

KEYWORD: Foreign Influence

DIGEST: Applicant's mother, parents-in-law, and brother are citizens of and reside in the People's Republic of China (PRC) Applicant failed to mitigate the resulting security concern under Guideline B (Foreign Influence). Clearance is denied.

CASENO: 04-04240.h1

DATE: 11/23/2005

DATE: November 23, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-04240

DECISION OF ADMINISTRATIVE JUDGE

MATTHEW E. MALONE

APPEARANCES

FOR GOVERNMENT

Ray T. Blank, Esquire, Department Counsel

FOR APPLICANT

Don Gemeinhardt, Personal Representative

SYNOPSIS

Applicant's mother, parents-in-law, and brother are citizens of and reside in the People's Republic of China (PRC) Applicant failed to mitigate the resulting security concern under Guideline B (Foreign Influence). Clearance is denied.

STATEMENT OF THE CASE

After reviewing the results of Applicant's background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding^(U) it is clearly consistent with the national interest to give Applicant a security clearance. On March 18, 2005, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed in the Directive under Guideline B (foreign influence). Applicant timely answered the SOR (Answer), admitted with explanation all of the allegations therein, and requested a hearing.

The case was assigned to me on July 18, 2005, and I convened a hearing on August 5, 2005. The government presented eight documentary exhibits (GE 1 - 8), and the Applicant presented five exhibits (AE A - E). Applicant also testified in his own behalf and presented testimony from one other witness. DOHA received the transcript (Tr) on August 17, 2005.

FINDINGS OF FACT

Applicant admitted both of the allegations in the SOR. Additionally, after a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact:

Applicant is 42 years old and employed as a senior research engineer by a defense contractor. His job description requires he hold a security clearance, for which he applied when he submitted a security clearance application on June 9,

2003. The SCA and the ensuing background investigation revealed Applicant was born and raised in the Peoples Republic of China (PRC), also known as mainland China. He received a university degree in physics at a Chinese university and stayed on at that school as a graduate teacher of basic physics. In 1990, Applicant and his wife, also a native-born Chinese citizen, came to the United States after Applicant received a visiting scholarship at a U.S. university, where he eventually received a master of science degree in computer science. Applicant has worked in software engineering and related research since at least 1997.

Applicant's mother and brother are both citizens of and reside in the PRC. Specifically, they live within a few miles of each other in Canton Province, a southern region of China near Hong Kong. Applicant's mother is in her 70s, and lives off her retirement from a clerical job at a construction company. As of the hearing, she was awaiting an interview with the U.S. consulate in Canton, the last step in her emigration from China to the U.S. Applicant expects his mother will apply for U.S. citizenship when she arrives, but appears concerned about her ability to pass the language test.

Applicant's brother is a construction worker. He is married and has one child. Applicant does not think he will come to the U.S. Applicant's brother has never been an agent of or had any other connection to the PRC government. However, Applicant's brother was arrested and sent to a "re-education" camp because he was practicing Falun Gong, a quasi-religious ideology outlawed by the Chinese government. Applicant's brother no longer practices Falun Gong.

Applicant and his wife elected to remain in the U.S. permanently and were naturalized as U.S. citizens in June 2000. They have two children born in the U.S. in 1994 and 1999. He has returned to the PRC to visit relatives in 1995 after the birth of his first child in 1995, for his brother's wedding in 1996, in December 2003 for a final visit with his father, who was terminally ill, and to fulfill his duties as the eldest son for his father's funeral in October 2004. His father had actually passed away in April 2004. In December 2003, Applicant gave his parents between \$1,000 and \$2,000 to help with mounting medical expenses. He has sent no other financial support to his or his wife's relatives.

Applicant's wife's parents and one of her sisters are citizens of and reside in the PRC. Her parents are retired textile factory workers, and her sister works in a department store. Applicant's other sister-in-law lives in Great Britain. Applicant rarely speaks directly with his in-laws, but calls his mother on average twice monthly. Most of his contact with his brother is through his mother. Applicant had been calling more frequently to monitor developments when his father was ill.

China is generally regarded as the United States' pre-eminent global "strategic competitor,"⁽²⁾ both economically and militarily. The country is run by a totalitarian, communist regime with an abysmal human rights record. Applicant himself acknowledges, and his brother experienced firsthand, that human rights such as freedom of association, of religion, and of expression are severely limited. The PRC is committed to establishing a dominant military to further its national interests. To that end, China's increasingly burgeoning economy funds military acquisitions. China also aggressively pursues foreign technology for military and aerospace applications, particularly that of the U.S., through a variety of methods such as commercial technology transfers, scientific exchanges, and industrial espionage.

By all accounts, Applicant is a dedicated husband and family man, whose friends and co-workers admire for his hard work and integrity. References from the past seven years have characterized Applicant as patriotic, honest to a fault, and without peer in his technical expertise. When Applicant and his wife were naturalized, his co-workers held a celebration and presented Applicant with a U.S. flag that had been flown over the U.S. Capitol in his honor.

