

KEYWORD: Foreign Influence

DIGEST: Applicant is a 60-year-old married man, who is employed as senior engineer/scientist for a defense contractor. Applicant has been employed by this defense contractor for over 30 years and has a history of successfully holding different levels of clearances. During the renewal process for his clearance, foreign influence concerns arose as a result of his recent marriage to a woman, who is a citizen of the People's Republic of China (PRC). She along with her teenage son, also a citizen of the PRC, moved in with Applicant. Additionally, Applicant's father-in-law's continued presence in the PRC raises a foreign influence concern Applicant is unable to mitigate. Clearance is denied.

CASE NO: 04-11512.h1

DATE:05/31/2006

DATE: May 31, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-11512

DECISION OF ADMINISTRATIVE JUDGE

ROBERT J. TUIDER

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esq., Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

Applicant is a 60-year-old married man, who is employed as senior engineer/scientist for a defense contractor. Applicant has been employed by this defense contractor for over 30 years and has a history of successfully holding different levels of clearances. During the renewal process for his clearance, foreign influence concerns arose as a result of his recent marriage to a woman, who is a citizen of the People's Republic of China (PRC). She along with her teenage son, also a citizen of the PRC, moved in with Applicant. Additionally, Applicant's father-in-law's continued presence in the PRC raises a foreign influence concern Applicant is unable to mitigate. Clearance is denied.

STATEMENT OF THE CASE

On June 10, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the basis for its decision why DOHA proposed to deny or revoke his access to classified information. [\(1\)](#) The SOR alleges a security concern under Guideline B for foreign influence. Applicant replied to the SOR on June 27, 2005, and requested a hearing. Department Counsel indicated he was ready to proceed on July 27, 2005, and the case was assigned to me on August 18, 2005.

On October 11, 2005, DOHA issued a notice of hearing scheduling the case to be heard on October 26, 2005. The case was conducted as scheduled to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

At the hearing, the government presented five exhibits, which were marked as Government Exhibits (GE) 1 through 5, and admitted without objection. Applicant presented five exhibits, which were marked as Applicant Exhibits (AE) A through E, and admitted without objection. I left the record open to allow Applicant the opportunity to submit additional matters. Applicant timely submitted one additional exhibit, which was marked AE F, and admitted without objection. DOHA received the transcript on November 9, 2005.

FINDINGS OF FACT

In his Answer, Applicant admitted the SOR allegations. His admissions are incorporated into my findings, and after a thorough review of the record, I make the following additional findings of fact:

Applicant testified during the hearing, and I found his testimony credible. He is a 60-year-old married man employed as a senior engineer/scientist for a defense contractor. Since October 1974, he has been employed by the same defense contractor, a period in excess of 31 years, and he has successfully held without incident various levels of clearances during that time, to include top secret. He seeks to renew his clearance.

From September 1964 to June 1968, Applicant attended a university and was awarded a bachelor's degree, majoring in aerospace and mechanical engineering. Continuing his education, from September 1968 to June 1969, he attended another university and was awarded a master of science degree in aerodynamics and aerophysics.

From December 1974 to August 1999, a period in excess of 24 years, Applicant was married to his first wife. That marriage ended in divorce. During that marriage, Applicant and his wife had four children. The three oldest children are emancipated adults. The youngest child is now 15 years old and resides with Applicant's former wife, to whom he pays child support. During Applicant's career as an engineer, he was generally required to work long hours. However, in January 1995, he undertook a high profile project that required him to put in a 70-80 hour work week. He found himself working seven days a week for five years. Like many of his colleagues similarly situated, he lost his marriage and children "for the sake of the program." AE A.

After his separation from his first wife and the breakup of their marriage, Applicant began a search for a mate. Tr. 29-30. Considering several options and at the suggestion of an ethnic Chinese woman Applicant met at a class reunion, he visited a web site she suggested that catered to Chinese women. This search ultimately led him to a web site where he met the woman who would later become his wife, a resident citizen of the People's Republic of China (PRC). Tr. 33.

In May 1999, Applicant made his first visit to the PRC to visit his wife-to-be and proposed to her. She accepted. After Applicant returned to the U.S., their long distance relationship continued to develop and he returned later that year in December to visit to her. In March 2000, Applicant's fiancé arrived in the U.S., and in June 2000, Applicant and his fiancé were married. In December 2000, Applicant's wife was given her permanent resident visa (green card). She is eligible to take her citizenship exam and intends to do so as soon as she achieves competence in the English language.

Applicant's new bride left behind in the PRC her one son from a previous marriage and her elderly widowed father, a retired architect. Since Applicant married his spouse, he has been back to the PRC with her two additional times in October 2000 and in March 2005, for a total of four visits. Since marrying Applicant, his wife has returned to the PRC one time without him in 2001.

Applicant's stepson, who is currently 21 years old, arrived in the U.S. in February 2001 and moved in with his mother and Applicant. In May 2002, he was given his green card and is now a college sophomore majoring in engineering. Other than her father, who is 71 years old, Applicant's wife has "brothers" living in the PRC.

Applicant's wife has a small vested pension in the PRC, which she is unable to take out of the PRC because of restrictions imposed by the PRC government. Applicant's wife has no other assets, real or personal in the PRC. Applicant estimates he has assets worth \$700,000.00 in the U.S., including the house Applicant and his wife and stepson live in, a vacation house in another state, 401k account, company stock, savings bonds, and bank accounts. Applicant and his wife provide no financial support to any of her relatives in the PRC.

