



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



In the matter of:

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) ISCR Case No. 15-03248
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Applicant for Security Clearance

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel

For Applicant: *Pro se*

08/12/2016

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the case file and pleadings, I conclude that Applicant failed to provide adequate documentation to mitigate security concerns for foreign influence under Guideline B. Eligibility for access to classified information is denied.

Statement of the Case

On February 14, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance for his employment with a defense contractor. (Item 2) Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM) on April 15, 2013. (Item 4) After reviewing the results of the interview, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On November 25, 2015, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for foreign influence under Guideline B. (Item 1) 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 in the DOD on September 1, 2006.

Applicant answered the SOR on December 14, 2015, admitting both allegations under Guideline B. He elected to have the matter decided on the written record. (Item 1) Department Counsel submitted the Government's written case on January 27, 2016. Applicant received a complete file of relevant material (FORM) on February 5, 2016, and was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. He did not provide any additional information in response to the FORM. I was assigned to case on June 9, 2016.

Procedural Issues

Applicant was advised in the FORM that the summary of the Personal Subject Interview (PSI) with an OPM agent (Item 4) was not authenticated and could not be considered over his objection. He was further advised that he could make any corrections, additions, or deletions to the summary to make it clear and accurate, and he could object to the admission of the summary as not authenticated by a Government witness. He was additionally advised that if no objection was raised to the summary, the Administrative Judge could determine that he waived any objection to the admissibility of the PSI. Since Applicant did not respond to the FORM, he did not object to the admission of the PSI. He waived any objection to the admissibility of the PSI. I will consider information in the PSI in my decision.

Findings of Fact

I thoroughly reviewed the case file and the pleadings. I make the following findings of fact.

Applicant was born in the People's Republic of China (PRC) and is 48 years old. He received a bachelor's degree in 1989 and his first master's degree in 1993 from a university in the PRC. Applicant came to the United States in August 1995 and became a United States citizen in June 2008. He attended a university in the United States, receiving a master's degree in May 1997, a doctorate in August 2000, and another master's degree in December 2004. From June 2000 until March 2012 he was a manager at a national housing financial agency. He has been employed as a senior managing consultant by a defense contractor since March 2012. He married a citizen and resident of the PRC in the PRC in April 1995. His wife became a United States citizen in June 2008. They have two children born in the United States, who are residents and citizens of the United States. (Item 2, e-QIP, dated February 14, 2013; Item 3, PSI, dated April 15, 2013)

Applicant admits the two foreign influence allegations in the SOR. He admits that his parents and his brother are citizens and residents of the PRC. He also admits that his mother-in-law and his father-in-law are residents and citizens of the PRC.

Applicant reported on his e-QIP, in response to question 20C asking for foreign travel in the last seven years, and to security investigators, that he made numerous return trips to the PRC with his wife and children to see his family since leaving in 1995. He reported a 21 to 30 day visit from December 2002 until January 2003; a 21 to 30 day visit in August 2005; and an 11 to 20 day visit in June 2009 until July 2009. Applicant also reported that from September 2012 until December 2012, he worked in the PRC on a project for his employer. He stayed at a hotel during this visit. (Item 2, e-QIP, dated February 14, 2013; Item 3, PSI, dated April 15, 2013, at 3 - 4)

Applicant's parents are retired chemists who are citizens and residents of the PRC. Neither of them have worked for or been affiliated with the PRC government. Applicant has monthly telephone contact with them. Applicant sees them when he visits the PRC. Applicant's brother is a college professor who is also a resident and citizen of the PRC. Applicant has monthly telephone contact with him and sees him on his visits to the PRC. Applicant's mother-in-law and father-in-law are both retired engineers and citizens and residents of the PRC. Neither of them worked for or are affiliated with the PRC government. Applicant reports that they also have a United States green card and are planning in the future to come to the United States and become United States citizens. Applicant's in-laws come to the United States yearly to visit. Applicant and his wife have weekly telephone contact with them. The in-laws stay with his family when they make their yearly trips to the U.S. (Item 2, e-QIP, dated February 14, 2013; Item 3, PSI, dated April 15, 2013, at 2)

