



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No 12-01432

Appearances

For Government: Julie R. Mendez, Esquire, Department Counsel
For Applicant: *Pro se*

09/25/2013

Decision

HOWE, Philip S., Administrative Judge:

On July 27, 2010, Applicant submitted his electronic version of the Security Clearance Application (SF 86) (e-QIP). On May 21, 2013, the Department of Defense issued to 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 in writing on June 9, 2013. Applicant requested his case be decided on the written record in lieu of a hearing.

On July 22, 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 July 23, 2013. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on August 11, 2013. Applicant filed a Response to the FORM on August 18, 2013, within the 30 day time allowed that would have expired on September 11, 2013. The Department Counsel had no objection to Applicant's Response. I received the case assignment on September 12, 2013. Based upon a review of the pleadings, and exhibits, eligibility for access to classified information is denied.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to the People's Republic of China (PRC). The request and the attached documents were admitted into evidence and were included in the record as Item 6. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

Applicant admitted all four allegations in the SOR. (Item 3)

Applicant is 38 years old and married to a citizen of the PRC since December 2010. She resides in the United States now and is 34 years old. They do not have any children. Applicant works for a defense contractor and has since 2009, shortly after graduating from college. He served in the U.S. Army from September 2001 to December 2003. (Item 4)

The record does not contain any information on how Applicant met his wife. He was working in the Middle East for his defense contractor employer and she lived in the PRC. Applicant traveled to the PRC to visit her. Applicant traveled there in August 2010, December 2010, March 2011, July 2011, January 2012, and November 2012. Applicant continues to work in the Middle East. He claims his wife has applied to become a permanent alien in the United States. Applicant completed his e-QIP in July 2009 and declared he was not married. His marriage occurred after that date but he did not supplement his marital information in the record except in the background investigation in June 2011 and his Response to the FORM. In that summary he disclosed he saw his wife once every three months and they speak on the phone daily or communicate over the internet. During the courtship and after his marriage in 2010 and until she moved to the United States, his wife was not employed in the PRC where she lived. His FORM

Response disclosed he met his wife in August 2009 when he was on a pass in another country in the Middle East. His wife was then a store clerk. Now she is a hostess at a local restaurant in the United States where she lives with his parents. Applicant states his wife cannot live with him at his duty station because it is unsafe for her, but he does not explain why that could be true. In his Response Applicant states he does not have any assets in the PRC and does not plan on having any children with his wife. Therefore, Applicant claims his wife has nothing with which to coerce him into betraying the United States. He does not mention the financial support he provides for her son and the son's continued presence in the PRC residing with undisclosed persons, as discussed below. (Items 4, 5; FORM Response)

Applicant's mother-in-law and father-in-law live in the PRC and are citizens of that nation. His brother-in-law lives and works in the PRC also. Applicant claims they do not speak English. Applicant claims he does not communicate with his wife's family because of the communication barrier. Applicant also contends his wife's family does not have PRC government jobs. He has met them on trips to the PRC. Applicant claims an 11-year-old child is his son-in-law in his Answer to the SOR and in the e-QIP, but that person must be his step son. That person lives in the PRC and it is unclear if he intends to move to the United States or remain in the PRC. It is also unclear why he does not live with his mother in the United States, where he lives and with whom in the PRC. Applicant states in his Answer that he supports the step son financially. He also asserts the step son does not know what work Applicant does or that he is seeking a security clearance. (Items 3, 5)

Applicant does not disclose on his e-QIP or in the answers to the DOHA interrogatories signed on April 24, 2013, what his income is, where his money is invested, or other personal and family information pertaining to his wife. He also does not provide any information on how or where he met his wife when she lived in the PRC and he lived in the Middle East working for a defense contractor. Applicant did disclose such information in his FORM Response. His wife lives in the Southern U.S. with his parents, which is the location reported for his parents in the e-QIP. Applicant's parents are alive and he has three brothers and two sisters, all living in the United States. He stated he owns three real estate lots to be developed at a later date. He is paying a mortgage and owns a car. Applicant also stated he has "no assets or emotional ties in China." Applicant claims his emotional ties to the United States are stronger than his bond to his wife. He also states his wife does not know what he does for employment. She does not know about the security clearance application. Applicant asserted he and his wife do not intend to have children. If she attempted to have him betray the U.S., he stated he would report her to the proper authorities. He stated in the FORM Response he self-reported every phase of their relationship to his security officer. (Items 4, 5; FORM Response)

I take administrative notice of the following facts concerning the PRC, all of which are found in Item 6. The PRC is a one-party Communist totalitarian state. It has an economy growing at 10% annually, and expanding military forces, including its naval forces. The PRC naval fleet now includes an aircraft carrier.

