



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



In the matter of:)	
)	
)	ISCR Case No. 10-04452
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard Stevens, Esq., Department Counsel
For Applicant: *Pro se*

05/11/2012

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline B, Foreign Influence. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On January 20, 2012, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B. 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 answered the SOR on February 6, 2012, and requested a hearing before an administrative judge. The case was assigned to me on March 14, 2012. DOHA issued a Notice of Hearing on April 2, 2012. I convened the hearing as

scheduled on April 18, 2012. Applicant acknowledged she received 15 days notice. The Government offered Exhibits (GE) 1 through 6, which were admitted into evidence without objection. The Government requested administrative notice be taken of the facts contained in Hearing Exhibit (HE) I. There was no objection, and I have taken administrative notice of the facts contained in HE I. Applicant offered Applicant Exhibits (AE) A through D, which were admitted without objection. Applicant and one witness testified on her behalf. DOHA received the hearing transcript (Tr.) on April 26, 2012.

Findings of Fact

Applicant admitted all the SOR allegations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 47 years old. She was born in the People's Republic of China (China). She earned a bachelor's degree in China in 1985. In 1986, because she was the highest rated student in her department, she was selected to study in the United States. She came to the United States in 1986 on a student visa. Her education was funded by China. She stated that after the Tiananmen Square incident in China, Chinese students in the United States were offered an opportunity to change the status of their visas so they could remain in the country. Applicant remained in the United States. She became a permanent resident in 1992 and a naturalized citizen in 1999. She earned a master's degree in 1987 and a Ph.D. in 1991.¹

Applicant met her husband, who was also from China, in the United States, and they married in 1986. He became a permanent resident and a naturalized citizen of the United States at the same time as Applicant. They have two daughters, both of whom were born in the United States.²

Applicant returned to China in 1994. She was a permanent resident of the United States at the time and had to obtain a reentry permit. She had an expired Chinese passport that she lost when she moved in 2010.³

Applicant's parents are citizens and residents of China. Her mother is a retired engineer. Before retiring she worked for an institution where she supervised graduate students. She receives a government pension. Her father is an engineer, and in the past, worked at a company doing government research. He retired and now works as a consultant for a different company. He receives a government pension. Applicant described her parents as well off, and she has not provided them any monetary support.⁴

¹ Tr. 25, 33-42, 55-59.

² Tr. 56.

³ Tr.33-35, 42, 70-71.

⁴ Tr. 28-31, 59.

Applicant has one sister, who is a physician. She is a citizen and resident of China. She is divorced and has a 13-year-old daughter.⁵

Applicant's mother lived with her in the United States in 1996 for about a year, to help care for her oldest daughter. Her mother also came for a short visit in 1991, for Applicant's graduation from school. In 2010, Applicant's niece visited her in the United States for about three weeks.⁶

Applicant's parents-in-law are citizens and residents of China. They both worked at a university. They are both retired and receive pensions from the Chinese government. In 1997, Applicant's parents-in-laws came to visit them in the United States for about a year, to help her care for her oldest daughter. Over the years, Applicant and her husband have provided his parents approximately \$100,000 in monetary support.⁷

Applicant's husband's brother and his wife are citizens and residents of China. He sells furniture and his wife works with him. He has a daughter from a previous marriage. Her husband's sister and her husband are citizens and residents of China. She works for a bank, and he works in the textile business. They have a daughter. All of Applicant's and her husband's extended family are citizens and residents of China.⁸

Since 1991, Applicant has worked in academia, in a specialized area of expertise, at different universities. She does research and recruits the best qualified students from around the world to study and work in her area of expertise. Ninety percent of the students that participate in her program are foreign and about eighty percent of them are Chinese. Because she is familiar with China, she focuses her recruiting on Chinese students. She interviews them by telephone, and her selection is based solely on their prior accomplishments. She does not know if they are affiliated with the Chinese government. When the students are selected, they are funded by the American university, work as teaching assistants, and live off campus. Applicant does not sponsor the students. Her only involvement with them is to recruit the best qualified students. The student and the university are responsible for complying with the passport and visa entry requirements. Many of these students remain in the United States after they graduate and seek employment with American companies. Applicant recruits scholars and not those who may have a second agenda. Her obligation is to bring the best and brightest students to the university to work on projects. Once they complete their degree, these students are on their own to get a job or return to China. Many students stay in the United States, but some return to China. She stated that, through her recruitment, she has helped enhance the brain power of the United States.⁹

⁵ Tr. 31, 59.

⁶ Tr. 65-67.

⁷ Tr. 28, 32, 60, 67-68.

⁸ Tr. 32-33, 60-61.

⁹ Tr. 26, 43-51.

Applicant and her family returned to China in 1994, and annually from 2003 to 2007, to visit both her husband's and her relatives. She has not been to China since 2007. She has a future business trip planned to Hong Kong and will visit China and her relatives while on this trip. She will also give a seminar at a Chinese university while there. One of her daughters will accompany her on the trip. Applicant's expenses are being partially covered by the Chinese university. In the past, she has been invited by Chinese universities and professors she is acquainted with to conduct lectures in China. She has funded her own trips on occasion, and other trips were paid for by the universities.¹⁰

Applicant and her husband do not have any financial interests in China. Their financial interests in the United States are approximately \$3 million. She does not know if she will receive any inheritance from her parents.¹¹

The chairman of the department where Applicant works testified on her behalf. He has known Applicant since 1993, and he is her direct supervisor. He considers Applicant very professional and she does all the right things. He indicated that it is very difficult to recruit U.S. students to get their Ph.D., so they recruit foreign students. About half of them are from China, and most stay in the United States after completing their studies. Many of them are funded by the United States. The witness stated that about 25% of the grant money they receive annually is from the Department of Defense. Most of their research is published, open to everyone, and not classified.¹²

People's Republic of China

China has an authoritarian, communist government. Chinese party committees work to see that party and state policy guidance is followed in all important Chinese government, economic, and cultural institutions.

