

KEYWORD: Foreign Influence

DIGEST: Applicant is an engineer with a defense contractor. Her mother and sister are citizens of and reside in the Peoples Republic of China (PRC). Applicant has not mitigated the foreign influence security concerns. Clearance is denied.

CASENO: 04-03396.h1

DATE: 01/31/2006

DATE: January 31, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-03396

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Braden Murphy, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is an engineer with a defense contractor. Her mother and sister are citizens of and reside in the Peoples Republic of China (PRC). Applicant has not mitigated the foreign influence security concerns. 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 14, 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 April 26, 2005 and elected to have a hearing before an administrative judge. The case was assigned to me on June 13, 2005. On July 27, 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. Applicant waived the 15-day notice requirement and the hearing proceeded (Tr. 6, 7). The Government and the Applicant submitted exhibits that were admitted into evidence. The Government moved to amend the SOR Paragraph 1.a. to reflect Applicant's testimony that her mother now lives in the People's Republic of China. The motion was granted without objection. DOHA received the hearing transcript (Tr.) on August 5, 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 48 years old, divorced, and has two sons, aged 13 and 12 years old. She works as an engineer for a defense contractor. She is well regarded by her manager and employer for her professional competency. She needs a security

clearance so she can open an account with a government computer facility that has powerful computers able to run complicated calculations needed in Applicant's defense contractor work. The information she would input and obtain from the computers would be classified, so she needs a classified computer facility to do the work. Neither her employer nor non-governmental agencies have computers powerful enough to run the calculations. Otherwise, since she started with her employer in 2002, she has not needed a security clearance for her work. (Tr. 20-34, 45, 49; Exhibit 1)

Applicant's mother and one sister live in the People's Republic of China (PRC). Applicant was born there in 1956, and immigrated to the U.S. in 1986 to obtain her Ph.D. in engineering. She graduated with a bachelor's and master's degrees from PRC universities. She obtained permission from the university she attended in the PRC to immigrate for education purposes. She was not required to return to the PRC after she got her doctorate degree. Applicant graduated with a Ph.D. in 1992 and went to work in the U.S. In 1988 she married, but divorced in 1999. Her former husband was a Taiwanese citizen, and Applicant is not certain he obtained his U.S. citizenship. Applicant became a U.S. citizen in 1999. Her two sons are U.S. citizens by birth in the U.S. In addition to her mother and sister in the PRC, Applicant has a brother and sister living in the U.S. who are U.S. citizens. (Tr. 45-52, 63, 67-70; Exhibit 1)

Applicant's mother lived in the U.S. for several years, but returned to the PRC at the end of 2004. She did not learn to speak English, and felt more comfortable living in the PRC. She has a "green card" signifying permanent U.S. residency status. Applicant does not support her mother, who is 80 years old. Applicant's two sisters provide financial support to their mother. Applicant calls her mother monthly, alternating every two weeks with calling her sister in the PRC. (Tr. 53-56, 59-63; Exhibits A and B)

Applicant's sister in the PRC is the financial controller for a pharmaceutical company owned by Hong Kong residents, and incorporated in the Cayman Islands. She is a certified public accountant in the PRC. She is married to a public school teacher in the PRC. Applicant spoke to her sister the weekend before the hearing. (Tr. 64-66; Exhibits 1 and C)

Applicant made trips to the PRC in 1994, 1995, 1997, and 1999. Her trips were to visit her family and particularly her ill father. Her father has since died. Applicant has not traveled to the PRC since 1999, and has no plans to travel there in the near future, at least until both her sons are in college. She helps her sons with their homework and is not interested in traveling to the PRC until they are in college, if ever. (Tr. 57, 59, 79)

Applicant visited Taiwan in 1989 or 1990 with her former husband. Applicant thinks she obtained Taiwanese citizenship when she visited Taiwan to meet her husband's parents. They visit the U.S. on occasion to see their two grandsons, but Applicant has no contact with them on those visits. (Tr. 71-75)

Applicant's father was the chief executive officer of a PRC corporation that made art work for sale. He was an industry leader in that field. She is not certain, but Applicant thinks her father was a member of the Communist Party of China. During the Cultural Revolution in the PRC in the 1960s Applicant's father was persecuted by the Communist Party. Her mother's father was killed by the Communist Party in the 1950s. Applicant was sent into the countryside during the Cultural Revolution to work. (Tr. 47, 78)

The PRC is ruled by the Communist Party of China. It is an authoritarian state that does not respect human rights as established as internationally recognized norms, including freedom of speech, freedom of religion, and other individual rights. There are 66 million members of the Communist Party out of a population of 1.3 billion people. PRC military policies include the importation and development of modern weapons, sale of weapons to other nations, and the acquisition by surreptitious methods U.S. industrial and military technology. (Exhibits 2-6)

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, each of the allegations in the SOR. The Disqualifying Condition (DC) applicable here is 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). Applicant's sister and mother are citizens of the PRC and reside in the PRC. Also, Applicant's sister is an executive in a company located in the PRC. Applicant calls them every other week, so she speaks with each on a monthly basis. Applicant's trips to the PRC in the 1990s were for family visits, but she has not traveled there in the past

six years, and she has no present plans to travel there in the next six years, at least.

No Mitigating Conditions (MC) applicable here. Applicant's contact with her family is frequent through phone calls monthly to her sister and mother. While her mother and sister are not agents of the PRC government, Applicant has not met her burden of showing they are not in a position to be exploited by the PRC that could force Applicant to choose between loyalty to them and the United States. In fact, Applicant's testimony showed her family members have attracted the attention of the Communist Party in China in the past, when her maternal grandfather was murdered by the Party, when Applicant was a victim of the Cultural Revolution, and the possibility that her late father's high-level industry position meant he was a Communist Party member. Her sister's executive position in a pharmaceutical company makes her vulnerable to coercion and exploitation. For these reasons I do not apply any MC for Applicant. Accordingly, I conclude this Guideline B 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: For 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).