



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



In the matter of:)	
)	
)	ISCR Case No. 10-01284
)	
Applicant for Security Clearance)	

Appearances

For Government: Nichole Noel, Esquire, Department Counsel
For Applicant: *Pro se*

February 17, 2011

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I deny Applicant's eligibility for a security clearance.

Statement of the Case

Applicant signed an Electronic Questionnaire for Investigations Processing (e-QIP) version of a security clearance application (SF-86) on January 25, 2006. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on July 26, 2010 detailing security concerns under Guideline B, Foreign Influence, that provided the basis for its preliminary decision to deny him a security clearance. 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) implemented on September 1, 2006.

Applicant acknowledged receipt of the SOR on August 2, 2010. He answered the SOR in writing on August 10, 2010, requesting a hearing before an administrative judge. DOHA received the request on August 12, 2010, and Department Counsel was prepared to proceed on August 19, 2010. I received the case assignment on October 4, 2010. DOHA issued a notice of hearing on October 26, 2010, and I convened the hearing as scheduled on November 18, 2010. The Government offered two exhibits (GE) 1 and 2, which were received and admitted into evidence without objection. Applicant testified. He submitted nine exhibits (AE) A through I, which were received and admitted into evidence without objection. The record closed on November 18, 2010. DOHA received the transcript of the hearing (Tr.) on December 3, 2010.

Procedural and Evidentiary Rulings

Notice

Applicant received the hearing notice on November 5, 2010, less than 15 days before the hearing. (Tr. 8.) I advised Applicant of his right under ¶ E3.1.8 of the Directive to receive the notice 15 days before the hearing. Applicant affirmatively waived his right to the 15-day notice. (*Id.*)

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Peoples Republic of China (PRC). The request and the attached documents were not admitted into evidence, but were included in the record as Hearing Exhibit 1, I-XV. The facts administratively noticed will be limited to matters of general knowledge and matters not subject to reasonable dispute, and are set out in the Findings of Fact below.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶ 1.a and some of the facts in ¶ 1.b of the SOR. His admissions are incorporated herein as findings of fact. He denied the factual allegation in ¶ 1.b, concerning the residence of his stepson. He also provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant, who is 50 years old, works as a mechanic for a Department of Defense contractor. He began his employment with his current employer in 2009. He previously worked for another Department of Defense contractor in a similar position for approximately five years. Applicant's immediate supervisor, a military officer, describes Applicant as a valued member of their battalion. Applicant spoke candidly with him about his plans to marry a Chinese national, and Applicant knew his marriage may have a negative impact on his security clearance. Applicant has little exposure to sensitive

materials in his job and has zero access to any computer networks in the battalion. Applicant applied for a clearance as it is required for everyone in the unit. His supervisor does not believe that Applicant is a threat to national security. Applicant stated that he must use his supervisor's common access card to enter his work time and does so only with his supervisor's permission.¹

Applicant married his first wife when he was 17 years old. After 25 years of marriage, they separated. They divorced in 2005. He has two daughters, ages 32 and 29. Applicant's daughters, mother, stepfather, and two brothers are United States citizens by birth and live in the United States. His former wife is a United States citizen by birth. Her current residence is unknown. Applicant and his family members are not of Pacific-Asian heritage.²

After his divorce, Applicant met his second wife on an internet website. For almost two years, they communicated with each other by e-mail and through a web cam as she lived in the PRC. In 2006, Applicant decided he needed to meet her in person to decide if their relationship could develop into a long-term relationship. He also knew that a face-to-face meeting was required by the United States Citizenship and Immigration Services, formerly known as the United States Immigration and Naturalization Services, or INS, before he could request a fiance'e visa. He obtained his passport in June 2006 and traveled to her home town in the PRC in September 2006. He stayed three weeks in her home town. He met her parents, son, brother and friends, and visited her work place, while in the PRC. He did not encounter any problems during this visit with the government of the PRC.³

Upon his return from the PRC in the fall of 2006, Applicant applied for a fiance'e visa. The visa was issued approximately nine months later in 2007. His soon-to-be wife came to the United States in October 2007 with her 14-year-old son. Applicant and she married a few days after her arrival in October 2007. About six months later, she and her son returned to the PRC for a visit, as her mother was ill and her former employer owed her some money. She stayed for two months at his suggestion. She returned, but her son remained in the PRC as he missed his friends. Applicant's stepson returned to the United States in January 2010 at the insistence of his grandparents. He is a sophomore in high school, where he is learning English. He plans to attend college in the United States. His wife and stepson still hold passports from the PRC, as they are not citizens of the United States. There are no plans for them to travel to the PRC.⁴

Applicant's wife earned a bachelor's degree in engineering from a university in the PRC. She worked for 20 years as a structural engineer for the city planning

¹GE 1; GE 2; AE A; Tr. 33-34.

