

KEYWORD: Foreign Influence

DIGEST: Applicant is a forty-three-year-old software engineer employed by a defense contractor. A Statement of Reasons was issued questioning Applicant's suitability because his mother, sister, and parents-in-law are citizens and residents of the People's Republic of China (PRC), because he maintains contact with associates in the PRC, and because he traveled to the PRC on four or more occasions since 1996. Although Applicant successfully reduced the numerosity of his trips to the PRC, he failed to address or mitigate the familial and social relationships that give rise to security concerns. Clearance is denied.

CASENO: 04-06017.h1

DATE: 03/18/2005

DATE: March 18, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-06017

DECISION OF ADMINISTRATIVE JUDGE

ARTHUR E. MARSHALL, JR.

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a forty-three-year-old software engineer employed by a defense contractor. A

Statement of Reasons was issued questioning Applicant's suitability because his mother, sister, and parents-in-law are citizens and residents of the People's Republic of China (PRC), because he maintains contact with associates in the PRC, and because he traveled to the PRC on four or more occasions since 1996. Although Applicant successfully reduced the numerosity of his trips to the PRC, he failed to address or mitigate the familial and social relationships that give rise to security concerns. Clearance is denied.

STATEMENT OF THE CASE

On November 9, 2004, 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) detailing why, pursuant to Guideline B-Foreign Influence, it 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 Applicant. Consequentially, DOHA recommended that the matter be referred to an Administrative Judge to determine whether a clearance should be granted.

In a written statement dated November 29, 2004, Applicant admitted to three of the allegations contained in the SOR

and denied the fourth, making a correction which the Government adopted. The Government's case was submitted on December 17, 2004, and a complete copy of the file of relevant material (FORM)⁽¹⁾ was provided to the Applicant. Applicant was afforded the opportunity to file objections and submit evidence in refutation, extenuation, or mitigation. Applicant received a copy of the FORM on December 21, 2004, but did not submit any additional material. I received this case on February 2, 2005.

FINDINGS OF FACT

I have thoroughly reviewed the entire record and make the following additional findings of fact:

Applicant is a forty-three-year-old software engineer who has been employed by a defense contractor since April 2001. Originally from the People's Republic of China (PRC), he enrolled at a major United States public university in 1988 and became a naturalized U.S. citizen in 1989. Applicant continued with his studies through 1994 and received his graduate degree in 1996. He has been employed in the same metropolitan area ever since. Applicant married a citizen of the PRC in 1992. His wife is currently a registered alien residing with him in the United States.

On September 9, 2003, Applicant completed a security clearance application (SF 86) in which he listed his relatives and associates as being his mother and father, both noted as citizens of the PRC and both designated as deceased,⁽²⁾ an elder brother residing in the United States who is a naturalized U.S. citizen who also maintains PRC nationality,⁽³⁾ and his wife.

After the expiration of his passport from the PRC on June 8, 1999, applicant received a United States passport on June 30, 1999. He has traveled to the PRC on three occasions since 1996, in 2000, 2002, and 2004.⁽⁴⁾

Applicant maintains contact with unspecified associates in his hometown who are citizens and residents of the PRC. His in-laws are also citizens and residents of the PRC. His mother⁽⁵⁾ and an unnamed sister⁽⁶⁾ remain citizens and residents of the PRC.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, these adjudicative guidelines are subdivided into those that may be considered in deciding whether to deny or revoke one's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to determine one could still be eligible for access to classified information (Mitigating Conditions).

In application, an Administrative Judge is not strictly bound to the adjudicative guidelines. As the term implies, they are guidelines - but part of an amalgam of elements for the Administrative Judge to consider in assessing an applicant in light of the circumstances giving rise to the SOR, as well as in assessing the applicant as a whole. The concept of the "whole person"⁽⁷⁾ means that all available, reliable information about the person - whether it is good or bad, present or past - should be considered in making a fair, impartial, and meaningful decision as to his or her suitability to hold a security clearance. To that end, Enclosure 2 also sets forth factors to be considered during this part of the adjudicative process, including: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (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 of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guideline most pertinent to an evaluation of the facts of this case:

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.⁽⁸⁾

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns, pertaining to this adjudicative guideline are set forth and discussed in the Conclusions section below.

After a full and thorough examination, however, the final assessment must comport with the considerable gravity of the final decision. There is no right to a security clearance⁽⁹⁾ and one seeking access to classified information must be prepared to enter into a fiduciary relationship with the United States Government that is inherently predicated on trust and confidence. Therefore, when the facts proven by the Government raise doubts about an applicant's judgment, reliability, or trustworthiness, the applicant has the heavy burden of persuasion to demonstrate that he or she is

nonetheless security worthy. As noted by the United States Supreme Court, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹⁰⁾ Therefore, any doubts will be resolved in favor of the national security, not the applicant.

