

KEYWORD: Foreign Influence

DIGEST: The Applicant's foreign connections are not of a type that would cause him to be vulnerable to coercion or pressure. His contacts with his parents are infrequent at best, he is not close to them. The relationship with a Chinese businessman was in connection with a potential business deal that did not come to pass, and stopped in 2002. His trips to China were related to his employment by companies located in the United States. Adverse inference is overcome. Clearance is granted.

CASENO: 04-04637.h1

DATE: 12/08/2005

DATE: December 8, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-04637

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR GOVERNMENT

Candace L. Le'i, Esquire, Department Counsel

FOR APPLICANT

SYNOPSIS

The Applicant's foreign connections are not of a type that would cause him to be vulnerable to coercion or pressure. His contacts with his parents are infrequent at best, he is not close to them. The relationship with a Chinese businessman was in connection with a potential business deal that did not come to pass, and stopped in 2002. His trips to China were related to his employment by companies located in the United States. Adverse inference is overcome. Clearance is granted.

STATEMENT OF THE CASE

On April 5, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed 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 a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on April 20, 2005, and requested a hearing. The case was received by the undersigned on June 13, 2005, and a Notice of Hearing was issued on July 6, 2005.

A hearing was held on July 25, 2005, at which the Government presented six documentary exhibits. Testimony was taken from the Applicant, who also called one additional witness. The transcript was received on August 5, 2005.

FINDINGS OF FACT

The Applicant is 45, married and has two Master's Degrees, in Electrical Engineering and Physics. He is employed by a defense contractor as a Network Engineer, and he seeks to obtain a Secret-level DoD security clearance in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a security clearance, based upon the allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR. They are based on the Applicant's Answer to the SOR, the exhibits and the live testimony.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant may have foreign connections which potentially make him vulnerable to coercion, exploitation or pressure.

The Applicant was born in the People's Republic of China (China) in 1960. He emigrated from China in 1988 in order to continue his studies in the United States. The Applicant became a naturalized American citizen in November 2001. His wife was also born in China, and became a naturalized American citizen in March 2001. They were married in 1988 and have one child, born in the United States. (Government Exhibit 1.)

The Applicant's elderly parents and his brother continue to live in China. His parents are retired and his brother works for a private company. His relationship with his family is not close. According to the Applicant, the break with his family occurred in 1995, when his mother came to the United States to help with his then new born child. There was conflict, and his mother left. The Applicant states, "So, since then, I - - the - - only like send Christmas - - Christmas card and also like call once or twice a year and then basically, actually, it's from my wife's request say you need to call your - - the - - the - - every time the call, it's just one - - like one or two minutes." (Transcript at 30-32. *See also*, testimony of Applicant's wife, Transcript at 93-95.) As discussed further below, all of the Applicant's subsequent trips to China have been primarily for business.

The mother-in-law of the Applicant passed away in early July 2005. His father-in-law continues to live in China. The Applicant's spouse and her brother, who also lives in the United States, are planning to move their father to the United States. The father-in-law is 76 and retired. He was punished during the Cultural Revolution and is very bitter against the Chinese government. (Transcript at 37-39.)

From June 2001 through January 2003 the Applicant worked for the American affiliate of a Chinese company. During part of that time, the Applicant was spending his free time attempting to start his own company using patents which he

owned. In an attempt to obtain working capital, the Applicant approached the Chairman and Chief Executive Officer of a Chinese telecommunications company. The Chairman's wife was a friend of the Applicant's wife from school. During this period, the Applicant traveled several times to China for his job. He also had discussions with the Chairman. These discussions were not fruitful and no investment was made in the Applicant's company. The Applicant has not been in contact with the Chairman, or his wife, since 2002. His relationship with the Chairman was purely business related and terminated before the Applicant ended his attempt at starting his own business and went to work for his current employer in 2003. (Transcript at 41-45, 72-73.)

As stated earlier, the Applicant made several trips to China between 2000 and 2002. All of the trips were at least partially connected to the Applicant's employment. In addition, as also admitted by the Applicant, he visited his parents and the Chairman, the latter to discuss business. (Transcript at 46-50, 99-100.)

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case will be discussed under CONCLUSIONS, below.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

- a. The nature, extent and seriousness of the conduct

- b. The circumstances surrounding the conduct, to include knowledgeable participation

- c. The frequency and recency of the conduct

- d. The individual's age and maturity at the time of the conduct

- e. The voluntariness of participation

- f. The presence or absence of rehabilitation and other pertinent behavior changes

- g. The motivation for the conduct

- h. The potential for pressure, coercion, exploitation or duress

- i. The likelihood of continuation or recurrence."

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may have foreign connections which could lead to poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent,

willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the granting of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant has foreign connections which could cause a security concern (Guideline B).

The Applicant, on the other hand, has successfully mitigated the Government's case. The Applicant's parents are retired and he does not provide them any financial support. The evidence shows that the Applicant's relationship with his family in China is not close, and has not been close for ten years. It is difficult to call any family relationship "casual and infrequent," but this one comes close. Any ties of affection the Applicant may have felt for his family have been vitiated by time, space and conflict. The possibility that the Applicant can be coerced by his family are virtually nil.

As for his father-in-law, the concern is also mitigated. His mother-in-law has passed away and the plan is to move the father to the United States. This retired gentleman was deemed an enemy of the people during the Cultural Revolution and, therefore, has little or no motivation to assist the Chinese government.

The Applicant, before starting to work for his current employer, attempted to start his own company. During that time, he had discussions with the Chairman of a Chinese company. These discussions were not fruitful. The Chairman is not a close personal friend of the Applicant. Rather, the relationship was brought about by the Applicant's wife, who was the friend of the Chairman's wife. Any security concerns here have been mitigated because the business venture was not successful and there is no continuing association with this person.

Finally, it appears that the Applicant's trips to China were at the request of his employers. He did take side trips to visit his parents and talk to his potential investor, but the trips were not primarily for those purposes. In fact, the Applicant

has not traveled to China for purely personal reasons since 1993.

Disqualifying Condition 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*) is the only one which applies on its face. Under the particular facts of this case, the following Mitigating Conditions apply: 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*), E2.A2.1.3.3. (*Contact and correspondence with foreign citizens are casual and infrequent*), and E2.A2.1.3.5. (*Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities*).

The evidence shows that the Applicant is a patriotic American citizen. He is knowledgeable about security and has taken steps to reduce his vulnerability. Using the whole person standard, the Applicant has mitigated the security significance of his foreign connections and is eligible for a security clearance.

On balance, it is concluded that the Applicant has successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1: For the Applicant.

Subparagraphs 1.a. through 1.d.: For the Applicant.

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Wilford H. Ross

Administrative Judge