



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-08930
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank, Jr. Esquire, Department Counsel
For Applicant: *Pro Se*

February 22, 2010

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on October 16, 2007. On June 16, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B (Foreign Influence) for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), 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 July 1, 2009. He elected to have his case decided on the record in lieu of a hearing. Department Counsel submitted the government's written case on December 9, 2009. Applicant received a complete file of relevant material (FORM) on December 16, 2009, and was provided an opportunity to file objections and submit material to refute, extenuate, or mitigate the government's

case.¹ Applicant submitted additional information by January 15, 2010. The case was assigned to me on February 2, 2010. Based upon a review of the case file, eligibility for access to classified information is denied.

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to People's Republic of China (PRC). The request and the attached source documents were included in the record as attachments. (I-XVI) The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In his Answer to the SOR, dated July 1, 2009, Applicant admitted the factual allegations in ¶¶ 1.a, 1.b, 1.c, 1.d, 1.e, 1.f, and 1.g of the SOR. He submitted additional information to support his request for eligibility for a security clearance.

Applicant is a 31-year-old employee of a defense contractor. He was born and raised in China, he immigrated to the United States in August 1995. Applicant became a naturalized United States citizen in May 2001. He submitted a security clearance application on October 16, 2007.

Applicant graduated from an American high school in August 1998. He received an undergraduate degree and ultimately a master of science degree from a U.S. university in 2006. Currently, he is employed as an engineer for a contractor. He has been in his current position since March 2007.

Applicant married a woman he was introduced to online, who is a citizen of China. He met her in person in China in 2006. In October 2008, they were married in the United States. She resides in the United States with Applicant. She holds a permanent resident card and intends to become a United States citizen when all the conditions are met in approximately two years (Item 2). Applicant maintains that his wife does not show any interest in his work, and she works in a medical field at a university.

Applicant's mother-in-law was an accountant for a local city planning department in China, where she is a citizen and a resident. She retired in November 2007. Applicant plans to sponsor her to the United States next year (Item 2). His father-in-law is deceased.

Applicant has an aunt, three uncles, and several cousins who are citizens and residents of China. He maintains contact with them through his mother who has been a naturalized U. S. citizen since 2001. Applicant speaks to his relatives in China on the telephone at holiday or festival times. He maintains that he does not contact them separately or apart from the phone conversations that his mother has with them.

¹The Government submitted seven items in support of its contentions.

Applicant's aunts and uncles are retired. He maintains they have not worked since the 1990's. He knows they were teachers, doctors, and civil engineers. His cousin works for a highway traffic station collecting tolls. Applicant describes his cousin's work as civil service, and not military or government service.

Applicant contends that his relatives in China do not know what Applicant does for a living. He emphasized that "they do not possess any type of information as to what kind of job I currently have, nor did they express any interest."

Applicant traveled to China in 1996, 1999, 2002, 2006, and 2007. In 1996, 1999, and 2002, he traveled with his mother. Applicant was on spring or summer breaks from high school or college. He reported that he accompanied his mother to China because he had nowhere else to go, and that it was expected that he would visit his family. He explained that it is common practice in his culture to have family members provide shelter and food for visiting relatives. The visits were sometimes three months in length. When Applicant was in college, he visited his Chinese relatives from January 2002 until April 2002 (Item 7).

In 2006 and 2007, Applicant visited China to meet the woman he would marry. He spent the time on vacation. He had no personal financial business activities. He reported the visit to the Facility Security Officer (FSO) for his company. He was briefed and debriefed before and after the visits. He acknowledged that he made a short trip to China in January 2008, and he acknowledged that he visited his relatives (Item 7).

In a 2008 sworn affidavit, Applicant acknowledged that he has maintained contact with a childhood friend (XW), who is a citizen and resident of China. He is a chemistry salesman in Shanghai. Applicant's friend introduced him to Applicant's wife in 2005. Applicant had online contact with his friend from 2005 until September 2008. Prior to 2005, Applicant maintained contact with XW by email on a limited basis (Item 2). Applicant maintains that his last contact with XW was in 2008, when Applicant was married (Response to FORM).

Applicant's other childhood friend (ZL), who is a citizen and resident of China, maintained contact with Applicant while they were both in college from 2003 until 2006. Applicant maintains he had very limited contact prior to 2003. The frequency declined after 2006 when they graduated from college. ZL is a software engineer who works for a non-governmental agency in China. ZL was present at Applicant's wedding in 2008. He has not contacted him since, and he has no information about his current address (Response to FORM, July 2009).

Applicant admits that he has other friends who are citizens of China. He acknowledges that he met these two students, who were married, while he was in the university. They both were students of engineering. Applicant recalls that in 2005 and 2006, he had daily contact with them and shared an apartment with them. He left the apartment when he graduated in 2006. Applicant received a phone call or two from

them after 2006. He has not had contact with them since February 2008. He has no further information about them.

Applicant stressed that he has lived in the United States for almost half his lifetime. He does not have any affiliation to any Chinese political entity. He has more American friends than foreign contacts. Applicant emphasized that his contacts with family and friends in China are limited. He has no sympathy for the Chinese government. His allegiance is to the United States. He has confidence that as a well-educated, professional United States citizen, he would not sell or disclose any classified information to a foreign government (Item 2). He loves the freedom in the United States and knows the duty of “being a United States citizen.”

