



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-00990
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Pamela C. Benson, Esquire, Department Counsel
For Applicant: Alan V. Edmunds, Esquire

July 1, 2010

Decision

HOWE, Philip S., Administrative Judge:

On April 1, 2008, Applicant submitted her Security Clearance Application (SF 86). On August 10, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B (Foreign Influence). 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) effective within the Department of Defense on September 1, 2006.

Applicant acknowledged receipt of the SOR on September 9, 2009. She answered the SOR in writing on or before September 11, 2009, and requested a decision without a hearing. DOHA received the request on September 11, 2009. On or about October 2009, Applicant changed her selection and decided to have a hearing before an administrative judge. Department Counsel was prepared to proceed on January 7, 2010, and I received the case assignment on January 13, 2010. DOHA issued a Notice of Hearing on January 29, 2010, and I convened the hearing as

scheduled on February 22, 2010. The Government offered Exhibits 1 through 3, which were received without objection. Exhibit 3, the request for administrative notice of documents pertaining to the People's Republic of China, consists of 15 subparts (Attachments I through XV). Applicant testified. Her attorney submitted Exhibits A through E, without objection. DOHA received the transcript of the hearing (Tr.) on March 4, 2010. 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). (Tr. at 10-12.) The request and the attached documents were admitted into evidence as Hearing Exhibit 3. 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 to 1.d and ¶¶ 1.f to 1.j of the SOR, with explanations. She denied the factual allegations in ¶ 1.e of the SOR. She also provided additional information to support her request for eligibility for a security clearance.

Applicant is 41 years old, married, and has two children, ages 6 and 8 years old. Her children were born in the United States. She works for a government contractor. Applicant became a U.S. citizen in 1998 and has a U.S. passport. Her last trip to the PRC was in 2000 and she has no present plans to travel there in the future. Her mother visited her in the United States in 2005, and her father visited her in 2008. She does not speak to her mother because of some past conflict. She communicates with her father about once every two months by telephone. Her husband was born in the PRC. He lives in the United States and is a U.S. citizen. He works for a local energy company. She and her husband own a home in the United States and their combined income exceeds \$150,000 annually. Applicant expressed her loyalty to the United States. (Tr. 14-18, 25-27, 31, 37; Exhibit E)

Applicant was born in 1968. She came alone to the United States in 1985 after high school graduation to attend college here. Her father wanted her to study in the United States and to live here. Applicant graduated from college in 1991 with a bachelor's degree. She attended another U.S. university and obtained another bachelor's degree in 1994. (Tr. 28-30, 41-44)

Applicant's parents live and work in the PRC. They were born there and are citizens of the PRC. They are members of the Communist Party in the PRC. Applicant voluntarily disclosed her parent's political party memberships. Applicant was never a member of the Communist Party when she lived in the PRC. According to Applicant's

explanation, her parents joined the Communist Party as a means to obtain a better job and an improved income. Both parents worked at PRC universities and are now retired, receiving a pension from the PRC government. Her parents do not have access to any information or governmental connection in their retirement status. Her parents do not know of Applicant's work for her employer. (Tr. 17-19, 24, 25, 33; Exhibits 1, 2)

Applicant has an uncle who is a university professor living in the PRC. She speaks with him once a year. She also has an aunt who is a member of the Communist Party and lives in the PRC. Applicant speaks with her once a year. Applicant told the government investigator that her aunt has no affiliation with a foreign government. (Tr. 21; Exhibits 1, 2)

Applicant had two brothers who were twins. One died several years ago as a crime victim. The other brother is a banker in the PRC. He is not a member of the Communist Party. Applicant explained her brother did not need to join the Communist Party to gain economic advancement in the modern PRC. She speaks to him only once every few months over the telephone. (Tr. 20, 33, 34; Exhibits 1, 2)

Applicant's mother-in-law lives in the PRC. She lives in a rural community. She is not a member of the Communist Party. Applicant has never met her and has no contact with her. (Tr. 37; Exhibits 1, 2)

Applicant submitted two favorable personal and employment references. She also submitted her June 2008 employee evaluation showing rankings in all categories of "above average." This evaluation was her 90-day performance evaluation. (Exhibits A-D)

