

DATE: December 5, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-26756

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a naturalized United States citizen whose wife is a citizen of the People's Republic of China (China) with permanent resident alien status in the United States. Her mother and father are citizens and residents of China, and she speaks with them by telephone on a regular basis. He has failed to mitigate the foreign influence security concerns that result from his family ties to China. Clearance is denied.

STATEMENT OF THE CASE

On February 9, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. ⁽¹⁾ The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline B (foreign influence). Applicant submitted a response to the SOR that was received by DOHA on March 3, 2005, requested a hearing, and admitted all SOR allegations.

The case was assigned to me on August 10, 2005. A notice of hearing was issued on September 7, 2005, scheduling the hearing for September 22, 2005. The hearing was conducted as scheduled. The government submitted four documentary exhibits that were marked as Government Exhibits (GE) 1-4. GE 1 and 2 were admitted in evidence and made part of the record case without objection. Administrative notice was taken of GE 3 and 4 without objection. Applicant testified, called one witness to testify on his behalf, and submitted six documents that were marked as Applicant's Exhibit (AE) 1-6, and admitted in evidence and made part of the record without objection. The transcript was received on October 6, 2005.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the pleadings, testimony, and exhibits, I make the following findings of fact:

Applicant is 27 years old, married, and has been employed as a systems engineer by a defense contractor since May 2001. The certificates he submitted attest to his being a capable employee who is deemed to be a key contributor to the employer's success on several projects. He held an interim security clearance for about a year, and there were never any complaints made alleging he mishandled classified information or did anything

that might indicate he was a security risk.

Applicant was born and raised in the People's Republic of China (China) until he immigrated at the age of 11 to the United States with his mother in April 1990. Applicant's father, a physician, had entered the U.S. in 1987 on an exchange program as a visiting scholar. Applicant attended high school in the U.S., and then obtained a bachelor of science degree with a major in electrical engineering from a major public university in 2000. He received a master of science degree from the same university in May 2001. While a student, Applicant worked as a researcher and teaching assistant at the university.

Applicant became a naturalized U.S. citizen in February 2001. His father became a naturalized citizen in December 1999. His mother has not sought U.S. citizenship because as a citizen of China she does not need to obtain a visa to travel there to visit her father. She has traveled to China several times since coming to the U.S., and was in China at the time of the hearing.

Applicant's wife is a citizen of China with permanent residency status in the U.S. They met while she was in the U.S. on a student visa, and were married in June 2003. They have no children, but do plan on starting a family. She is employed as a software engineer.

Applicant's wife is an only child. Her parent's are citizens and residents of China, and live on a farm they own. Her father is a 69-year-old retired factory worker. Her mother is a 60-year-old retired pharmacist. Applicant and his wife do not provide support for her parents, but have discussed the matter and are willing to provide them with financial support in case of medical emergencies or other such needs.

The only time Applicant has met his in-laws was during a three-week trip he and his wife took to China in 2003 for that purpose. They stayed with her parents during the trip. Applicant's wife has traveled back to China every couple of years since coming to the U.S., and she speaks with her parents by telephone every couple of weeks. Applicant only speaks with his in-laws two to three times a year.

In addition to the 2003 trip, Applicant has returned to visit in China three or four times since he immigrated to the U.S. He anticipates he will travel to China in the future because his grandfather still lives there. Neither he nor his wife own any property in China, although he presumes she will inherit the farm her parents own. Applicant estimates his assets in the U.S. are worth approximately \$200,000.00.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline B, pertaining to foreign influence, with its respective DC and MC, is most relevant in this case.

BURDEN OF PROOF

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽²⁾ The government has the burden of proving controverted facts.⁽³⁾ The burden of proof in a security clearance case is something less than a preponderance of evidence,⁽⁴⁾ although the government is required to present substantial evidence to meet its burden of proof.⁽⁵⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁶⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁽⁷⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁸⁾

No one has a right to a security clearance⁽⁹⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹⁰⁾ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.⁽¹¹⁾

CONCLUSIONS

Foreign Influence. 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 or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Security clearance decisions are not loyalty determinations and should not be construed as such. Instead, the issue is whether it is clearly consistent

with the national interest to grant a security clearance in a particular case. No suggestion has been made, and there is no reason to doubt, that Applicant is anything but a loyal, honorable, and faithful U.S. citizen. However, the analysis does not stop there.

Applicant's wife is a citizen of China, and his parents-in-law are citizens and residents of that country. He and his wife visited her parents in China in 2003, and she has visited there with them on other occasions. She speaks with her parents by telephone every couple of weeks and Applicant speaks with them two or three times a year. Although they do not presently provide support for her parents, Applicant and his wife have discussed the issue and are willing to do so when and if the need arises. Clearly, Applicant's wife and Applicant, at least vicariously through his wife, maintain a close relationship with her parents and have a sense of obligation to them.

Although not alleged as a separate security concern, Applicant's mother and grandfather are citizens of China and his grandfather resides in China. Applicant traveled to China several times before his 2003 trip, and, considering his in-laws and grandfather's citizenship and residency, will likely visit there again.

Disqualifying Conditions (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;* and DC 2: *Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists apply.*

Applicant has not provided any information upon which to base a finding that any mitigating condition applies to his parents-in-law and their residence in China. Specifically, there is no evidence supporting application of Mitigating Conditions (MC) 1: *A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, . . . are not . . . 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* or MC 3: *Contact and correspondence with foreign citizens are casual and infrequent.*

The presence of Applicant's parents-in-law in China, and his wife's presence there during her visits with her parents, clearly places them in a position where they can be exploited by the Chinese government. Applicant's trip to China with his wife to meet her parents, and her multiple visits with her parents, along with her frequent and routine telephone contact with them negates a finding that the contacts are casual and infrequent.

Neither Applicant nor his wife have any financial interests in China, and her possible inheritance of a farm of indeterminate value is speculative at best. On the other hand, Applicant has accumulated substantial assets in the United States. Mitigating Condition (MC) 5: *Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities* applies. The remaining Guideline B mitigating conditions have no applicability to the facts of this case.

In all adjudications the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

Considering all relevant and material facts and circumstances present in this case, the whole person concept, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, I find that Applicant has failed to mitigate the security concern that arises from his parents' residence in the PRC. Guideline B is decided against Applicant.

FORMAL FINDINGS

SOR ¶ 1-Guideline B: Against Applicant

Subparagraph a: Against Applicant

Subparagraph b: Against Applicant

Subparagraph c: Against 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 Applicant. Clearance is denied.

Henry Lazzaro

Administrative Judge

1. This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
3. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
4. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
5. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
6. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
7. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
8. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
9. *Egan*, 484 U.S. at 528, 531.
10. *Id* at 531.
11. *Egan*, Executive Order 10865, and the Directive.