



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



In the matter of:)	
)	
)	ISCR Case No. 11-13790
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

04/18/2013

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, the Government's FORM, Applicant's Response, and the exhibits, I conclude that Applicant has not mitigated the security concerns raised under the guideline for foreign influence. His request for a security clearance is denied.

Statement of the Case

On September 7, 2012, the Department of Defense (DOD) issued a Statement of Reasons (SOR), under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006. The SOR listed security concerns addressed in the Directive under Guideline B (foreign influence). In his September 26, 2012 Answer to the SOR, Applicant admitted the six allegations under Guideline B. He also requested a decision without a hearing.

Department Counsel for the Defense Office of Hearings and Appeals (DOHA) prepared a written presentation of the Government's case in a File of Relevant Material (FORM) dated January 29, 2013. On February 5, 2013, the FORM was forwarded to

Applicant, along with four evidentiary documents (Items 1 through 4), and 14 documents for administrative notice (Items 5 through 18). Applicant received the FORM on February 12, 2013. He timely submitted a response to the FORM (Response). The case was assigned to me on April 5, 2013, for an administrative decision based on the record.

Procedural Matters

Department Counsel requested I take administrative notice of information related to the People's Republic of China (PRC; China). Administrative notice is the appropriate type of notice for administrative proceedings.¹ The facts administratively noticed are limited to matters of general knowledge and not subject to reasonable dispute. I take administrative notice of facts relating to China, as set forth in Items 5 through 18.

Findings of Fact

Applicant's admissions in response to the SOR are incorporated as findings of fact. After a thorough review of the pleadings, Applicant's Answer to the SOR, the FORM, and Applicant's Response, I make the following additional findings.

Applicant is 35 years old and was born in China. He attended school there through 11th grade. He came to the United States in 1997, when he was 19 years old. He earned a bachelor's degree in 2003 and a master's degree in 2007 in electrical engineering, both at the same U.S. university. He became a naturalized U.S. citizen in August 2003. He has not served in the Chinese or U.S. military. He was hired by a defense contractor in 2003, and holds the position of senior engineer. (Items 3, 4)

Applicant met his wife while they were high school students in China. She was a Chinese citizen when they married in China in July 2004. He sponsored his wife's immigration to the United States in 2005. She is a naturalized U.S. citizen and a physician. She works at a U.S. hospital. As of 2011, Applicant and his wife did not have children. (Item 4)

During a security interview in June 2011, Applicant discussed his foreign family members, with whom he has personal contact and a "close bond of affection." Applicant also described his travel to China. He traveled there in 2002, 2003, and 2004 to visit his girlfriend. After they married, they traveled to China to visit her family. Applicant visited three times in 2004; once in 2005; annually from 2007 to 2009, and in 2011.² (Items 2, 3, 4)

¹ See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004)); *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)).

² It is unclear from the evidence if Applicant visited China in 2010.

Applicant's father was a transportation worker in China. Applicant's mother was a farmer. Applicant's family left China "to seek a better standard of living and lifestyle" in the United States. Both of Applicant's parents are retired and live in the United States. Applicant's mother became a naturalized U.S. citizen in 2004. His father remains a citizen of China, but submitted an application for naturalization in June 2012. However, because he does not speak English, Applicant noted that his father would have to take the citizenship test in Chinese. Applicant is in touch with his parents regularly, and stated in his security interview, ". . . I try maintaining weekly contact with them." Applicant's sister and her husband are naturalized U.S. citizens. His sister is an auditor for a U.S. government agency. Her husband is an accountant. (Items 2, 4)

Applicant's in-laws are citizen-residents of China. Applicant's father-in-law, a retired physician, died in June 2011. Applicant's mother-in-law is also a retired physician. His parents-in-law worked at a local hospital before retiring. Applicant is in touch with his mother-in-law monthly when his wife calls her. Applicant and his wife visit her in China yearly. Applicant's brother-in-law and sister-in-law are also citizen-residents of China. Applicant's sister-in-law is a homemaker. He describes his brother-in-law as a "business man." He talks with them monthly when his wife calls them. Applicant and his wife visit them during their annual visits to China. In his security clearance application, he described his contacts with his sister-in-law as more than 15 times per year. (Items 2, 3, 4)

Applicant also maintains contact with his aunt, a homemaker, who is a citizen and resident of China. They speak from three to seven times per year, and Applicant visits her during his annual trips to China. Applicant also has an uncle who is a citizen-resident of China. He is a retired teacher. Applicant was in touch with him three to seven times per year, and during his annual visits to China. Applicant stated during his 2011 security interview that his contact with his uncle ended in late 2009. Applicant has a cousin who is a citizen of China, and currently resides in the United States. He is employed as a limousine driver. He and Applicant were in touch in the past, about 8 to 15 times per year. Applicant stated during his 2011 security interview that his contact with his uncle ended in late 2009. Although Applicant stated during his 2011 security interview that he had not had contact with his uncle or cousin since 2009, he included them in his discussion of family contacts in his Answer of February 2013. In addition, it is unclear if he visited his cousin or uncle when he visited China in 2011. The evidence is ambiguous as to whether or not he is still in touch with them. Applicant stated in his Response that he is not "bound by affection, influence, and/or obligation" to his in-laws, aunt, uncle, cousin or friend. (Response; Items 3, 4)

