



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



In the matter of:)	
_____)	
SSN: _____)	ISCR Case No. 08-03771
)	
Applicant for Security Clearance)	

Appearances

For Government: Jennifer I. Goldstein, Department Counsel
For Applicant: B. Daniel Lynch, Attorney At Law

December 8, 2008

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP), on September 27, 2006. On June 26, 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 August 19, 2008, and she requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on September 12, 2008. A notice of hearing was issued on September 23, 2008, scheduling the hearing for November 5, 2008. At the hearing the Government presented two exhibits, referred to as Government Exhibits 1 and 2. The Applicant called two witnesses, and presented ten exhibits, referred to as Applicant's Exhibits A through J. Applicant also testified on her own behalf. Applicant's Exhibits A through E were marked for identification purposes only and not admitted into evidence. The record was left open to allow the Applicant to submit documentation to verify that

Exhibits A through E, which were originally in Chinese and translated into English, were in fact translated by a licensed and certified court translator. Applicant's submitted two post-hearing exhibits, referred to as Applicant's Post-Hearing Exhibits A and B. Applicant's Exhibit A is an affidavit that verifies that Applicant's Exhibits A through E were translated by a duly licensed and certified court translator. Accordingly, Applicant's Exhibits A through E were admitted into evidence. The official transcript (Tr.) was received on November 17, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Request for Administrative Notice

Department Counsel requested that I take administrative notice of certain facts concerning the current political conditions in the People's Republic of China (PRC). Applicant had no objection. (Tr. p. 6). 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 45 years of age and has a Doctorate Degree of Philosophy in Electrical Engineering. She is employed as an Engineering Specialist for a defense contractor. She seeks a security clearance in connection with her 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 she has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information. The Applicant admitted all of the allegations set forth in the SOR under this guideline.

The Applicant was born in Shanghai, China in 1963, to Chinese parents. She came to the United States in 1987, to pursue higher education. She obtained a Masters Degree in Mathematics and then a Ph.D in Electrical Engineering. She started working for a defense contractor in 1997. She became a naturalized United States citizen in July 2000. She began working for her current employer in May 2006. She understands English and Chinese.

The Applicant's elderly mother and father and 50 year old brother, are citizens and residents of China. Her mother, who is 85 years old, is a retired librarian. Her father, who is 83 years old, is a retired University professor. They live in and own a small apartment in China built by the University for the University faculty. Until 2001, her father was also a member of the Communist party. (Tr. p. 109). Her brother, with whom she claims she is estranged, is a retired Electrical Technician. She admits to sending him a birthday card. His wife works in the garment industry.

The Applicant is very close to her parents. She applied for permanent resident status for them in 2003, and they received their green cards in 2004. (Applicant's Exhibit G). In addition to a small pension her parents receive, from 1997 to 2006, the Applicant financially supported her parents. She recently sent \$1,000.00 to her parents in order for them to purchase medicine. She contacts them by telephone at least once a week. Applicant's mother, who is now sick with what maybe cancer, is currently being treated in China with traditional Chinese herbal medicine. Since returning to China her mother's health condition has improved. Her parents plan on returning to the United States in December or January, and in June 2009, upon eligibility, plan to apply for United States citizenship. (Tr. p. 76). Upon their return, they plan to live with the Applicant and she will provide their financial support.

The Applicant owns a condominium in Shanghai, China valued at approximately \$250,000.00. The condo is currently in escrow and if all things go as planned, should be sold in February 2009. If not, it will remain on the market for sale. She also maintains a bank account in China that is used to distribute funds from her tenants rent to pay the mortgage on the condo. The Applicant earns approximately \$700.00 to \$800.00 per month in rental income from the condo. She also maintains a checking account at a bank in China that currently has a balance of approximately \$6,000.00. Once the condo is sold, the Applicant will not longer have any financial assets in China. (Applicant's Exhibits A, B, C, D, and E).

Since February 1997, the Applicant has traveled to China on at least six different occasions. Since becoming a United States citizen, she had traveled to China using her American passport. She has torn up her Chinese passport. (Applicant Exhibit F). On each occasion, she visited her parents and stayed at their home in Shanghai. She also saw her brother during those visits.

In 2007, the Applicant purchased a townhouse in the United States for \$530,000.00. Her bank account balances equal approximately \$200,000.00 and each month she contributes to a 401(k) offered by her employer.

The Applicant's Director and Section Manager testified that the requirements of her job are very difficult to fill and that she is exceptionally reliable and trustworthy and an excellent employee. They both recommend her for a position of trust. (Tr. p. 45 -54 and 57- 64).

Letters of recommendation from the Applicant's professional colleagues, including the Director of the Department, the Section Manager, and other co-workers who have known the Applicant since she began her employment in the defense industry, describe her as honest, a person of good character, high integrity, diligence, straight forwardness, discreet, with hard working habits. She has superior skills in her field of expertise and is considered reliable and trustworthy both personally and professionally. (Applicant's Exhibit I).

Applicant received an award from her company in recognition of her outstanding contribution. (Applicant's Exhibit H).

I have taken official notice of the following facts concerning the People's Republic of China (PRC). The People's Republic of China is a Communist country and 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 of 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.

Conditions 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;

7. (d) sharing living quarters with a persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion;

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.

Conditions that could mitigate security concerns:

None.

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 and 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 Conditions 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*; 7(d) *sharing living quarters with a persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion*; 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. None of the mitigating conditions are applicable.

It appears that the Applicant's financial holdings in China, specifically her condo and bank accounts, are presently in escrow, and will soon be a moot issue. Therefore I do not see them as a security risk. I have also considered all of the favorable evidence, including the testimony, character references and accomplishments of the Applicant.

However, the Applicant's foreign contacts pose a security risk. Her mother and father are citizens and residents of China, and the Applicant is very close to them. Her parents currently live in China, and travel back and forth between China and the United States. When they are in the United States, they live with the Applicant. When they are in China, she contacts them by telephone on a regular basis. She also provides financial support for them when they need it. There is clear evidence of a close bond and strong and deep affection. Although the Applicant does not consider herself to be close to her brother in China, she sees him when she visits China and sends him birthday cards. She also brings gifts of toys and clothes to her brother's son, her nephew, when she visits.

It is also noted that the current political situation in China elevates the cause for concern in this case. The evidence shows that the Applicant has a strong bond and affection with her parents and to a lesser extent, her brother, and nephew in China. Under the particular circumstances of this case, these foreign relationships could potentially cause the Applicant to become subject to foreign exploitation, inducement, manipulation, pressure, or coercion. Therefore there is a 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 vulnerable to foreign influence. Accordingly, I find against the Applicant under Guideline B (Foreign Influence).

Considering all the evidence, the Applicant has not met the mitigating conditions of Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, she has not met her 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: Against the Applicant.
- Subparas. 1.a.: Against the Applicant
- Subparas. 1.b.: Against the Applicant
- Subparas. 1.c.: Against the Applicant
- Subparas. 1.d.: Against the Applicant
- Subparas. 1.e.: Against the Applicant

Subparas. 1.f.: Against the Applicant
Subparas. 1.g.: Against the Applicant
Subparas. 1.h.: Against the Applicant

DECISION

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson
Administrative Judge