



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-11447
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Alison O'Connell, Department Counsel
For Applicant: *Pro Se*

February 1, 2008

Decision

TESTAN, Joseph, Administrative Judge:

On October 24, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to applicant detailing the security concerns under Guidelines E and J. The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on November 27, 2007, and requested an Administrative Determination by an Administrative Judge (AJ). Department Counsel issued a File of Relevant Material (FORM) on December 18, 2007. Applicant responded to the FORM on January 5, 2008. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant is a 44 year old employee of a defense contractor. He was born, raised and received most of his education, in the People's Republic of China (PRC). He was an employee of the Chinese Academy of Geological Sciences (CAGS) in the PRC from 1983 to 1990.¹ In 1987, he married a CAGS coworker. In 1990, his daughter was born.

Following the birth of his daughter in 1990, applicant and his family moved to the United States where applicant attended attend graduate school. Toward the end of his graduate studies, he went to work for the United States government. He was employed by the United States government from 1994 to 1998. Since 1998, he has worked for his current employer, which supports United States government civilian and military operations. He and his family were granted permanent residency status in 1996, and they became naturalized United States citizens in 2002. Their second child was born in 1999 in the United States.

Applicant's mother, brother, two sisters, cousin, and parents-in-law are citizens and residents of the PRC. Since his father passed away, applicant has increased his telephone contact with his mother to about once a week. He has contact with his brother and one sister once every two to three months. He has contact with his other sister once every one to two months. He speaks to his cousin once a year. He has telephone contact with his parents-in-law a few times each year. They visited applicant in the United States three times. Each time they stayed with applicant and his family.

Applicant also has friends and associates who are citizens and residents of the PRC. Applicant maintains occasional contact, by telephone and email, with some of them.

Applicant traveled to the PRC in 1992, in 1999 to attend his father's funeral, and in 2005 to visit relatives.

Applicant states he is a loyal American who has lived in the United States "for over 17 years and will live here the rest of life."²

The Government provided six official United States publications with the FORM that describe the economic, political and intelligence activities of the PRC. The Government requested that these documents be admitted into evidence. I have admitted the documents into evidence, and I take administrative notice of the following facts found therein:

The PRC, which has a population of over 1.3 billion people, is ruled by an authoritarian government dominated by the Chinese Communist Party. The PRC

¹ In Exhibit 6, applicant listed his employment dates as 1983-1988. In Exhibit 5, he listed his employment dates as 1983 to 1990.

² SOR Response.

continues to have a poor human rights record. Reported abuses have included arbitrary and lengthy incommunicado detention, forced confessions, torture, and mistreatment of prisoners.³

PRC authorities monitor telephone communications, facsimile transmissions, email, text messaging, and Internet communications.⁴

The Intelligence Threat Handbook identifies PRC intelligence activities toward the United States as follows: “The United States is a primary intelligence target of China because of the United States role as a global superpower; its substantial military, political, and economic presence in the Pacific Rim and Asia; its role as a developer of advanced technology that China requires for economic growth; and the large number of Americans of Chinese ancestry, who are considered prime intelligence targets by the PRC.”⁵

Of the 140 foreign intelligence agencies continuously attempting to penetrate United States agencies, the PRC’s is the most aggressive. Officials from United States consider the PRC’s espionage and industrial theft activities as the leading threat to the security of United States technology.⁶

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 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch. The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” (Exec. Ord. 10865, Section 2.)

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.

³ United States Department of State, *Background Note: China*, October 2007 at pages 3, 7, and 9.

⁴ United States Department of State, *Country Reports on Human Rights Practices, 2006* (China).

⁵ Interagency OPSEC Support Staff, *Intelligence Threat Handbook* at page 7.

⁶ 2007 United States - China Economic and Security Review Commission Report to Congress, pages 104 and 106.

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, Paragraph E3.1.14.) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. (Directive, Paragraph 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, Paragraph 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.

Analysis

Guideline B, Foreign Influence

The security concern relating to the Foreign Influence guideline is set forth in Paragraph 6 of the AG, and is as follows:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

Paragraph 7 describes conditions that could raise a security concern and may be disqualifying. Under Paragraph a., “contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion” may be disqualifying. Under Paragraph b., “connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information” may be disqualifying. Lastly, under Paragraph i., “conduct, especially while traveling outside the U.S., which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country” may be disqualifying.

Applicant has weekly contact with his mother, and less frequent but regular contact with his three siblings, all of whom are residents and citizens of the PRC. In addition, since moving to the United States in 1990, he has visited the PRC three times, the last time in 2005, well after he became a United States citizen. Even though his trip to the PRC was for the purpose of visiting family members, his presence in the PRC made him and his family members potentially vulnerable to exploitation, pressure, or coercion by the PRC government, which actively seeks to obtain classified or proprietary information from United States citizens of Chinese ancestry who work for United States government contractors. These facts raise concerns under all three disqualifying conditions.

Paragraph 8 sets forth conditions that could mitigate security concerns. Under Paragraph a., it is potentially mitigating if an applicant can demonstrate that “the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.” Under Paragraph b., it is potentially mitigating if an applicant can demonstrate “there is no conflict of interest, either because the individual’s sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.” Lastly, under Paragraph c., it is potentially mitigating if an applicant can demonstrate that the “contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.”

None of the foregoing mitigating conditions is applicable. Applicant’s contacts with his mother and siblings in the PRC are frequent and ongoing. His relationship with them, particularly with his mother, is one of loyalty and obligation, raising the concern that these relationships create a risk for foreign influence or exploitation. Applicant failed to provide credible evidence that it is unlikely he would be placed in a position of having to choose between the interests of a foreign government and the interests of the United States, or that he is not vulnerable to a conflict of interest.

“Whole Person” Analysis

Under the whole person concept, the AJ must evaluate an applicant’s security eligibility by considering the totality of the applicant’s conduct and all the circumstances. An AJ should consider the nine adjudicative process factors listed at AG Paragraph 2(a): “(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) extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent 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.” Under AG Paragraph 2c, the ultimate

determination of whether to grant a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant was born, raised, and received most of his education in the PRC. He and his family have resided in the United States for approximately 17 years. Applicant, his wife, and daughter became United States citizens in 2002. Their second child was born here. The evidence establishes that applicant has provided valuable service and expertise to United States government civilian and military operations as both a government employee and an employee of a United States government contractor. He is also an honorable family member who seeks to maintain contact with his mother and siblings who are citizens and residents of the PRC. In carrying out his family responsibilities, he has made choices to travel to the PRC, and these choices could also make him vulnerable to coercion, exploitation, or pressure and could cause the future compromise of classified information. I have carefully reviewed the administrative record, applicant's submissions, and the allegations in the SOR. I have weighed the disqualifying and mitigating conditions of Guideline B, and I have evaluated applicant's conduct in light of the whole person concept identified at Paragraph E2.2. of Enclosure 2 of the Directive. After doing so, I conclude that applicant failed to rebut the Government's case under Guideline B.

There is nothing in the record that suggests applicant is anything but a loyal American citizen. 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 concern as to applicant's allegiance, loyalty, or patriotism.

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:

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a through 1.m:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

JOSEPH TESTAN
Administrative Judge