



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 08-12148  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Julie R. Mendez, Department Counsel  
For Applicant: *Pro Se*

March 31, 2010

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**Decision**

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LOKEY ANDERSON, Darlene, Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing on July 23, 2008. (Government Exhibit 4). On August 31, 2009, 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 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 in writing on September 10, 2009, in which he elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on October 7, 2009. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on October 22, 2009, and he submitted no reply within the 30 days allowed. The case was assigned to the undersigned for resolution on January 11, 2010. Based upon a review of the case file, pleadings, exhibits, and eligibility for access to classified information is denied.

## **Request for Administrative Notice**

Department Counsel submitted a request that I take administrative notice of certain facts concerning the current political conditions in the Peoples Republic of China (PRC). Applicant made no objection. 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, and the exhibits. The Applicant is 46 years of age. 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 admits to each of the allegations set forth under this guideline. The Applicant was born in the PRC in 1963. He emigrated to the United States and immediately applied for citizenship. He became a naturalized United States citizen in April 2008. His father, mother, two brothers, sister and mother-in-law are citizens and residents of the PRC. (Government Exhibits 3,4 and 5). The Applicant maintains contact with his parents via telephone several times a month. (Government Exhibit 5). At least one of the Applicant's brothers and a sister work for the county-level government entities in the PRC. Applicant states that he has never told anyone in the PRC about his job duties in the United States. He further states that his parents, brothers and sister do not know which company he works for.

The Applicant has traveled to the PRC in 2002, 2006, 2007 and 2008. During his trips to the PRC, in addition to visiting his family he had dinner with former classmates and neighbors that he has maintained contact with who are citizens and residents of the PRC. He states that when he travels to the PRC in the future, he will not meet with his former classmates and neighbors anymore. Applicant has surrendered his foreign passport to his company security officer who has destroyed it. (Government Exhibit 6).

Applicant is married to a woman of Chinese heritage who has also become a naturalized United States citizen. They have a native born American child. The Applicant enjoys the freedoms and opportunities afforded him in the United States and appreciates being a citizen of this country.

I have taken official notice of the following facts concerning the country of China. China is a large and economically powerful country, with a population of over a billion people and an economy growing at about 10% per year. China is an authoritarian government, dominated by the Chinese Communist Party. In its 2007 annual report to Congress, the United States-China Economic and Security Review Commission noted the following about China's intelligence gathering:

In some cases, access to restricted technology is obtained by China through industrial espionage; China operates an aggressive clandestine effort to acquire additional technologies.

In recent years, this has become such a problem in the United States that U.S. Immigration and Customs Enforcement officials have rated China's espionage and industrial theft activities as the leading threat to the security of U. S. technology.

Moreover, the FBI stepped up counter-intelligence efforts against Chinese Intelligence operations in the United States in July 2007, because of what FBI Director Robert Muller called a "substantial concern" about those operations. As Chinese espionage against the U.S. military and American business continues to outpace the overwhelmed U.S. counterintelligence community, critical American secrets and proprietary technologies are being transferred to the People's Liberation Army and Chinese state-owned companies.

The report also concludes that "Chinese espionage activities in the United States are so extensive that they comprise the single greatest risk to the security of United States technologies."

The National Counterintelligence Executive has made similar findings, including the fact that China continues to target United States military technologies. Specifically, in its 2007 annual report to Congress, the National Counterintelligence Executive included the following passage in its findings:

Businessmen, scientists engineers, and academics as well as state-run security services from a large number of countries continue to target US information and technology, according to information compiled during the FY 2007 reporting period. The bulk of the collection activity, however, comes from citizens of a core group of fewer than 10 countries, which include China.

According to the Department of Defense's Annual Report to Congress: Military Power of the People's Republic of China 2009: (1) China uses "state-sponsored industrial espionage to increase the level of technologies available to support military research, development, and acquisition", (2) "China continues a systematic effort to obtain dual-use and military technologies from abroad through legal and illegal commercial transactions", (3) China seeks to "obtain sensitive U.S. technologies (e.g. missile, imaging, semiconductor and submarine) illegally by targeting well-placed scientists and businessmen", and (4) China poses a "threat to national security due to China's sustained efforts to obtain U.S. technology illegally."

Furthermore, according to the State Department, China has a poor record with respect to human rights, which includes: arbitrary or unlawful killings by security forces, physical abuse and torture of prisoners, arbitrary arrest and detention, denial of fair public trials, searches of premises without warrants, monitoring of communications (including telephone conversations, facsimile transmissions, e-mail, text messaging,

and internet communications) and opening domestic and international mail, failure to respect freedom of speech and press, failure to respect academic and artistic freedom, severe restrictions on peaceful assembly and associations, restrictions on freedom of association, restriction on the freedom of religion, and citizens lack the right to change their government peaceably, or change the laws and officials that govern them.

## **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 risk of foreign exploitation, inducement, manipulation, pressure, or coercion.

#### 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, extent and seriousness of the conduct;

- 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 extent to which the participation is voluntary;
- f. The presence or absence of rehabilitation and other permanent behavior changes;
- g. The motivation for the conduct;
- h. The potential for pressure, coercion, exploitation or duress; and
- 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 predicated 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, that 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.

The evidence shows that the Applicant has close and continuing foreign family ties in the PRC. The Applicant's father, mother, brothers, sister, and mother-in-law are citizens and residents of the PRC. She communicates with her parents in the PRC several times a month by telephone. A brother and a sister are employed for the county government in the PRC. The risk of this strong foreign family tie is heightened by the fact that the Applicant's siblings have connections to the Chinese government by virtue of their employment. Furthermore, Applicant's recent frequent travel to the PRC, and future travel to the PRC, places her in a vulnerable position and subject to coercion, exploitation and/or pressure by the Chinese government. It is also noted that the current political situation in the PRC elevates the cause for concern in this case. China is the most active collector of sensitive and protected United States information and technology. In this case, the possibilities are great that the Applicant may at some point be placed in a position to be forced to choose between the interests of a foreign individual, group organization, or government and the interests of the United States.

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 risk of foreign exploitation, inducement, manipulation, pressure, or coercion* applies. None of the Mitigating Conditions apply. In this case, Applicant's relationships and regular contact with her immediate family in the PRC, and her former classmates and neighbors, and the fact that her two siblings are employed for the county government in the PRC, creates a risk for foreign influence or exploitation.

Furthermore, there is no evidence in support of mitigation under the whole person analysis. The Applicant has submitted no favorable recommendations or sufficient documentation to support security clearance eligibility. I have considered the "whole person concept" in evaluating the Applicant's eligibility for access to classified information. Under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed as a whole, support a whole person assessment of poor judgement, untrustworthiness, unreliability, a lack a candor, and an unwillingness to comply with rules and regulations, and/or other characteristics indicating that the person may not properly safeguard classified information.

The evidence shows that the Applicant has a strong bond and affection with his foreign parents, siblings, former classmates and neighbors in the PRC, and that 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. Thus, 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 met the mitigating conditions of Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, she has failed to meet 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: Against the Applicant.  
Subpara. 1.a.: Against the Applicant  
Subpara. 1.b.: Against the Applicant  
Subpara. 1.c.: Against the Applicant  
Subpara. 1.d.: Against the Applicant  
Subpara. 1.e.: Against the Applicant  
Subpara. 1.f.: Against the Applicant  
Subpara. 1.g.: 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