

KEYWORD: Foreign Influence

DIGEST: Applicant was born, educated, and married in the People's Republic of China (PRC). He became a U.S. citizen in 1998 and is employed as a database systems administrator by a government contractor. Applicant administers a database system that supports the budget formulation and review processes for a federal agency. Applicant's parents, brother, two sisters, parents-in-law, and sister-in-law are citizens and residents of the PRC. Applicant failed to mitigate security concerns arising from having relatives who are citizens and residents of the PRC. Clearance is denied.

CASENO: 05-03422.h1

DATE: 05/12/2006

DATE: May 12, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-03422

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant was born, educated, and married in the People's Republic of China (PRC). He became a U.S. citizen in 1998 and is employed as a database systems administrator by a government contractor. Applicant administers a database system that supports the budget formulation and review processes for a federal agency. Applicant's parents, brother, two sisters, parents-in-law, and sister-in-law are citizens and residents of the PRC. Applicant failed to mitigate security concerns arising from having relatives who are citizens and residents of the PRC. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On September 2, 2005, under the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision—security concerns raised under Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing September 23, 2005, and elected to have a hearing before an administrative judge. The case was assigned to me December 12, 2005. On January 11, 2006, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses, offered one exhibit for admission to the record (Ex. 1), and submitted five documents for administrative notice, which were enumerated I through V. The Government's exhibit and documents for administrative notice were admitted to the record without objection. Applicant called one witness and submitted three exhibits, which were identified and marked as Ex. A, B, and C. Applicant's exhibits were admitted to the record without objection. On January 20, 2006, DOHA received the transcript (Tr.) of the proceeding.

RULINGS ON PROCEDURE

Applicant waived the 15-day notice provision, as required by ¶ E3.18. of Enclosure 3 of DoD Directive 5220.6. (Tr. 6-9.)

FINDINGS OF FACT

The SOR contains four allegations of disqualifying conduct under Guideline B, Foreign Influence, of the Directive. In his answer to the SOR, Applicant admitted two allegations, admitted one allegation in part, and denied one allegation. His admissions are incorporated as findings of fact.

Applicant is 47 years old and employed as a database administrator by a defense contractor. (Ex. 1, at 1-2.; Ex. A.) He administers a data base with classified and unclassified elements which supports the budget formulation and review process for a federal agency. (Tr. 45; 48; Ex. A.)

Applicant was born in 1959 in the People's Republic of China (PRC) and received an undergraduate degree in electrical engineering in the PRC. (Tr. 64-65.) In 1985 Applicant and his wife, who was also born and raised in the PRC, were married in the PRC. (Tr. 65-66; Ex. 1.) In 1989, the couple immigrated to the U.S. and earned advanced degrees. (Tr. 67.) Applicant's wife's advanced degree is in computer information systems. She works with health care computer data bases. (Tr. 66-67.) Applicant became a U.S. citizen in 1998. (Tr. 68.) Applicant and his wife are the parents of one child, born in 1992, who is a U.S. citizen. (Ex. 1.)

When he was three years old, Applicant's son was diagnosed with a brain tumor. (Ex. C.) The U.S. doctors they consulted recommended surgery to remove the tumor. Applicant and his wife decided against the operation, which they considered to be too risky. Instead, Applicant traveled three times to the PRC to obtain herbal therapies to treat his son. (Tr. 18-19; 37-39.) Additionally, Applicant's mother-in-law and father-in-law, citizens and residents of the PRC, came to the U.S. to help care for the son. They lived with Applicant and his wife and son from 1998 to 2000. (Tr. 19-20: Answer to SOR at 2.) In 2000, after the son's health became more stable, Applicant's father-in-law and mother-in-law returned to the PRC. (Tr. 20.)

Applicant's father, mother, brother, sister-in-law, and two sisters are citizens and residents of the PRC. Applicant's father is approximately 75 years old and Applicant's mother is approximately 73 years old. Both parents are retired. Before retirement, Applicant's father was a construction manager and his mother was employed in clothing manufacturing. Applicant's brother, aged 49, works as a project manager in the construction company managed by Applicant's father. His wife, Applicant's sister-in-law, is unemployed. Their son, Applicant's nephew, is a university student.

(Answer to SOR at 1-2; Tr. 56-57.)

Applicant's two sisters, aged approximately 56 and 53, have retired from work as accounting subcontractors in the same construction company that employed their father and brother. (Answer to SOR at 1; Tr. 59-60.)