Applicant has a friend who is a citizen-resident of China. She attended medical school with his wife, and is currently a physician at an ophthalmology center. They see her during their annual visits to China. Item 4)

In his Response to the FORM, Applicant stated that, as far as he is aware, the individuals listed in the SOR are not employed by or affiliated with the Chinese government. He also noted that in his professional life he mitigates risks related to his

work: he has never published papers in China, attended a seminar in China, or discussed his work with family or friends. His parents are unaware that his work is defense-related. (Response; Item 2)

When Applicant completed his security clearance application in June 2010, he held a bank account in China with a balance of \$8,000. His parents opened the account, but Applicant changed it to his name because “my parents do not visit China as often as I do.” Applicant stated during his security interview that he closed the account during his March 2011 visit to China because he realized it represented a security concern. This account is not alleged in the SOR. Applicant does not have real estate, stocks, or other financial interests in China, and does not receive benefits from China or any other foreign country. Applicant and his wife have no intention to return to China to live or to retire. Applicant owns a cooperative apartment in the United States. He satisfied the mortgage loan in April 2010. The file does not indicate the value of the apartment, or other financial assets Applicant may have in the United States. (Items 3, 4)

Administrative Notice

People’s Republic of China

The People’s Republic of China (PRC; China) is geographically vast, with a population of more than a billion people. Its authoritarian government, controlled by the Chinese Communist Party, has a poor human rights record. It suppresses political dissent, and engages in arbitrary arrests and detention, forced confessions, and torture of prisoners. The government does not respect freedom of speech, assembly, press, religion, or academic or artistic freedom. Chinese authorities monitor communication devices such as telephones, faxes, emails, text messages, and internet servers; and open domestic and international mail. Visitors are expected to register with the police within 24 hours of arrival in China. The U.S. Department of State warns that foreign visitors may be placed under surveillance; hotel rooms may be monitored onsite or remotely; and personal items in hotel rooms may be searched without the owner’s consent or knowledge.

A 2011 DOD report on Chinese military and security developments found that China uses “economic espionage, supported by extensive open source research, computer network exploitation, and targeted intelligence operations to obtain technologies to supplement [its] indigenous military modernization efforts.” In discussing China’s acquisition of defense technology, the report noted that the network of government-affiliated companies in its military-industrial complex often

enable[s] the PLA [People’s Liberation Army] to access sensitive and dual-use technologies or knowledgeable experts under the guise of civilian research and development. The enterprises and institutes accomplish this through technology conferences and symposia; legitimate contracts and joint commercial ventures; partnerships with foreign firms; and joint development of specific technologies.

The same report stated:

China continues to leverage foreign investments, commercial joint ventures, academic exchanges, the experience of repatriated PRC students and researchers, and state-sponsored industrial/technical espionage to increase the level of technologies and expertise available to support military research, development, and acquisition.

In its 2012 Annual Report to Congress, the Office of the Secretary of Defense stated that the PRC is one of “the world’s most active and persistent perpetrators of economic espionage. Chinese attempts to collect U.S. technological and economic information will continue at a high level and will represent a growing and persistent threat to U.S. economic security.” Commenting on cases prosecuted in 2007 and 2008, the U.S. Department of Justice noted that China ranked second only to Iran as the leading destination for illegal exports of restricted U.S. technology.

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.³ Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the guidelines, commonly referred to as the “whole-person” concept. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines are followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under Guideline B (foreign influence).

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁴ for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the Government’s case.

Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.⁵ A person who has access to classified information enters into a

³ Directive ¶ 6.3.

⁴ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁵ See *Egan*, 484 U.S. at 528, 531.

fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the national interests as his or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government.⁶

Analysis

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern under Guideline B:

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. The following disqualifying conditions are relevant to the 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.

The mere possession of close family ties with a resident or citizen of a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country, and an applicant has frequent, non-casual contacts with that relative, this factor alone is sufficient to create the potential for foreign

⁶ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

influence and could potentially result in the compromise of classified information.⁷ Moreover, the country in question must be considered. In particular, the nature of its 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.⁸ China has a poor human rights record, including arbitrary arrests and detention, forced confessions, and torture of prisoners. The government does not respect freedom of speech, assembly, press, religion, or academic or artistic freedom. Chinese authorities monitor telephones, faxes, emails, text messages, and internet servers; and open domestic and international mail. American citizens with family members who are citizens or residents of China are at a heightened risk of coercion, exploitation, or pressure.

