

KEYWORD: Foreign Influence

DIGEST: Applicant is a naturalized citizen of the United States. His parents, citizens of the People's Republic of China (PRC), reside with him and have been granted permanent resident status by the United States. Applicant's wife is a U.S. citizen, but her mother and brother are citizens and residents of China. Applicant has mitigated the foreign influence security concern alleged in the Statement of Reasons. Clearance is granted.

CASENO: 03-27041.h1

DATE: 01/26/2006

DATE: January 26, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-27041

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a naturalized citizen of the United States. His parents, citizens of the People's Republic of China (PRC), reside with him and have been granted permanent resident status by the United States. Applicant's wife is a U.S. citizen, but her mother and brother are citizens and residents of China. Applicant has mitigated the foreign influence security concern alleged in the Statement of Reasons. Clearance is granted.

STATEMENT OF THE CASE

On February 14, 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 a security concern under Guideline B (foreign influence). Applicant submitted an answer to the SOR that was received by DOHA on March 7, 2005, admitted all SOR allegations, and requested a hearing.

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 21, 2005. The hearing was conducted as scheduled. The government submitted five documentary exhibits that were marked as Government Exhibits (GE) 1-5. GE 1 and 2 were admitted into evidence, and administrative notice was taken of the information contained in GE 3-5 without objection. ⁽²⁾ Applicant testified, called one witness to testify on his behalf, and submitted four documentary exhibits that were marked as Applicant Exhibits (AE) 1-4, and admitted into evidence without objection. The transcript was received on October 6, 2005.

PROCEDURAL MATTERS

The Government moved to amend the SOR by withdrawing subparagraph 1.a., striking the words "and residents" from subparagraph 1.b., and inserting a subparagraph 1.d. to read "Your brother-in-law is a citizen and resident of the People's Republic of China." The requested amendments were allowed without objection.

FINDINGS OF FACT

After a thorough review of the pleadings, testimony, and exhibits, I make the following findings of fact:

Applicant is 38 years old and has been employed as a staff engineer by a defense contractor since January 2003. He was born in the People's Republic of China (PRC) in August 1967, and resided in that country until he immigrated to the U.S. on a student visa in December 1988. Applicant was awarded a bachelor of science degree in China in 1988. He earned a master of science degree in electrical engineering in the U.S. in 1991, and a Ph.D. in electrical engineering in the U.S. in 1993. He held several jobs in the engineering field with non-government contractors prior to being hired by his present employer.

Applicant met his wife, who was then a citizen of the PRC, in the U.S. while she was attending the same university from which he earned his advanced degrees. She had immigrated to the U.S. in approximately 1990. They were married in February 1996, and have one daughter who is six years old. Applicant was granted permanent resident status in the U.S. in 1993, and became a U.S. citizen on May 23, 2001. Applicant's wife became a U.S. citizen on August 18, 2005. She is presently employed as a chemical engineer.

Although Applicant's parents are citizens of the PRC, they were granted permanent resident alien status in the U.S. on June 9, 2005, and now reside with Applicant and his family. His father is a 68-year-old retired mechanical engineer, and his mother is a 66-year-old retired research scientist. Applicant has one brother who is 33 years old, and who has also been granted permanent resident alien status in the U.S. Applicant believes each of his immediate relatives will apply for U.S. citizenship when they become eligible.

Applicant's wife's mother and brother are citizens and residents of the PRC, and her sister is a citizen of the PRC, but a resident of the U.S. His mother-in-law is a 66-year-old retired accountant. Applicant does not know what his brother-in-law does for a living other than that it involves architectural design related to engineering. Applicant's wife speaks with her mother by telephone about every other week, and with her brother about once a month if he chances to be present when she calls her mother. Applicant has only spoken with his mother-in-law once in the past year, and with his brother-in-law once in the last two years. Applicant's wife occasionally sends her mother and brother nominal gifts but does not provide any support for them.

