

KEYWORD: Foreign Influence

DIGEST: Applicant's mother and five siblings are citizens and residents of China (PRC). His wife and son are Chinese citizens living in the U.S. The record evidence is insufficient to mitigate or extenuate the negative security implications relating to his relatives who are citizens of and living in China. Clearance is denied.

CASENO: 04-02582.h1

DATE: 12/08/2005

DATE: December 8, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-02582

**DECISION OF ADMINISTRATIVE JUDGE**

**CLAUDE R. HEINY**

**APPEARANCES**

**FOR GOVERNMENT**

Robert E. Coacher, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's mother and five siblings are citizens and residents of China (PRC). His wife and son are Chinese citizens living in the U.S. The record evidence is insufficient to mitigate or extenuate the negative security implications relating to his relatives who are citizens of and living in China. Clearance is denied.

**STATEMENT OF THE CASE**

On January 28, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating that DOHA could not make the preliminary affirmative finding<sup>(1)</sup> it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Security concerns are alleged under Guideline B (Foreign Influence). DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On February 21, 2005, Applicant answered the SOR and requested a hearing. On June 13, 2005, I was assigned the case. On June 22, 2005, a Notice of Hearing was issued scheduling the hearing which was held on June 29, 2005. On July 14, 2005, DOHA received a copy of the transcript (Tr.).

**FINDINGS OF FACT**

In his response to the SOR, Applicant admits his mother and siblings are Chinese citizens living in the People's Republic of China (PRC), and his wife and son are Chinese citizens living in the U.S. Those admissions are incorporated herein as findings of fact. After a thorough review of the entire record, I make the following additional

findings of fact:

Applicant is a 39-year-old software engineer who has worked for a defense contractor since June 2002, and is seeking to obtain a security clearance.

Applicant's father, who was a retired manager of a cotton processing factory, is deceased. His mother, age 70, is retired in a small town in China. Applicant has weekly telephone contact with her. He currently sends his mother \$1,000 per year, which is his mother's principal means of support. His brother is a manager of a pharmaceutical company. Applicant contacts this brother once a year during holiday. One sister is a retired factor worker who's husband works for the government as manager in disease control (Tr. 39). Another sister is also a retired factory work who is married to a self-employed truck driver. Another sister is an OB/GYN. doctor in private practice married to a city zoning commissioner. His last sister works as a nurse in a hospital. She also helps run a small restaurant with her husband. All are citizens of and reside in China.

In his answer to the SOR, completed in February 2005, Applicant stated he intended to continue visiting his family in China every five or six years while his mother is alive. His last visit to China was in 1999. He was leaving the day after the hearing for a one month visit to China. At the time of the hearing his wife and children had been in China two months on a visit (Tr. 50).

At age 13 (24 years ago), Applicant left his hometown and went to a boarding high school. After that he attended college in Beijing. At age 19, 20 years ago, Applicant left China and came to the U.S. In August 1985, he started school at an American university. Since leaving China, Applicant has made nine trips to China. He visited for one month in 1988. In December 1995, he was in China for two months during which he married his wife. He also visited China in June 1996, December 1996, June 1997, December 1997, June 1998, December 1998, and August 1999. Other than the five years when his wife was waiting for her visa, Applicant visited his parents and siblings every five to six years on average (Tr. 20). On all of his trips to China he visited his family.

In March 1997, Applicant's son was born in China. His wife's visa was approved and in September 1999, she came to the U.S. His wife has weekly telephone contact with her relatives in China. Applicant provides no support to his in-laws. They are retired and are well off. His in-laws live approximately 700 miles from where his mother and siblings live. In August 2004, Applicant's daughter was born in the U.S. Applicant's wife and son are planning on applying for U.S. citizenship in early 2006.

**POLICIES**

The Directive sets forth adjudicative guidelines to be considered when evaluating a person's eligibility to hold a security clearance. Disqualifying Conditions (DC) and Mitigating Conditions (MC) are set forth for each applicable guideline. Additionally, each 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 Section 6.3 of the Directive. The adjudicative guidelines are to be applied by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. The presence or absence of a particular condition or factor for or against clearance is not determinative of a conclusion for or against an applicant. However, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, I conclude the relevant guidelines to be applied here is Guideline B (Foreign Influence).