Applicant testified that because of the difficult time he had during his last visit to the PRC, he may never return. In short, the length of the trip, food, and tension from crime and density that exists, particularly in the larger cities, makes for a very "tough environment."

None of Applicant's wife's family members were or are members of the Communist party or are associated with the PRC government. Applicant further testified his 71-year-old father-in-law has a 35-year-old girlfriend and is unlikely to leave the PRC. Applicant testified convincingly about his dislike for the PRC government, which he characterized as "extremely evil" and "corrupt." Tr. 46. In contrast, he described the Chinese people as "wonderful." Tr. 46. He acknowledged the PRC government would use its own citizens to "get what they want." Tr. 46. Applicant's wife's family have suffered under the Communist government. Not being members of the Communist party, Applicant's wife stated that her "family in the past has suffered at the hands of the Chinese government, losing family members and many properties." AE D.

Applicant has limited contact with his in-laws in the PRC. Applicant's wife speaks to her father or a brother on the telephone "maybe a couple times a month." Applicant characterizes his interaction with his in-laws as an occasional exchange of greetings when his wife has them on the telephone. Other than that, he has no contact with them.

Applicant convincingly testified that in the remote chance someone in the PRC government tried to extort information from him through his father-in-law, he would report the contact to the FBI and "not deal with them." He even went so

far as to say that he's "not dealing with the Chinese . . . even if they're holding my 14-year-old daughter hostage." Tr. 66.

Applicant enjoys an excellent reputation with her employer. Adjectives used by her superiors and colleagues include, "thoroughly trustworthy, forthright and candid," and "always treated the data with the utmost security and care." AE B and C.

Department Counsel submitted exhibits which document, among other things, the PRC's abysmal human rights record, and its active espionage program against the U.S. and its interests.. GE 4 and 5.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's security-clearance eligibility, including disqualifying conditions (DC) and mitigating conditions (MC) for each applicable guideline. In addition, each clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, and the factors listed in ¶ 6.3.1. through ¶ 6.3.6. of the Directive. Although the presence or

absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

BURDEN OF PROOF

The only purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽²⁾ There is no presumption in favor of granting or continuing access to classified information.⁽³⁾ The government has the burden of proving controverted facts.⁽⁴⁾ The U.S. Supreme Court has said the burden of proof in a security clearance case is less than a preponderance of the evidence.⁽⁵⁾ The DOHA Appeal Board has followed the Court's reasoning on this issue establishing a substantial evidence standard.⁽⁶⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁷⁾ Once the government meets its burden, an applicant has the burden of presenting evidence of refutation, extenuation, or mitigation sufficient to overcome the case against him.⁽⁸⁾ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁹⁾

As noted by the Court in *Egan*, "it should be obvious that no one has a 'right' to a security clearance," and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." [\(10\)](#) Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

CONCLUSIONS

Under Guideline B for foreign influence, a security concern 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 U.S. or may be subject to duress. These situations create the potential for foreign influence that could result in the compromise of classified information. Directive E2.A2.1.1. 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 evidence as a whole, the government has established its case under Guideline B. Applicant has family ties to the PRC, as evidenced by his father-in-law being a resident citizen of the PRC. Although Applicant's contact with his in-laws is minimal and superficial, the same cannot be said for his wife. Applicant's wife maintains regular contact with her father through periodic telephone calls and through several visits since she arrived in the U.S. Although Applicant's wife and stepson have taken all required steps to achieve U.S. citizenship, they still remain citizens of the PRC. Taken together, these circumstances raise a security concern under Foreign Influence Disqualifying Condition 1. [\(11\)](#)

I have reviewed the Foreign Influence Mitigating Conditions (MC) under Guideline B and view MC 1 [\(12\)](#) as a potential mitigating condition applicable under the Directive. Unfortunately, the facts of this case do not warrant application of this MC. The evidence supports the notion that Applicant's wife enjoys a close relationship with her father. Such a relationship is normal and would be expected under the circumstances. Unfortunately, and albeit remote, this is a relationship that the PRC government could attempt to exploit.

Applicant's loyalty and dedication to the U.S. are not in question. Quite to the contrary. He has spent his entire adult life dedicated to working in the defense industry. He knows the importance of maintaining security and he also knows the ways and means of the PRC government. Regrettably, his current situation poses a risk that cannot be tolerated. It is not him or his behavior that is of concern, but rather the well established actions of a government whose interests are often times at odds with the U.S. Accordingly, Guideline B is decided against Applicant.

Applicant's new spouse and stepson's efforts to assimilate into the U.S. are to be commended. His stepson appears to have a bright future in his newly adopted country through his diligent pursuit of an engineering degree. Applicant should take solace in his new-found family and the potential joy he will derive from them.

To conclude, Applicant has not met his ultimate burden of persuasion to obtain a favorable clearance decision. In reaching my decision, I have considered the whole-person concept, the clearly-consistent standard, and the appropriate factors and guidelines in the Directive.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

SOR ¶ 1-Guideline B: AGAINST APPLICANT

Subparagraph 1.a : Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against 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.

Robert J. Tuider

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
3. ISCR Case No. 02-18663 (March 23, 2004) at p. 5.
4. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
5. *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).
6. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
7. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
8. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
9. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.
10. *Egan*, 484 U.S. at 528, 531.
11. 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."
12. 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."