

KEYWORD: Foreign Influence

DIGEST: Applicant is a 46-year-old naturalized United States citizen, who has resided in the United States for 19 years. Three of his siblings are resident citizens of the Peoples Republic of China, as are his wife's parents. His wife and brother reside in the United States and await citizenship. His Chinese parents live with him and are applying for status as permanent resident aliens. He has not mitigated the security concerns raised by foreign influence. Clearance is denied.

CASENO: 04-10509.h1

DATE: 03/31/2006

DATE: March 31, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-10509

DECISION OF ADMINISTRATIVE JUDGE

SHARI DAM

APPEARANCES

FOR GOVERNMENT

Ray E. Blank, Jr., Esq.

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 46-year-old naturalized United States citizen, who has resided in the United States for 19 years. Three of his siblings are resident citizens of the Peoples Republic of China, as are his wife's parents. His wife and brother reside in the United States and await citizenship. His Chinese parents live with him and are applying for status as permanent resident aliens. He has not mitigated the security concerns raised by foreign influence. Clearance is denied.

STATEMENT OF THE CASE

On June 23, 2005, the Defense Office of Hearings and Appeals (DOHA) under Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons under Guideline B (Foreign Influence) why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant a security clearance to Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted.

On July 18, 2005, Applicant filed an Answer to the SOR, admitting all of the allegations, and elected to have the case decided on the written record in lieu of a hearing. On November 17, 2005, Department Counsel prepared a File of Relevant Material (FORM) and provided Applicant with a complete copy on November 18, 2005. Applicant had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation or mitigation. Applicant received the FORM on November 18, 2005. On December 12, 2002, he submitted additional information, which I marked Applicant Exhibits (AX) A-C. The case was assigned to me on December 19, 2005.

FINDINGS OF FACT

Based on the entire record, including Applicant's admissions in his Answer to the SOR, I make the following findings of fact:

Applicant is a 46-year-old married man. He was born in the Peoples Republic of China (China) in 1959. From 1985 until 1987, he was employed as an engineer for the Chinese government. ⁽¹⁾ In 1987, he came to the United States to attend graduate school, which he completed in 1993 and earned a PhD in engineering. He became a naturalized citizen in 2001. ⁽²⁾ Since September 2003, he has worked as an engineer for a federal contractor. He completed a security clearance application (SCA) in September 2003. ⁽³⁾

In 1996, Applicant married his wife who was born in China. She is a permanent resident alien of the United States and applied for citizenship in October 2005. ⁽⁴⁾ They have two children who were born in the United States. He and his family reside in the United States. ⁽⁵⁾

Applicant's parents were born in China. They presently reside in the United States with Applicant, who is in the process of sponsoring them for permanent alien resident status. ⁽⁶⁾

Applicant is one of five children, all born in China. One of his brothers resides in the United States as a permanent resident alien and applied for citizenship in November 2005. ⁽⁷⁾ His two sisters and other brother are citizens and residents of China. In May 2005, he submitted Petitions for Alien Relative to the U.S. Citizenship and Immigration Services in order to sponsor their residence in the United States. ⁽⁸⁾

Applicant's mother-in-law and father-in-law are citizens and residents of China. They would like to immigrate to the United States after his wife obtains citizenship. ⁽⁹⁾

None of these relatives are employed by the Chinese government or work in intelligence gathering positions. Applicant telephones his siblings and in-laws a couple times a year, usually at the holidays. He does not provide any financial assistance to them, and does not own property there.⁽¹⁰⁾ He strongly professed his love and loyalty to the United States.⁽¹¹⁾

China is an authoritarian state whose power is centralized in the Chinese Communist Party. Its government historically has a poor human rights record toward its own citizens, who lack the freedom to peacefully demonstrate opposition to the political system or freely change those in charge of the government. Those citizens seeking to express dissenting political views are subject to arrest, harassment and abuse. China does not have an independent judiciary nor are their citizens afforded due process rights.⁽¹²⁾

China is recognized as a country that has traditionally been considered hostile to the United States and has used its intelligence services to harm United States' interest. The Chinese have expended significant resources in that pursuit and are among the most active information collectors and participants in industrial espionage.⁽¹³⁾

POLICIES

Enclosure 2 of the Directive, *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, sets forth criteria which must be evaluated when determining security clearance eligibility. Within those adjudicative guidelines are factors to consider in denying or revoking an individual's request for access to classified information (Disqualifying Conditions), and factors to consider in granting an individual's request for access to classified information (Mitigating Conditions). By recognizing that individual circumstances of each case are different, the guidelines provide substantive standards to assist an administrative judge in weighing the evidence in order to reach a fair, impartial and common sense decision.

The adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at a balanced decision. Section E2.2. of Enclosure 2 of the Directive describes the essence of scrutinizing all appropriate variables in a case as the "whole person concept." In evaluating the disqualifying and mitigating conduct an administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Granting an applicant's clearance for access to classified information is based on a high degree of trust and confidence in the individual. Accordingly, decisions under the Directive must include consideration of not only the *actual* risk of disclosure of classified information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information. Directive, Enclosure 2, ¶ E2.2.2. The decision to deny an individual a security clearance is not necessarily a judgment about an applicant's loyalty. Executive Order 10865, § 7. Instead, it is a determination that an applicant has not met the strict guidelines established by the Department of Defense for issuing a clearance.

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. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988). The Directive presumes a rational connection between past proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the corresponding burden of rebuttal shifts to the applicant to present evidence in refutation, extenuation, or mitigation sufficient to overcome the position of the government. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); Directive, Enclosure 3, ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his clearance." *Id.*

Based upon the allegations contained in the SOR and a consideration of the evidence as a whole, the following adjudicative guideline is pertinent to an evaluation of the facts of this case:

Guideline B - Foreign Influence: A security concern may exist when an individual's immediate family, including co-habitants, and other persons to whom he or she maybe bound by affection, influence, or obligations 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 coercions, exploitation, or pressure.

The disqualifying and mitigating conditions, either raising security concerns or mitigating security concerns applicable to this case, are discussed in the Conclusions section below.

CONCLUSIONS

After considering all of the facts in evidence and legal standards, including the "whole person" concept discussed above, I conclude the following regarding the allegations in the SOR:

The Government established its case for disqualification under Guideline B. Based on the evidence, 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 or, or resident or present in, a foreign country*) applies. Applicant's brother and two sisters are citizens and residents of China. Although his wife, parents and other brother permanently reside in the United States, they presently retain their Chinese citizenship. Under ISCR Case No. 01-03120, DOHA LEXIS 94 at 8 (App. Bd. Feb. 20, 2002), Applicant's mother-in-law and father-in-law also fall within the disqualification as "[t]here is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse."

While family ties with persons in a foreign country are not, as a matter of law, disqualifying under Guideline B, such ties raise a *prima facie* security concern. This concern is sufficient to require an applicant to present evidence of rebuttal, extenuation or mitigation sufficient to meet the applicant's burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance. ISCR Case No. 99-0424, 2001 DOHA LEXIS at 33-34 (App. Bd. Feb. 8, 2001).

Security concerns raised by an applicant's foreign associates may be mitigated under Foreign Influence 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 associates(s) in question are not agents of a foreign power or in a position to be exploited by the foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States*). Applicant established that his foreign family members are not agents of a foreign power.

In assessing the vulnerability to exploitation of Applicant's family (the second prong of this mitigating condition), it is helpful to consider several factors: the nature of the foreign government, its relationship to the United States, and its human rights record. China is an authoritarian government, known to conduct intelligence operations against the United States, and is notorious for its abysmal human rights record. Consequently, the risk of coercion, persuasion, or duress to exploit its citizens to gather classified information from United States citizens increases considerably.

The evidence clearly established Applicant is a loyal, trustworthy United States citizen. He has done nothing wrong. I gave significant regard to Applicant's numerous ties with the United States, including the length of time he has lived here, and his family members who reside with him and are in the process of obtaining citizenship. He insists that he is loyal to the United States and could not be vulnerable to foreign coercion or influence. However, the mitigating

condition "hinges not on what choice Applicant might make if he is forced to choose between his loyalty to his family and the United States, but rather hinges on the concept that applicant should not be placed in a position where he is forced to make such a choice." ISCR Case No. 03-15205 at 3-4 (App. Bd. Jan. 21, 2005). With three siblings and in-laws still residing in China, Applicant failed to establish they are not in a vulnerable position and could not pose a potential problem for him. However, he did mitigate the concerns related to his wife and brother who are permanent resident aliens and have recently applied for U.S. citizenship, as well as his parents who are seeking permanent residency status.

Hence, I find Applicant mitigated the allegations contained in ¶¶ 1.a, 1.b, and 1.c, but did not mitigate the security concerns raised by several family members who are resident citizens of China, as alleged in SOR ¶¶ 1.d, and 1e. Accordingly, Guideline B is decided against Applicant.

For the reasons stated, I conclude Applicant is not eligible for access to classified information.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1: Guideline B (Foreign Influence) AGAINST APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant a security clearance. Clearance is denied.

Shari Dam

Administrative Judge

1. Item 4 at 6.
2. Item 4.
3. *Id.* at 1.
4. *Id.* at 3; AX B.
5. Item 4.
6. Item 3.
7. AX C.
8. Item 3 at 4.
9. *Id.* at 1.
10. Item 5 at 3 and 8.
11. *Id.* at 8.
12. Item 7.
13. Items 12 and 9.