China's military is pursuing comprehensive transformation and modernization of its military forces intended to improve its capacity for power projection. China has designated specific missions that go beyond its coastal borders.

China is the most aggressive country conducting espionage against the United States. It focuses on obtaining information and technologies beneficial to China's military modernization and economic development. China is actively engaged in efforts to acquire restricted U.S. technologies. The Chinese government encourages and rewards private citizens who obtain technology on its behalf. The Chinese government offers financial inducements to U.S. government officials in order to encourage them to

¹⁰ Tr. 30, 33, 61-65, 69.

¹¹ Tr. 68-69, 71.

¹² Tr. 74-81.

compromise classified material. China is ranked second as the leading destination for illegal exports of restricted U.S. technology. China's enterprise-directed espionage is taking on a more targeted form. Commercial entities are targeting restricted technologies acting as surrogate collectors for the Chinese government. Chinese intelligence personnel target Chinese-Americans who may be sympathetic and are willing to act as a "friend of China." They appeal to the person's desire to help China in some way through ethnic targeting to arouse feelings of obligation.

U.S. counterintelligence officials suggest that China's intelligence collection efforts are growing in scale, intensity, and sophistication, and represent a substantial threat to our national security.

China has a poor human rights record. It suppresses political dissent, and practices arbitrary arrest and detention, forced confessions, torture, and other prisoner mistreatment.

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 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. 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 to obtain 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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 conditions that could raise a security concern and may be disqualifying. Three are potentially applicable:

(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 person, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

AG ¶¶ 7(a) and 7(d) require evidence of a “heightened risk.” The “heightened risk” necessary to raise AG ¶¶ 7(a) and 7(d) is a relatively low standard. “Heightened risk” denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or owning property in a foreign country. The totality of Applicant’s family ties to a foreign country, as well as each individual family tie, must be considered.

Guideline B is not limited to countries hostile to the United States. The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States.

Most nations with substantial military establishments seek classified and sensitive information from the United States because it has the largest military industrial complex and most advanced military establishment in the world. Chinese officials actively engage in conduct to obtain restricted technologies and is the most aggressive country conducting espionage against the United States.

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, a family member is associated with or dependent upon the government, the country is known to conduct intelligence operations against the United States, or there is a serious problem in the country with crime or terrorism. China conducts a full range of activities to collect economic information and technology from U.S. targets. China targets U.S. citizens and Chinese-American citizens who may be sympathetic to China. China has a poor human rights record.

These factors create a heavy burden of persuasion on Applicant to demonstrate that her relationship with her parents, sister, parents-in-law, brother-in-law, and sister-in-law do not pose a security risk, and that she is not in a position to be forced to choose between loyalty to the United States and them. With China’s poor human rights record, its aggressive collection efforts, and its focus on obtaining U.S. intelligence and conducting espionage operations, it is conceivable it would target its own citizens or a former citizen living in the United States in an attempt to gather valuable information from the United States. Applicant’s contacts and relationships with her relatives in China are sufficiently close to raise a possible security concern.

Along with Applicant’s relatives in China, her husband’s relatives also live there. She and her husband provide his parents substantial financial support. These facts

potentially create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion, and also create a potential conflict of interest. I find AG §§ 7(a), 7(b), and 7(d) apply.

Applicant recruits Chinese students to attend the university where she teaches. Some of the students remain in the United States after they complete their studies, others return to China. She does not sponsor their entry into the United States. I find for Applicant on SOR § 1(e).

I have also analyzed all of the facts and considered all of the mitigating conditions for this security concern under AG § 8 and conclude the following three are potentially applicable:

(a) the nature of the relationship 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 and 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 interests in favor of the U.S. interests; 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's parents, sister, parents-in-law, brother-in-law, and sister-in-law are citizens and residents of China. Applicant and her husband maintain close contact with their relatives in China. They provide financial support to her husband's parents. Her mother visited her in the United States for a year, as did her husband's parents. None of these relationships can be characterized as casual and infrequent. Therefore, I cannot conclude that Applicant's relationships are unlikely to create a risk for foreign influence or exploitation. I find AG § 8(c) does not apply.

Due to China's aggressive espionage tactics against the United States, their undeterred quest for obtaining restricted U.S. technologies, and their pursuit of sympathetic Chinese-American citizens, there is considerable cause for concern. Under the circumstances, Applicant has not established that it is unlikely she could be placed in a position of having to choose between the interests of the United States and that of her family in China and the Chinese government. I find there is a conflict of interest even though Applicant has a commitment to the United States. Her sense of loyalty to her family and her husband's family in China is not minimal. Therefore, I cannot apply AG §§ 8(a) or 8(b).

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 the 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant has been a devoted academic for many years. Her commitment to her profession is unquestioned. Her expertise and achievements are impressive. Her loyalty to the United States is also unquestioned. However, her close ties to both her family and her husband's family in China create a heightened risk. Both her parents and parents-in-law receive pensions from the Chinese government. Her contact with her family in China creates a heightened risk that is not mitigated. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns raised under the Foreign Influence guideline.

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
Subparagraphs 1.a-1.d:	Against Applicant
Subparagraph 1.e:	For 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 a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge