



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



In the matter of:)	
)	
)	ISCR Case No. 07-13123
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert E. Coacher, Esquire, Department Counsel
For Applicant: *Pro Se*

June 26, 2008

Decision

LAZZARO, Henry, Administrative Judge

Applicant failed to mitigate the foreign influence and foreign preference concerns that exist in this case due to his wife’s family ties to the People’s Republic of China, his financial interest in China, and his likely retirement in China.

On March 20, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.¹ The SOR alleges security concerns under Guidelines B (foreign influence) and C (foreign preference). Applicant submitted a response to the SOR that was received by DOHA on April 7, 2008. Applicant admitted all SOR allegations and requested a decision based on the written record without a hearing. Department Counsel requested a hearing by memorandum dated April 16, 2008.²

¹ This action was taken under Executive Order 10865, DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive), and revised adjudicative guidelines which became effective within the Department of Defense for SORs issued after September 1, 2006.

² As authorized by Paragraph E3.1.7, Additional Procedural Guidance, Enclosure 3 of the Directive.

The case was assigned to me on April 22, 2008. A notice of hearing was issued on April 24, 2008, scheduling the hearing for May 20, 2008. The hearing was conducted as scheduled.

The government submitted eight documentary exhibits that were marked as Government Exhibits (GE) 1-8. GE 1 and GE 2 were admitted into the record without objection. Administrative notice was taken of the contents of GE 3-8 without objection. Department Counsel submitted a document containing written comments on the contents of GE 3-8 for my consideration which was marked as Appellate Exhibit (App. Ex.) I, and made part of the record without objection. Applicant testified but did not submit any documentary exhibits. The transcript was received on June 2, 2008.

Findings of Fact

Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough review of the pleadings, testimony and exhibits, I make the following findings of fact:

Applicant is a 46-year-old man who has been employed as an electronics engineer by a defense contractor since January 1996. He has held a secret level security clearance, when required by his employment assignments, since about 1981, and no previous adverse action has been taken to revoke or downgrade that clearance. Applicant was awarded a bachelor of science degree in electrical engineering in 1989.

Applicant was first married in January 1993. That marriage ended in divorce in October 2000. He has two children from this marriage, ages 14 and 11, and shares custody of them with his ex-wife.

Applicant has been remarried since June 2004. He met his current wife through an internet dating service in November 2002. Although the internet site he used was designed for Jewish singles to meet, his wife was a resident and citizen of the People's Republic of China (China) at the time. Applicant visited with her in China in March 2003, and a couple of times thereafter. He sponsored her entry into the U.S. on a fiancé visa in March 2004. She presently has conditional permanent resident status in the U.S.

Applicant's wife worked as a municipal police officer in China. As such, she was required to be a member of the Communist party. Her father is a citizen and resident of China and a retired municipal police officer. One of her brothers is a citizen and resident of China and is currently employed as a municipal police officer. Applicant presumes his father-in-law and brother-in-law are members of the Communist party based upon his wife's required membership as a condition of her employment as a police officer.

Applicant's mother-in-law is a citizen and resident of China and a retired factory worker. He has a second brother-in-law who is a citizen and resident of China and who works as an electronics salesman. His wife also has several close friends who are citizens and residents of China and who are employed as either police officers or civil servants. Applicant presumes her friends are members of the Communist party as a condition of their employment.

Applicant and his current wife have two children, ages two years and nine months, who were born in the U.S. and are U.S. citizens. His wife has daily e-mail/webcam contact with her mother, weekly contact with the brother who is a salesman, and once a month contact with the brother who is a police officer. Additionally, Applicant's wife spends 90 days a year in China visiting with her family and close friends. She takes their children to China with her while vacationing there. Applicant last vacationed in China with his wife about two years ago.

Applicant gave his Chinese parents-in-law \$41,000 as a gift to purchase a home. The parents-in-law gave an additional \$6,000 that Applicant provided to them for the purchase of the house to their salesman son for use in his business. In April 2006, Applicant and his wife paid \$103,750 to purchase a house in China for use as a potential retirement home. While Applicant has not definitely committed to retiring in China, he believes living there would be in his wife's best interest because she is much closer to her friends and family members in China than he is to anyone in the U.S.

