



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 08-05548
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: *Pro Se*

February 6, 2009

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on April 23, 2007. On November 14, 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 November 20, 2008. He answered the SOR in writing on December 8, 2008, and requested a hearing before an Administrative Judge. DOHA received the request on December 24, 2008, and it was assigned to another Administrative Judge on January 5, 2009. I received the case assignment on January 20, 2008. DOHA had issued a notice of hearing on January 5, 2009, and I convened the hearing as scheduled on January 21, 2009. The Government

offered Exhibits (GXs) 1 through 3, which were received without objection. Applicant testified on his own behalf. DOHA received the transcript of the hearing (TR) on February 3, 2009. I granted Applicant's request to keep the record open until February 4, 2009, to submit additional matters. On January 31, 2008, he submitted Exhibit A, without objection. The record closed on February 4, 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). The 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 his Answer to the SOR, Applicant admitted all the factual allegations of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Guideline B - Foreign Influence

The Applicant, who was born in the PRC, came to the U.S. in 1991 to pursue his Ph.D. (TR at 24 line 24 to page 27 line 11). He was married before he came to the U.S. (TR at page 27 line 18 to page 29 line 3). He and his wife were both naturalized in August of 2005 (e-QIP at pages 7~8 and 16~17). They have children who are native born Americans (TR at page 29 line 4 to page 31 line 6). The Applicant's "net worth [in the U.S.] is probably \$600,000 excluding . . . [his] house," and he owns nothing in the PRC (TR at page 32 line 22 to page 36 line 8).

The Applicant's father was a businessman, whose business was taken away from him when the Communist came to power in 1949 (TR at page 42 line 4 to page 43 line 1). As a result, the Applicant has no love or loyalty to the PRC (*Id*).

1.a. and 1.d. The Applicant mother passed away in December of 2008; and as a result, he has little incentive to now visit the PRC (TR at page 17 line 21 to page 18 line 14, and AppX A at pages 3~7). He visited the PRC five times since 2000, always visiting and staying with his mother (*Id*).

1.b. The Applicant has three siblings, one older brother and two older sisters, who are citizens and residents of the PRC (TR at page 18 line 15 to page 19 line 19, at page 44 lines 1~23, at page 45 lines 18~25, and at page 46 line 10 to page 48 line 20).

They are all “peasant farmers,” and his two sisters are “illiterate” (*Id*). None of Applicant’s siblings have any connection with the government of the PRC, and are not members of the Communist party (TR at page 18 line 15 to page 19 line 19, at page 44 lines 1~23, at page 45 lines 18~25, and at page 46 line 10 to page 48 line 20). The Applicant is not subject to coercion vis-a-vis his siblings and the PRC (*Id*, and Tr at page 50 line 14 to page 51 line 22).

1.c. The Applicant’s in-laws are citizens and residents of the PRC (TR at 19 line 20 to page 21 line 8, and at page 54 line 12 to page 55 line 3). They are also peasants (*Id*). Neither of Applicant’s in-laws have any connection with the government of the PRC, and are not members of the Communist party (TR at 19 line 20 to page 21 line 8, and at page 54 line 12 to page 55 line 3). The Applicant is not subject to coercion vis-a-vis his in-laws and the PRC (*Id*, and Tr at page 50 line 14 to page 51 line 22).

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 siblings and in-laws 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. Since his mother passed away, he has little contact with the PRC. Furthermore, he can not be coerced by the PRC.

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.

He has the unqualified support of his Senior Manager and two colleagues (AppX A at pages 8~10, *see also* at pages 11~15). His Senior Manager avers, in part, the following:

[The Applicant] . . . was well respected by his co-workers, management and his customers. He has always shown an outstanding work ethic and was essential to the success of the program [a high profile aerospace program]. He works very well with others and has demonstrated exceptional team work skills. [The Applicant] . . . is a valuable engineering asset and I appreciate the time he was able to spend on the . . . program.

I highly recommend [the Applicant] for a security clearance (AppX A at page 8).

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 his 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
Subparagraph 1.d:	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