I take administrative notice of the following facts. China (PRC) is an authoritarian state whose power is centralized in the Chinese Communist Party. In foreign relations, China and the U.S. have been rivals since the Cold War, with particular disagreement on the status of Taiwan, and China has continued to resist what it considers to be superpower dominance by the U.S., despite improving economic relations. The United States is a primary intelligence target of China because of the U.S. 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. China uses legal and illegal means, including espionage, to obtain military related systems and technologies from the U.S. China has a poor human rights record and its citizens lack freedom to peacefully express opposition to the political system or to freely change those in charge of the government. There are many high profile cases involving monitoring, harassment, detention, arrest, and imprisonment of journalists, writers, activists, and defense lawyers, many of whom were seeking to exercise their rights under the law. There is a lack of due process and new restrictions on lawyers that further limit the progress toward the rule of law. There are tight restrictions on freedom to practice religion and freedom to travel. According to the U.S. State Department, the government of China engages in serious human rights abuses including, extrajudicial killings, torture, coerced confessions of prisoners, and forced labor.

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 required 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 overarching 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

The security concern for Foreign Influence is set out in AG & 6:

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.

The guideline notes several conditions that could raise security concerns. Under AG & 7(a), a contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or a resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion” may create a security concern. Similarly, under AG & 7(d) “sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure or coercion” may raise security concerns. Applicant’s wife is a citizen of China, although she resides in the United States. Applicant met his wife through a friend in China. His mother-in-law is a resident and citizen of China. Applicant has family connections with China, as his aunt, three uncles and cousins are residents and citizens of China. Applicant and his mother have visited their family on numerous occasions since 1999. Applicant spent vacations in China and met his wife in person in China in 2006. He again visited her in 2007 and in 2008. Some of Applicant’s visits were three months in length. Applicant has childhood friends with whom he has maintained a level of connection. China is a country whose human rights record is dismal and the potential for abuse is high. Applicant’s familial relationship with citizens and residents of China creates a heightened risk of potential exploitation, inducement, manipulation, pressure or coercion. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from foreign influence. Under AG ¶ 8(a), the disqualifying condition may be mitigated where “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.” Applicant has lived more than half his life in China. Applicant maintained contact with childhood friends who are citizens and residents of China. Applicant met his wife through such a friend in China. Applicant and his wife have been married since 2008. Although his wife maintains her residency in the U.S., she is a Chinese citizen. She has emotional ties with her mother in China. Applicant’s relatives are in China. He has visited his family on six occasions. He stayed with his relatives on many such occasions. His last visit was in 2008. Applicant and his wife keep in touch with their families in China. Applicant is a naturalized U.S. citizen, however, there is a heightened risk due to his wife’s status and his family ties to China. Unfortunately, China is a country that causes concern in the area of potential exploitation and coercion which makes Applicant vulnerable. His contact with his family cannot be construed as minimal. This creates a potential conflict of interest. The evidence does not raise this potentially mitigating condition.

Under AG & 8(b), security concerns may be mitigated where there is no conflict of interest, either because the individual's sense of loyalty or obligation 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." As noted above, Applicant has longstanding, close ties with his family. Applicant is a naturalized citizen; however, there is a heightened risk due to his family ties to China. Unfortunately, China is a country with a tendency to cause concerns in the area of potential exploitation and coercions which makes Applicant vulnerable. His contact with his family cannot be construed as minimal This creates a potential conflict of interest.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an Applicant has frequent, non-casual contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, if an applicant's family member is associated with or dependent upon the government, or if the country is known to conduct intelligence operations against the United States.

However, the complicated, competitive relationship of the PRC with the United States places a significant, but not insurmountable, burden of persuasion on Applicant to demonstrate that his relationship with his relatives living in China and his relatives in the United States with close relationships to family members living in China does not pose a security risk and he is not in a position to be forced to choose between loyalty to the United States and his family living in China. With its mixed human rights record, and political, economic, and military rivalry with the United States, it is conceivable that China would target any Chinese citizen or former citizen living in the United States in an attempt to gather valuable information from the United States.

China is a country whose human rights record is dismal and the potential for abuse is high. Applicant's familial relationship with citizens and residents of China creates a heightened risk of potential exploitation, inducement, manipulation, pressure or coercion. China's intelligence operatives seek classified or economic information from United States businesses and/or governmental agencies. Applicant's connections to his family members and his mother-in-law create a potential conflict of interest because these relationships are sufficiently close to raise a possible security concern about his desire to help these relatives living in China by providing classified information.

Evidence that "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” is potentially mitigating under AG & 8(c). Applicant traveled to China numerous times to visit his family. He also contacts them on a regular basis. I conclude this potentially mitigating condition does not apply.

After a review of the remaining mitigating conditions, I find that none of them applies in this case.

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 relevant 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.

A Guideline B decision concerning China must take into consideration the geopolitical situation in the PRC. The PRC has a dismal human rights record, The PRC is one of the world’s most aggressive nations in the collection of United States intelligence and sensitive economic information.

Applicant was born and raised in China. He has lived in the United States since 1995. He became a United States citizen in 2001. He received his undergraduate and master degree in 2006 from an American university. His mother is a naturalized United States citizen. He has worked for a defense contractor since 2007.

Applicant has traveled to China on six occasions since 1996. He visited his family and also childhood friends in China. He went to China to meet a woman who would become his wife. He married in 2008. His last trip to China was in 2008. He maintained contact with some childhood friends as late as 2008. The familial ties are close and the practices carried out by China create a heightened security risk. I am persuaded by the totality of the evidence that it is not clearly consistent with the interests of national security to grant Applicant a security clearance. In reaching my decision, I considered the evidence as a whole, including the appropriate factors and guidelines.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from 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 B:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

NOREEN A. LYNCH
Administrative Judge