Applicant and his wife attempted to start a business importing granite tiles from China to resell in the U.S. With the assistance of his father-in-law, Applicant paid \$14,000 to buy and import the tiles from China. However, he has concluded he is not a very good salesman and has given up on that effort for the time being.

China is a Communist party-led state. It has a well-documented and continuing practice of abusing human rights in violation of internationally recognized norms, stemming both from the authorities' intolerance of dissent and the inadequacy of legal safeguards for basic freedoms. (GE 3)

The U.S. is a primary intelligence target of China. (GE 4) Chinese espionage activities in the U.S. are so extensive that they comprise the single greatest risk to the security of American technologies. (GE 5)

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the disqualifying conditions and mitigating conditions for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guidelines B (foreign influence) and C (foreign preference), with their disqualifying and mitigating conditions, are most relevant in this case.

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an

applicant.³ The government has the burden of proving controverted facts.⁴ The burden of proof in a security clearance case is something less than a preponderance of evidence,⁵ although the government is required to present substantial evidence to meet its burden of proof.⁶ “Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.”⁷ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁸ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁹

No one has a right to a security clearance¹⁰ and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹¹ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.¹²

Analysis

Guideline B, Foreign Influence

Foreign contacts and interests may be a security concern if the individual has divided loyalties or 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.

³ ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

⁴ ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.

⁵ *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

⁶ ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

⁷ ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

⁸ ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

⁹ ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.

¹⁰ *Egan*, 484 U.S. at 528, 531.

¹¹ *Id* at 531.

¹² *Egan*, Executive Order 10865, and the Directive.

Applicant's wife is a citizen of China with conditional permanent resident status in the U.S. Her parents, brothers and close friends are citizens and residents of China. Her father, one brother, and close friends are, considering the requirement that she had to be a member of the Communist party to work as a police officer, most likely either current or former members of the Communist party themselves. She visits with her relatives and friends in China for 90 days each year and maintains daily contact with her mother and regular contact with other family members and friends when she is in the U.S.

Disqualifying Condition (DC) 7(a): *contact with a foreign family member . . . 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 DC 7(d): *sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion* apply.

Applicant has provided \$41,000 to his parents-in-law for the purchase of a house in China. He indirectly provided an additional \$6,000 to his brother-in-law. Applicant and his wife have purchased a house in China to potentially use as a retirement home. Applicant has vacationed in China on numerous occasions, most recently about two years ago. China is a Communist party-led state that aggressively targets the U.S. for intelligence collection.

DC 7(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*; and DC 7(e): *a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation* apply. I have considered all mitigating conditions and conclude that none apply.

Guideline C, Foreign Preference

Foreign preference is a concern because when an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

Applicant has purchased a residence in China and may decide to reside there when he retires. While he is presently uncertain if he will actually relocate to China, he believes that would be in his wife's best interest because of her very close relationship with her family and friends who are citizens and residents of China. Although the record does not contain information about what is required of an American citizen to purchase real estate in China and to permanently relocate to China, it is obvious that Applicant's ownership of a potential retirement home in China is sufficient for application of Disqualifying Condition (DC) 10(a): *exercise of any right, privilege or obligation of foreign citizenship . . . through the foreign citizenship of a family member*.

Applicant's wife spends one-fourth of each year residing in China and visiting with her family and friends. She maintains daily contact with her mother and regular contact with other family members and close friends. While Applicant equivocates on whether or not he will eventually relocate to China, the evidence indicates it is more likely than not that he will. I have considered all mitigating conditions and conclude none apply.

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." In this case, there is no reason to doubt that Applicant is a loyal American citizen or suspect he would consider doing harm to the interests of the United States. Still, his and his wife's contacts with China through her relatives and friends, their ownership of real estate in that country, and the likelihood they will one day take up residence in China, coupled with the nature and history of the Chinese government, create a security concern that has not been overcome.

The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

Considering all relevant and material facts and circumstances present in this case, the whole person concept, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, and the applicable disqualifying conditions, Applicant has failed to mitigate the foreign influence and foreign preference security concerns that exist in this case. He has failed to overcome the case against him or satisfy his ultimate burden of persuasion. Guidelines B and C are decided against Applicant. It is not clearly consistent with the national interest to grant Applicant a security clearance.

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-g:	Against Applicant
Paragraph 2, Guideline c:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

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. Clearance is denied.

Henry Lazzaro
Administrative Judge