PRC engages in industrial and military espionage on a regular basis against the United States and other countries. The United States and the PRC have been rivals since 1948, when the Communists took control of mainland China, and the Nationalist government fled to the island of Taiwan. Taiwan remains an issue of contention between the two countries.

The 2009 and 2012 *U.S. - China Economic and Security Review Commission* (Commission) reports to the U.S. Congress found the PRC has a large and aggressive intelligence gathering operation in the United States, particularly in the scientific and military fields. The PRC engages regularly in military, economic, and industrial espionage, including stealing nuclear weapons technology, missile design information, and commercial technology. The PRC also obtains commercial information through the use of front companies, buying dual-use technologies, and the direct collection of technology by non-intelligence agencies and individuals. The Peoples Liberation Army (PLA) is integrated into the civil industrial base in the PRC, known as the “digital triangle.” The 2009 and 2012 Reports to Congress of the Commission state the linkages between the military and Chinese commercial information technology companies and the R&D institute are longstanding, “as telecommunications and information technology in China were originally under military auspices and the commercial relationships with state and military research institutes remain important.”

Additionally, the U.S. State Department reported the PRC has a poor human rights record, including but not limited to, denial of free speech and press, fair and open trials, and other basic rights recognized by the international community. It also suppresses political dissent, using arbitrary arrests, forced confessions, and mistreatment of prisoners as part of its operational methods to maintain control of its population.

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 nine conditions that could raise a security concern and may be disqualifying. Three conditions may 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 has familial connections to foreign citizens who live in the PRC. His wife is a PRC citizen who lives in the United States. While Applicant may not speak the Chinese language used in that family, his ties of affection with his in-laws are imputed to him by way of his wife's connections to her family. Heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion is present because of the PRC espionage, both military and economic, shown in the Administrative Notice documents. The PRC is also a Communist authoritarian state with numerous human rights violations in its history. AG ¶ 7 (a) applies because of these factors.

A conflict of interest between Applicant's relationship to his Chinese wife, stepson, and in-laws and his duty to protect sensitive information or technology exists. Applicant placed himself in the middle of this conflict by his marriage to a foreign citizen and his lack of details in his Answer and supporting documents about how he met his

wife, his numerous trips to the PRC to visit with her, the current status of their relationship, and his finances to support her. AG ¶ 7 (b) applies.

Applicant shares living quarters with his wife when he returns from the Middle East where he works. Applicant has also not explained why they do not live together in the location of his employment. She lives with his parents in the United States. When Applicant completed his e-QIP it was in July 2009 and he stated he was unmarried. He married his wife in December 2009. His wife's son lives in the PRC. There is no information about his living conditions there or with whom he lives. Applicant admitted the child is financially dependent on him but claims his young age means the step son does not understand anything about that support or what work Applicant does, for which he needs a security clearance. There is a heightened risk because of the step son's location, financial support by Applicant, and a lack of information as to why the step son is not living with his mother in the United States. AG ¶ 7 (d) applies because of Applicant's marital situation and his living with his wife at various times during his future life.

AG ¶ 8 provides six conditions that could mitigate security concerns. Three conditions might apply:

(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; 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 has familial ties to his wife's family in the PRC. That government will use any means to obtain information of a commercial, proprietary, or government nature. Applicant disclosed that his wife works as a restaurant hostess in the U.S. while living with his parents. He stated he owns a car and has three lots he is holding for

investment purposes. He also stated he pays a mortgage but did not disclose where the property is located. The record does not contain sufficient information from Applicant for him to show that it is unlikely he will be placed in a position of having to choose between the interests of the U.S. and his wife's family in the PRC. AG ¶ 8 (a) does not apply.

Applicant has not provided sufficient information to show there will not be a conflict of interest because his obligation to his wife's family is so minimal or that he has longstanding relationships and loyalty to the U.S. Applicant contends he has the commitment to the U.S., having been born here. But his explanation of his connections to his wife and her family are not persuasive on this conflict of interest issue. AG ¶ 8 (b) does not apply.

Applicant's contact with his wife and her family is not casual and infrequent. He speaks daily with his wife from his work location. Therefore, Applicant has not submitted persuasive information that there would be little likelihood of a risk for PRC influence or exploitation. AG ¶ 8 (c) does 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, while working for a defense contractor, meets and marries a PRC citizen. Her family lives in the PRC. That government has a long record of espionage, both military and economic. His wife now

lives in the United States. However, Applicant traveled several times to the PRC while working to visit his fiancé and meet her parents. His disclosures about their relationship and his financial connections to the United States, even though he is a U.S. citizen, are minimal. His course of conduct does not demonstrate good judgment in the context of his employment and desire for a security clearance. His trustworthiness and reliability are also questioned because of the context of his marital relationship with a citizen of a country that routinely engages in multiple forms of espionage.

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

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraph 1.a to 1.d:	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