



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



In the matter of:

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) ISCR Case No. 15-00174
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Applicant for Security Clearance

Appearances

For Government: Carroll J. Connelley, Esquire, Department Counsel
For Applicant: *Pro se*

08/31/2016

Decision

WHITE, David M., Administrative Judge:

Applicant immigrated to the United States for graduate education and held a tenured position at a U.S. university for many years. He left that position for a two-year teaching position at a university in Hong Kong, and recently agreed to remain there for two more years. He failed to mitigate resulting security concerns. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SF 86) on December 6, 2012.¹ On June 8, 2015, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline B (Foreign Influence).² The action was taken under Executive Order 10865, *Safeguarding*

¹Item 3.

²Item 1.

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 for Determining Eligibility for Access to Classified Information* effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on August 25, 2015, and requested that his case be decided by an administrative judge on the written record without a hearing.³ Department Counsel submitted the Government's written case on November 23, 2015. A complete copy of the File of Relevant Material (FORM)⁴ was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant received his copy of the FORM on January 6, 2016. He did not object to consideration of the Items in the FORM or to Department Counsel's administrative notice request; but he did submit additional evidence within the time allotted, to which Department Counsel had no objection. I received the case assignment on March 23, 2016. Items 1 through 5 in the FORM are admitted into evidence. Item 6 is Department Counsel's request for administrative notice of facts concerning the People's Republic of China and the Hong Kong Special Administrative Region. That request is granted, and the facts stated on pages 3 through 9 of Item 6 are incorporated into the following findings of fact by reference.⁵ Applicant's response to the FORM is admitted into evidence as Exhibit (AE) A.

Findings of Fact

Applicant is a 77-year-old consultant to a defense agency, where he has worked part-time, on and off, over the past 15 years. He has held various U.S. security clearances in connection with his consulting work for several different Government agencies since about 1990. He has been married since 1969, and has two adult children.⁶ Applicant admitted all of the factual allegations set forth in the SOR, with explanations.⁷ Applicant's admissions, including those made in two interrogatory responses,⁸ are incorporated in the following findings.

³Item 2.

⁴The Government submitted six Items in support of the SOR allegations.

⁵Department Counsel submitted six documents in support of his request for administrative notice, comprising the relevant portions of official U.S. Government publications that he cited as authority for the noticed facts. Website addresses for complete copies of those documents were also provided.

⁶Item 3; Item 4; AE A.

⁷Item 2; AE A.

⁸Item 4; Item 5.

Applicant was born and raised in India. He came to the United States in 1962 to pursue postgraduate studies, earning his master's degree in 1964 and his Ph.D. degree in 1968. He became a naturalized U.S. citizen in 1971. His wife and two children are also U.S. citizens and residents.⁹

Applicant worked for more than 40 years as a tenured professor at a medium-sized urban private research university. In late 2012, he accepted a lump-sum retirement buyout offer from the university to leave that position. A longtime friend and professional associate of his, who is the president of a public research university in Hong Kong, offered Applicant a two-year highly paid position as a professor at his school. Applicant accepted the offer in order to be able to continue an academic lifestyle under the umbrella and infrastructure of a university.¹⁰

Applicant started work at the university in Hong Kong in January 2013, teaching primarily students from China, but also exchange students from around the world. As part of his professorial duties, he has traveled to and attended academic conferences throughout China, and numerous other foreign countries including Norway, Italy, Turkey, India, England, Canada, Russia, Azerbaijan, South Africa, and Iran. Applicant accepted an offer to extend his teaching position at the Hong Kong university for an additional two years, and intends to reside with his wife and work there as a state employee until at least December 2017. Most of his assets are in the United States, but he has a Hong Kong bank account that he opened in January 2013 for deposit of his university compensation (totaling about \$30,000 per month) and disbursement of local living expenses.¹¹

Applicant submitted neither good-character references, nor corroborating evidence concerning the quality of his professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

I took administrative notice of the facts set forth in Department Counsel's request concerning the People's Republic of China and the Hong Kong Special Administrative Region., which are incorporated herein by reference as noted above.¹² Of particular significance are the poor human rights situation; China's position as the most active, aggressive, and persistent country conducting economic and military espionage against the United States; and the fact that Hong Kong's partial retention autonomy, after the

⁹Item 3; Item 4.

