



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 07-18819
)	
Applicant for Security Clearance)	

Appearances

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

October 10, 2008

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP), on January 3, 2007. On June 12, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline 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.

Applicant acknowledged receipt of the SOR on June 17, 2008. She answered the SOR in writing on June 30, 2008, and requested a hearing before an Administrative Judge. DOHA received the request on July 24, 2008, and I received the case assignment that same day. DOHA issued a notice of hearing on August 4, 2008, and I convened the hearing as scheduled on August 21, 2008. The Government offered Exhibits (EXs) 1 and 2, which were stipulated to. Applicant testified on her own behalf,

as did her husband. She also submitted Exhibit A, which was admitted without objection. DOHA received the transcript of the hearing (TR) on September 3, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

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 People's Republic of China (PRC). This request was granted. 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

In her Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a, 1.b, and 1.c of the SOR, with explanations. She also provided additional information to support her request for eligibility for a security clearance.

Guideline B - Foreign Influence

The Applicant was born in the PRC, but came to the U.S. in 1998 (TR at page 16 line 25 to page 24 line 13). Her mother "was born in a wealthy family and was well educated" (TR at page 14 lines 7~20). However, when the Communist came to power, and after the Cultural Revolution, her mother was assigned to perform menial tasks for the rest of her working years (*Id*). As a result, the Applicant has no love for the PRC (TR at page 16 line 25 to page 24 line 13, and at page 33 line 20 to page 36 line 6).

She was naturalized as an American citizen in 2006, and is married to a former U.S. Navy Petty Officer (TR at page 16 line 25 to page 24 line 13, and at page 41 line 6 to page 43 line 10).

1.a. As mentioned above, the Applicant's mother is a citizen and resident of the PRC (TR at page 24 line 14 to page 25 line 4). She is 79 years of age, of fragile health, and lives with Applicant's brother (*Id*, and TR at page 25 line 13 to page 28 line 2). Her mother gets no government pension, never worked for PRC's government, and was never a member of the Communist Party (*Id*). The Applicant sends her mother between \$1,000~\$2,000, a couple of times a year during Chinese holidays (TR at page 25 line 13 to page 28 line 2). She also speaks to her mother once a month, but her mother does not know who Applicant works for, only that the Applicant is an engineer (*Id*).

1.b. Applicant's younger brother is also is a citizen and resident of the PRC (TR at page 28 line 3 to page 30 line 12). He works as a technician in a fertilizer plant (*Id*). She rarely speaks to her brother at any length, she calls his home and he passes the

phone to their mother (TR at page 28 line 3 to page 30 line 12). He does not work for PRC's government, and is not a member of the Communist Party (*Id*). He does not know who the Applicant's employer is (TR at page 28 line 3 to page 30 line 12).

The Applicant's oldest sister is a retired accountant (TR at page 30 line 13 to page 32 line 7). She only speaks to this sister a couple of times a year (*Id*). Her sister did not work for PRC's government, and is not a member of the Communist Party (TR at page 30 line 13 to page 32 line 7). She does not know the Applicant's employer is a dense contractor (*Id*).

The Applicant's other sister owns a "facial shop" (TR at page 32 line 8 to page 33 line 19). She speaks to this sister about "once a month" about facial beauty advice (*Id*, and TR at page 15 lines 2~22). Like the Applicant's other siblings, this sister does not work for PRC's government, and is not a member of the Communist Party (*Id*). She does not know who the Applicant's employer is (TR at page 28 line 3 to page 30 line 12).

The Applicant is not be subject to coercion by the PRC vis-a-vis her Chinese family members (TR at page 16 line 9~15). She "would seek assistance from the proper authorities . . . of the United States" (*Id*).

1.c. The Applicant traveled to the PRC in 2003 and in 2004 to visit her parents and to tour the country (TR at page 15 line 23 to page 16 line 8, at page 25 lines 5~12, and at page 36 line 7 to page 39 line 3). She last visited the PRC in 2007 to bury her father (*Id*). She has no current plans to visit the PRC (TR at page 36 line 7 to page 39 line 3).

I also take administrative notice of the following facts: The PRC, the most populous country in the world, is economically powerful, and is an important trading partner of the U.S. It is run by the Communist Party which controls all aspects of the PRC government. It has strong military forces, and has its own foreign-policy. Although there has been some cooperation, there has been much more conflict with the U.S. The PRC has an abysmal human rights record, which includes arbitrary killings; detention or incarceration without notice in mental facilities; torture; arbitrary arrest, detention or exile; no right to a public, fair trial; a politically controlled judiciary; lack of due process; restrictions on free speech, on religious freedom, freedom to travel, on freedom of assembly; and no rights of privacy - family, home or correspondence.

The PRC engages in espionage against the U.S. through an extensive network of businesses, personnel, and specific programs designed to acquire advanced U.S. military technology. It tries to identify ethnic Chinese in the U.S. who have access to sensitive information, and sometimes enlist their cooperation in illegal technology information transfers.

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

Paragraph 6 of the new adjudicative guidelines sets out the security concern relating to Foreign Influence: “Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign 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 a foreign interest.”

Here, Paragraph 7(a) is applicable: “*contacts with a foreign family member . . . 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.*” The Applicant’s mother, brother and two sisters are citizens of and reside in the PRC. This is clearly countered, however, by the first mitigating condition, as “*the nature of the relationships with foreign persons, the country in which these persons are located . . . 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 . . . and the interests of the U.S.*” The Applicant has no love for the PRC. The Cultural Revolution decimated her family. Her family knows little of what she does, only that she is an engineer. She can not be coerced by the PRC or any other government.

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

She has the unqualified support of her past and present supervisors, and of her colleagues (AppX A at pages 1~4). Her current supervisor avers, in part, the following:

In the years that . . . [the Applicant] has been a direct report to me, she has shown herself to be a diligent, organized, and hard-working. She has shown herself to be diligent, organized, and hard working. She has demonstrated dedication to both our company, and to the programs that we participate in. . . . [The Applicant] is extremely cognizant of the

importance of upholding our National security, and as such treats all material, whether classified, proprietary, or otherwise, with proper respect (AppX A at page 2).

I have considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. 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 security concerns arising from her alleged 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 F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant

Conclusion

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

Richard A. Cefola
Administrative Judge