Finally, Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance 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." Therefore, nothing in this Decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty, or patriotism.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all legal precepts, factors, and conditions, including those described briefly above, I find the following with respect to the allegations set forth in the SOR:

With respect to Guideline B, the Government has established its case. Applicant has been portrayed as a person who is a security risk because members of his immediate family and his parents-in-law, people to whom he is bound by affection, influence, or obligation, are neither citizens nor residents of the United States, and may be subject to duress. Such situations raise the potential for vulnerability to coercion, exploitation, or pressure, and the exercise of foreign influence that could result in the compromise of classified information. Applicant has offered no descriptive evidence that would otherwise characterize these familial relations, or that would tend to flesh out his relationships with his associates in the PRC. This raises Foreign Influence Disqualifying Condition (FI DC) 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*)

Moreover, because Applicant failed to present any documentary information with regard to his relationships with his immediate family members, in laws, and associates, there is insufficient evidence to make a determination under Foreign Interest Mitigating Condition (FI MC) 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*). Therefore, it does not apply.

In response to the allegation that he has visited the PRC on "at least four occasions since 1996," Applicant has mitigated the numerosity of his trips and successfully rebutted Subparagraph 1.e. of the SOR. Therefore, I find for Applicant on that allegation. While he has shown that his contact is infrequent, however, he has failed to show that such contact is

casual. Thus, I find that FI MC E2.A2.1.3.3. (*Contact and correspondence with foreign citizens are casual and infrequent*) does not apply.

The record does not show any requests or threats from persons or organizations from a foreign country. Applicant failed, however, to document on his 2003 security clearance application that he had visited the PRC in 2002, only noting it a year later in his 2004 response to the SOR. While such an omission may not constitute the type of *contacts* contemplated by FI MC E2.A2.1.3.4. (*The individual has promptly reported to proper authorities all contacts, requests, or threats from persons or organizations from a foreign country, as required*), it does little to endorse his ability to *promptly report* or accurately document *all contacts*. Therefore, I find that it does not apply.

Inasmuch as Applicant has not offered any evidence that his contacts are the result of official United States Government business or addressed his financial interests, neither FI MC E2.A2.1.3.2. (*Contacts with foreign citizens is the result of official United State Government business*) nor FI MC E2.A2.1.3.5. (*Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities*) apply.

In all adjudications, the protection of the national security is the paramount concern. The objective of the security clearance process is the fair minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in light of the "whole person" concept. That concept recognizes that we should view a person by the totality of their acts, omissions, motivations, and other variables such as age and maturity. We cannot ignore, however, the circumstances and the potential risk one might pose to the national security.

In evaluating Applicant's risk and vulnerability in protecting our national interests, I have considered all the evidence and mitigating conditions. His familial attachments raise concerns with regard to his suitability to hold a security clearance and his ability to execute his obligations unfettered by concerns about family members who may be subject to the interests of a foreign nation. Specifically, his mother and sister remain citizens and residents of the PRC. oreover, although his wife, a citizen of the PRC, resides here as a registered alien, her parents, Applicant's in-laws, remain citizens and residents of the PRC. These facts raise serious doubts about Applicant's ability to protect national secrets without restraint. Absent any evidence or argument from the Applicant to resolve or extenuate these doubts, and after consideration of the whole person, I find Applicant has failed to mitigate the remaining security concerns. Therefore, I am persuaded by the totality of the evidence in this case that it is not clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guideline B is decided against Applicant

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.2.5 of Enclosure 3 of the Directive are:

Paragraph 1. 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.: For 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 Applicant. Clearance is denied.

Arthur E. Marshall, Jr.

Administrative Judge

1. The government submitted 9 items in support of its case.
2. Item 4 (Security Clearance Application (SF 86), dated September 9, 2003), at 4.
3. *Id.*
4. Only the 2000 trip has a stated purpose: pleasure; the rest are noted without description. *Id.*, at 5.

5. Item 3 (Applicant's Answer to the SOR, dated November 9, 2004) includes Applicant's admission that his mother "is a citizen and resident of the

People's Republic of China," despite his claim on his SF 86 that she is deceased. Given this admission, I find that she is currently alive and both a citizen and resident of the PRC.

6. The existence of a sister, living or dead, was not noted in the Applicant's SF 86. Her existence in this matter is based solely on the SOR and Applicant's admission at Item 3, *supra*. Given this admission, I find that Applicant has a sister who is a citizen and resident of the PRC.

7. Directive, at 2-1.

8. Directive, Enclosure 2, Attachment 2, Guideline B, ¶ E2.A2.1.1.

9. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

10. *Id.*, at 531