

KEYWORD: Foreign Influence

DIGEST: Applicant, who was born, educated, and married in the People's Republic of China (PRC),

became a U.S. citizen in 2000 and is employed as a systems engineer by a government contractor. She is responsible for managing access to a database containing personal and medical information about military and civilian patients. Applicant's parents, brother, and parents-in-law are citizens and residents of the PRC. In 1994, 1995, and 1996, when working for another employer, she was sent to the PRC to solicit information technology business for the employer. Applicant failed to mitigate security concerns arising from having relatives who are citizens and residents of the PRC. Applicant's eligibility for assignment to a sensitive position is denied.

CASENO: 04-12331.h1

DATE: 04/20/2006

DATE: April 20, 2006

In Re:

SSN: -----

Applicant for Trustworthiness Determination

ADP Case No. 04-12331

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

Fahryn Hoffman, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, who was born, educated, and married in the People's Republic of China (PRC),

became a U.S. citizen in 2000 and is employed as a systems engineer by a government contractor. She is responsible for managing access to a database containing personal and medical information about military and civilian patients. Applicant's parents, brother, and parents-in-law are citizens and residents of the PRC. In 1994, 1995, and 1996, when working for another employer, she was sent to the PRC to solicit information technology business for the employer. Applicant failed to mitigate security concerns arising from having relatives who are citizens and residents of the PRC. Applicant's eligibility for assignment to a sensitive position is denied.

STATEMENT OF THE CASE

On October 12, 2001, Applicant submitted an application for a position of public trust. The Defense Office of Hearings and Appeals (DOHA) declined to grant the application under Department of Defense Regulation 5200.2-R, *Personnel Security Program*, (Jan. 1987), as amended and modified (the "Regulation"), and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (the "Directive"). On July 28, 2005, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under Guideline B, Foreign Influence, of the Directive.

Applicant answered the SOR in writing on August 15, 2005. She elected to have a hearing before an administrative judge.

The case was assigned to me on November 25, 2005. With the concurrence of the parties, I conducted the hearing on

February 1, 2006. The government introduced two exhibits (Ex.), identified as Ex. 1 and 2, and four documents for administrative notice, identified as I through IV. Applicant presented two exhibits, identified as Ex. A and B, and the testimony of one witness. Additionally, Applicant testified on her own behalf. The parties' exhibits and documents for administrative notice were admitted to the record without objection. DOHA received the transcript on February 8, 2006.

FINDINGS OF FACT

The SOR contains four allegations of disqualifying conduct under the Foreign Influence Guideline of Appendix 8 of DoD 5200.2-R.. In her answer to the SOR, Applicant admitted the four allegations and noted mitigating conditions. Her admissions are incorporated as findings of fact.

Applicant is 48 years old and employed as a systems engineer by a defense contractor. (Ex. 1, at 1-2.) She administers a graphical user interface on a data base system that provides access to the sensitive personal and medical information of military and civilian patients. (Tr. 37-38.) None of the information in the system Applicant administers is classified, and there is no proprietary government software on the system. (Tr. 33; 39.) The interface software is a dual-use technology which has multiple uses and could be configured for military systems. (Tr. 38.)

Applicant was born in the People's Republic of China (PRC) and received an undergraduate degree in electrical engineering in the PRC. (Tr. 51.) In 1985 Applicant and her husband, who was also born and raised in the PRC, were married in the PRC. (Ex. 1.) In 1989, the couple immigrated to the U.S. and earned advanced degrees. (Answer to SOR at 1-2.) Applicant's husband is also a data base administrator. (Tr. 54-55.) Applicant became a U.S. citizen in 2000, and her husband became a U.S. citizen in 1998. They are the parents of one child, born in 1992, who is a U.S. citizen. (Ex. 1; Ex. 2.)

From 1994 to 1999, Applicant was employed as a senior systems engineer by a private telecommunications company. (Ex. 1.) The Chief Executive Officer (CEO) of the company asked Applicant to travel to the PRC with him in 1994 as a technical representative and translator. He described the purpose of the trip as "fostering international trade and assisting certain Chinese ministries in the area of telecommunications infrastructures." (Ex. A at 1.) After the CEO established business relationships with Chinese-owned companies, he assigned Applicant to travel back to the PRC as his representative in 1995 and 1996 "to investigate in person the technical capabilities of several companies for the purpose of determining whether we really wanted to further develop a business relationship with any of them." (Tr. 47-50; Ex. A at 1.) No business relationships with PRC companies grew out of Applicant's assignment. (Tr. 49.) When she was in the PRC on business in 1994, 1995, and 1996, Applicant took the opportunity to visit her parents and her brother. (Answer to SOR at 3.) She has not traveled to the PRC for pleasure or on business since 1996. (Tr. 30.)

