

KEYWORD: Foreign Influence

DIGEST: Applicant, a 52-year-old software engineer, born in the PRC and educated there and at two U.S. universities in several disciplines, failed to mitigate security concerns relating to his family members in the PRC. These include his parents, three siblings and his mother-in-law. Clearance denied.

CASENO: 04-01055.h1

DATE: 12/30/2005

DATE: December 30, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-01055

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq. , Department Counsel

FOR APPLICANT

Robert R. Sparks, Jr., Esq.

SYNOPSIS

Applicant, a 52-year-old software engineer, born in the PRC and educated there and at two U.S. universities in several disciplines, failed to mitigate security concerns relating to his family members in the PRC. These include his parents, three siblings and his mother-in-law. Clearance denied.

STATEMENT OF THE CASE

On February 23, 2005, the Defense Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry* 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 which detailed 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 Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated March 21, 2005, Applicant responded to the allegations set forth in the SOR admitting some of the specifics but offering explanatory information. He requested a hearing. The case was assigned to me on June 27, 2005, and a Notice of Hearing was issued August 30, 2005, for a hearing held on September 15, 2005. The government introduced one exhibit at the hearing and requested that administrative notice be taken of seven. Applicant introduced one exhibit appended to his answer. All were accepted into evidence. The Applicant testified on his own behalf. The transcript was received on September 29, 2005.

FINDINGS OF FACT

Applicant admitted some of the factual allegations with explanatory information and denied others. Those admissions are incorporated herein as findings of fact. After a complete review of the evidence in the record and upon due consideration of the record the following additional findings of fact are made:

Applicant is a 52-year-old employee of a defense contractor working as a software engineer.

He was born in the Peoples Republic of China (PRC) and educated at Beijing University in physics and also employed while a student working on laser research. He married another student in 1982. In 1988 he left the PRC for Switzerland where he did work on lasers and plasma. He left Switzerland in 1990 and worked in Florida for two years in a research position in the chemistry department of a university. To further his career and obtain U.S. education, he moved to New Mexico in 1992 where he obtained master's degrees in physics and electrical engineering in 1995. Since his graduation he has worked for several U.S. companies in the defense field. Applicant became a permanent resident of the U.S. in 1994, a U.S. citizen in 1999, and obtained a U.S. passport in 2000.

Applicant has family in the PRC consisting of his parents (ages 75 and 85), a brother, and three sisters. His father and brother are farmers in a small village. Two sisters are housewives whose husbands are a repairman for a utility and a school teacher. The third sister's husband is an accountant with a public school. His mother-in-law also lives in the PRC and receives a pension from the government. He sends funds to his parents on occasion at Chinese holidays never exceeding \$500.00 in any one gift and \$1,000.00 per year. His siblings provide other financial assistance to his parents as needed. None of his relatives have visited the U.S.

Applicant traveled to the PRC twice in 2003 to visit his parents whose health was not good. He last traveled there in August of 2005 to visit his mother who was ill. He used his U.S. passport on all trips. He advised his security office of the trips. He traveled alone without family.

Applicant's wife has been employed by U.S. industry but is currently unemployed due to outsourcing of jobs by her former employer. They have one son who is an undergraduate in a major U.S. university. They have investments in the U.S. totaling over \$700,000.00.

Applicant has worked for his present employer since 2003 during which time he has held an interim security clearance.

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.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (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 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. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "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* Executive Order No. 12968 § 3.1(b).

"A security risk may exist when an individual's immediate family 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." Directive, ¶ E2.A2.1.1. Having immediate family members who are citizens of, and residing in a foreign country, may raise a disqualifying security concern. Directive, ¶ E2.A2.1.2.1.

CONCLUSION

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors and conditions above, I conclude the following with respect to all allegations set forth in the SOR:

Under Guideline B, Foreign Influence, a security risk may exist when an individual's immediate family and other persons to whom he has close ties of affection or obligation are not citizens of the United States or may be subject to duress. (E2.A2.1.1.) Such facts could create the potential for foreign influence that could result in the compromise of classified information.

Conditions under Guideline B that could raise a security concern and may be disqualifying include an immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident in a foreign country. (E2.A2.1.2.1.) Possible mitigating conditions (MC) that might be applicable are a determination that the associates 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 persons involved and the U.S.(E2.A2.1.3.1.)

Based on the evidence of record, including Applicant's admissions, the government established reasons to deny him a security clearance because of foreign influence. Having established such reasons, the Applicant had the burden to establish security suitability through evidence which refutes, mitigates, or extenuates the disqualification and demonstrates that it is clearly consistent with the national interest to grant a security clearance. ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001)

Applicant has shown that his family members are not agents of a foreign power, but he does have a number of close relatives living abroad who are in a position to be exploited by a foreign power in a way that could force him to choose between loyalty to them and to the U.S. (E2.A2.1.3.1.) His contacts with them are not frequent but because of the consanguinity of the relations, they are not casual. (E2.A2.1.3.3.)

Applicant has illustrated in his testimony his thankfulness for living in the U.S. and the freedoms as well as the financial benefits he has received. His immediate family is in the U.S. and he has substantial financial investments here. However, through his training in both the PRC and in the U.S., he has developed expertise in a variety of subjects which could be of value to the PRC in the information collection programs illustrated in the documents of which I have taken administrative notice. The Appeal Board has noted in past decisions that a very heavy burden is placed on an Applicant to overcome the fact that he has a number of relatives living in a country whose economic and political interests are adverse to the U.S. ISCR Case No. 01-26893 (App.Bd. Oct. 16, 2002) The evidence offered by Applicant is insufficient to meet that burden. No mitigating factors are applicable.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security of the nation. 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. The "whole person" concept recognizes that we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. While the evidence of Applicant's history and attitudes towards his adopted country are favorable they do not outweigh the evidence of his extensive family living in the PRC and the inherent risks of that fact when considered in the light of Applicant's knowledge and expertise in significant fields attractive to intelligence gatherers.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that it is not clearly consistent with the national interest to grant clearance to Applicant.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

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

DECISION

After full consideration of all the facts and documents 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.

Charles D. Ablard

Administrative Judge