



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-14191
SSN: -----)
)
Applicant for Security Clearance)

Appearances

Jennifer I. Goldstein, Department Counsel
For Applicant: *Pro Se*

June 20, 2008

Decision

LOKEY-ANDERSON, Darlene, Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (eQip), on November 9, 2006. On February 7, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines B for Applicant. 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.

The Applicant responded to the SOR on February 27, 2008, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on March 26, 2008. A notice of hearing was issued on April 4, 2008, scheduling the hearing for April 24, 2008. At the hearing the Government presented two exhibits. The Applicant presented four exhibits and testified on his own behalf. The official transcript (Tr.) was received on May 8, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts concerning the current political conditions in the People's Republic of China (PRC), the Hong Kong Special Administrative Region (Hong Kong) and the Macau Special Administrative Region (Macau). Applicant had no objection. (Tr. p. 23). The request and the attached documents were not admitted into evidence but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the testimony and the exhibits. The Applicant is 38 years of age and has a Bachelors Degree in Mechanical Engineering. He is employed as a Mechanical Engineer for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant was born in Hong Kong, China in 1969. He was adopted by his uncle and moved to the United States when he was ten years old. (Tr. p. 32). Since then, he has lived in the United States, attended American schools, and fully assimilated into the American culture. In fact, he has never considered himself to be a part of the Chinese culture. (Tr. p. 33). He married an American woman of Italian descent and they have two children who were born in the United States. His children have never been to China, they do not speak Chinese, and the Applicant has no intent of ever taking them to China, as their permanent home is the United States. The Applicant stated, "There is no reason for me to help China in anything in any way". (Tr. p. 34).

The Applicant explained that although his biological father is a citizen and resident of Hong Kong, China, the Applicant did not grow up with him. The Applicant and his biological father are not close, they have no parental bond, and no relationship of that sort. As a matter of respect, the Applicant has minimal contact with his biological father, maybe once a year or so, or on holidays, and only because of the Applicant's respect for his Christian upbringing, which says that he should "honor his father and mother". (Tr. p. 35). Copies of the Applicant's telephone bills for 2006 and 2007 verify this. (Applicant's Exhibit D).

In responding to interrogatories concerning this investigation, the Applicant indicated that his biological father was self-employed, manufactured L.C.D. screens from home, and is attempting to find investors for his business. (Government Exhibit 2). The Applicant was unsure about his responses and asked his mother to help him to provide information about his biological father for the Department of Defense. (Tr. p.

36). The Applicant admits that he was mistaken about the information he provided the DoD concerning his biological father. The Applicant stated that the reason his biological father went to Hong Kong instead of to China is because the family hated Communism so much and wanted to get away from it. (Tr. p. 38). A copy of the Applicant's biological father's resume indicates that he was educated at MIT in the field of Mechanical Engineering and then returned to Hong Kong. Over the years he has been involved in various business ventures in Hong Kong and/or has done consulting work in the clothing and garment industry, the automobile industry, the computer industry, the real estate industry, and power plants and the manufacture of wind turbines. (Applicant's Exhibit C). He is not a member, nor has he ever been a member, of the Communist party or any other political or government agency and has no ties to such. He is a devout Christian and has been involved with the church on a volunteer basis for many years in various capacities. With the exception of still being Chairman of the China Bible Seminary, he has retired from all of his other jobs and is no longer employed. The Applicant's biological father has decided to permanently move to the United States to live with the Applicant's biological mother. He has recently applied for citizenship in the United States and is awaiting his application processing. (Tr. pp. 37-38).

The Applicant contacted his biological father for the limited purpose of alerting him to the fact that the Department of Defense may contact him and question him concerning the Applicant, as the Applicant is applying for a security clearance. The Applicant's father is not aware of any other details concerning the Applicant. For the most part, the Applicant's biological father has never shown interest concerning the Applicant, his wife or his family in the United States.

Although the Applicant's biological father has a background in Mechanical Engineering, just as the Applicant does, the Applicant has never and will not ever discuss any work issues with him. The Applicant does not talk to his father about his work as he takes his responsibilities very seriously. On those rare occasions where the Applicant may have the opportunity to talk with his biological father, they talk about the Applicant's son and his health problems.