Applicant's father-in-law and mother-in-law, aged 80 and 74, are citizens and residents of the PRC. Before retirement, Applicant's mother-in-law worked in a human relations office at the telephone company, and his father-in-law was a salesman. Applicant's mother-in-law has visited Applicant and his family twice in the U.S. (Tr. 58-60; Answer to SOR at 2.) None of Applicant's family members was employed by the PRC government. (Answer to SOR, at 1-2; Tr. 21; 56-57.) Applicant's in-laws and parents depend on the PRC government for medical care and other benefits available to elderly retired citizens and residents of the PRC. (Answer to SOR at 2.)

Applicant's contacts with his parents and parents-in-law focus on their health and retirement activities. Additionally, he keeps them apprised of his activities and his son's progress in school. (Answer to SOR at 1-2.)

Even though he lived in the PRC until the age of 30, Applicant denied having friends there. He said when he was growing up in China during the cultural revolution, people feared being betrayed by family and friends and did not form strong personal bonds with one another. (Tr. 60-62.) Applicant said that during his security interview the investigator asked him to identify a citizen and resident of the PRC who might serve as a contact for him when he visited. Applicant gave the investigator the name of an acquaintance he had asked to book him a hotel room when he traveled to the PRC. Applicant denied the individual was his friend, and he said his contact with the individual was limited to his request for assistance in booking a hotel room during one of his visits to the PRC. (Answer to SOR at 2; Tr. 61-63.)

Applicant works as a part of a six-member team. The leader of his team appeared at his hearing and testified on his behalf. The team leader has known Applicant since April 2004 and works with him on a daily basis. She reported Applicant was respected by his co-workers for his abilities and strong work ethic. (Tr. 42-49.) Additionally, a senior vice-president of the government contracting company which employs Applicant submitted a letter of character reference on his behalf. (Ex. B.) The senior vice-president, who hired Applicant to work for the company in the 1990s, said this about him:

I have taken a special interest in [Applicant] among the 400 engineers in my organization because he is one of those persons who is deeply competent in his field, a field critical to successful development of business systems software; and because he has consistently been one of our professionals who always improves the status and performance of the projects he is assigned to. . . . He has an exceptional work ethic, he is kind and courteous with everyone, and he is universally liked by his peers and customers.

I take administrative notice that the PRC is a totalitarian state with human rights policies and military goals antagonistic to the United States. ("China (includes Tibet, Hong Kong, and Macau) Country Reports on Human Rights Practices - 2004," U.S. Department of State, Government document for administrative notice V; Current and Projected National

Security Threats to the United States, Statement for the Record by Vice Admiral Lowell E. Jacoby, U.S. Navy, Director, Defense Intelligence Agency, before the Senate Armed Services Committee, 16 February 2005, Government document for administrative notice II.) 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, I take administrative notice that the PRC pursues aggressive methods to acquire advanced U.S. military technology, including identifying ethnic Chinese in the U.S. who have access to sensitive information and enlisting their cooperation in transferring information and technology illegally. (U.S. National Security and Military/Commercial Concerns with the People's Republic of China, 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, Government document I for administrative notice, at 20-21; Overview at ii-vii.) I also take administrative notice of the PRC's active and historic roles as collector of competitive information and perpetrator of industrial espionage against U.S. companies producing militarily critical technologies such as information systems, sensors and lasers, and electronics. (National Counterintelligence Center, Annual Report to Congress on Foreign Economic Collection and Industrial Espionage - 2000, Appendix, Government document III for administrative notice.)

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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." *Id.* at 527. 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 for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal 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 process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established 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. *See Egan*, 484 U.S. at 531. 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. *See* ISCR Case No. 95-0611 at

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* 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.

CONCLUSIONS

Guideline B - Foreign Influence

In the SOR, DOHA alleged, under Guideline B of the Directive, that Applicant's parents, brother, and two sisters are citizens and residents of the PRC (¶ 1.a.); that Applicant's father-in-law and mother-in-law are citizens of the PRC and reside with Applicant in the U.S. (¶ 1.b.); that Applicant's sister-in-law is a citizen and resident of the PRC (¶ 1.c.); and that Applicant's friend is a citizen and resident of the PRC (¶ 1.d.)

A Guideline B security concern exists when an individual seeking clearance is bound by ties of affection, influence, or obligation to immediate family, close friends, or professional associates in a foreign country, or to persons in the United States whose first loyalties are to a foreign country. A person who places a high value on family obligations or fidelity to relationships in another country may be vulnerable to duress by the intelligence service of the foreign country or by agents from that country engaged in industrial espionage, terrorism or other criminal activity. The more faithful an individual is to family ties and obligations, the more likely the chance that the ties might be exploited to the detriment of the United States.

