

KEYWORD: Foreign Influence

DIGEST: Applicant is 32 years old. He is an engineer for a defense contractor. His parents live in the Peoples Republic of China (PRC), where they were born. His father is now a U.S. citizen, and his mother has permanent residency in the U.S., but Applicant provided no evidence about their current residence other than that contained on his security clearance application that they live in the PRC. His two sisters live in the PRC, according to his security clearance application, and Applicant has not provided any address information for them that varies from that original information. Applicant did not mitigate the foreign influence security concern. Clearance is denied.

CASENO: 03-26020.h1

DATE: 01/30/2006

DATE: January 30, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-26020

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 32 years old. He is an engineer for a defense contractor. His parents live in the Peoples Republic of China (PRC), where they were born. His father is now a U.S. citizen, and his mother has permanent residency in the U.S., but Applicant provided no evidence about their current residence other than that contained on his security clearance application that they live in the PRC. His two sisters live in the PRC, according to his security clearance application, and Applicant has not provided any address information for them that varies from that original information. Applicant did not mitigate the foreign influence security concern. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On January 13, 2005, DOHA issued a Statement of Reasons⁽¹⁾ (SOR) detailing the basis for its decision-security concerns raised under Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing on March 8, 2005. Applicant requested his case be decided on the written record in lieu of a hearing.

On August 1, 2005, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not file a response to the FORM within the 30 day time allowed that expired on September 2, 2005. The case was assigned to me on September 20, 2005.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated here as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is a 32-year-old engineer employed by a defense contractor. He applied for a security clearance on August 26, 2003, when he signed his security clearance application (SCA). (Item 4)

Applicant's family members were born in the Peoples Republic of China (PRC), as was Applicant. Applicant became a naturalized U.S. citizen on March 30, 1999. He holds a U.S. passport. Applicant's father became a U.S. citizen in July 2004. His mother is a permanent resident of the U.S. According to Applicant's SCA, they both now reside in the PRC. His older sister is a citizen of Portugal. His other sister was projected to move in 2005 to the United Kingdom with her husband because of his employment. According to Applicant's answer to the SOR, both of his sisters were living in the PRC at the time. (Items 3 and 4)

Applicant traveled to the PRC for family visits in October to November 2002, September 1999, and December 1996. He owns a home in the U.S. and was married in 2005 to a U.S. citizen. (Items 3 and 4)

The PRC is an active collector of military and industrial intelligence. The PRC agents seek information on sensors and lasers, military weapons systems, computer equipment, and information systems, among other areas of interest. The PRC is a one-party communist-controlled nation that does not respect the individual rights of its citizens, centrally plans its economy, and maintains a large military and internal security apparatus. The government and the communist party control the news, and internet access for its citizens is regulated. It has a poor human rights record, and suppresses dissent and anyone who is perceived as a threat to the government or the communist party. The PRC has a growing global presence, seeking trade agreements, commodity contracts for gas and oil, for example, and multilateral security agreements. (Items 5-10)

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information with Industry*

§ 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required.

In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence (See Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. 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.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. ay 2, 1996). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Exec. Or. 12968 § 3.1(b).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guideline most pertinent to an evaluation of the facts of this case:

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 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 are relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.
E2.A2.1.1

CONCLUSIONS

The Government established by substantial evidence and Applicant's admissions each of the allegations in the SOR. According to his SCA, Applicant's parents and sisters live in the PRC. The burden of proof is on him in responding to the SOR, and he has not met that burden to persuade me that his parents and sisters live somewhere other than the PRC, as he originally disclosed.

Applicant had two opportunities in this process to disclose clearly where his family members live, if outside the PRC. He failed to do so.

The Disqualifying Condition (DC) applicable is 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. E2.A2.1.2.1). His family lives in the PRC.

There are no Mitigating Conditions (MC) applicable. Applicant has the burden of proof that any MC apply, and he has not met that burden. He failed to establish that his family members were not agents of a foreign power or in a position to be exploited by the PRC in a way that could force Applicant to choose between his loyalty to the U.S. and to his family. His contacts with them are not casual and infrequent. For these reasons, no MC apply, and I conclude this guideline against Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline B: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

DECISION

In light of all of 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 Applicant. Clearance is denied.

Philip S. Howe

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).