



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



In the matter of:)
)
) ISCR Case No. 07-13393
)
)
Applicant for Security Clearance)

Appearances

For Government: Francisco Mendez, Department Counsel
For Applicant: *Pro Se*

September 9, 2008

Decision

HEINY, Claude R., Administrative Judge:

Applicant was born in the People’s Republic of China (PRC) and is a naturalized U.S. citizen, who has lived in the United States since 1998. His nationality is Uyghur.¹ Applicant’s parents and siblings are citizens and residents of the PRC in the Xinjiang Uyghur Autonomous Region. He has substantially more connections to the United States than to the PRC. Applicant has rebutted or mitigated the government’s security concerns under Guideline B, Foreign Influence. Clearance is granted.

Statement of Case

Applicant contests the Defense Department’s intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order

¹ Applicant was a resident of an area located in central Asia historically called Uyghurstan or East Turkistan. He is not ethnic Chinese, but Uyghur, also spelled Uighur. In 1949, the People’s Republic of China (PRC) annexed the Uyghur people’s homeland in Western China and renamed the area the Xinjiang Uyghur Autonomous Region (XUAR).

and DoD Directive,² the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) on April 29, 2008, detailing security concerns under Foreign Influence.

On May 30, 2008, Applicant answered the SOR, and requested a hearing. On June 10, 2008, I was assigned the case. On June 26, 2008, DOHA issued a notice of hearing scheduling the hearing held on August 7, 2008. The government offered Exhibits (Ex.) 1 through 9, which were admitted into evidence. Applicant testified on his own behalf and submitted Exhibits A through H, which were admitted into evidence. On August 19, 2008, the transcript (Tr.) was received.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to the PRC. The request and the attached documents were included in the record as Hearing Exhibits (Ex) I–VI. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations of SOR ¶¶ 1.a, 1.b, and 1.c, with explanations.

Applicant is a 36-year-old linguist who has been employed by a defense contractor working with a U.S. Army Joint Task Force (JTF) since August 2002. He is seeking to maintain a secret security clearance granted in April 2004. (Ex. 2) Applicant's immediate supervisor places him in the top three per cent of the 90 plus linguists he supervises. (Tr. 26) Applicant is one of the busiest translators at the JTF. (Tr. 25, 28) The site manager states Applicant is a very dedicated, hard working individual. Neither his supervisor nor the site manager have ever had a problem with Applicant or had a complaint about Applicant. (Tr. 30, 31)

Applicant has received seven certificates of appreciation and a letter of recommendation for his work with the JTF. (Exs. A, F) Applicant's work has been beyond reproach. He handles pressure, physical hardships, and emotional stress admirably. (Ex. F) His unique skills have made significant contributions to the JTF's mission. (Ex. G) A co-linguist and senior site representative says Applicant is very proud of his citizenship and very proud of his contribution to the mission. (Tr. 36)

² 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) approved by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant has endured difficult working conditions to get the mission accomplished. He has shown “the true meaning of dedication and personal courage on a daily basis.” (Ex. B) Applicant has not only provided meticulous insight into the language, but more critically of the social, economic, and religious culture of his native people. (Exs. C, G) He is an innovative, self-starter, exceeds expectations, handles pressure well, volunteers for overtime to meet deadlines and completes all tasks assigned. (Exs. C, G) He is a model citizen who understands and respects the benefits of the U.S. (Ex. D) He is dedicated, reliable, and an invaluable asset to the mission. (Tr. 67)

In 1972, Applicant was born in the PRC. At age 14, Applicant went to art college. In 1989, he graduated from college at the time as the Tiananmen Square student uprising. The uprising opened his mind to expressing his rights and feelings against the Chinese government. (Tr. 40) In January 1991, Applicant was selected to be an entertainer as part of a cultural entertainment dance ensemble at a theme park, in China. (Tr. 40) Applicant was a folk dancer. This theme park was 3,000 miles from his home. (Tr. 53) In October 1994, Applicant came to the U.S. to work at a Chinese theme park sponsored by the Chinese government. He worked at the park until 1995, when an acquaintance told Applicant not to return home, because someone Applicant knew and talked with had been arrested and placed in jail. (Tr. 41) Applicant sought and received political asylum. (Ex. 3) In 1997, Applicant attended a U.S. university.

