

KEYWORD: Foreign Influence

DIGEST: Applicant is a 42 year-old naturalized United States citizen, born in the People's Republic of China (PRC). Applicant's sister is a citizen and resident of the PRC. The evidence establishes that Applicant has close and continuing relationship with his sister, which makes him potentially vulnerable to foreign influence. Mitigation has not been shown. Clearance is denied.

CASENO: 06-25204.h1

DATE: 06/06/2007

DATE: June 6, 2007

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In Re:)	
)	
-----)	ISCR Case No. 06-25204
SSN: -----)	
)	
Applicant for Security Clearance)	
_____)	

**DECISION OF ADMINISTRATIVE JUDGE
MARTIN H. MOGUL**

APPEARANCES

FOR GOVERNMENT
Jennifer I. Goldstein, Esq., Department Counsel

FOR APPLICANT
Pro Se

SYNOPSIS

Applicant is a 42 year-old naturalized United States citizen, born in the People's Republic

of China (PRC). Applicant's sister is a citizen and resident of the PRC. The evidence establishes that Applicant has close and continuing relationship with his sister, which makes him potentially vulnerable to foreign influence. Mitigation has not been shown. Clearance is denied.

STATEMENT OF THE CASE

On February 16, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant which detailed 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 a security clearance for Applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR in writing on March 3, 2007. Applicant requested a clearance decision based on a hearing record.

On March 28, 2007, the case was initially assigned to another Administrative Judge to conduct a hearing and issue a written decision, but on April 19, 2007, the case was reassigned to this Administrative Judge. A Notice of Hearing was issued to the parties on April 10, 2007, and the hearing was held on May 10, 2007.

At the hearing, Department Counsel offered two documentary exhibits (Exhibits 1 and 2) and no witnesses were called. Applicant offered three documentary exhibits (Exhibits A - C) and offered his own testimony. The record was left open to allow Applicant to offer additional documentation regarding the status of the PRC. Department Counsel had until May 31, 2007, to respond to the documents offered by Applicant. Applicant offered eight documents in a timely manner, and Department Counsel objected to documents 3 through 8. I have entered Applicant's cover letter and all of the documents included, which have been identified collectively as Exhibit D. The transcript (Tr) was received on May 22, 2007.

FINDINGS OF FACT

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline B of the Directive because Applicant has immediate family members who are not United States citizens and may be subject to duress. The SOR contains four allegations, 1.a., through 1.d., under Guideline B. Applicant admitted SOR allegations 1.a. through 1.c., and denied 1.d.. Based on testimonial evidence elicited at the hearing, SOR allegation 1.d. was amended without objection. Allegation 1.d. now states, "You traveled to China on December 2003 and April 2007." Applicant admitted this allegation as amended. The admissions are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the documents and the live testimony, and upon due consideration of that

evidence, I make the additional findings of fact:

Applicant is 42 years old, employed as a Systems Engineer by a defense contractor, and he seeks a security clearance for that position. He received a Bachelor of Science degree in civil engineering from a university in the PRC in 1987, and a Master's Degree in Computer Science from a United States university in 2005.

Applicant was born in the PRC in 1965. He moved to the United States to get his advanced college degree in 1991, and became a naturalized United States citizen in October 2004.

Applicant's wife is also PRC born. She married Applicant in the PRC and came with him to the United States in 1991. She also became a naturalized United States citizen. Applicant and his wife have an eight year old daughter, who is a natural born United States citizen.

Applicant's father and mother are citizens of the PRC, but they reside with Applicant in the United States, after coming here in 2006. They are both retired farmers. Neither his father nor mother ever worked for or was associated with the PRC Government.

Applicant's sister is a citizen and resident of the PRC. She is also a farmer, and she has never worked for or been associated with the Government of the PRC. Applicant generally speaks to his sister approximately every two months, and he testified that he has a loving relationship with her. He sends her between \$500 and \$700 a year. In April 2007, Applicant went to the PRC to visit his sister because she was ill. He spent almost a week with her, and the trip cost him approximately \$1,000. Since his sister became ill, Applicant has been calling her more frequently.