¹⁰Item 3; Item 4; AE A.

¹¹Item 2; Item 4; AE A.

¹²Item 6. Applicant did not object to the Administrative Notice request or dispute any facts set forth therein.

British ceded sovereignty to China in 1997, does not extend to foreign and defense affairs.

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 (DCs) and mitigating conditions (MCs), which are to be 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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, "[t]he 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." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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.

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. Department Counsel persuasively argued that substantial evidence in this case established three of them:

- (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
- (e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

China has significant economic and military espionage programs, and political/military interests, in direct opposition to U.S. interests. Accordingly, Applicant's voluntary and significant financial, personal, and professional academic connections to people and institutions in that country have more potential to generate a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion under AG ¶¶ 7(a) and (e), than would similar connections to many other countries.

Applicant accepted a buyout from the U.S. university where he taught for many years in order to accept a position in a government-owned university in China where a friend and colleague serves as its president. After his initial two-year employment, he

accepted another two-year offer to continue the arrangement. His work at this university involves teaching and collaboration in Hong Kong and other institutions throughout the People's Republic of China. The Hong Kong government pays him the equivalent of about \$30,000 per month for his services there.

These facts meet the Government's burden of production by raising all three of the aforementioned disqualifying conditions. Applicant's contacts, relationships, and financial connections with China through his voluntary and recently renewed employment and residence there, shift a heavy burden to him to prove mitigation under applicable Appeal Board precedent.

AG ¶ 8 provides conditions that could mitigate security concerns. Those with potential application in mitigating AG ¶¶ 7 (a), (b), and (e) security concerns are:

(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; 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.

Considered in light of the significant economic and military espionage engaged in by China, Applicant did not demonstrate that it is unlikely he could be placed in a position of having to choose between the interests of a foreign individual or government and those of the U.S. due to his ongoing employment and academic relationships there. His communication, collaboration, and contacts with his Chinese employers and colleagues are neither casual nor infrequent, and he recently renewed those connections for another two years. Accordingly, he failed to establish the mitigating conditions set forth in AG ¶¶ 8(a) and 8(c).

The evidence also fails to establish significant mitigation under AG ¶¶ 8(b) or 8(f). Applicant immigrated to the United States from India to pursue a graduate education,

then pursued a successful U.S. academic career for more than 40 years. He voluntarily left his tenured position at a U.S. research university to accept employment at a public university in Hong Kong, where his friend is the president, and recently agreed to extend that lucrative arrangement for at least two additional years. He reports that the university pays him the equivalent of about \$30,000 per month, and his duties involve professional collaboration at institutions throughout China. These are not insignificant or minimal considerations.

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 pertinent facts and circumstances surrounding this case. Applicant's conduct is not in question here. He is a mature, talented, and experienced individual, who is seeking to continue providing services to a DoD agency under changed employment circumstances.

However, the potential for pressure, coercion, exploitation, or duress deriving from Applicant's residence and employment in Hong Kong remains unmitigated. Placing Applicant in a position wherein it is foreseeable that he could be forced to choose between the security interests of the United States and the interests of his ongoing employment, professional standing, collegial relationships, and family resident in China, is the harm to be avoided under Appeal Board precedent. He failed to show that such potential is diminished to any reasonable extent.

Overall, the record evidence creates substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He failed to meet his burden to mitigate the security concerns arising from foreign influence considerations.

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

Subparagraphs 1.a through 1.e:

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.

DAVID M. WHITE
Administrative Judge