Applicant's mother and father are citizens and residents of the PRC. Applicant's father is 80 years old and a retired office manager. He was not employed by the Chinese government. Applicant's mother is 74 years old and a retired telecommunication company manager. Because utilities such as telecommunications were state-owned, Applicant's mother was an employee of the PRC government. (Answer to SOR at 1; Tr. 45.) The parents live with Applicant's 38-year-old brother, who is also a citizen and resident of the PRC. (Ex. 2.) Until November 2005, Applicant's brother was employed by a financial securities research group in the PRC. He is currently unemployed. (Answer to SOR at 2; Tr. 45-46.)

Applicant's mother-in-law and father-in-law are citizens and residents of the PRC. The father-in-law is retired and a former construction manager. Applicant's mother-in-law is retired from work in the clothing manufacturing business. Neither of Applicant's in-laws worked for the Chinese government. The parents receive medical and retirement benefits from the government of the PRC. (Answer to SOR, at 2; Tr. 46-47.)

Applicant has close relationships with her father, mother, and brother. She speaks often with her family members by telephone. [\(1\)](#) (Ex. 2.) She speaks with her mother-in-law and father-in-law once a year by telephone. Applicant's contacts with her family members in the PRC focus on health, retirement, and family matters. (Answer to SOR at 2-3; Ex. 2.)

Applicant's line manager appeared as a witness at the hearing and testified to Applicant's professionalism, trustworthiness, and reliability. (Tr. 32-33.) He also supplied a letter of character reference for Applicant in which he identified her as "an exceptional performer, whose presence is highly valued." (Ex. B at 1.)

I take administrative notice that the PRC is an authoritarian state controlled by the Chinese Communist Party (CCP), whose military and political goals are antithetical to the U.S. China (includes Tibet, Hong Kong, and Macau), Country Reports on Human Rights Practices- 2004, U.S. Department of State: Government document IV for administrative notice) In pursuit of its military goals, the PRC has stolen design information on the United States' most advanced thermonuclear weapons. The PRC has used a variety of approaches to acquire military technology, including exploiting dual use products and services for military advantage in unforeseen ways. Additionally, the PRC tries to identify ethnic Chinese in the U.S. who have access to sensitive information and sometimes to enlist their cooperation in information transfers. (U.S. National Security and Military/Commercial Concerns With the People's Republic of China, Vol I, Report of the Select Committee on U.S. National Security and Military/Commercial Concerns With the People's Republic of China, May 25, 1999, declassified, in part, pursuant to House Resolution 5, as amended, 106th Congress, 1st session, Overview at ii; 20-21; Government document I for administrative notice.)

POLICIES

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." *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). In Executive Order 12968, *Access to Classified Information*, § 3.1(b) (August 4, 1995), the President provided that eligibility for access to classified information shall be granted only 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 for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information."

To be eligible for assignment to sensitive duties, an applicant must meet the security guidelines contained in DoD 5200.2-R. "The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security." DoD 5200.2-R, ¶ C6.1.1.1. Appendix 8 of the Regulation sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guideline at issue in this case is:

Foreign Influence: A security risk may exist when an individual's immediate family, including cohabitants, or other persons to whom he or she may be bound by affection, influence, or obligation, are (1) not citizens of the United States or (2) 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.

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

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." DoD 5200.2-R, Appendix 8. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. *Id.* An administrative judge should consider the following factors: (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 for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. *Id.*

DoD contractor personnel are afforded the right to the procedures contained in DoD Directive 5220.6 before any final unfavorable access determination may be made. DoD 5200.2-R, ¶ C8.2.1. Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. Directive, ¶ E3.1.14. Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. Directive, ¶ 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 security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2.

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. Exec. Ord. 10865, § 7. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

CONCLUSIONS

In the SOR, DOHA alleged that Applicant's mother, father, brother, and mother-in-law and father-in-law are citizens and residents of the PRC (§§ 1.a., 1.b., and 1.c.); and that Applicant traveled to the PRC in at least 1994, 1995, and 1996. (§ 1.d.).

The government's evidence and Applicant's admissions constitute substantial evidence of a potentially disqualifying condition under the Foreign Influence Guideline of Appendix 8 of DoD 5200.2-R. The Regulation provides that it may be a disqualifying condition if "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." The Regulation does not define the phrase "immediate family member," but the Directive, ¶ E2.A2.1.3.1, defines the phrase to include a spouse, father, mother, sons, daughters, brothers, and sisters. Applicant's mother, father, and brother are citizens and residents of the PRC. Additionally, Applicant has close ties of affection or obligation to her mother-in-law and father-in-law, who are also citizens and residents of the PRC.

