

KEYWORD: Foreign Influence

DIGEST: The Applicant's parents and siblings are citizens of, and resident in, the People's Republic of China. They are not agents of the Chinese government, or in a position to be exploited by that government. The Applicant is knowledgeable about her security responsibilities, and shows that she can fulfill them. Sufficient mitigation is shown. Clearance is granted.

CASENO: 04-06246.h1

DATE: 12/21/2005

DATE: December 21, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-06246

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR GOVERNMENT

Candace Le'i, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant's parents and siblings are citizens of, and resident in, the People's Republic of China. They are not agents of the Chinese government, or in a position to be exploited by that government. The Applicant is knowledgeable about her security responsibilities, and shows that she can fulfill them. Sufficient mitigation is shown. Clearance is granted.

STATEMENT OF THE CASE

On April 7, 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 27, 2005, and requested a hearing. The case was received by the undersigned on July 5, 2005, and a Notice of Hearing was issued on July 21, 2005.

A hearing was held on August 15, 2005, at which the Government presented three documentary exhibits. Testimony was taken from the Applicant, who called one additional witness, and also submitted two exhibits. The transcript was received on August 22, 2005.

FINDINGS OF FACT

The Applicant is 40, married and has a Master's Degree. She is employed by a defense contractor, and she seeks to obtain a DoD security clearance in connection with her 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 her vulnerable to coercion, exploitation or pressure.

The Applicant was born in the People's Republic of China (China) in 1965. She emigrated from China in 1990 in order to continue her studies in the United States. The Applicant became a naturalized American citizen in October 1999. Her husband was born in China, and he also became a naturalized American citizen in October 1999. They were married in 1989, and have three children, all born in the United States. (Government Exhibit 1, Transcript at 37-38.) They have about \$300,000 to \$400,000 in assets in the United States. (Transcript at 38-39.) Since becoming an American citizen she has returned to China once, in 2003.

The Applicant's elderly parents, two sisters and a brother continue to live in China. Her parents are retired. Her mother suffered a serious stroke over a decade ago and is permanently disabled. She talks to her father about once or twice a month, primarily concerning her mother's health. The Applicant sends her parents gifts amounting to about \$1,000 a year. This amount is not excessive and is in accordance with Chinese customs, as explained by the Applicant's minister. (Applicant's Exhibit A.)

She has two younger sisters and a younger brother. All three are employed, but the Applicant only has a vague idea about what they do. She does not correspond with her siblings, other than when they are present when she calls her father. None of them are agents of the Chinese government. (Transcript at 20-25.)

The Applicant's mother-in-law continues to live in China. She is 65 and retired. The Applicant's husband has filed an "Immigrant Petition for Relative, Fiance(e), or Orphan," with the United States immigration authorities. (Applicant's Exhibit B.) The mother-in-law has no current intention of moving to the United States, but the Applicant and her husband want his mother to have the opportunity to come here if she wishes.

The Applicant was asked whether she was close to her family. She replied, "Yes and no." When asked to explain that answer, she stated:

A yes and a no. Yes, you know, that's my family and you know that's where you come from, that's yes. But no, in U.S., I have my own family here. I have three kids. I have husband. I have job here, you know and I feel more responsible, duties to my kids other than my sister, my siblings and my parents back in China. And I wish we can all move here so everybody is happy, but the situation is they have to stay there. I cannot afford to move my parents here. (Transcript at 30.)

Mitigation.

The Applicant's manager testified on the Applicant's behalf. He stated that she is an intelligent, hard-working, outstanding employee. Furthermore, he believes her to be a trustworthy person. (Transcript at 42-46.)

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 set forth 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 that 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 she provides them minimal financial support. She provides no support to her mother-in-law. The evidence shows that the Applicant's relationship with her family in China is not close, and has not been close for some time. This is shown by her one trip to China in 15 years and the lack of communication between the Applicant and her siblings. It is difficult to call any family relationship "casual and infrequent," but this one comes close. Finally, none of her family in China is an agent of the Chinese government or, in my opinion, in a position to be exploited by the Chinese government. The possibility that the Applicant can be coerced by her family are virtually nil.

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*), and E2.A2.1.3.3. (*Contact and correspondence with foreign citizens are casual and infrequent*).

The evidence shows that the Applicant is a patriotic American citizen. The Applicant eloquently testified about the importance of her family in the United States, and their relationship to her security responsibilities. She is knowledgeable about security and has taken steps to reduce her vulnerability. Using the whole person standard, the Applicant has mitigated the security significance of her 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 her 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.h.: 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