

KEYWORD: Foreign Influence

DIGEST: Applicant is an employee of a federal contractor. His wife is a citizen of the People's Republic of China (PRC) living in the United States. Her parents and her sister are citizens of and reside in the PRC. He failed to successfully mitigate the foreign influence security concerns based on his wife's citizenship and her family ties to the PRC. Clearance is denied.

CASE NO: 04-03690.h1

DATE: 05/11/2006

DATE: May 11, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-03690

**DECISION OF ADMINISTRATIVE JUDGE**

**CHRISTOPHER GRAHAM**

**APPEARANCES**

**FOR GOVERNMENT**

Eric H. Borgstrom, Esq., Department Counsel

## FOR APPLICANT

*Pro Se*

### SYNOPSIS

Applicant is an employee of a federal contractor. His wife is a citizen of the People's Republic of China (PRC) living in the United States. Her parents and her sister are citizens of and reside in the PRC. He failed to successfully mitigate the foreign influence security concerns based on his wife's citizenship and her family ties to the PRC. Clearance is denied.

### STATEMENT OF THE CASE

On April 11, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, 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. The SOR alleged facts under Guideline B (foreign influence), detailing 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 Applicant's security clearance.

In a written statement, dated May 15, 2005, Applicant responded to the allegations in the SOR, and requested a decision without a hearing. Department Counsel submitted a file of relevant material (FORM) in support of the Government's preliminary decision, a copy of which was received by Applicant on June 20, 2005. Applicant was afforded the opportunity to file objections and submit material in refutation, extenuation, or mitigation by July 20, 2005. Applicant did not respond to the FORM. The case was assigned to me on August 1, 2005.

## FINDINGS OF FACT

Applicant admitted allegations in SOR ¶¶ 1.a., 1.b., 1.f., 1.g., and 1.h. These admissions are incorporated herein as findings of fact. He denied those allegations in ¶¶ 1.c., 1.d., and 1.e. . After a thorough review of the record as a whole, I make the following additional findings of fact:

Applicant is a married, 39-year-old employee of a federal contractor.<sup>(1)</sup> He was married in 1998, and his wife is a citizen of the People's Republic of China (PRC), living in the United States.<sup>(2)</sup> He is employed as a senior research scientist.<sup>(3)</sup> His parents-in-law and his sister-in-law are citizens and residents of the PRC.<sup>(4)</sup> His parents-in-law were employed as professors at a university in the PRC. Both are retired.<sup>(5)</sup> His sister-in-law has been employed in the architecture school at the same university.<sup>(6)</sup> He traveled to the PRC at least once in 2000. Since 1998, he and his wife have sent several thousand dollars to her parents in the PRC.<sup>(7)</sup>

The PRC has an abysmal human rights record, which includes arbitrary killings; detention or incarceration without notice in mental facilities; torture; arbitrary arrest, detention or exile; no right to a public, fair trial; and no rights of privacy for family, home or correspondence.<sup>(8)</sup> China engages in espionage against the United States, especially against Fortune 500 companies for technology and defense-related information.<sup>(9)</sup> The PRC has had success in obtaining classified defense information.<sup>(10)</sup>

## POLICIES

"[No] one has a 'right' to a security clearance."<sup>(11)</sup> 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."<sup>(12)</sup> The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential coercion, and willingness and ability to abide by regulations governing use, handling, and protection of classified information."<sup>(13)</sup>

Eligibility for a security clearance may be adjudicated using the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative factors listed in ¶ 6.3 of the Directive: nature and seriousness of the conduct and surrounding circumstances; frequency and recency of the conduct; age of the Applicant; motivation of the applicant, and the extent to which the conduct was negligent, wilful, voluntary, or undertaken with knowledge of the consequences involved; absence or presence of rehabilitation; and probability that the circumstances or conduct will continue or recur in the future.

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.<sup>(14)</sup> 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.<sup>(15)</sup>

Once the Government establishes a disqualifying condition, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.<sup>(16)</sup> An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."<sup>(17)</sup> 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 as his or his own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the Government.<sup>(18)</sup> Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism.