These circumstances "could create the potential for foreign influence that could result in the compromise of classified information." DoD 5200.2-R, Appendix 8, Foreign Influence. While the

mere possession of family ties with persons in a foreign country is not, as a matter of law, automatically disqualifying . . . [it] does raise a prima facie security concern 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 for the applicant.

ISCR Case No. 99-0424, 2001 DOHA LEXIS 59 at **33-34 (App. Bd. Feb. 8, 2001).

In addition to the security concerns related to Applicant's family members in the PRC, a concern arises over Applicant's travel to the PRC and her contacts, in 1994, 1995, and 1996, on behalf of her employer, with PRC telecommunications companies. These contacts, which occurred while Applicant was a citizen of the PRC, raise a concern under a disqualifying condition identified in DoD 5200.2-R, Appendix 8, Foreign Influence, as "conduct which may make an individual vulnerable to coercion, exploitation, or pressure by a foreign government." This security concern can be mitigated under the Foreign Influence Guideline of the Regulation if an individual can demonstrate that "contacts with foreign citizens are the result of official U.S. Government business." The record does not support a conclusion that Applicant's contacts with telecommunications officials in the PRC were the result of official U.S. Government business. Accordingly, the security concern raised by Applicant's conduct is not mitigated.

The security concerns raised by Applicant's relatives who are citizens and residents of the PRC may be mitigated where it is determined that "the immediate family member(s) . . . or associate(s) would not constitute an unacceptable security risk." DoD 5200.2-R, Appendix 8, Foreign Influence. The Regulation does not provide a definition or explanation for the phrase, "unacceptable security risk." However, in similar circumstances, ¶ E2.A2.1.3.1. of the Directive provides that it may be mitigating where the relatives 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 involved and the United States."

Applicant's mother, father, brother, mother-in-law and father-in-law are not "agents of a foreign power." *See* 50 U.S.C.A. § 1801(b). They are not employees of the PRC government, or otherwise associated with a "foreign power."

In assessing whether relatives are vulnerable to exploitation, it is helpful to consider several factors, including the character of the government of the relevant foreign country. The PRC is an authoritarian state controlled by the communist party and aggressive in its desire to acquire, through illegal methods, advanced U.S. military and technological information. To carry out this aggressive policy, the PRC often seeks to identify ethnic Chinese living in the U.S. who have access to sensitive information and to elicit their cooperation in the illegal transfer of this technology or information to the PRC. Individuals with family members in the PRC are vulnerable and can be targeted and pressured to act adversely to the interests of the United States.

It is also important to consider the vulnerability to duress of Applicant's relatives. Applicant's father and mother are elderly and retired. Applicant's father-in-law and mother-in-law are also elderly and retired. They rely on the government for retirement income and medical care. Under these circumstances, Applicant's parents and parent-in-law are vulnerable to governmental pressure or duress. Additionally, Applicant's brother recently lost his job and is unemployed, making him vulnerable to pressure and duress.

Another factor that can mitigate security concerns identified in the Foreign Influence Guideline is a finding that an applicant's contact and correspondence with foreign citizens are casual and infrequent. Applicant's frequent contacts with her family members in the PRC are based on strong familial ties of affection and obligation. They are not casual and infrequent, and they, in turn, raise the issue of Applicant's vulnerability to pressure or duress applied indirectly

through her ties with her relatives. In her affidavit, Applicant acknowledged strong familial and emotional ties to her mother, father, and brother. She is in frequent communication with them. Through her husband, she has close familial ties to her mother-in-law and father-in-law as well. These ties of affection and obligation could be exploited by an aggressive government seeking sensitive information or technologies. I conclude that even though Applicant's loyalty, patriotism, and allegiance to the U.S. are not in question in this proceeding, it is possible for a foreign power to exploit her familial loyalties in a way that would force her to chose between loyalty to the relatives in question and the United States.

I balanced all the factual circumstances and applied them to the adjudicative criteria established in the Regulation in light of the whole person concept. I considered the likelihood that the PRC government or a foreign power in that country would exploit Applicant's relatives. I have also considered the relatives' vulnerability to pressure, coercion, or duress, and Applicant's ties of affection or obligation to them and to the United States. I conclude the mitigating conditions set out in the Regulation do not apply to the facts of Applicant's case.

FORMAL FINDINGS

My conclusions as to each allegation in the SOR are:

Paragraph 1, Foreign Influence: 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 of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant's eligibility for assignment to sensitive duties. Eligibility is denied.

Joan Caton Anthony

Administrative Judge

1. In her affidavit, Applicant stated she communicated with her family by telephone once a week. (Ex. 2.) At her hearing, she said she spoke with her family by telephone about once a month. (Tr. 58-59.