In July 2003, Applicant became a naturalized U.S. citizen. (Ex. 1) Since coming to the U.S. he has had no foreign travel except for travel with his job with the JTF. He has no foreign passport. (Ex. 8) In 2001, Applicant was married to a native born U.S. citizen and they have one child, a son born in February 2002. In 2005, he was divorced. Applicant calls his son daily. (Tr. 57) His job requires him to be gone for three or four months before returning home for five or six days. (Tr. 56)

Applicant’s parents, five brothers, and sister live in the PRC. His parents are retired medical doctors who operate a drug store. (Tr. 54) One of his brothers is in the clothing business, another is a cook, one is a nurse, and the last is a pharmacist. His sister is a student. (Tr. 57, Ex. 6) Applicant has a cousin who was adopted by his parents and helps them in their home. (Tr. 59) None of his relatives work for a foreign government nor have any served in a foreign military.

Applicant talks with his parents every three or four months, asking about their health and daily lives. (Tr. 16, Exs. 4, 6) He last talked with them six months ago. He last talked to one brother two or three years ago and another brother three or four years ago. He has not spoken to his three other brothers since 1994. He last spoke to his sister three years ago. His sister was one year old when he last saw her. (Ex. 8) In 2005, Applicant sent his younger brother money to help with this brother’s tuition. (Tr. 50) He recently sent his mother money because she was having heart surgery. (Tr. 50)

Applicant assumes all telephone calls from the Xinjiang Uyghur region to foreign persons will be monitored by the Chinese government. (Tr. 44, Ex. 7) His family is

unaware of what he does. Applicant believes the Chinese authorities claim of Uyghur terrorism is simply an excuse to further suppress the Uyghur people. (Tr. 64)

Twice since he has been in the U.S., Chinese authorities have asked his parents about him. When his parents were asked when Applicant was coming home and what he was doing in the U.S. (Ex. 7) Applicant's father said Applicant was studying in college and he had no control over Applicant or when he would return. (Tr. 45) Applicant believes the questioning occurred in 1996 or 1997 and knows it occurred before 2000. (Tr. 75)

Should pressure be brought against his foreign relatives, Applicant would notify the U.S. government and the F.B.I. He understands that people sometimes are required to make sacrifices for a good cause. (Tr. 18) He is only one person and understands he must never negotiate or talk with the Chinese government. His main concern is for the U.S. and his family in the U.S. (Tr. 18)

Applicant has \$25,000 in savings, \$40,000 in his 401(k) retirement plan, and \$85,000 in stock market investments, all located in the U.S. (Ex. 6) He has no foreign investment. Applicant describes his naturalization as the best and happiest day of his life. (Tr. 60) He will never return to the land of his birth until the Chinese government becomes democratic. (Tr. 17) He has no sympathy for the Chinese government or the Chinese communist party. (Tr. 42) Applicant states he is a loyal, patriotic citizen who would die for American interests, the American people, and his son. (Tr. 65)

China

China is a large and economically powerful country, with a population of over a billion people. It has an authoritarian government dominated by the Chinese Communist Party.³ China possesses large and increasingly sophisticated military forces, which include strategic nuclear weapons and missiles.⁴ Since the cold war, the U.S. and China have been rivals with particular disagreement on the status of Taiwan.

The U.S. is a primary intelligence target of China because of the U.S. role as a global superpower.⁵ China operates an aggressive clandestine effort to acquire technology. China's espionage and industrial theft activities are the leading threat and single greatest risk to the security of U.S. technology.⁶

³ U.S. Department of State, *Background Note: China*, dated April 2008 (Background Note on China) at 1.2. (Ex. 1)

⁴ Background Note on China at 16-17. (Ex. 1)

⁵ Interagency OPSEC Support Staff, *Intelligence Threat Handbook* (Unclassified/For Official Use Only) (Intelligence Threat Handbook), dated June 2004 at 17. (Ex. 2)

⁶ U.S.— China Economic and Security Review Commission, *2007 Report to Congress of the U.S.— China Economic and Security Review Commission*, dated November 2007, at 104. (Ex. 3)

