



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



In the matter of: )  
 )  
----- ) ISCR Case No. 09-01194  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: James Duffy, Esquire, Department Counsel  
For Applicant: *Pro Se*

February 22, 2010

**Decision**

HOWE, Philip S., Administrative Judge:

On June 18, 2007, Applicant submitted his electronic version of the Security Clearance Application (SF 86) (e-QIP). On July 9, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to 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 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 answered the SOR in writing on July 27, 2009. Applicant requested his case be decided on the written record in lieu of a hearing.

On September 22, 2009, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant on the same date. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on October 12, 2009. Applicant did not file a Response to the FORM within the 30 day time allowed that would have expired on November 11, 2009. I received the case assignment on January 8, 2010. Based upon a review of the complete case file, pleadings, and exhibits, 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 the People's Republic of China (PRC). (FORM at Page 1) The request and the attached documents were not admitted into evidence but were included in the record as Administrative Notice Documents I through XV. Applicant had no objection to these documents. The facts administratively noticed are set out in the Findings of Fact, below.

### **Findings of Fact**

Applicant's Answer admitted the allegations in the SOR. He submitted additional information in support of his request for a security clearance. (Item 4)

Applicant is 52 years old and married to a PRC citizen and resident. He was divorced from his first wife in May 2005. He has three children from his first marriage. Applicant met his current wife in December 2004 in a foreign location near where he worked for a government contractor. They started dating in May 2005. They married in September 2006. Applicant has a 14-year-old step-son in his current marriage. He also traveled to the PRC in September 2006 with his wife to visit her family. That trip is when he met his mother-in-law for the first time. Applicant visited his wife in the PRC in June and October 2008. Applicant's step-son and mother-in-law are citizens and residents of the PRC. His wife and her son have lived in the PRC since June 2008 (Items 4, 5, 6)

Applicant is a senior operations coordinator for a government contractor. He has 20 years of U.S. Army service. He previously held a Secret security clearance in the Army. He seeks a security clearance to perform his current job. (Items 4-6)

According to an interview with a government investigator on December 11, 2008; confirmed in his interrogatory answers made on May 3, 2009; and in his SOR Answer; Applicant gave his wife money to purchase a house in the . She lives there with her son. This purchase occurred in June 2008. Applicant is not a legal owner of this property because he is not a citizen of the PRC. Applicant's wife is seeking a U.S. visa and would like to reside in the United States with Applicant after his current contract expires. Applicant is sponsoring his wife for the visa. She intends to become a U.S. citizen when she is eligible. Applicant gives his wife \$4,000 monthly to support her and her son, and

his mother-in-law. Applicant voluntarily pays for his step-son's education. He has telephone contact with his wife and step-son daily. (Items 4-6)

I take administrative notice of the following facts relating to 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 Peoples 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* (Item V at Page 102) states the linkages between the military and Chinese commercial information technology companies and the 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. The U.S. State Department notifies visitors to the PRC that they are expected to register with the police within 24 hours of arrival in the PRC. (Items I to XV)

### **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, the administrative judge applies the guidelines 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.

According to 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 the 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 regarding 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.

AG ¶ 7 describes nine conditions that could raise a security concern and may be disqualifying, five of which may be 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;
- (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;
- (c) counterintelligence information, that may be classified, indicates that the individual's access to protected information may involve unacceptable risk to national security;
- (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;
- (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;
- (f) failure to report, when required, association with a foreign national;
- (g) unauthorized association with a suspected or known agent, associate, or employee of a foreign intelligence service;
- (h) indications that representatives or nationals from a foreign country are acting to increase the vulnerability of the individual to possible future exploitation, inducement, manipulation, pressure, or coercion; and
- (i) conduct, especially while traveling outside the U.S., which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country.

Applicant has ties of marriage, affection, and financial investment in the PRC, which raise a heightened security risk. He has daily contact with his wife and her son. They are citizens and residents of the PRC. The ties of affection and loyalty to his wife make Applicant subject to a risk of foreign exploitation, inducement, manipulation, pressure, or coercion by agents of the PRC. AG ¶ 7 (a) applies.

These same familial connections to his wife and her son create a potential for a conflict of interest between Applicant's obligations to protect U.S. classified information and his desire to continue to help his wife financially and emotionally. Applicant gives her \$4,000 monthly to support her. He gave her money to buy a house in the PRC. AG ¶ 7 (b) applies.

Applicant lives with his wife when he visits her in the PRC. That relationship creates a heightened risk of foreign inducement, manipulation, pressure, and coercion because he will seek to protect her and her son, and the house for which he paid. That desire makes him subject to PRC pressures, if they were to be applied. The requirement to register within 24 hours of arriving in the town where his wife lives also places a risk on Applicant. AG ¶ 7 (d) applies.

Next, Applicant's \$4,000 monthly stipend to his wife, and the cost of the house in the PRC, for which Applicant paid, creates a substantial financial and property interest in the PRC for Applicant. The desire to protect that investment could subject Applicant to a heightened risk of PRC influence or exploitation. AG ¶ 7 (e) applies.

Finally, Applicant owns property in the PRC and supports his wife who lives there and is a PRC citizen. He visited her regularly in 2008. This course of conduct makes Applicant vulnerable to exploitation, pressure, or coercion by the PRC because of his familial and financial connections to the PRC.

AG ¶ 8 provides six conditions that could mitigate security concerns arising under this guideline:

(a) 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.;

(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;

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and,

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

From these mitigating conditions, only AG ¶ 8 (b) may have some application. Applicant is a U.S. citizen, and served in the U.S. Army for 20 years. He held a security clearance during his Army service. He understands the requirements of holding a security clearance. As an American, he should have life-long relationships and loyalties to the United States. However, they are counter-balanced by his voluntary marriage to a PRC citizen and resident, and the substantial financial support he provides his wife, currently living in the PRC. With his military experience he should know of the PRC's historical espionage activities and the nature of a communist government. AG ¶ 8 (b) is not sufficient to mitigate the disqualifying conditions.

### **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.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. Applicant's marriage creates potential for pressure and coercion. He knew the citizenship of his wife when he married her. He has visited her three times in the PRC from 2006 to 2008, provided significant financial support to her for three years, and gave her money to purchase a house in the PRC. His financial interests in the PRC are substantial. Applicant was an adult when he entered into this relationship.

Overall, the record evidence leaves me with questions and substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under the guideline for Foreign Influence. I conclude the "whole-person" concept against 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:

Foreign Influence: **AGAINST APPLICANT**

### **Conclusion**

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

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PHILIP S. HOWE  
Administrative Judge