²GE 1; Tr. 19.

³GE 2; Tr. 19-20.

⁴GE 2; Tr. 23-24, 26-28, 32.

commission in her hometown. Her work involved reading construction blueprints, reviewing construction work for high rise buildings, and conducting site inspections. After moving to the United States, his wife obtained work as a housekeeper in a hotel. She learned that her engineering degree would not be accepted in the United States, and she decided not to return to college for an engineering degree. Rather, she decided to obtain training in accounting. She is currently enrolled at a technical college. She expects to receive a certificate in accounting when she completes her program in March 2011. She left her housekeeping job to attend school full-time in the fall of 2010. She will look for entry level work in accounting when she completes her classes. She has also taken additional courses in English since arriving in the United States. Applicant describes her English as “pretty good” as she uses her translator infrequently.⁵

The parents of Applicant’s wife are retired university professors, who taught agriculture and farming related subjects. They live in an apartment near the university where they worked. Their residence is state sponsored and may have been provided to them in recognition for their many years of work at the university. Applicant does not know the actual financial arrangement for his parents-in-law’s apartment. Her parents are not involved in political activities in the PRC.⁶

Applicant’s mother-in-law does not speak or understand English, and he does not speak or understand Chinese. Thus, he does not talk with his mother-in-law. His wife speaks with her mother on a weekly basis. His father-in-law speaks English, and Applicant has spoken with him on the telephone. When Applicant speaks with his father-in-law, it is usually a greeting and an inquiry about how he is. To his knowledge, his wife does not talk with her brother, and does not talk regularly with her father.⁷

Since arriving in the United States, his wife has made friends with Chinese individuals at her school who are married to United States citizens. Applicant and his wife socialize with her new friends. Her parents have not traveled to the United States and have no intent to move from the PRC. His wife has one cousin, who lives in the United States and is married to a United States citizen.⁸

Applicant’s wife does not own property in the PRC. She is not entitled to any benefits from the Chinese government and does not have any bank accounts or assets in the PRC. Her son does not have any assets in the PRC. Applicant and his wife are buying a house and a car in the United States.⁹

⁵GE 2; AE C; Tr. 20-22, 26-29.

⁶GE 2; Tr. 24-25.

⁷GE 2; Tr. 31–32.

⁸GE 2; Tr. 25, 33.

⁹GE 2; Tr. 30, 33-34

Applicant's wife intends to become a United States citizen when she is eligible. She can read, write, and speak English, a requirement for citizenship. She must also reside in the United States continuously for three years. She will meet this requirement in the summer of 2011. She is learning United States history and civics, also a requirement for citizenship.¹⁰

Applicant denied any strong family bonds with his parents-in-law. When asked at the hearing about what he would do if his wife told him that her parents were being pressured by the government of the PRC to ask him for classified information, Applicant responded that there was nothing he could do to help them because he did not intend to do anything to help the "Chinese" government and cause harm to the United States. He does not believe his wife's family would be targeted because he works as a mechanic and does not have access to classified information. To his knowledge, his wife's family has not been pressured by the government of the PRC. Neither he nor his wife has been approached by anyone connected with the government of the PRC. Applicant's wife has not shown any interest in his job. She has not asked any questions about his work. Applicant drove her to his work site once, but did not take her inside. He wanted her to know where he worked if she needed to reach him. She has not returned to his work location and has not been inside his work area, which is not a restricted area.¹¹

I take administrative notice of the following facts on the Peoples Republic of China (PRC). The PRC is an authoritarian, communist party-led state. Human rights violations continue to be problematic. Concerns regarding the PRC's weapons development, theft of classified technology information between 1979 and 1999, and industrial espionage activities remain. The PRC continues to have active intelligence operations in the United States, which seek to obtain military and industrial secrets through Americans of Chinese ancestry. In its efforts to obtain this information, the PRC often targets individuals with access to classified information. On the other hand, the PRC supports the United States's anti-terrorism position and activities. The United States and the PRC have developed joint trade agreements, resulting in the sale of goods to each other, and work together on environmental issues. The PCR enjoys a most favored nation status in trading with the United States. The PRC has opened its doors to outside investment. Terrorism is rare in the PRC and is mostly related to criminal activity. The PRC continues to be a safe country for travel.¹²

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially

¹⁰AE B.

