

KEYWORD: Foreign Influence

DIGEST: Applicant is a 44-year-old chemical engineer educated in the Peoples Republic of China (PRC) and the U.S. He is married and has two children. His mother and two sisters live in the PRC and are citizens of that country. Applicant has not mitigated the foreign influence security concern. Clearance is denied.

CASENO: 04-02350.h1

DATE: 11/25/2005

DATE: November 25, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-02350

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Braden M. Murphy, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 44-year-old chemical engineer educated in the Peoples Republic of China (PRC) and the U.S. He is married and has two children. His mother and two sisters live in the PRC and are citizens of that country. Applicant has not mitigated the foreign influence security concern. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On March 3, 2005, DOHA issued a Statement of Reasons ⁽¹⁾ (SOR) detailing the basis for its decision-security concerns raised under Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing on March 13, 2005 and elected to have a hearing before an administrative judge. The case was assigned to me on May 20, 2005. On June 21, 2005, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government and the Applicant submitted exhibits that were admitted into evidence. The Government amended the SOR at Paragraph 1.e. to add the word "initially" after "not", and without objection, the amendment was granted. DOHA received the hearing transcript (Tr.) on June 29, 2005.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated here as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 44 years old, married with two children, and has a Ph.D. in chemical engineering. He works for a defense contractor. His wife works for a state government in the U.S. Applicant was born in the Peoples Republic of China

(PRC), as were his wife and children. Applicant and his wife were married in 1986. Applicant and his wife applied for permanent residency status in 1993. Applicant, his wife, and two teenaged children are U.S. citizens after being naturalized. He became a U.S. citizen in 1999 and his wife became a U.S. citizen in 2000. (Tr. 25-41; Exhibit 1)

Applicant obtained his undergraduate degree in China from 1978 to 1982 at the South China Technological University, and a master's degree there in 1987. He taught at the South China Technological University from 1982 until 1989. Then, he applied to immigrate to the U.S. to study chemical engineering at a U.S. university on a fully-funded scholarship from that university. The PRC government did not pay for any of Applicant's study in the U.S. When Applicant immigrated, he could not afford to bring his family with him. In 1990 his wife immigrated to the U.S., and their children remained in the PRC with his parents. In 1991 the children immigrated to the U.S. The PRC government or the South China University was reluctant to give his wife a passport because if she immigrated Applicant might not return to the PRC. Applicant was not required to return to the PRC after he completed his doctoral studies. (TR. 35-41, 77, 79, 81, 82; Exhibit 1)

Applicant's father died in 2000. He was a retired chemistry teacher in a public high school. He received a pension from the high school district. His mother is a PRC citizen and lives in the PRC. She is a retired school teacher, and receives a pension. Applicant talks to his mother by phone weekly because he is her only son. She has visited Applicant in the U.S. about four times since he immigrated. He also has two sisters who are PRC citizens and residents. One sister lives in the same town as his mother, and is a lab instructor at a local PRC university in the chemistry department. The other sister lives in Hong Kong with her husband. That sister is a housewife. Their daughter attends a U.S. university. Applicant speaks with his lab instructor sister about every other month, and to his sister in Hong Kong about every month. During the "Cultural Revolution" proclaimed by the PRC government in the 1960s, Applicant's father, sisters, and wife were sent to the country to study and work with the peasants so they, as educated people, could understand how the peasants lived and worked. Applicant was not sent to the country. No one in Applicant's family was a member of the PRC communist party. (Tr. 47-61; Exhibit 1)

Applicant's brother-in-law, and parents-in-law live in the U.S. and are U.S. citizens. His parents-in-law are retired. They have traveled to China a few times to visit family since they immigrated to the U.S. (Tr. 61-66)

Applicant has a U.S. passport since he became a U.S. citizen. His PRC passport expired and he kept it for a record of his visits to the PRC. He does not use it for travel now. (Tr. 76)

Applicant traveled to the PRC in 1994, December 1996 to January 1997 taking his family with him to visit his grandparents and other family members, and again in 2000 for his father's funeral. He also traveled to the PRC in December 2002 to January 2003. Whether he travels to the PRC in the future depends upon the state of his mother's health because she is now 75 years old. (Tr. 66-70)

After his father died in 2000, Applicant received about \$10,000 from his sister in Hong Kong who was sending him this money at the request of his father. This money was a gift from his late father. (Tr. 71-73)

The PRC is a one-party communist government. It has a poor human rights record, restricting basic human rights of its citizens. It engages in a regular program of industrial and military espionage to enhance its economic and military capacities, including collecting information in the U.S. about various technologies its government thinks will be useful to it. (Exhibits 3-5)

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. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information with Industry*

§ 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required.

In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 pertinent 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 (See Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

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. 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. *See* ISCR Case No. 95-0611 at 2 (App. Bd. ay 2, 1996). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "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* Exec. Or. 12968 § 3.1(b).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

Guideline B: Foreign Influence: The Concern: 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 are relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.
E2.A2.1.1

CONCLUSIONS

The Government established by substantial evidence and Applicant's admissions to each of the allegations in the SOR, including Paragraph 1.e. as amended. The burden is on Applicant to show the foreign influence security concern is mitigated in his or her particular case. In each case, as in this one, specific Disqualifying Conditions (DC) or Mitigating

Conditions (MC) may apply.

The DC applicable in Applicant's case are 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 E2.A2.1.2.1) and DC 3 (Relatives, cohabitants, or associates who are connected with any foreign government E2.A2.1.2.3). Applicant has close ties of familial affection with his mother, and his two sisters. He calls them regularly and has visited them on four trips to the PRC since 1994. They live in the PRC, and are citizens of the PRC. Applicant's sister is a lab instructor at a government-owned university. His parents taught in and received pensions from the local school government. His father and sisters, along with his wife, were viewed by the PRC government as educated people who needed to reorient their thinking to that of the PRC peasants, so they were victims of PRC government policy.

MC 1 (A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, 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 E2.A2.1.3.1) might apply if Applicant could meet his burden of proof on both parts of this MC. While his parents were and his sister is employed by a government-owned school system and university, respectively, they may not be agents of a foreign government, the PRC. Applicant explained what their jobs involved and they were not in policy-making positions or communist party members. But he could not show that his mother and sisters were not in a position to be exploited by the PRC government in a way to force Applicant to choose between them and the U.S. by not disclosing classified information about which he may have knowledge.

His family members were victims in the Cultural Revolution. His mother and one sister receive money from the PRC governmental structure in the form of a pension and a salary, respectively. They could be exploited by the PRC. Applicant, therefore, has not shown he qualifies for the second part of MC 1 and I do not apply it. There are no other MC that apply. I conclude this guideline against Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

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

Subparagraph 1.f: Against Applicant

DECISION

In light of all of 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.

Philip S. Howe

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).