I take administrative notice of the following facts concerning the PRC. The PRC is a one-party Communist totalitarian state. It has an economy growing at 10% annually, and expanding military forces, including its naval forces. It engages in industrial and military espionage on a regular basis against the United States and other countries. The United States and the PRC have been rivals since 1948, when the Communists took control of mainland China, and the Nationalist government fled to the island of Taiwan. Taiwan remains an issue of contention between the two countries. The U.S. - China Economic and Security Review Commission's 2006 report to the U.S. Congress found the PRC has a large and aggressive intelligence gathering operation in the United States, particularly in the scientific and military fields. The PRC engages regularly in military, economic, and industrial espionage, including stealing nuclear weapons technology, missile design information, and commercial technology. The PRC also obtains commercial information through the use of front companies, buying dual-use technologies, and the direct collection of technology by non-intelligence agencies and individuals. The People's Liberation Army (PLA) is integrated into the civil industrial base in the PRC, known as the "digital triangle." The *2007 Report to Congress of the U.S.-China Economic and Security Review Commission* (Exhibit 3, Attachment V at page 102) states the linkages between the military and Chinese commercial information technology companies and the "state R&D institute" are longstanding, "as

telecommunications and information technology in China were originally under military auspices and the commercial relationships with state and military research institutes remain important.” Additionally, the U.S. State Department reported the PRC has a poor human rights record, including but not limited to, denial of free speech and press, fair and open trials, and other basic rights recognized by the international community. It also suppresses political dissent, using arbitrary arrests, forced confessions, and mistreatment of prisoners as part of its operational methods to maintain control of its population. (Exhibit 3 and its Attachments I to XV)

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the 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 overarching adjudicative goal is a fair, impartial, and commonsense 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, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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

AG ¶ 6 expresses the security concern pertaining to foreign influence:

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. Two are potentially applicable in this case:

(a) contact with a foreign family member, business or professional associate, friend, or other person 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;¹ and

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual’s obligation to protect sensitive information or technology and the individual’s desire to help a foreign person, group, or country by providing that information.

Applicant’s mother, father, brother, aunt, and uncle are citizens and residents of the PRC. She does not contact her mother because they have a personality conflict. She speaks with her father monthly. She contacts her brother periodically. Applicant

¹ 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 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).

annually contacts her aunt and uncle. These contacts create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion because they are made with persons living in a Communist dictatorship that has a history of economic and military espionage against the United States. It also creates a potential conflict of interest if Applicant were approached by any of her relatives to obtain information from Applicant on behalf of the PRC government. Applicant would have to choose between her loyalty to the United States and her relatives. AG ¶ 7(a) and (b) have been raised by the evidence.

The Government produced substantial evidence of those two disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove mitigation. Two conditions that could mitigate the disqualifications are provided under AG ¶ 8:

(b) 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; and

(c) 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.

Applicant established the application of AG ¶ 8(b) and 8(c). The evidence presented at the hearing showed the true nature of her connections to her family and her substantial personal investment in her life in the United States.

Applicant showed sufficient evidence and a persuasive presentation that her loyalty to the U.S. is paramount over her connections to any members of her family in the PRC. She has been in the United States for 24 years, longer than her first 16 years in the PRC as she was growing up. She obtained her education in the United States, owns property in the United States, and her children, ages 6 and 8, were born in the United States. She and her husband became U.S. citizens and residents. Applicant owns a home in the United States, earns a very good salary and with her husband's income they earn more than \$150,000 annually. When Applicant became a citizen in 1998, she renounced her PRC citizenship. She has not travelled to the PRC for 10 years and has no plans to travel there in the future.

There is no risk of exploitation or influence because of these tangential familial connections when balanced with Applicant's substantial economic, educational, and immediate family connections to the United States. Therefore, she can be expected to resolve any conflict of interest in favor of the U.S. interests,

Her relationship with her mother and brother are casual or infrequent because Applicant has no contact with her mother and only quarterly contact with her brother.

Applicant's relationship with her father is closer and more regular. Her parent's membership in the PRC Communist Party is problematic, but they are retired from their university professorial positions and have no contact with the university or the PRC government in their retirement status. Her brother is not a member of the Communist Party.

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 an 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.

AG ¶ 2(c) requires each case must be judged on its own merits. 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.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. Applicant came to the United States when she was 16 years old. She has been living here since then, obtaining two college degrees, marrying, having two children, and buying a house. She has limited contact with family members in the PRC, speaking only to her father, and that once a month. She has not seen him since 2008. The last time she visited PRC was in 2000. Applicant is strongly committed to the United States and her life here. She has been a U.S. citizen for 12 years and remains in the United States instead of traveling to the PRC. There is no potential for pressure or coercion by the PRC against Applicant.

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 foreign influence security concerns. I conclude the "whole-person" concept for Applicant.

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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant

Conclusion

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

PHILIP S. HOWE
Administrative Judge