

DATE: June 29, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-26536

DECISION OF ADMINISTRATIVE JUDGE

CHRISTOPHER GRAHAM

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a naturalized citizen of the United States, is employed by a federal contractor in information systems. His wife and her parents are citizens of the People's Republic of China (hereafter PRC.) His wife is applying for U. S. Citizenship. He has traveled to the PRC in the past and disclosed his foreign contacts. He was able to successfully mitigate the foreign influence security concerns of Guideline B raised by his immediate family members who live in the PRC. Clearance is granted.

STATEMENT OF THE CASE

On February 2, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR alleged facts under Guideline B (foreign influence), detailing 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 Applicant's security clearance.

In a sworn written statement, dated February 9, 2005, Applicant responded to the allegations in the SOR, attached one document, and waived a hearing. A File of Relevant Material (FORM) was issued March 31, 2005. Applicant filed no response to the FORM. The case was assigned to me on May 18, 2005.

FINDINGS OF FACT

Applicant has admitted to all three factual allegations pertaining to foreign influence under Guideline B. His admissions are incorporated herein as findings of fact. After a thorough review of the record as a whole, I make the following additional findings of fact:

(1)

Applicant is a married, 39-year-old employee of a federal contractor. His wife is a citizen of the PRC, has unconditional residence status in the United States (green card), and is preparing her application for citizenship. (2) She immigrated to the United States in March 2000, (3) and she married Applicant in May 2000. (4) She was one of the student protestors at Tiananmen Square in 1989. (5) Her parents are citizens and residents of the PRC. Her mother is 74 and her father is 80. Both are retired professors of a major Chinese university. Because of a long standing family conflict, she does not have a close relationship with her parents. (6) Applicant traveled to the PRC in 1999 and 2000 during his courtship with his wife. The trips were personal and he had no contact with the PRC government or any business entities. (7) Applicant has had nominal contact with his father-in-law since January 2002, and has had no contact with his mother-in-law since January 2003. (8)

Applicant has a history of properly disclosing his foreign travel and foreign contacts to his employer. (9)

The PRC is noted for its repressive Communist- style government and military and industrial espionage. (10) However, there has been considerable economic activities between the two countries. (11)

POLICIES

"[No] one has a 'right' to a security clearance." (12) 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." (13) The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential coercion, and willingness and ability to abide by regulations governing use, handling, and protection of classified information." (14) Eligibility for a security clearance may be adjudicated using the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative factors listed in ¶ 6.3 of the Directive: nature and seriousness of the conduct and surrounding circumstances; frequency and recency of the conduct; age of the Applicant; motivation of the applicant, and the extent to which the conduct was negligent, wilful, voluntary, or undertaken with knowledge of the consequences involved; absence or presence of rehabilitation; and probability that the circumstances or conduct will continue or recur in the future.

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. (15) 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. (16)

Once the Government establishes a disqualifying condition, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. (17) An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." (18) 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 judgment, reliability and trustworthiness of one who will protect the national interests as his or his 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. (19) Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism.

Having considered 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: (FI), Directive, ¶ E2.A2.1.1. *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 obligations are: (1) not citizens of the United States or (2) 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 or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.*

CONCLUSIONS

The Government established its case under Guideline B. Applicant has been portrayed as a person who has a potential security risk because his wife and her parents are citizens of the PRC. His in-laws still live there and may be subject to duress. These situations raise the potential for vulnerability to coercion, exploitation, or pressure, and the exercise of foreign influence that could result in the compromise of classified information. However, the mere possession of family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B:

The language of [Guideline] B (Foreign Influence) in the Adjudicative Guidelines makes clear that the possession of such family ties may pose a security risk. Whether an applicant's family ties in a foreign country pose a security risk depends on a common sense evaluation of the overall facts and circumstances of those family ties. *See* ISCR Case No. 98-0419 (April 30, 1999) at p.5. [\(20\)](#)

The continuing citizenship of his wife's parents raise the potential issue of foreign influence. In this regard, see Foreign Influence Disqualifying Condition (FI 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 or present in, a foreign country)*. Also, FI 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)* is applicable. Given his wife's estrangement from her parents, the fact that she has been living in the U. S. for the prerequisite 5 years, and will be making application for citizenship rebuts any adverse influence or duress on Applicant. Also, the fact that she was a student protestor at the Tiananmen Square incident belies her attitude toward the PRC government.

Also applicable in this case is Foreign Influence Mitigating Condition (FI MC) E2.A2.1.3.1. *(a determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitants, or associate(s) in question are not agents of a foreign power or in a position to be exploited by foreign power in a way that would force the individual to choose between loyalty to the person(s) involved and the United States)*. Applicant's in-laws are retired professors, who have not been agents of the PRC government, and because of their age and lack of close contact with Applicant and his wife, are not in a position to be exploited in such a manner as to make Applicant a security risk.

FI MC E2.A2.1.3.3 *(Contact and correspondence with foreign citizens are casual and infrequent)* also applies. Applicant's two trips to the PRC were a number of years ago, and were for the purpose of courting his wife and then arranging to bring her to the United States. He has had minimal contact with her parents in past years and has had no contact in several recent years. More important, his wife has had some family discord and is estranged from her parents, having very minimal contact with them. She provides them no financial support. I find Applicant has had only casual and infrequent contact with his in-laws and has successfully rebutted the presumption that these contacts are not casual.

Further, FI MC E2.A2.1.3.4. *(The individual has promptly reported to proper authorities aa contacts, requests, or threats from persons or organizations from a foreign country, as required)* also applies. Applicant has consistently disclosed his foreign contacts to his employer during his trips abroad, while he worked overseas, and since being married to his wife. He can be trusted to do so in the future.

Finally, FI MC E2.A2.1.3.5. (*foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities*) applies. Applicant and his wife have no financial ties to the PRC, as they own no property or bank accounts in the PRC, nor do they send money in support of the wife's parents. .

Applicant has not engaged in any misconduct such as to render him an inappropriate candidate for a security clearance. I conclude that Applicant has successfully rebutted the presumption of foreign influence. I conclude Guideline B for the Applicant.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 2. Guideline B: FOR THE APPLICANT

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.c. For the 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 Applicant's security clearance. Clearance is granted.

Christopher Graham

Administrative Judge

1. Item 4 (*Standard Form 86, Security Clearance Application, signed April 24, 2003*) at 1, 3.
 2. Item 3 (*Applicant's Sworn Statement dated February 9, 2005*) at 1.
 3. Item 5 (*Applicant's Sworn Statement dated October 30, 2003*) at 1.
 4. Item 4, *supra*, at 3.
 5. Item 3, *supra*, at 1..
 6. *Id.* at 2.
 7. Item 5, *supra*, at 2.
 8. *Id.* at 2.
 9. Item 3, *supra*, at 2-3; Item 5, *supra*, at 1-3.
10. Item 7 (*U. S. Department of State: Background Note: China dated October 2004*).
 11. *Id.* at 17-20.
 12. See *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1998).
 13. *Id.*, at 527.

14. Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995).
15. *Egan, supra*, at 531.
16. See *ISCR Case No. 95-0611* at 2 (App. Bd. May 2, 1996).
17. See *ISCR Case No. 01-20700* at 3 (App. Bd. Dec. 19, 2002).
18. *Id.*, at 3.
19. See *Egan*; Directive ¶ E2.2.2.
20. *ISCR Case No. 98-0507* (Appeal Board Decision and Reversal Order, May 17, 1999), at 10.