The Applicant's uncle, who adopted the Applicant at the age of ten, is the Applicant's father for all intents and purposes. The Applicant considers him to be his father. He is a citizen and resident of the United States and has raised the Applicant as his own son.

The Applicant's biological mother, immigrated to the United States in the 80's, is a citizen and resident of the United States and is teaching Chinese Bible Church. The Applicant lived with her for a short time when he came to the United States but now only visits her on holidays.

A letter of compelling need from the Applicant's employer dated April 17, 2008, indicates that the Applicant, with over ten years of experience in the field, provides key skills necessary for solid Engineering support. He is a dedicated employee and can be trusted to perform his task with the highest quality and integrity and is strongly recommended for a security clearance. (Applicant's Exhibit A).

In winter 1994, the Applicant was awarded for his academic achievement and was on the Dean's Honor List at the College of Engineering he was attending. (Applicant's Exhibit B). The Applicant received a certificate from the American Society of Mechanical Engineers for a design entry in the National Student Design Competition held at a University in March 1995. (Applicant's Exhibit B).

I have taken official notice of the following facts concerning the Peoples Republic of China (PRC), the Hong Kong Special Administrative Region (Hong Kong), and the Macau Special Administrative Region (Macau). While the Hong Kong government generally respects the human rights of its citizens, under PRC nationality law, persons who are of Chinese descent and who were born in the mainland China or Hong Kong are PRC citizens. The People's Republic of China is a Communist country that its politics, society and human rights records remain inconsistent with United States system of democracy and freedom. It is the most populous country in the world, is economically powerful, and is an important trading partner of the United States. It has strong military forces, and has its own foreign-policy. The United States is a primary intelligence target of China because its 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. 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

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Foreign Influence

6. *The Concern.* 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.

Condition that could raise a security concern:

7. (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact creates a heightened risks of foreign exploitation, inducement, manipulation, pressure, or coercion.

Conditions that could mitigate security concerns:

8. (a) the nature of the relationships with foreign person, the country in which these person are located, or the positions or activities of those person 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.;

8. (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.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct

- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is “clearly consistent with the national interest” to grant an Applicant’s request for access to classified information.

The DoD Directive states, “The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, “Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned.”

The Government must make out a case under Guideline B (foreign influence) that establishes doubt about a person’s judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant’s adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates a foreign influence ad has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The mere possession of a foreign passport raises legitimate questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal standards and factors, and having assessed the Applicant’s credibility based on the

record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR.

Under Foreign Influence, Disqualifying Condition 7(a) *contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact creates a heightened risks of foreign exploitation, inducement, manipulation, pressure, or coercion* applies. However, Mitigating Conditions 8(a) *the nature of the relationships with foreign person, the country in which these person are located, or the positions or activities of those person 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,* and 8(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* also apply.

Although the Applicant's biological father is a citizen and resident of Hong Kong, China, the Applicant is not close to him and rarely contacts him. There is no evidence of a close bond or strong evidence of affection. In fact, to the contrary, the Applicant's biological father was never there for the Applicant growing up and the Applicant's only respect for him at all is because of the Applicant's Christian convictions. All of the Applicant's close family members are citizens and residents of the United States. The Applicant's adopted father, his biological mother, his wife and their two children are all residents and citizens of the United States. The Applicant does not consider himself to ever have been a part of the Chinese culture and essentially cut all ties from China when he moved to the United States as a youngster.

It is noted that the current political situation in Hong Kong, China elevates the cause for concern in this case. However, the evidence shows that the Applicant has no bond and affection with his biological father or to any foreign individual or to Hong Kong or China in any way that could potentially cause the Applicant to become subject to foreign exploitation, inducement, manipulation, pressure, or coercion. Therefore there is no possibility of foreign influence that exists that could create the potential for conduct resulting in the compromise of classified information. I find that the Applicant is not vulnerable to foreign influence. Accordingly, I find for the Applicant under Guideline B (Foreign Influence).

Considering all the evidence, the Applicant has met the mitigating conditions of Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guideline B.

FORMAL FINDINGS

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.
Subparas. 1.a.: For the Applicant
Subparas. 1.b.: For the Applicant
Subparas. 1.c.: For the Applicant

DECISION

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson
Administrative Judge