



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 11-11976

Appearances

For Government: David F. Hayes, Esquire, Department Counsel
For Applicant: *Pro se*

07/02/2013

Decision

HOWE, Philip S., Administrative Judge:

On January 31, 2011, Applicant submitted her electronic version of the Security Clearance Application (SF 86) (e-QIP). On August 24, 2012, the Department of Defense issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines B and C. 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 in writing. Applicant requested her case be decided on the written record in lieu of a hearing.

On April 8, 2013, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant on that date. She was given the opportunity to file objections and submit material in

refutation, extenuation, or mitigation. Applicant received the file on April 18, 2013. Applicant did not file a Response to the FORM within the 30 day time allowed that would have expired on May 18, 2013. I received the case assignment on June 10, 2013. Based upon a review of the complete case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant submitted two Answers. The first Answer is dated September 19, 2012. The second document was signed October 29, 2012, adding more detail to the first Answer, but consistent with it. She admits the allegations under Paragraph 1 (Guideline B) and the first two allegations of Paragraph 2 (Guideline C) of the SOR. She denies the remaining 28 allegations of Paragraph 2 pertaining to meetings or dinners, which she listed on her SF-86. Her denials state she did not attend each of these meetings, but merely disclosed them because the question on the SF-86 sought such disclosure. (Items 1, 4, 7)

Applicant is 24 years old, unmarried, college-educated, and a native born U.S. citizen. Her parents paid for her college education in the United States. She lives with her parents in their apartment in the United States. She works for a defense contractor. Her parents were born outside the United States. Her father was born in Hong Kong when it was a British territory. Her mother was born in the People's Republic of China (PRC). They are both naturalized U.S. citizens. Her father works for a Hong Kong economic development organization (Entity), with responsibility for a territory. He travels throughout his assigned territory promoting Hong Kong manufacturers and their products. Applicant's mother is not employed outside the home. Applicant has one sister who is a native born U.S. citizen. (Items 8-11)

Applicant's grandmother is a citizen and resident of the PRC. Her maternal uncles, of which there are three, are citizens of the PRC and live outside the PRC. Applicant does not have more than annual contact with any of these relatives. (Items 4, 7, 8)

Applicant worked at the Entity office in the United States from July to August 2006 during her summer vacation from college. She described her tasks during this summer internship as doing data entry of a client list. (Items 4, 7)

Applicant obtained a Hong Kong identification card in 1995 when she was eight years old. She renewed it in 2000. It allowed her to travel into Hong Kong and the PRC. She could obtain that document because her father was born in Hong Kong, and as his daughter she has the right to live in Hong Kong if she were to choose to do so. Applicant lived in Hong Kong from 1995 to 1997 and from 1999 to 2000. Applicant told the government investigator in August 2011 that she would be willing to relinquish the card to her employer's facility security officer but the record does not show that such action was ever taken. The record contains a memorandum from her employer's

security officer that Applicant's Hong Kong identification card on September 20, 2011 was at her parent's house and she could not retrieve it for some time. There is no further information about the location or status of the identification card in the record. Applicant told the government investigator in August 2011 that she did not have a foreign passport. She admitted she could obtain another card at any time because she is on the registry in the Hong Kong government offices, but would not do so. (Items 4, 7, 8, 9, 12)

Applicant denies attending a PRC New Year's party at the PRC Consulate in February 2008. She also denies attending dinners and meetings while traveling with her father between April and December 2010 when he was on business. She also denied attending June 2010 luncheons in Hong Kong and PRC (SOR Subparagraph 2.c to 2.dd). Applicant explained in her second Answer that she responded to Question 20b, Paragraph 4 of the SF-86, which asked if any family member had a contact with a foreign government or its representatives anywhere in the world. She made these disclosures about the dinners on her SF-86 but did not mention her father's job required such meetings or dinners. She did not clarify it in the "Additional Comments" section of the SF-86. (Items 4, 7, 8-11)

Applicant does not own real estate here. She has not explained what financial connections or investments she has in the United States separate and apart from her family's assets. (Items 8, 9)

I take administrative notice of the following facts concerning the PRC and Hong Kong, which is a part of the PRC:

The PRC is a one-party Communist totalitarian state. It has an economy growing at 10% annually. The PRC is expanding its military forces, including its naval forces. All military forces are under the People's Liberation Army (PLA).

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. Diplomatic relations with the PRC were not established until 1972. Taiwan remains an issue of contention between the two countries.

The PRC engages regularly in military, economic, and industrial espionage, including stealing nuclear weapons technology, missile design information, and commercial technology from the United States and other 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 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 PLA is integrated into the civil industrial base in the PRC, known as the “digital triangle.” The *2011 Annual Report to Congress: Military and Security Developments Involving the People’s Republic of China*, states the linkages between the military, 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 in its *2010 Human Rights Report: China*, 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. (Administrative Notice Summary)

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, 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.

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. 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 such conditions apply:

- (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's father works for a Hong Kong Entity engaged in international business. He is a U.S. citizen born in Hong Kong. Through him, Applicant has regular contact with the Hong Kong organization and the PRC. AG ¶ 7 (a) applies.

Applicant's familial connection to the PRC and Hong Kong Entity include working for its New York office in the summer of 2006. She also benefited from the income earned by her father over the years from the Entity.

Applicant's father has extensive, broad, and on-going connections to organizations and people in the PRC and Hong Kong. These associations started many years ago. Her father travels extensively for the Entity, meeting with foreign economic and political leaders.

