative Judge.

On March 24, 2005, this case was assigned to this Administrative Judge to conduct a hearing and issue a written decision. A Notice of Hearing was served on the parties on May 10, 2005, and the hearing was held on May 26, 2005.

At the hearing, Department Counsel offered four documentary exhibits (Government's Exhibits 1-4) and no witnesses were called. Applicant offered three documentary exhibits (Applicant's Exhibits A-C) and offered his own testimony and that of five other witnesses. The transcript (Tr) was received on June 10, 2005.

FINDINGS OF FACT

The SOR contains four allegations, 1.a. through 1.d., under Guideline B. In his response to the SOR, Applicant admits all of the SOR allegations. The admitted allegations are incorporated as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the documents and the live testimony of all the witnesses, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is a 39 year old Chemist for a defense contractor. He is a native born, United States citizen. He holds a Ph. D. degree. All of Applicant's blood relatives, including his three year old son, his father, mother, and two brothers, were born in the United States and are U.S. citizens and residents.

Applicant's wife was born in the PRC and resided there until 1990, when she immigrated to the United States. She married Applicant in 1998, and became a U. S. Citizen in 2004.

Applicant's wife's father and mother are citizens of the PRC. They are retired and now reside with Applicant and his wife in the United States. They have taken steps to become permanent United States residents. Their English is extremely limited, and they have no conversations with Applicant about his employment.

Applicant's wife has a sister and cousin who reside in the PRC, with whom she keeps in contact. Her sister is an elementary school teacher, and her cousin works for a private company, based in Hong Kong. Applicant's only contact with them is when he traveled to the PRC in 2003. None of the family members of Applicant's wife has any contact with the Government of the PRC.

In 2003, Applicant and his wife visited the PRC to visit Applicant's wife's family. Applicant carefully followed all of the security requirements of his company, before and after his trip. With the exception of this trip to PRC, Applicant has had no contact with any other individuals in the PRC.

Neither Applicant nor his wife owns any property or has any other financial interest in the PRC.

At the hearing, three men who know Applicant at his work environment, in supervisory or co-worker status, testified on his behalf. They spoke in extremely positive terms about his exceptional skill at his job and his honesty and integrity, and all of them strongly recommended him for a position of trust. Applicant's father testified briefly about his daughter-in-law and her strong feeling for the United States, and Applicant's wife also testified about her devotion to her child and husband. Finally, Applicant also introduced several letters from individuals, who know Applicant at his place of employment or as a friend, and they strongly recommended him as person of high character and integrity.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section F.3. and in Enclosure (2) of the Directive. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, etc.

BURDEN OF PROOF

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance. Assessment of an applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of rehabilitation.

A person who seeks access to classified information enters into a fiduciary relationship with

the U.S. Government that is predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability, or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

CONCLUSIONS Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of Applicant, I conclude the following with respect to Guideline B:

Based on the evidence of record, the Government has established an initial reason to deny Applicant a security clearance because of foreign influence. While Applicant's wife is now a United States citizen and resident, her mother and father are citizens of the PRC, and her sister and cousin are a citizen and resident of the PRC. The Chinese citizenship and residency of family members creates 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. 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. ISCR Case No. 99-0424, 2001 (App. Bd. Feb. 8, 2001). This Applicant has done.

The evidence of existence of immediate family members, who are citizens of and reside in the PRC, a country which is undisputedly hostile to the Government of the United States, comes within 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.

However, I conclude that Applicant has mitigated the security concerns, thereby demonstrating that it is clearly consistent with national security to grant him the clearance. This decision is based on several factors. These include the fact that Applicant is a native born United States citizen, who has lived his entire life in the United States, and his only trip to PRC was in 2003. Applicant's wife is now a United States citizen, and all his blood relatives, including his three year old son, his father, mother, and two brothers, were born in the United States and are U.S. citizens. Finally, the

family members, who are of a concern, are related to Applicant's wife and not to Applicant; his parents-in-law now live in the United States with him and his wife, and his contact with his wife's sister and cousin has been casual and extremely infrequent.

I have determined that Applicant's wife's family do not constitute an unacceptable security risk, and Mitigating Conditions (MC) (E2.A2.1.3.1.), a determination that the immediate family members 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, applies.

After considering all of the evidence of record on Guideline B., I conclude that the mitigating evidence substantially outweighs the evidence supporting the SOR and even in the unlikely event pressure was exerted upon Applicant to compromise classified information, he would resist it, and would report the incident to the proper authorities. Accordingly, Guideline B is found for Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Martin H. Mogul
Administrative Judge