

DATE: March 17, 2005

---

In re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 03-26176

**DECISION OF ADMINISTRATIVE JUDGE**

**PHILIP S. HOWE**

**APPEARANCES**

**FOR GOVERNMENT**

Marc E. Curry, Esq., Department Counsel

**FOR APPLICANT**

Pro Se

**SYNOPSIS**

Applicant is 42 years old, married with three children, and works as an electrical engineer for a defense contractor. In 1999 he married a citizen of the People's Republic of China. They live in the U.S., but her parents and siblings live, work, and are citizens of the People's Republic of China. Her father and brother are, or were, officials of the provincial government. Contact with her parents and siblings is frequent by Applicant's wife. His wife became a naturalized U.S. citizen in 2004. Applicant has not mitigated 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 June 1, 2004, DOHA issued a Statement of Reasons<sup>(1)</sup> (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 June 25, 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on November 16, 2004. On December 14, 2004, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government and the Applicant submitted exhibits that were admitted into evidence. DOHA received the hearing transcript (Tr.) on December 27, 2004.

**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 42 years old, a registered professional engineer and a registered communications distribution engineer. He works for a defense contractor. Applicant is married to a woman born and raised in the People's Republic of China (PRC) who is now a naturalized U.S. citizen. They have two children, and Applicant has another child from his previous marriage. Applicant and his spouse were married in November 1999. They live in the U.S. and own their own home.

Applicant was an eagle scout at age 16, and served in the Army from 1980 to 1982, being discharged honorably. (Tr. 13, 20-23, 26, 39; Exhibits 1, and A-C)

Applicant's spouse family members live and work in the PRC. His spouse's parents are retired. Her father was a treasurer of a county government in the PRC, and her mother worked in a state-owned bank. Her father is or was a member of the Chinese Communist Party. Her brother is a policeman in a PRC province, working in a managerial capacity with the operational funds of that police department. Her older sister is an accounting manager in a bank. Applicant's spouse's younger sister is a chemistry teacher. Applicant's spouse calls her parents at least once every three weeks, and usually weekly. She also speaks frequently with her sisters. She speaks less frequently with her brother. (Tr. 27-35; Exhibit 1)

Applicant first visited the PRC with his spouse in December 1999. He next visited her family from February 2002 to March 2003, and then again in December 2003. Applicant's spouse's parents lived with them from June 2002 to June 2003 to help take care of their first child after its birth. Applicant intends to return to China often to visit his wife's family. When visiting her family, Applicant socializes with her parents and siblings, though they do not speak English. (Tr. 25-29, 41; Exhibit 1)

Applicant submitted several character reference letters. They show Applicant is a competent and hard-working electrical engineer. They also state Applicant is a loyal citizen, conscientious, and dependable. Applicant's spouse's employer rates her highly as a banker and comments she became a naturalized U.S. citizen in 2004. (Tr. 15-19; Exhibits D-I)

The PRC is controlled politically by the Chinese Communist Party. Foreign business people traveling in the PRC may be placed under government surveillance, and their belongings subject to search without notice. Their hotel rooms and communications may be subject to monitoring by government authorities. (Exhibit 2)

### 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 with 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. *See Egan*, 484 U.S. at 531. 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. May 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 guidelines 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. Applicant's spouse has all of her family members living, working, or retired in the PRC. They are citizens of the PRC. Therefore, three Disqualifying Conditions (DC) apply to these facts. DC 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*), DC E2.A2.1.2.2 (*Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists*), and DC E2.A2.1.2.3 (*relatives, cohabitants, or associates who are connected with any foreign government*) apply. Applicant's spouse's father is or was a member of the Chinese Communist Party, and held a job in a provincial treasurer's office. Her brother is an official in a provincial police department. Applicant's wife's family live in the PRC. And Applicant's sharing of his living quarters with his wife has a potential for adverse foreign influence because her parents and siblings live and work in the PRC.

The Mitigating Conditions (MC) applicable here are none. Applicant's wife family members are in a position to be exploited by the PRC government in a way that could force Applicant to choose between his loyalties. His in-laws could be exploited by threats of job or pension loss if they did not get Applicant to cooperate. Applicant's travel to the PRC places him in a vulnerable position if he has access to classified information in his job if the PRC agents search his luggage or monitor his phone calls and telefaxes. His wife has frequent contact with her family from their home in the U.S., and her parents lived with them for a year in the U.S. Applicant and his wife's family may not speak English together, but his nearly annual trips to the PRC do not show his contact with the family is casual or infrequent. For these reasons, 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

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 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).