POLICIES AND BURDEN OF PROOF

The Directive sets forth adjudicative guidelines⁽³⁾ to be considered in evaluating an Applicant's suitability for access to classified information. The Administrative Judge must take into account both disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Having considered the record evidence as a whole, specifically, that Applicant has close ties of affection to foreign citizens, I conclude the only relevant adjudicative guideline to be applied here is Guideline B (Foreign Influence).

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁽⁴⁾ for an Applicant to either receive or continue to have access to classified information. The Government bears the initial burden of proving, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If the government meets its burden it establishes a *prima facie* case that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden then shifts to the Applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, the Applicant bears a heavy burden of persuasion.⁽⁵⁾ 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 judgement, reliability and trustworthiness of one who will protect the national interests as his or her 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.⁽⁶⁾

CONCLUSIONS

The government has alleged, and Applicant has admitted, that Applicant's mother and brother are citizens of and reside in the PRC (SOR ¶¶ 1.a and 1.c); that his wife's parents are citizens of and reside in the PRC (SOR ¶ 1.b); that

Applicant's brother was sent to a labor camp by the Chinese government (SOR ¶ 1.d); that Applicant sent his parents money in late 2003 to help with medical expenses (SOR ¶ 1.e); that Applicant taught at a state-run university for two years (SOR ¶ 1.f); and that Applicant has traveled back to the PRC at least three times between 1995 and 2004 (SOR ¶ 1.g). According to Guideline B (foreign influence), 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. ⁽⁷⁾

The government has presented sufficient information to support the reasons for its decision to deny Applicant's request for clearance. The presence of Applicant's mother and brother, as well as his wife's parents and sister in the PRC creates a risk the PRC government may pressure or coerce Applicant's relatives to gain access through Applicant to U.S. classified information. In light of the PRC's demonstrated willingness to persecute its citizenry, and its aggressive pursuit of western technology to further commercial, military, and political interests adverse to those of the U.S., the available information supports application of Guideline B disqualifying condition (DC) 1. ⁽⁸⁾ Cases such as this often involve a degree of speculation about whether a foreign government would actually target an applicant's relative or close associate living overseas. However, this case presents information that Applicant's own brother was summarily confined to a labor camp because of his personal ideology. Such information only reinforces concerns about the possibility the PRC authorities would use Applicant's brother to force Applicant to compromise U.S. interests.

After reviewing the Guideline B mitigating conditions (MC), I conclude MC 5 ⁽⁹⁾ is applicable in that Applicant has no assets in China or any other foreign country. Indeed, there is ample information available showing his finances and all other facets of his personal life reside completely in the U.S.

I have also considered the applicability of MC 1. ⁽¹⁰⁾ It is apparent from the information presented that none of Applicant's overseas family are agents of the PRC or that they have ever been connected with that government. However, the analysis of MC 1 applicability must also focus on whether Applicant's relatives are in a position to be exploited by the PRC. If not, then MC 1 might apply. However, in this case, Applicant has not demonstrated his relatives are not in such a position. To the contrary, as noted, above, Applicant's family has actually experienced government pressure, and Applicant himself tacitly acknowledged the possibility of government intimidation when he commented on the near absence of human rights in the PRC. Based on the foregoing, I conclude MC 1 does not apply. I further conclude he has failed to mitigate the Guideline B security concerns raised by the government's information.

My decision in this case should not be interpreted as an indictment of Applicant's loyalty to the U.S. or of his personal integrity. The issues in this case arise solely as a result of Applicant's familial circumstances and not from any misconduct or poor judgment on his part. However, the government has a compelling interest in ensuring the protection of its classified information and may reasonably engage in risk assessment based on facts about a person's ties to family and other close associates in foreign countries. In evaluating the risks presented by the available information, I have carefully weighed all of the evidence in this case, and I have applied the aforementioned disqualifying and mitigating conditions as listed under Guideline B. No single factor is dispositive of my decision in this matter. The government is reasonably concerned about the presence of Applicant's family in a foreign country, a fair and commonsense

assessment. [\(11\)](#) In light of continuing concerns about the nature and practices of the Chinese government, and given the experiences of Applicant's brother, I conclude the presence of Applicant's mother and brother in the PRC presents an unacceptable security risk.

FORMAL FINDINGS

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

Paragraph 1, Foreign Influence (Guideline B): AGAINST THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.c: Against the Applicant

Subparagraph 1.d: Against the Applicant

Subparagraph 1.e: Against the Applicant

Subparagraph 1.f: Against the Applicant

Subparagraph 1.g: Against the 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 the Applicant.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. GE 7.
3. Directive, Enclosure 2.
4. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
5. *See Egan*, 484 U.S. at 528, 531.
6. *See Egan*; Directive E2.2.2.
7. Directive, E2.A2.1.1.
8. Directive, 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;
9. Directive, E2.A2.1.3.5. Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.
10. 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;
11. Required by Directive, E2.2.3.