Applicant has never returned to the PRC since immigrating to the U.S. His wife has only been back to the PRC on two occasions since she immigrated to the U.S., and both of those trips were business trips sponsored by her present employer. She visited with her mother and brother while in the PRC on those trips, and extended one of the trips by several days to specifically arrange to visit with her family. Applicant's wife will only visit the PRC in the future as part of her employment. Applicant's mother-in-law has visited with him and his wife on two occasions. The last visit occurred in 2001, and was of about six months' duration.

Neither Applicant nor his wife own any property in the PRC. His net worth of approximately \$700,000.00 is made up of real estate, stocks, bank accounts, 401K accounts, and other property. Applicant's parents own a condominium in the PRC that he estimates is worth about \$70,000.00. The condominium has been vacant since his parents moved to the U.S., and he believes his parents are retaining it for their use when they visit relatives, primarily Applicant's grandmother, in the PRC in the future. Applicant believes he and his brother would inherit the condominium if it was still owned by his parents at the time of their deaths. Applicant's parents also receive a combined pension of approximately \$200.00 per month from the PRC, but are otherwise totally supported by Applicant and his wife.

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.⁽³⁾ The government has the burden of proving controverted facts.⁽⁴⁾ The burden of proof in a security clearance case is something less than a preponderance of evidence,⁽⁵⁾ although the government is required to present substantial evidence to meet its burden of proof.⁽⁶⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁷⁾ 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.⁽⁸⁾ Additionally, an

applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁹⁾

No one has a right to a security clearance⁽¹⁰⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹¹⁾ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.⁽¹²⁾

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.

Disqualifying Condition (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* applies in this case because Applicant's parents are citizens of the PRC. 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* applies because Applicant's mother-in-law and brother-in-law are citizens and residents of PRC.

Once the government meets its burden of proving controverted facts⁽¹³⁾ the burden shifts to an applicant to present evidence demonstrating extenuation, mitigation, or changed circumstances.⁽¹⁴⁾ Further, the government is under no duty to present evidence to disprove any Adjudicative Guideline mitigating conditions, and an Administrative Judge cannot assume or infer that any particular mitigating condition is applicable merely because the government does not present evidence to disprove that particular mitigating condition.⁽¹⁵⁾

The following Mitigating Conditions (MC) must be evaluated in determining whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant under Guideline B: MC 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 a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States*; MC 3: *Contact and correspondence with foreign citizens are casual and infrequent*; and MC 5: *Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.*

There is no evidence to suggest that Applicant's parents or in-laws are, or ever have been, agents of the PRC, so the issue under MC 1 is whether they are in a position to be exploited by PRC.

Although Applicant's parents remain citizens of the PRC, they have been granted permanent resident status in the U.S. and now reside with Applicant in the U.S. While his parents still own a condominium in the PRC and receive a small pension from that country, those assets appear to be of minimal concern to them considering their willingness to leave the condominium vacant and for use as essentially a vacation home in the event

they decide to visit relatives in the PRC in the future, and that their primary support at present is provided by Applicant and his spouse. Under the facts present in this case, Applicant's parents are not in a position that might subject them to the kind of exploitation that would vitiate application of MC 1.

Conversely, Applicant's in-laws reside in the PRC and are subject to possible exploitation by that country's government. However, his contacts with them are casual and infrequent within the meaning of MC 3. His wife on the other hand has regular contact with her mother and brother. She frequently speaks with them by telephone, has visited them in the PRC while she was there on business, and her mother has visited in the U.S. on two occasions. Accordingly, Applicant is not entitled to application of MC1 at all and only minimal application of MC 3 as to his in-laws.