¹¹Tr. 33-35.

¹²Hearing Exhibit 1, I-XV.

disqualifying conditions and mitigating conditions, which are used 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.

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. . . ." An applicant has the ultimate burden of persuasion for 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 an 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 relating to the guideline 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 United States 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.

Under the potential disqualifying conditions described in AG ¶ 7, the following conditions could raise a security concern and may be disqualifying 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; and

(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.

Applicant is a U.S. citizen by birth. His mother is also a U.S. citizen by birth as are his two daughters and two brothers. They live in the United States. His stepfather and former wife were U.S. citizens by birth. Applicant and his family members are not descendant's of a Pacific-Asian heritage. Thus, no security concern is raised by these family members. Applicant's wife and stepson are citizens of the PRC, and residents of the United States. Because they reside in the United States, they do not directly raise a security concern. His wife's mother, father, and brother are citizens and residents of the PRC. Applicant has minimal contact with his wife's parents, particularly her mother, who does not speak English. He speaks infrequently to his father-in-law, who can speak English. He and his wife do not speak to her brother. Applicant's wife, however, speaks to her mother on a weekly basis. She speaks infrequently with her father. His stepson communicates with his friends in the PRC through the Internet. His wife maintains a normal, familial relationship with her mother, and a somewhat more limited familial relationship with her father. Applicant met her parents during his visit to the PRC in 2006, but has not visited with them in person since he left the PRC. His wife arrived in the United States in October 2007. She returned to to the PRC in 2008, but has otherwise remained in the United States. He does not provide financial support for her family in the PRC. His wife's family relationships are not *per se* a reason to deny

Applicant a security clearance, but her contacts with family members must be considered in deciding whether to grant Applicant a clearance. The Government must establish that these family relationships create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion or would create a potential conflict of interest between his obligations to protect sensitive information and his desire to help his family members. The Appeal Board has held that there is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse. See ADP Case No. 08-10099 (App. Bd. Jan. 28, 2011), ISCR Case No. 03-26176 (App. Bd. Oct. 14, 2005); ISCR Case No. 01-03120 (App. Bd. Feb. 20, 2002).

In determining if a heightened risk exists, I must look at Applicant's relationship and contacts with his wife's family members as well as the nature of the foreign government involved, the intelligence gathering history of the PRC, the presence of terrorist activity within the PRC, and the PRC's human rights record. See ADP Case No. 08-10099 (App. Bd. Jan. 28, 2011), ISCR Case No. 07-05809 (App. Bd. May 27, 2008). The risk that an applicant could be targeted for manipulation or induced into compromising classified information is real, not theoretical. Applicant's wife's relationship and contacts with her mother and father and his stepson's contacts with friends in the PRC raise a heightened risk of security concerns because of the activities of the government of the PRC to its goal of obtaining military, technological, and classified information from the United States. The evidence shows that the PRC government engages in espionage activities in the United States and that it targets U.S. citizens, particularly those of Chinese ancestry in the United States by exploiting, manipulating, pressuring, or coercing them to obtain protected information.

Under the guidelines, the potentially conflicting loyalties may be weighed to determine if an applicant can be expected to resolve any conflict in favor of the United States interests. In determining if Applicant's contacts in the PRC cause security concerns, I considered that the PRC supports the United States in the fight against terrorism, that the United States has granted the PRC most favored nation status, and that the United States and the PRC have joint trade agreements. I also considered the active intelligence gathering activities of the PRC in the United States, as the PRC continues its significant efforts to obtain military and industrial secrets through Americans of Chinese ancestry.¹³ The government of the PRC specifically targets Chinese-Americans citizens for assistance in collecting classified information from the United States. While none of these considerations by themselves dispose of the issue, they are all factors to be considered in determining Applicant's vulnerability to pressure or coercion because of his wife's family members in the PRC. The activities of the government of the PRC, his stepson's contacts with friends in the PRC, and his wife's contacts with her family, as well as his, in the PRC raise a heightened risk under AG ¶¶ 7(a), 7(b), and 7(d).

¹³The Government submitted several examples of the PRC targeting naturalized American citizens born in the PRC, but no example of the PRC targeting American citizens not of Chinese ancestry. Hearing Exhibit 1, I-XV.

In deciding if Applicant has established mitigation under AG ¶ 8 (a), I must consider:

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 United States

Under AG ¶ 8(b), I must consider whether Applicant has established:

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 United States, that the individual can be expected to resolve any conflict of interest in favor of the United States interests.