Applicant's father-in-law and mother-in-law are citizens and residents of the PRC. They are now retired, but she had worked a teacher in a business school and he worked for a manufacturer. Neither he nor his wife have spoken to them in many years. He last saw them during a 1997 visit he made to the PRC.

Since Applicant moved to the United States in 1991, he has visited the PRC on three occasions in 1997, 2003, and in April 2007.

Applicant testified that he has no assets in the PRC, and his net worth in the United States includes his home and his vehicle

When he was questioned as to what he would do if a representative of the PRC threatened his sister if he did not cooperate with the government, he testified, "I'd ignore them"(Tr at 86).

Current Status of the PRC

Since Applicant's sister and in-laws are citizens and residents of the PRC, it is important to consider the status of the PRC at this time.

The PRC, the most populous country in the world, is economically powerful, and is an important trading partner of the United States. It is run by the Communist Party which controls all aspects of the PRC government. It has strong military forces, and has its own foreign-policy.

Although there has been some cooperation, there has been much more conflict with the United States in the past. The PRC has an extremely large army, a sophisticated defense establishment, and space capability. The PRC has launched satellites, has ballistic missiles, has nuclear arms, and nuclear bombs. Its diplomatic and military dispute with the Republic of China (Taiwan), foreshadows a possible military conflict, which the United States opposes as a resolution of the conflict. 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; a politically controlled judiciary; lack of due process; restrictions on free speech, on religious freedom, on freedom of travel, on freedom of assembly; and no rights of privacy - family, home or correspondence.

The PRC engages in espionage against the United States through an extensive network of businesses, personnel, and specific programs designed to acquire advanced U.S. military technology. One approach is to covertly conduct espionage by personnel from government ministries, commissions, institutes, and military industries, independently of the PRC intelligence services. This is believed to be the major method of PRC intelligence activity in the United States. It also tries to identify ethnic Chinese in the United States who have access to sensitive information, and sometimes is able to enlist their cooperation in illegal technology information transfers.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section F.3. and in Enclosure (2) of the Directive. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, etc.

BURDEN OF PROOF

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance. Assessment of an applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of rehabilitation.

A person who seeks access to classified information enters into a fiduciary relationship with the U.S. Government that is predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability, or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As

noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

CONCLUSIONS

I have reviewed the overall record and the totality of the evidence. Based on the evidence of record, the Government has established an initial reason to deny Applicant a security clearance because of Guideline B (Foreign Influence). Applicant's relatives are citizens of the PRC, which could create the potential for foreign influence that could result in the compromise of classified information because it makes Applicant potentially vulnerable to coercion, exploitation, or pressure. The possession of such ties raises a security concern sufficient to require Applicant to present evidence in rebuttal, extenuation, or mitigation sufficient to meet his burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him. This Applicant has not been able to do.

In reviewing the Disqualifying Conditions (DC) I find that DC 7 (a) applies, contact with foreign family members, who are citizens and residents in a foreign country, if that contact creates heightened risk of foreign exploitation, pressure or coercion. I do not find that Applicant's parents, who now reside in the United States with Applicant, to be a security risk, nor are Applicant's in-laws, with whom neither he nor his wife has any contact, a security concern. However, Applicant's sister, who still lives in the PRC and with whom Applicant has a close and continuing relationship, remains a legitimate security concern. Applicant has shown by his description of their loving relationship, and by his conduct including: regular contact with her, sending her yearly presents of \$500 to \$700, and his spending \$1,000 to visit her when she fell ill, that he continues to have very strong feelings for her. This when considered with the nature of the PRC, as described above, constitutes an unacceptable security risk. I do not find that any Mitigating Condition applies.

After considering all of the evidence of record on Guideline B, I conclude that the evidence substantially supporting the SOR outweighs the mitigating evidence. Accordingly, at this time it is not clearly consistent with national security to grant Applicant a security clearance.

FORMAL FINDINGS

Paragraph 1. Guideline B: AGAINST APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For 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.

Martin H. Mogul
Administrative Judge