These long-standing connections through her father create a potential conflict of interest for Applicant between her obligation to protect sensitive information or technology and her desire to help her father if called upon by him or his organization to do so. AG ¶ 7 (b) applies.

Applicant lived with her parents all her life. She continues to live with them. Her SF-86 declares her residence until the present as her parent's apartment. Such a close familial relationship in shared living quarters creates a heightened risk of foreign inducement, manipulation, pressure, or coercion. AG ¶ 7 (d) applies.

AG ¶ 8 provides conditions that could mitigate security concerns:

(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.

None of these mitigating factors apply. Applicant's family members, especially her parents and sister, make it likely that Applicant could 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. Further, she provided no evidence of deep and longstanding loyalties to the United States beyond being born here. Applicant's contact with her relatives is not casual or infrequent. AG ¶¶ 8 (a), (b), and (c) are not applicable.

Any foreign contacts Applicant has in Hong Kong or the PRC are not part of U.S. Government business or approved by the cognizant security authority. AG ¶ 8 (d) does not apply.

There is no relevant information in the FORM showing Applicant reported foreign contacts in accordance with agency requirements. AG ¶ 8 (e) does not apply.

Applicant did not show any foreign financial or property interest, which could cause a conflict of interest and could be used to manipulate her. Therefore, AG ¶ 8 (f) does not apply.

Guideline C, Foreign Preference

AG ¶ 9 states the security concern involving foreign preference:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

AG ¶ 10 describes three conditions that could raise a security concern and may be disqualifying:

(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to:

(1) possession of a current foreign passport;

(2) military service or a willingness to bear arms for a foreign country;

(3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;

(4) residence in a foreign country to meet citizenship requirements;

(5) using foreign citizenship to protect financial or business interests in another country;

(6) seeking or holding political office in a foreign country; and

(7) voting in a foreign election;

(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen;

(c) performing or attempting to perform duties, or otherwise acting, so as to serve the interests of a foreign person, group, organization, or government in conflict with the national security interest; and,

(d) any statement or action that shows allegiance to a country other than the United States: for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship.

Applicant obtained a Hong Kong identification card through her father when she was eight years old. She renewed it once. She did not surrender it to her security officer until 2011, after the security clearance process commenced. She could use that card to live in Hong Kong and travel freely to the PRC. Applicant's acquisition and continuation of that Hong Kong card was done to obtain recognition of her Hong Kong citizenship and to allow her to make use of it. AG ¶¶ 10 (a)(3) and (b) apply.

Applicant's explanation of the list of meetings in 2010 as actually being the business of her father is not persuasive in showing that she did not attend these sessions with foreign leaders. She did not support her statement with any objective evidence of her non-participation or her lack of presence in any of these countries. It was because of her connections to Hong Kong and her father's birth in Hong Kong that she should visit these other countries and the dinners became available to her. Applicant performed duties to serve the interests of Hong Kong, a part of the PRC. AG ¶¶ 10 (c) and (d) apply.

AG ¶ 11 provides conditions that could mitigate security concerns:

- (a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;
- (b) the individual has expressed a willingness to renounce dual citizenship;
- (c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;
- (d) use of a foreign passport is approved by the cognizant security authority;
- (e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated; and
- (f) the vote in a foreign election was encouraged by the United States Government.

Applicant's ability to obtain the Hong Kong identification card that would allow her to enter Hong Kong and the PRC derives from her father's birth in Hong Kong. Applicant's identification card was surrendered to her security officer who apparently is maintaining it in a secure location. Applicant was born in the United States. The record does not contain any information about dual citizenship held by her except for the Hong Kong identification card. But her parents are now U.S. citizens. Their possible dual citizenship with the PRC is not explained in the record. Therefore, AG ¶ 11 (a) does not apply.

Applicant does not express directly a willingness to renounce dual citizenship, even renouncing her Hong Kong status. Therefore, AG ¶ 11 (b) does not apply.

Applicant was eight years old when she obtained the Hong Kong identification card. She became 18 years old in 2006. She lived in Hong Kong as a minor. AG ¶ 11 (c) has limited application under the limited facts Applicant presented. But not enough to overcome the close connections her family has to the PRC and Hong Kong and the continuing benefits, such as her college education and trips to foreign countries, she has received from those long-time and intimate affiliations.

The use of her Hong Kong identification card was not authorized by any U.S. security authority. The card has not been destroyed, surrendered, or invalidated by a cognizant security authority. There is no evidence in the record of Applicant voting in a foreign election. Therefore, AG ¶ 11 (d), (e), and (f) do not apply.

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 has strong connections to Hong Kong and a PRC-controlled business entity through her father. She has benefited during her 24 years of life in the United States from his income from this entity. Applicant's father has extensive connections to Hong Kong and works for an organization that is part of the Hong Kong establishment.

Applicant is young and has not established a work record and substantial attachments to the United States, such as owning a home, having extensive savings and investments in the U.S., and other strong connections to her birth country to overcome the potential based on these facts. She continues to live with and travel with her parents. They are closely connected to Hong Kong and the PRC because of the father's employment and both were born either in Hong Kong or in the PRC.

The PRC conducts extensive economic espionage throughout the world and particularly in the United States. The potential for pressure, coercion, exploitation, or duress is great in such an arrangement.

Overall, the record evidence leaves me with questions or 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. She did mitigate the security concerns under the guideline for Foreign Preference. 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 ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraph 1.a to 1.c:	Against Applicant
Paragraph 2, Guideline C:	AGAINST APPLICANT
Subparagraphs 2.a to 2.dd:	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.

PHILIP S. HOWE
Administrative Judge