I take administrative notice of the following facts concerning the PRC. The PRC has an authoritarian government dominated by the Communist Party. It has large and increasingly sophisticated military forces. The U.S. and the PRC have been rivals since the Cold War, with particular disagreements on the status of Taiwan. Despite political disagreements, the U.S. and the PRC have become major economic and trading partners. The PRC aggressively targets sensitive and protected U.S. technology and military information, using worldwide intelligence operations. It is one of the most aggressive practitioners of industrial espionage. There are an estimated 2,000-3,000 PRC-front companies operating in the U.S. to gather secret or proprietary information. U.S. citizens of Chinese ancestry are considered prime intelligence targets.

The PRC has a poor human rights record. It suppresses political dissent, and it practices arbitrary arrest, detention, forced confessions, torture, and mistreatment of prisoners. Travelers to the PRC can expect to be placed under surveillance, with their hotel rooms, telephones, and fax machines monitored and personal possessions, including computers, searched without their knowledge or consent. (Item 4)

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 must be considered 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion for obtaining 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.

Analysis

Guideline B: 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 the 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

consideration 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 ¶ 6)

Applicant's parents, brother, and in-laws are long time citizens and residents of PRC. He has weekly telephone contact with them. He also sees them on his trips back to the PRC and when his in-laws' yearly visits Applicant and his family in the United States. His in-laws have green cards and anticipate becoming United States citizens in the future. Applicant lives with his wife and children and his wife has contacts with her parents and her in-laws in the PRC. This family situation also raises a security concern. His parents, brother, and in-laws residence and citizenship in the PRC and his and his wife's contact with them raises the following Foreign Influence Disqualifying Conditions under AG ¶ 7:

(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 existence of foreign relationships and contacts is not sufficient to raise the above disqualifying conditions. The nature of Appellant's contacts and relationships must be examined to determine whether it creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. "Heightened" is a relative term denoting increased risk compared to some normally existing risk that can be inherent anytime there are foreign contacts and relationships. The totality of an applicant's ties to a foreign country as well as to each individual family tie must be considered. The foreign influence security concern 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. Even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Friendly nations have engaged in espionage against the United States, especially in economic, scientific, and technical fields. 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 is at risk of coercion, persuasion, or duress. The PRC's authoritarian government, aggressive targeting of sensitive and protected U.S. technology and military information,

poor human rights record, and intelligence targeting of U.S. citizens of Chinese ancestry places a heightened risk of exploitation, inducement, manipulation, pressure, or coercion on Applicant.

I considered Foreign Influence Mitigating Conditions under AG ¶ 8:

(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 or infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

None of these mitigating conditions apply. There is a rebuttable presumption that a person has ties of affection for, or obligation to, his immediate family members of the family members of his spouse. Applicant did not present any information that rebuts this presumption. The presence of Applicant's parents, brother, and in-laws in the PRC creates a security concern. Applicant did not present any information that would negate the heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion because of the presence of the family members in the PRC and the intelligence activities of the PRC. Accordingly, Applicant has not met his heavy burden to show that his relationships with his family members in the PRC are not a security concern. I conclude Appellant has not mitigated security concerns for foreign influence with the PRC.

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 access to sensitive information 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. The whole-person concept requires consideration of all available information about Applicant to reach a determination concerning Applicant's eligibility for access to classified information.

The presence of Applicant's parent, brother, and in-laws in the PRC creates a heightened risk of foreign influence leading to the potential for vulnerability, pressure, or coercion of Applicant by China against the interest of the United States. Applicant has close and frequent contact with his relatives in the PRC. These facts leave me with questions and doubts about Applicant's eligibility and suitability for access to classified information. For all these reasons, I conclude Applicant has not mitigated foreign influence security concerns based on his close contact with his family members in the PRC. Eligibility for access to classified information is denied.

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 and 1.b: 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.

THOMAS M. CREAN
Administrative Judge