Having considered the evidence as a whole, I find the following guideline most pertinent to an evaluation of the facts of this case: Guideline B (foreign influence) Directive, ¶ E2.A2.1.1. *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.*

## CONCLUSIONS

Applicant admitted that his wife's parents and sister live in the PRC. We know nothing about them, except they are retired professors and his sister-in-law works for a university's architecture department. Applicant has not noted what their jobs were or are in any detail or whether they are members of the Communist party. 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 brought under control or used as a hostage by a foreign intelligence or security service. While in-laws are not considered part of Applicant's immediate family, there is a rebuttable presumption that he has ties of affection for or obligation for his spouse's parents and sister and thus come under the guidelines.<sup>(19)</sup> Here, based on the record as a whole, the government established its case under Guideline B. Applicant's wife has close family ties to the PRC, as evidenced by her father, mother, and sister who are citizens of and residents in the PRC. His wife remains a citizen of the PRC. The strength of the ties is also demonstrated by Applicant traveling to the PRC for family visits and repeatedly providing financial assistance to his wife's parents. These contacts buttress the presumption that his relationship with his wife's immediate family is not casual and infrequent. These circumstances raise a security concern under 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.*

I reviewed the mitigating conditions under Guideline B and conclude none apply. The only MC deserving serious consideration is 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* but it does not apply. Applicant has the burden to present evidence to establish the fact that his wife's family members are not foreign agents and that they are not in positions to be exploited by the PRC. As Applicant failed to respond to the FORM and provide answers to these questions we do not know if his wife's parents are living on university pensions, although one might assume that. We don't know the type of work the power engineering department at the university is engaged in. If we assume all family members depend upon the PRC government for support we can assume that they could easily be exploited by the PRC government. There is no evidence to base a decision either way. Applicant has not met his burden of mitigating the government's case.

In deciding if an applicant has met the second prong of MC 1, it is proper to consider how the foreign country at issue is governed. The focus is not the country or its people, but its rulers and the nature of the government they impose. The PRC is hostile to the U.S. and is ruled by a communist government with a poor record of human rights. With this history it is not difficult to envision a scenario in which Applicant's in-laws could be subjected to some or all of these arbitrary denial of basic human rights in an effort to put pressure on him to divulge classified information. We also know the PRC is actively pursuing industrial and military intelligence in this country. Given these circumstances--which are clearly beyond Applicant's control--the presence of Applicant's in-laws in the PRC places them at risk of being brought under control or used as a hostage by a PRC intelligence or security service. Unfortunately, his in-laws are in a position where there is a potential for them to be exploited in a way that could force him to choose between loyalty to his family members and the interests of the U.S. Accordingly, since Applicant failed to respond to the FORM we don't know whether he could have mitigated the security concerns. Guideline B is decided against him.

To conclude, Applicant has failed to meet his ultimate burden of persuasion to obtain a favorable clearance decision. But this decision should not be construed as an indictment of Applicant's loyalty and patriotism to the U.S., as those matters are not at issue. Instead, the clearly-consistent standard requires I resolve any doubt against Applicant, and his close family ties to the PRC create doubt about his security suitability. In reaching my decision, I have considered the record evidence as a whole, the whole-person concept, the clearly-consistent standard, and the appropriate factors and guidelines in the Directive.

### **FORMAL FINDINGS**

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by E3.1.25 of Enclosure 3 of the Directive, are:

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

Subparagraph 1.g. Against Applicant

Subparagraph 1.h. 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 Applicant's security clearance. Clearance is denied.

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**Christopher Graham**

**Administrative Judge**

1. Item 3 (Standard Form 86 (SF 86) *Security Clearance Application* signed June 13, 2003) at 1-2.
  2. *Id.* at 3.
  3. *Id.* at 2.
4. Item 2 (Applicant's Answer to the SOR dated May 15, 2005) at 1; Item 3, *supra*, at 3-4; and Item 4 (SF 86 *Security Clearance Application* transmitted June 13, 2003) at 5-6.
  5. Item 2, *supra*, at 1.
  6. *Id.*
  7. *Id.*
8. Item 12 (U. S. State Department, *Country Reports on Human Rights Practices: China, 2005*), at 1, 4-9, 11-12.
9. Item 10 (*Annual Report to Congress on Foreign Economic Collection and Industrial Espionage for 2000*), at 1-18.
  10. *Id.*
  11. See *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1998).
  12. *Id.* at 527.
13. Exec. Or. 12968, *Access to Classified Information*, § 3.1(b) (Aug. 4, 1995).
  14. *Egan, supra*, at 531.
  15. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).
  16. See ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
  17. *Id.*, at 3.
  18. See *Egan*; Directive ¶ E2.2.2.
19. ISCR Case No. 01-03120, Appeal Board, February 20, 2002 at 3.