

KEYWORD: Foreign Influence

DIGEST: Applicant, an employee of a federal contractor, has two brothers, four sisters, and their spouses who are citizens of and who reside in the People's Republic of China. Two of the sisters and two brothers-in-law are members of the Chinese Communist Party. He was unable to successfully mitigate the foreign influence security concern based on his family ties to the People's Republic of China. Clearance is denied.

CASE NO: 04-07153.h1

DATE: 12/31/2005

DATE: December 31, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-07153

DECISION OF ADMINISTRATIVE JUDGE

CHRISTOPHER GRAHAM

APPEARANCES

FOR GOVERNMENT

Ray T. Blank, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, an employee of a federal contractor, has two brothers, four sisters, and their spouses who are citizens of and who reside in the People's Republic of China. Two of the sisters and two brothers-in-law are members of the Chinese Communist Party. He was unable to successfully mitigate the foreign influence security concern based on his family ties to the People's Republic of China. Clearance is denied.

STATEMENT OF THE CASE

On October 5, 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) 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 November 4, 2004, Applicant responded to the allegations in the SOR, and requested a hearing. The case was assigned to me on March 27, 2005. Notice of the hearing was issued May 12, 2005, scheduling the hearing for June 2, 2005. The hearing was held as scheduled. The transcript was received June 14, 2005.

FINDINGS OF FACT

Applicant admitted the allegations in the SOR that his father, four sisters, two brothers, and their spouses are residents of the People's Republic of China., except to state that his mother was deceased. After a thorough review of the record as a whole, I make the following additional findings of fact:

Applicant is a married, 47-year-old employee of a federal contractor. ⁽¹⁾ He is a native of the People's Republic of China (PRC), was married in the PRC in 1984, came to the U. S. in 1985, and became a naturalized citizen in 1990-91. ⁽²⁾ He is employed as a Diplomatic Security Officer. ⁽³⁾ His father, two brothers, four sisters and their spouses reside in the PRC. ⁽⁴⁾ Two sisters and two brothers-in-law are members of the Chinese Communist Party. ⁽⁵⁾ The PRC Constitution sets forth the supremacy of the Communist Party over all other government, military, and civilian entities. ⁽⁶⁾ The following chart demonstrates the various relationships and work status of his immediate family.

Relationship	Age	Occupation	Employer	CCP Member	Retired
Sister	63	Doctor	metals company	Yes	Yes
Brother in law	70	Chemical Engineer	metals company	Yes	Yes
Sister	58	Staff	mining institute	No	Yes
Brother in law	62	Engineer	mining institute	No	Yes
Sister	52	Staff	public health	Yes	Yes
Brother in law	56	Staff	foreign trade	No	Yes
Sister	49	Staff	mining institute	No	Yes
Brother in law	51	Engineer	mining institute	Yes	No
Brother	56	Staff	university	No	No
Sister in law	52	Nurse	university	No	No
Brother	54	Staff	computer college	No	Yes
Sister in law	51	Staff	computer college	No	Yes
Father	86	Driver	university	No	Yes

⁽⁷⁾

His wife's family are naturalized citizens living in the U.S. ⁽⁸⁾ Her parents live in the U.S. but have taken vacation trips to the PRC. ⁽⁹⁾ He has a number of nieces and nephews living in the PRC. ⁽¹⁰⁾ Applicant speaks by telephone with his elderly father frequently and communicates with his siblings by telephone and email on a monthly basis. ⁽¹¹⁾ He traveled to the PRC in 1989, 1996, and 2001 to primarily visit his parents and siblings. ⁽¹²⁾

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 - family, home or correspondence. ⁽¹³⁾ China engages in espionage against the United States and is believed to have plans for a "cyber attack" on U.S. computer systems. ⁽¹⁴⁾ The PRC has had success in obtaining classified defense information. ⁽¹⁵⁾

POLICIES

"[No] one has a 'right' to a security clearance."⁽¹⁶⁾ 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."⁽¹⁷⁾ 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."⁽¹⁸⁾

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.⁽¹⁹⁾ 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.⁽²⁰⁾

Once the Government establishes a disqualifying condition, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.⁽²¹⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽²²⁾ 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.⁽²³⁾ 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 acohabitants, 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 he had numerous immediate family members living in the PRC, including four immediate family members who are members of the Chinese Communist Party (CCP). In addition, 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. Here, based on the record as a whole, the government established its case under Guideline B. Applicant has close family ties to the PRC, as evidenced by his sisters and brothers and their spouses who are citizens of and residents in the PRC. The strength of the ties is also demonstrated by Applicant traveling to the PRC for family visits and frequent and regular telephone and internet contact with family members. 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. It appears that none of the family members in PRC are agents of the PRC government or any other foreign power. The term "foreign power" includes political parties and entities controlled by the government.* (24) But that does not end the analysis, as Applicant must show his family members in the PRC are not in positions to be exploited by the PRC government. Applicant's family members either work or worked for a government entity or rely on a government pension and thus could easily be exploited by the PRC government.

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 siblings 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 siblings and father 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 siblings and their spouses 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. This particularly is true of his two sisters and two brothers-in-law who are members of the Communist Party. One of the PRC's strategic initiatives is structural materials, special function materials, composites, rare-earth materials, new energy compound materials, and high capacity engineering plastics with research being conducted at research "think tanks." [\(25\)](#) Half of his family either currently or has worked for mining or metallurgical institutions. Accordingly, Applicant is unable to successfully mitigate the security concern, and 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 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

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.

Christopher Graham

Administrative Judge

1. Government Exhibit 1 (Standard Form 86 (SF 86) *Security Clearance Application* signed May 15, 2002) at 1, 3.
 2. *Id.* at 1, 3; Tr. at 19-22.
3. Government Exhibit 4 (*Applicant's Answers to Interrogatories* dated July 20, 2004,) at 2; Tr. at 21.
 4. *Id.* at 4.
 5. *Id.*
6. Government Exhibit 9 (*Report of the Select Committee on U.S. National Security and Military/Commercial Concerns with The People's Republic of China* dated June 1999) at 9.
7. Government Exhibit 4 (Applicant's Answers to Interrogatories dated July 20, 2004,) at 4; Tr. at 23-30.
 8. Tr. at 23.
 9. Government Exhibit 3 (*Applicant's Statement* dated January 15, 2003,) at 4
 10. Tr. at 30-32.
 11. Tr. at 33-34.
 12. Tr. at 32-33.
13. Government Exhibit 5 (U. S. State Department, *Country Reports on Human Rights Practices: China, 2003*,) at 1, 4-9, 11-12.
14. Government Exhibit 6 (Congressional Research Service, *China-U.S. Relations, January 2003*,) at 9; Government Exhibit 8 (*Annual Report to Congress on Foreign Economic Collection and Industrial Espionage for 2000*, at 16.
15. Government Exhibit 9 (*Report of the Select Committee on U. S. National Security and Military/Commercial Concerns with the People's Republic of China, June 1999*,) at xxi, xxxi-xxxvi, and pp.19-21.

16. See *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1998).

17. *Id.* at 527.

18. Exec. Or. 12968, *Access to Classified Information*, Â§ 3.1(b) (Aug. 4, 1995).

19. *Egan, supra*, at 531.

20. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

21. See ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

22. *Id.*, at 3.

23. See *Egan*; Directive Â¶ E2.2.2.

24. See 50 USC Â§1801 (a) (5) and (6).

25. Government Exhibit 9 (*Report of the Select Committee on U.S. National Security and Military/Commercial Concerns with The People's Republic of China* dated June 1999) at 10-13.