

DATE: July 26, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-26965

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's foreign family ties have been mitigated and do not raise a security concern. Clearance is granted.

STATEMENT OF THE CASE

On February 11, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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 and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on February 21, 2005, in which he elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on April 11, 2005, consisting of seven documents, referred to as Government Exhibits 1 through 7. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on April 25, 2005, and he submitted a reply dated May 20, 2005, with attachments.

The case was assigned to the undersigned for resolution on July 7, 2005.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the exhibits and the testimony. The Applicant is 40 years of age. He holds a Ph.D in electrical engineering from a University in the United States. He is employed as a Principal Systems Scientist for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant was born in China in 1965. He left China in 1990. He became a United States citizen in September 2001. His father, who was a Chinese University professor for thirty-eight years of his life is now a permanent resident of the United States. His father is also a citizen of the People's Republic of China but resides in Canada with the Applicant's sister. The Applicant's father is planning to apply for his United States citizenship when he is eligible. The Applicant further indicates that his father is not an agent of the Chinese Government. The University in China for whom the Applicant's father taught was not and has never been affiliated in any way with the Chinese Government. The Applicant's father has no financial interests in China and the only person that he contacts at all in China is his brother, once every three months or so. Although he used to live with the Applicant, he no longer resides with him.

The Applicant also has aunts and uncles who are citizens and residents of China. None of his relatives in China have ever been employed with or for the Chinese Government, nor have they ever been associated with the Communist party. They are employed as farmers, mechanics, street vendors, real estate agents and one owns a food processing factory. The Applicant has no contact with any of his aunts and uncles in China.

The Applicant traveled to China for a two week vacation in December 2001. The Applicant has no financial interests in China and little contact with anyone there. Since 1990 when he left China, he has had little or no contact with any of his relatives. During an interview with the Defense Security Service the Applicant stated that he is loyal to the United States and that nothing could place him in a position where he would be forced to question that loyalty. (*See Government Exhibit 4*).

Mitigation.

Excerpts from the Applicant's personnel file, maintained by his employer, specifically his annual employee reviews, indicate that his work performance ratings either "exceed or meet job requirements".

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

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: (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.

Condition that could raise a security concern:

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;

Conditions that could mitigate security concerns:

1. A determination that immediate family member(s), spouse, father, mother, sons daughters, brothers, sisters), cohabitant, or associates(s) in questions 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) and the United States;
3. Contact and correspondence with foreign citizens are casual and infrequent.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

The Government must make out a case under Guideline B (Foreign Influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates a foreign preference and has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSIONS

Having considered the evidence in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR, and that Applicant's foreign influence has a direct and negative impact on his suitability for access to classified information.

This 40 year old Chinese born Applicant obtained his doctoral degree in electrical engineering in the United States. He became a United States citizen in September 2001. He has little or no contact with any of his relatives in China. His father is a permanent resident of the United States, living in Canada and is planning to apply for United States citizenship when he is eligible. None of the Applicant's family members in China or in the United States have ever been affiliated with, employed for, or agents of, the Chinese Government, the Communist party, or any other adverse organization. Therefore, mitigating condition *(1) a determination that the immediate family member(s), cohabitant, or associate(s) in question would not constitute an unacceptable security risk* applies.

Although his aunts and uncles still reside in China, he has only casual and infrequent contact with them. Mitigating condition *(3) contact and correspondence with foreign citizens are casual and infrequent* also applies. The Applicant has substantial financial interests in the United States and none in China. In a sworn statement to the Defense Security Service the Applicant stated that he is loyal to the United States and that there is no situation that could ever occur that would force him to reveal classified information to any unauthorized individual no matter what their relationship to the Applicant. He has no foreign ties or contacts that could potentially influence him. Therefore, I find that there is no situation that could create the potential for foreign influence that could result in his compromise of classified information. Accordingly, the Applicant's request for a security clearance must be granted under Guideline B.

Considering all the evidence, the Applicant has met the mitigating conditions of Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guideline B.

FORMAL FINDINGS

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.

Subparas. 1.a.: For the Applicant

1.b.: For the Applicant

1.c.: For the Applicant

1.d.: For the Applicant

1.e.: For the Applicant

DECISION

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

Darlene Lokey Anderson

Administrative Judge