China has a poor record with respect to human rights, it suppresses political dissent, and its practices include arbitrary arrest and detention, forced confessions, torture, and mistreatment of prisoners.⁷ In June 2006, Chinese authorities detained and beat the sons of a prominent Uyghur human rights activist.⁸ Chinese authorities monitor telephone conversations, facsimile transmissions, e-mail, text messaging, and internet communications. Chinese authorities open and censor domestic and international mail.⁹

The largest ethnic group in China is the Han Chinese, which constitutes about 92 per cent of the total population.¹⁰ Han control of the XUAR's political and economic institutions also contributed to heightened tension. Government policies has brought economic improvements to the XUAR with Han residents received a disproportionate share of the benefits.¹¹

Since 2001, authorities have increased repression in the Xinjiang Uyghur Autonomous Region (XUAR), targeting in particular the region's ethnic Uyghur population. The government continues to repress Uyghurs expressing peaceful political dissent and independent religious views.¹² The XUAR government tightened measures that diluted expression of Uyghur identity, including measures to reduce education in ethnic minority languages and to institute language requirements that disadvantage ethnic minority teachers.¹³ The Chinese government promotes Han migration into the XUAR.

The Uyghurs were one of the largest Turkic peoples living in Central Asia. In 1949, East Turkestan was annexed by the PRC. (Tr. 39) The name Xinjiang, which means "new territory" in Chinese, is an offensive term to many Uyghur people. The Chinese government often refers to Uyghur nationalists as "terrorists."

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

⁷ Background Note on China (Ex. I) at 9. See U.S. Department of State, *Country Reports on Human Rights Practices – 2007, China (includes Tibet, Hong Kong, and Macau)* dated March 11, 2008 at 1-6. (Country Report) (Ex. V)

⁸ Country Report at 2. (Ex. V)

⁹ *Id.* at 9.(Ex. V)

¹⁰ Background Notes at 2. (Ex I)

¹¹ Country Report at 31. (Ex. V)

¹² *Id.* at 31. (Ex. V) (Tr. 83)

¹³ Country Report 1, 30-31. (Ex. V)

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

Foreign Influence

AG ¶ 6 expresses the security concerns regarding foreign influence:

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.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying:

(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.

(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;

(c) counterintelligence information, that may be classified, indicates that the individual's access to protected information may involve unacceptable risk to national security;

(d) sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists;

(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;

(f) failure to report, when required, association with foreign national;

(g) unauthorized association with a suspected or known agent, associate, or employee of a foreign intelligence service;

(h) indications that representatives or nations from a foreign country are acting to increase the vulnerability of the individual to possible future exploitation, inducement, manipulation, pressure, or coercion; and

(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.

AG ¶ 8 provides conditions that could mitigate security concerns:

(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 obligations 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.

AG ¶¶ 7(a) and 7 (b) applies because his parents and siblings live and are residents of the XGAR, a part of the PRC. In every case where a sibling lives overseas, there is a risk of pressure on this relative and through them upon the holder of a security clearance. Under the facts of this case, a heightened risk for exploitation, inducement, manipulation pressure, or coercion is substantiated. This potential pressure also raises a possible conflict of interest. However, Applicant has significant ties to the U.S. and his only tie to the PRC is his relatives.

Applicant's work as a linguist and interpreter supports the U.S. military mission. The Army holds his work in high regard. He provided more than language interpretation skills. He explained local cultural nuances and practices which greatly assisted the military in accomplishing its mission. He has worked very hard to helping the Army and has developed a high level of trust with the Army. For the past six years, Applicant has

done excellent work with the U.S. Army Joint Task Force. There have been no complaints or actions taken against him. His duty performance is outstanding.

Applicant's contact with his parents is limited to every four to six months. He has not had any contact with three siblings since 1994 and very limited contact with two brothers and a sister. Even though his contact with his parents is minimal, due to the parent son relationship it can not be said the relationship is casual.