Applicant's case requires the recognition that the PRC, a totalitarian regime, is able to manipulate its citizens to obtain, through illegal methods, militarily critical technologies from companies doing business as government contractors in the United States. These actions threaten U.S. security interests. U.S. citizens with immediate family members who are citizens or residents of the PRC could be vulnerable to coercion, exploitation, or pressure.

Applicant admitted the Guideline B allegations at ¶¶ 1.a., 1.b., and 1.c. of the SOR. He denied the allegation at ¶ 1.d. The Government produced no evidence to support its allegation that Applicant had a friendship with an unrelated individual who was a resident and citizen of the PRC. Applicant provided credible testimony to rebut the Government's

allegation.

Applicant's admissions raise security concerns under Disqualifying Condition (DC) E2.A2.1.2.1. and DC E2.A2.1.2.2. Applicant's father, mother, brother, and two sisters are citizens and residents of the PRC. His father-in-law, mother-in-law, and sister-in-law are citizens and residents of the PRC. Applicant's parents-in-law resided in the U.S. with Applicant and his family from 1998 to 2000 in order to help care for Applicant's son, who suffers from a brain lesion. Applicant shares living quarters with his wife, a U.S. citizen, who has close ties to her parents, who are citizens and residents of the PRC.

Applicant's sisters, parents, and parents-in-law are retirees who depend on the government of the PRC for their health care and retirement benefits, and they could be subject to duress by a government or its agents seeking classified information from Applicant in exchange for health care or other retirement benefits. Applicant's familial communications with his parents and parents-in-law show his closeness to them and could make him vulnerable to coercion, exploitation, or pressure by individuals or groups seeking militarily critical technologies to be used by the PRC.

An applicant may mitigate foreign influence security concerns by demonstrating that immediate family members are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force an applicant to choose between loyalty to the foreign associates and loyalty to the U.S. mitigating Condition (MC) E2.A2.1.3.1. The evidence does not establish that Applicant's father, mother, parents-in-law, brother, sister-in-law, and two sisters are agents of a foreign power; however, the record shows Applicant's family members and associates⁽³⁾ are citizens of a country that engages in industrial espionage and illegal data collection and is hostile to U.S. interests.

Applicant offered no evidence to rebut the Government's assertion that his family members and in-laws could be exploited by the PRC in a way that could force him to choose between loyalty to them and the security interests of the United States. (ISCR Case No. 03-15485, at 4-6 (App. Bd. June 2, 2005) Accordingly, C E2.A2.1.3.1 does not apply to Applicant's case.

An applicant may also mitigate foreign influence security concerns if he shows his contacts and correspondence with foreign citizens are casual and infrequent. C E2.A2.1.3.3. Applicant's contacts with his family members and in-laws who are citizens and residents of the PRC are based on ties of familial affection or obligation. He has traveled to the PRC to seek medicine for his son, and his wife's parents have come to the U.S. to help care for the child. Applicant is solicitous of the health and well-being of his family members in the PRC. His concern for his family members is based familial affection. Accordingly, mitigating condition E2.A2.1.3.3. does not apply to Applicant's relationships with his father, mother, parents-in-law, brother, sister-in-law, and two sisters, all of whom are citizens and residents of the PRC.

Nothing in Applicant's answers to the Guideline B allegations in the SOR suggested he was not a loyal American citizen and a credit to his adopted country. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance 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." Therefore,

nothing in this decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty, or patriotism.

In ISCR Case No. 98-0761 at 3 (App. Bd. Dec. 27, 1999), DOHA's Appeal Board states that an administrative judge, in deciding an applicant's security worthiness, "must consider the record as a whole (Directive Section F.3.) and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*." I have considered the record as a whole and have evaluated Applicant's situation under the whole person concept of the Directive. I conclude that Applicant has not mitigated the security concerns raised by the Guideline B allegations in the SOR and he has not demonstrated that it is clearly consistent with the national interest to grant him a security clearance.

In summary, the allegation at subparagraph 1.d. of the SOR is concluded for the Applicant. Because Applicant failed to put forward evidence that could mitigate the security concerns alleged in subparagraphs 1.a., 1.b., and 1.c. and demonstrate that he would not be vulnerable to foreign influence that would result in the compromise of classified information, the allegations in subparagraphs 1.a. through 1.c. under Guideline B of the SOR are concluded against the Applicant.

FORMAL FINDINGS

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

Paragraph 1. Guideline B: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: For 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 or continue a security clearance for Applicant. Clearance is denied.

Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended.
3. Foreign connections derived from marriage and not from birth can raise Guideline B security concerns. In reviewing the scope of MC E2.A2.1.3.1, DOHA's Appeal Board has stated that the term "associates(s)" reasonably contemplates in-laws and close friends. ISCR Case No. 02-12760 at 4 (App. Bd. Feb. 18, 2005).