Finally, under AG ¶ 8(c), I must consider whether Applicant has established:

(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's relationship with his wife's family members is not an automatic basis to deny him a security clearance; however, his burden of proof on mitigation requires more than statements about the limited scope of his conversations with his mother-in-law and his father-in-law. See ISCR Case No. 07-02485 (App. Bd. May 9, 2008). His wife worked for a city government in the PRC for 20 years as a structural engineer, and her parents worked for the university. Her family members have never held a political position, nor have they been targeted by the government of the PRC. Her family members have never been imprisoned nor is there any evidence that her family members in the PRC have suffered any abuses from the PRC government. However, the Appeal Board has held that her family's obscurity does not provide a meaningful measure when the family are subject to the authority of a regime that has a dismal human rights record. See ADP Case No. 08-10099 (App. Bd. Jan. 28, 2011). Applicant's wife and stepson continue to hold passports from the PRC, as they are not U.S. citizens. They have no plans for travel to the PRC, and her family living in the PRC has not traveled to the United States. Applicant's wife speaks with her mother on a weekly basis and her son continues to interact regularly with his friends in the PRC through the internet. Applicant has limited contact with his wife's parents and none with her brother. His wife does not have a strong emotional tie to her brother. His telephone conversations with his mother-in-law are limited to "hi" because of a language barrier, and his telephone calls with his father-in-law are general and casual. His closest family members are his wife and her son, who are residents of the United States. She and her son do not own property in the PRC and do not keep any financial assets in the PRC.

Before he married his wife, Applicant complied with the rules of the U.S. government and traveled to the PRC to meet her and her family. He has not returned to the PRC. Applicant specifically and credibly stated at the hearing that if the PRC government threatened her parents, he would not do anything as he would not help the Chinese government. His supervisor clearly stated that he did not have access to classified information.¹⁴ Because he is a mechanic, Applicant does not believe that the government of the PRC would have any interest in him.

Balancing these factors as well as the PRC's support of the anti-terrorism position and activities of the United States, I find that Applicant's contact with his mother-in-law and brother-in-law are casual and infrequent. Because he talks with his father-in-law, he has developed a bond with him. Most importantly, the PRC actively seeks military and economic information from the United States, which must be weighed against his statement that he would not do anything to help his wife's family in the PRC, if pressured, because he would not help the Chinese government. Applicant has no connections to the culture of the PRC, only to the culture of the United States. While he does not work with classified information, and he is not given access to classified information, this is not a factor in determining his eligibility for a security clearance. Applicant lives with his wife, who maintains regular contact with her parents in the PRC, and his stepson, who regular communicates with his friends in the PRC. In weighing these facts and all the facts of record, I find that Applicant has not provided sufficient evidence to mitigate the security concerns raised. See ISCR Case No. 07-02485 (App. Bd. May 9, 2008). Given that terrorism is rare in the PRC, there is little likelihood of threats by terrorists organizations against Applicant's wife's family in the PRC. His loyalties are to the United States, not to the PRC, and are not questioned. His loyalty to the United States is insufficient to show mitigation of the security concerns raised by his marriage. Applicant has not mitigated the Government's security concerns as to his contacts with his in-laws under AG ¶ 8.

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

¹⁴Lack of current access to classified information in the work environment is not a factor in granting a security clearance.

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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant married a woman from the PRC knowing that his marriage had the potential to affect his eligibility for a security clearance. He complied with the requirements of the U.S. government and traveled to China to meet his wife and her family before he married her. Because of the language barrier, he has not developed any emotional bonds with his mother-in-law and his contacts are extremely limited. He has developed some bonds with his father-in-law, and since his stepson returned to the United States a year ago, he has developed stronger bonds with him. His wife decided not to continue her career as an engineer. Instead, she is training to work in the accounting field. They socialize with other couples who are both Chinese and American. Applicant's wife shows no interest in his work or his job, as she has not asked, nor does she ask, him about his work. He is loyal to the United States, where he was born and raised.

The PRC, however, actively targets Americans who were born and raised in the PRC and Americans of Chinese ancestry to participate in its economic and industrial espionage program to gain access to classified information and industrial secrets. The PRC has operated its espionage program for many years and continues to do so in an effort to gain information from the United States which is beneficial to the PRC's military growth and to its goals of becoming a world power. Because of the activities of the government of the PRC, Applicant has not provided sufficient evidence to mitigate the security concerns raised by his marriage.

Overall, the record evidence leaves me with 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 under Guideline B.

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

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.

MARY E. HENRY
Administrative Judge