Applicant's father is a citizen of China, living in the United States. Applicant tries to maintain weekly contact with his father. Applicant has family members who are citizen-residents of China, including his mother-in-law, sister-in-law, brother-in-law, aunt, uncle, and cousin. The Appeal Board has held that there is a rebuttable presumption that an applicant has ties of affection and obligation to his spouse's family.⁹ Applicant has not rebutted that presumption. Applicant is in touch with his mother-in-law, sister-in-law, brother-in-law, and aunt monthly by telephone and annually during personal visits. Applicant described his "close bond of affection" to his family. His close relationship with his family members in China creates a heightened risk that he could be exploited or coerced based on these ties. Moreover, Applicant's affection for his foreign family creates a potential conflict of interest between his desire to protect them, if they were threatened or coerced, and the obligation to protect classified information, were he to hold a security clearance. AG ¶¶ 7(a) and (b) apply.

Applicant's wife is a U.S. citizen. However, the fact that he shares living quarters with her, and she has foreign family members with whom Applicant maintains contact, creates a heightened risk of foreign manipulation or coercion. AG ¶¶ 7(d) applies.

I have considered the mitigating conditions under AG ¶¶ 8, especially the following:

(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.; and

⁷ See ISCR Case No. 03-02382 at 4 (Feb. 15, 2005); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

⁸ ISCR Case No. 07-02485 at 4 (App. Bd. May 9, 2008).

⁹ ISCR Case No. 02-03120 at 3 (App. Bd. Feb. 20, 2002).

(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 family members in China could place him in a position that could force him to choose between U.S. and foreign interests.¹⁰ He is bound by ties of affection to his foreign family, who live in a country that persistently perpetrates economic espionage. Its attempts to collect sensitive U.S. information and technology to support military research, development, and acquisition constitute a threat to U.S. security. Chinese authorities monitor citizens' communications, and visitors to China may be placed under surveillance and monitored. Applicant's foreign relatives could be subject to coercion that could force him to choose between their interests and those of the United States. AG ¶ 8 (a) cannot be applied.

AG ¶ 8(c) also does not apply. Applicant's contacts with his father and his foreign family are frequent and ongoing. He tries to maintain weekly contact with his father, and is in contact monthly with his family in China. There is a rebuttable presumption that contacts with family members are not casual.¹¹ There is also a rebuttable presumption that relationships with relatives of a spouse are close.¹² Applicant has not rebutted these presumptions about his relationships with his foreign family members. On the contrary, his regular contacts and visits with family in China demonstrate that Applicant has close ties and frequent contact with them.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate the applicant's security eligibility by considering the totality of the applicant's conduct and circumstances. I have evaluated the facts and applied the appropriate adjudicative factors. I have reviewed the record in the context of the following whole-person factors:

(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.

¹⁰ ISCR Case No. 03-21434 at 3 (App. Bd. Feb. 20, 2007); ISCR Case No. 04-07766 at 3 (App. Bd. Sep. 26, 2006).

¹¹ ISCR Case No. 00-0484 at 4 (App. Bd. Feb. 1, 2002)

¹² ISCR Case No. 01-03120 at 3 (App. Bd. Feb. 20, 2002).

Security clearance adjudications are not determinations of an applicant's loyalties, and here, Applicant's loyalty is not in question. He has shown facts in his favor, including almost 10 years as a U.S. citizen; his 16 years of U.S. residency, his two degrees from a U.S. institution, his wife's U.S. citizenship; his 10 years of employment for a defense contractor; and his property ownership. He stated that he takes pride in the hard work that has led to his current achievements. However, Applicant has also demonstrated close ties to his foreign family members. In general, close family ties are laudable because they demonstrate character and integrity. But in the context of security clearance adjudications, such close ties with foreign family can raise concerns. The Appeal Board has held that applicants with good character and personal integrity can pose a security risk if they have close relatives in a country hostile to the United States.¹³

Applicant has strong ties of affection to his father, a citizen of China, and to other family members who are citizens and residents of China. He is in touch with them regularly, visits annually, and describes their relationship as close. China is an active and persistent collector of sensitive U.S. information, which constitutes a heightened risk that has not been mitigated. A fair and commonsense assessment of the available information bearing on Applicant's suitability for a security clearance shows he has not satisfied the doubts raised. Such doubts must be resolved in favor of the Government.

Formal Findings

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1, Guideline B:	AGAINST Applicant
Subparagraphs 1.a – 1.f	Against Applicant

Conclusion

In light of the foregoing, it is not clearly consistent with the national interest to grant Applicant access to classified information. Applicant's request for a security clearance is denied.

RITA C. O'BRIEN
Administrative Judge

¹³ ISCR Case No. 01-26893 at 9 (App. Bd. Oct. 16, 2002).