### **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. Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, an applicant from being eligible for access to classified information. The burden of proof in a security clearance case is something less than a preponderance of evidence, although the government is required to present substantial evidence to meet its burden of proof. Substantial evidence is more than a scintilla, but less than a preponderance of the evidence. All that is required is proof of facts and circumstances which 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. Additionally, the government must prove controverted facts alleged in the SOR. Once the government has met its burden, the burden shifts to an applicant to present evidence to refute, extenuate or mitigate the government's case. Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. [\(2\)](#)

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information to be resolved in favor of protecting national security. Security clearance determinations should err, if they must, on the side of denials.

### **CONCLUSIONS**

The Government has satisfied its initial burden of proof under Guideline B, Foreign Influence. Under the Foreign Influence guideline, a security risk may exist when an individual's immediate family, or other persons to whom he may

be bound by affection, influence, or obligation are not citizens of the U.S., reside in a foreign country, 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. The Government established Applicant's spouse and son are citizens of China living in the U.S. and his mother and five siblings are citizens and residents of China. Disqualifying Condition (DC) 1 (E2.A2.1.2.1 *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.

Applicant is close to his mother calling her weekly and providing her funds that are her principal means of support. He has visited China nine times since 1988. At the time of the hearing, Applicant's wife and children had been on a two-month visit to China. The day after the hearing, Applicant was leaving to visit China.

His mother and two sisters are retired. However, two of his sisters are married to Chinese government officials. One is a city zoning commissioner and the other works as a manager in disease control. The record indicates that Mitigating Condition (MC) 1 (E2.A2.1.3.1 *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.*) applies only in part to the facts of Applicant's case. While the evidence does not establish that Applicant's mother, and siblings are agents of a foreign power, they are citizens of a totalitarian state with interests antithetical to the United States and could be exploited by their government in a way that could force Applicant to choose between loyalty to them and the United States. Applicant's contacts with citizens of PRC are frequent and familial, and thus MC3 (E2.A2.1.3.3. *Contact and correspondence with foreign citizens are casual and infrequent*) does not apply to Applicant's relationships with his mother, brother, and sisters.

In determining whether an applicant's family ties in a foreign country pose an unacceptable security risk, the Administrative Judge must consider the record evidence as a whole. Common sense suggests that the stronger the ties of affection or obligation, the more vulnerable a person is to being manipulated if the relative, cohabitant, or close associate is improperly influenced or is brought under control or used as a hostage by a foreign intelligence or security service. However, the mere possession of family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. <sup>(3)</sup> An administrative judge must consider the record evidence as a whole in deciding if the facts and circumstances of an applicant's family ties pose an unacceptable security concern under Guideline B.

The inquiry in a foreign influence case is not limited to consideration of whether the foreign contacts or connections are agents of a foreign power. Rather, the foreign contacts or connections must also be evaluated in terms of whether they place an applicant in a position of vulnerability to be influenced by coercive or non coercive means, even if there is no evidence that a foreign county has sought to exploit that vulnerability. (*See ISCR Case No. 00-0628, February 24, 2003*).

The likelihood of pressure or coercion being placed on the foreign relatives depends, in part, on the nature of the country involved (whether it respects democratic principles and human rights, has friendly relations with the U.S., etc). Applicant's case requires the recognition that the PRC has historically acted in a hostile manner to U.S. security

interests. American citizens traveling to the PRC are advised that PRC security personnel may place foreign government officials, journalists, and business people with access to advanced proprietary technology under surveillance. The PRC has significant intelligence collection capability of which the U.S. is a primary target (Gov Ex 3), and the PRC continues to have a poor human rights record (Gov Ex 4).

This mitigating condition "hinges not on what choice Applicant might make if he is forced to choose between his loyalty to his family and the United States, but rather hinges on the concept that applicant should not be placed in a position where he is forced to make such a choice." ISCR Case no. 03-15205 at 3-4 (App. Bd. Jan. 21, 2005). Applicant should not be placed into a situation where he has access to classified information and a mother and five siblings citizens of and living in China. I find against Applicant as to foreign influence.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

### **FORMAL FINDINGS**

Formal Findings as required by Section 3, Paragraph 7, of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline B (Foreign Influence): AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: 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.

**Claude R. Heiny**

**Administrative Judge**

1. Required by Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended.
2. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.
3. ISCR Case No. 98-0419 (April 30, 1999) at p.5.