AG ¶¶ 8(a) and 8(c) partially apply because "it is unlikely [he] will be place in a position of having to choose between the interest of [his parents and siblings] and the interest of the U.S." His infrequent or non existent contacts and not particularly close relationship with his siblings have a very low potential for forcing him to choose between the United States and the PRC. Applicant has no love for the Chinese government or the Chinese Communist party. The Chinese government is taking systematic steps to suppress the Uyghur people. Applicant will not return to his home land until China becomes democratic. He met his burden of showing there is "little likelihood that [his relationship with his PRC relatives] could create a risk of foreign influence or exploitation."

AG ¶ 8(b) partially applies. There is no evidence that his parents or siblings are or have been political activists or are challenging the policies of the Chinese Government. There is no evidence his parents or siblings currently work or have ever worked for the Chinese military, or new media, or that of any other foreign government. More than ten years ago, shortly after Applicant stayed in the U.S. the Chinese authorities asked his parents when Applicant was coming home and what he was doing in the U.S.

Since 2000, there is no evidence that terrorists or the Chinese Government have approached or threatened Applicant, his parents, or siblings for any reason. There is no evidence that his relatives living in the PRC currently engages in activities which would bring attention to them or that they or other Chinese elements are even aware of Applicant's work. As such, there is a reduced possibility that his relatives or Applicant would be targets for coercion or exploitation.

Applicant has "such deep and longstanding relationships and loyalties in the U.S., [he] can be expected to resolve any conflict of interest in favor of the U.S. interest." His son is a U.S. citizen, residing in the United States. In 1991, seventeen years ago, Applicant left his home to work at a folk dancer at a theme park 3000 miles from his home. In 1994, he came to a Chinese sponsored theme park in the U.S. This was the last time he saw his parents and siblings. In 1995, he obtained political asylum. In July 2003, on the happiest and best day of his life, Applicant became a naturalized U.S. citizen.

AG ¶ 8 (f) applies because he has no interest in property in any foreign country and he has significant U.S. property and assets. However, this mitigating factor has very limited weight in cases where AG ¶¶ 7(a) and 7 (b) apply.

There is little likelihood that Applicant will be placed in a position of having to choose between the interests of the U.S. and a foreign entity. Likewise, because of his close ties and his loyalties to the U.S., including his son (who is a U.S. born citizen); he would resolve any conflict of interest in favor of the U.S. These mitigating conditions taken together are sufficient to fully overcome the foreign influence security concerns.

Whole Person Concept

Protection of our national security is of paramount concern. Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the adjudicative process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. In reaching this decision, I have considered the whole person concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I considered the totality of Applicant's family ties to XUAR and the heavy burden an Applicant carries when he has family members in a foreign country.

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) the 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 commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

Seventeen years ago, Applicant left the PRC, which was the last time he saw his parents and siblings. Because he guides Army personal on local customs and nuances related to the spoken word and performs outstanding work, the Army views him as a valuable resource in helping it achieve its mission with the JTF. Applicant's six years of service comprised four or five months of overseas tours before a brief return to his home. His service providing crucial assistance in the Global War on Terrorism is successful in the past because of his language and cultural skills gained in the XGAR ¹⁴

¹⁴In ISCR Case No. 05-03846 at 6 (App. Bd. Nov.14, 2006), the Appeal Board recognized an exception to the general rule in Guideline B cases when "an applicant has established by credible, independent evidence that his compliance with security procedures and regulations occurs in the context of dangerous, high-risk circumstances in which the applicant had made a significant contribution to the

While danger certainly exists for all living in the XGAR, Applicant's parents and siblings are in no greater danger than any other individual living and working there. Applicant has no love for the Chinese government due to the government's suppression of the Uyghur people. He was given refugee status because of the hostility of the PRC government for him and the XGAR people.

I have carefully weighed the evidence in favor of Applicant against the government's concerns about Applicant's ability to protect classified information. I find that there is little potential for Applicant to be pressured, coerced, or exploited because he has relatives living in PRC. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the foreign influence security concerns.

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: FOR APPLICANT

Subparagraph 1.a – 1.c: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

CLAUDE R. HEINY II
Administrative Judge

national security . . . [and therefore he] can be relied upon to recognize, resist and report a foreign power's attempts at coercion or exploitation."