



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
)	ISCR Case No. 07-12399
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: John Bayard Glendon, Department Counsel
For Applicant: *Pro Se*

July 28, 2008

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the government's security concerns under Guideline B, Foreign Influence. Applicant's eligibility for a security clearance is denied.

On March 5, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, Foreign Influence. 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 April 1, 2008, and elected to have his case decided on the written record. Department Counsel submitted the government's file of relevant material (FORM) on May 5, 2008. The FORM was mailed to Applicant on May 7, 2008, and it was received on April 23, 2008. Applicant was afforded an

opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the FORM and submitted additional material. The case was assigned to me on June 27, 2008.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted within the FORM a formal request that I take administrative notice of certain facts relating to the People's Republic of China (PRC). In addition, Department Counsel requested that the source documents be admitted for administrative notice. Applicant did not object and the request is approved. The request and the attached documents were not admitted into evidence but are included in the record as part of the FORM. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

Applicant admitted all of the allegations in the SOR except he denied a part of 1.f. After a thorough and careful review of the pleadings, exhibits, and statements submitted, I make the following findings of fact.

Applicant is a 46-year-old project manager who has been employed by a government contractor since 1993. He was born in China, immigrated to the U.S. in 1989, and became a naturalized U.S. citizen in October 2005. He attended a Chinese university from 1979 to 1983 and received a bachelor's degree. From 1989 to 1990 he attended an American university and received a master's degree. He married in 1992 and divorced in 2002. From 1983 to 1989 he was employed in China as a translator/interpreter. He also worked as a freelance linguist/interpreter in 2005.

Applicant's mother, father, brother, uncle and aunt are citizens and residents of China. Prior to retiring, Applicant's mother worked for a Chinese government owned shipbuilding company. His father, prior to retiring, worked for a Chinese government owned research institute. Upon retiring Applicant's father worked as a production manager on a joint venture. No information was provided regarding the joint venture, other than it entailed work similar to what he had previously done. He retired from this position and Applicant believes his father might work as a consultant/technical advisor in the production of a gem product. No other information was provided regarding aspects of his work. Applicant's aunt, prior to retiring, worked for a Chinese government owned hospital. No information was provided as to how Applicant's brother or uncle are employed. Applicant did not provide any additional information about his family members. It is unknown how long they each worked in their respective employment. Presumably they each receive a pension from the Chinese government.¹

¹ Answer to SOR; Item 5.

Applicant traveled to China to visit his family in April 2004 to May 2004, for approximately two weeks to attend his brother's wedding. He again traveled to China in August 2007 to September 2007, for approximately three weeks. His mother was sick at the time. No other information was provided about Applicant's brother or his wife or her family. Applicant believes his brother lives with his parents. He also believes his brother disappeared from the family in around 2005. He believes he went through some type of trauma. He does not know the specifics. The family did not where his brother was when he disappeared. The brother reappeared a year later. No further information was provided regarding his brother's mysterious disappearance. Applicant disputes he traveled to China in October 2004.²

Applicant acknowledges he attended various parties hosted by the Chinese Embassy in Washington D.C. He estimated he attended a total of three to four holiday celebrations hosted by the embassy. He would receive the invitation through a coworker or a friend. He stated he did not have any additional contact with the Chinese Embassy directly before or after the parties. He stated in his Answer to the SOR that the last event he attended was two or three years ago for a Chinese New Year party. This would mean that he attended the party after becoming a U.S. citizen.³

Applicant provided minimal information about his contacts in China. It is unknown whether he has any property interests or financial interests in China. Applicant claimed he contacts his parents about once or twice a year.⁴

People's Republic of China

China is a large and economically powerful country, with a population of over a billion people and an economy growing at about 10% per year. China has an authoritarian government, dominated by the Chinese Communist Party. China has a poor record with respect to human rights, suppresses political dissent, and its practices include arbitrary arrest and detention, forced confessions, torture, and mistreatment of prisoners.

China is one of the most aggressive countries in targeting sensitive and protected U.S. technology, and economic intelligence. It has targeted the U.S. with active intelligence gathering programs, both legal and illegal. In China, authorities have monitored telephone conversations, facsimile transmissions, e-mail, text messaging, and internet communications. Authorities opened and censored mail. The security services routinely monitored and entered residences and offices to gain access to computers, telephones, and fax machines. All major hotels had a sizable internal security presence, and hotel guestrooms were sometimes bugged and searched for sensitive or proprietary materials.

² *Id.*

³ *Id.* His Answer to the SOR is dated April 1, 2008.

⁴ *Id.*

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that 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." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 7:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Four are potentially applicable in this case:

- (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; and
- (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.

Applicant's mother, father, brother, aunt, and uncle are citizens and residents of China. His parents and aunt all worked for Chinese government owned entities and are retired, presumably receiving some type of Chinese government pension. Applicant traveled to China as recently as 2007. He attended his brother's wedding and visited when his mother was sick. He attended parties at the Chinese Embassy in the past two or three years, which would have been after he became a U.S. citizen. China has an authoritarian government, dominated by the Communist Party, with a poor human rights record, and targets the U.S. for espionage. Applicant's foreign connections create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. They also create a potential conflict of interest. AG ¶¶ 7(a) and 7(b) have been raised by the evidence.

Conditions that could mitigate Foreign Influence security concerns are provided under AG ¶ 8:

(a) 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.;

(b) 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;

(c) 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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

Applicant failed to provide enough information about his relatives, travels and Chinese contacts to meet his burden of mitigating the security concerns raised by foreign influence. He failed to provide any information as to what his property interests are in China or the U.S. The record is silent as to whether Applicant visited any of his relatives, other than his mother, when he was in China in 2007. He failed to elaborate on his relationship with his brother or his mysterious disappearance. It is clear he still maintains his family relations in China and has visited them for family events, such as a wedding and when his mother was sick. Applicant has been in the U.S. since 1989, but only a citizen since 2005, a relatively short period of time. He has not met his burden to convince me that his contact with China and his relatives are minimal and that he has such deep and longstanding relationships and loyalties to the U.S. that he can be expected to resolve any conflict of interest in favor of the U.S. interest. Based on his relationships and ties with his family in China, which are more than casual and the nature of that foreign country, I am unable to find any of the mitigating conditions applicable.

Whole Person Concept

Under the whole person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 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 ¶ 2(c), the ultimate determination of whether to grant eligibility for 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 has been a naturalized U.S. citizen since 2005. He has family ties to China and failed to provide sufficient information to mitigate the foreign influence security concerns raised. He has attended parties at the Chinese Embassy, but not fully elaborated on his contacts while in attendance. Overall the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising from foreign influence.

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
Subparagraph 1.a-1.g:	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.

Carol G. Ricciardello
Administrative Judge