Still, the decision to grant or deny a security clearance to Applicant is not simply based upon the ability to apply or deny the application of a mitigating condition to this case or the weighing of those conditions against the existence of an established disqualifying condition. Rather, the ultimate determination in this case requires an overall common sense determination based upon consideration of the possibility of foreign influence being exerted upon Applicant and him succumbing to that foreign influence in the context of the whole person. [\(16\)](#)

Applicant entered the United States in 1988 on a student visa, and obtained permanent resident alien status in 1993. He became a U.S. citizen on May 23, 2001. His wife came to the United States in 1990, apparently also on a student visa, has remained a resident of this country since that time, and she became a U.S. citizen in August 2005. They have a six-year-old daughter who is a U.S. citizen by birth. During the hearing, Applicant eloquently expressed his loyalty to the United States, his appreciation for the freedoms and benefits it offers, and of his desire to contribute to the nation's defense capabilities.

Applicant has obtained two advanced degrees since coming to the U.S., and has held a number of responsible employment positions. He and his wife have accumulated substantial assets since immigrating to the U.S., and, with the exception of her mother and brother, have effectively severed all ties to the PRC. Applicant has never returned to the PRC. His wife only recently returned to that country, and then only on her employer's behalf. Further evidence of Applicant's substantial ties to the U.S., and minimal connection to the PRC, is the recent immigration of his parents to this country, their obtaining permanent resident status in the U.S., and the fact that his brother and sister-in-law are residents of the U.S.

It is also prudent to look at the nature of Applicant's relationships with his in-laws, and their respective positions and/or activities within the PRC in assessing the likelihood that Applicant might be placed in a position of having to choose between the interests of those individuals and the interests of the U.S. To that end, Applicant has virtually no contact with his in-laws, one of whom is a retired accountant, and the other employed in a rather innocuous field. Neither has any connection with the PRC government, and nothing has been done within the PRC to attempt to exploit those relationships, or Applicant's relationship with his parents while they still resided in the PRC, since Applicant and his wife immigrated to the U.S. Additionally, Applicant's deep and longstanding relationship and expressed loyalty to the United States, especially when weighed against his minimal contacts with his in-laws in the PRC, is such that he can be expected to resolve any conflict of interest that might arise in favor of the interests of the United States.

It is likely that Applicant's parents will return to the PRC to visit for stays of unknown duration, thereby placing themselves in a position to be exploited by the PRC government. While Applicant's relationship to them is much stronger than it is to his in-laws, his demonstrated and expressed loyalty to the U.S., the fact that his home, wife and child are here, and the substantial assets he has accumulated in this country warrant finding he would likewise resolve any conflict of interest that might arise from his parent's future presence in the PRC in favor of the interests of the United States.

Although not alleged as a separate security concern, Applicant's lack of financial interests in the PRC and his substantial assets in the U.S. are further indicators of his connection and loyalty to the U.S., and lack of the same to the PRC. While he speculated he may stand to inherit a portion of the condominium his parents own in the PRC, there is no way of predicting what will actually happen or what the laws of the PRC provide as to such an inheritance. Even if he does inherit a one-half share of the condominium, that asset would be minimal when compared with the financial assets he possesses in the U.S., and not of such a nature that it would affect his security responsibilities. Accordingly, he is entitled to application of MC 5.

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. Applicant has presented sufficient evidence of refutation, extenuation, and mitigation to overcome the case against him. Accordingly, Guideline B is decided for Applicant.

FORMAL FINDINGS

SOR ¶ 1-Guideline B: For Applicant

Subparagraph a: Withdrawn

Subparagraph b: For Applicant

Subparagraph c: For Applicant

Subparagraph d: For 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 a security clearance for Applicant. Clearance is granted.

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. The transcript incorrectly indicates that GE 3-5 were admitted into evidence.
3. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
4. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
5. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
6. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
7. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
8. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
9. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.
10. *Egan*, 484 U.S. at 528, 531.
11. *Id* at 531.
12. *Egan*, Executive Order 10865, and the Directive.
13. Directive, Additional Procedural Guidance, Item E3.1.14
14. Directive, Additional Procedural Guidance, Item E3.1.15
15. ISCR Case No. 99-0597 (December 13, 2000).
16. Directive, Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, Item E2.2.3