



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



In the matter of:)
)
) ISCR Case No. 15-04493
)
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: Thomas McCarthy, Personal Representative

11/29/2016

Decision

CURRY, Marc E., Administrative Judge:

Applicant mitigated the foreign preference security concerns, but failed to mitigate the foreign influence security concerns generated by her family members and friends who are citizens and relatives of the People's Republic of China (PRC). Clearance is denied.

Statement of the Case

On January 15, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines B, foreign influence, and C, foreign preference. 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).

Applicant answered the SOR on February 2, 2016, admitting all of the allegations, and requesting a hearing. On June 6, 2016, the case was assigned to me. On June 27, 2016, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing scheduling the case for August 16, 2016. I held the hearing as scheduled and considered two Government exhibits (GE) marked as GE 1 and 2, and eight Applicant exhibits (AE), marked as AE A through H. I took administrative notice of facts regarding the PRC, encapsulated in seven hearing exhibits (HE I-VII), as requested by Department Counsel. At the close of the hearing, I left the record open at Applicant's request to allow her an opportunity to submit additional exhibits. Within the time allotted, she submitted five additional exhibits that I have incorporated into the record as AE I through AE M. The transcript (Tr.) was received on August 24, 2016.

Findings of Fact

Applicant is a 32-year-old woman. She grew up in Hong Kong, moving there from mainland China when she was four years old, and immigrated here with her family in 2001 when she was 17. (Tr. 43) After moving to the United States, she finished high school and attended college, graduating in 2007 with a major in interior design and a minor in business. In 2012, she became certified as a licensed interior designer. (Tr. 19; AE F) She has been working in this field since then. (Tr. 20) She became a naturalized U.S. citizen in 2011. (AE A) Applicant recently married her husband, whom she had been dating since college. (Tr. 26)

Applicant's parents are PRC citizens who reside in the United States. Applicant's parents are permanent U.S. residents. (Tr. 29) Her mother and father both worked at a community service center that serves primarily Asian-American senior citizens. Their duties included helping prepare meals and organizing trips to grocery stores and malls. (Answer at 1; Tr. 28) Currently, they are both retired. Applicant has a brother. He lives in the United States and became a naturalized citizen in 2012. (Tr. 20, 32)

Applicant has a cousin who lives in Hong Kong. She is a social worker who works for the government. (Tr. 36-37; AE 1 at 27) Applicant communicates with her a few times per year through social media. She last saw her when her cousin visited the United States in October 2015.

Applicant's aunt and uncle, the parents of the cousin in the previous paragraph, are citizens and residents of Hong Kong. Applicant speaks to them through social media a few times per year. Applicant usually stays at their house when she visits Hong Kong. (Tr. 38) Applicant's aunt and uncle are both retired. Before retiring, Applicant's aunt worked for a textile company, and Applicant's uncle worked at an airport. (Tr. 38-39)

Applicant has a friend, whom she has known since kindergarten, who is a citizen and resident of PRC. She is a high school teacher. They keep in touch "a couple times a year" primarily through social media. (Tr. 35) Applicant typically sees her when she visits Hong Kong. (Tr. 34) She knows that Applicant is applying for a security clearance. (Tr. 35)

Applicant has a friend who is a citizen and resident of Hong Kong and works as an event planner at a hotel. They keep in touch through social media. Applicant last saw her a few years ago when she visited the United States.

Applicant has a friend who is a citizen and resident of Hong Kong who works as a flight attendant. She has approximately the same amount of contact with this friend as she does with her other friends who are PRC citizens and residents.

Applicant has a friend who is a PRC citizen who recently completed a corporate internship in the United States. Applicant visited this friend while she was working in the United States. (Tr. 40)

Applicant has a friend, a PRC citizen and resident, who works as a receptionist. (Tr. 41) She has approximately the same amount of contact with this friend as she does with her other friends who are PRC citizens and residents. She knows that Applicant is applying for a security clearance. (Tr. 41)

Applicant has not travelled to mainland China since she was a small child. (Tr. 42) She has returned to Hong Kong four times, in 2003, 2005, 2011, and 2015. On her most recent trip, she travelled with her mother to purchase a wedding dress and to visit friends. Her last trip occurred after she had become a naturalized U.S. citizen. (Tr. 42) She travelled there using a U.S. passport.

As of the hearing date, Applicant possessed a passport issued by the PRC. (Answer) She has not used the passport to travel internationally since becoming a U.S. citizen in 2012. (Tr. 27) She reported each trip to her supervisor before departing. On August 22, 2016, Applicant destroyed both her PRC passport and her Hong Kong permanent identity card in the presence of her company's facility security officer. (AE J)

Administrative Notice

The PRC is a totalitarian state that routinely violates human rights. (*See generally* HE VI). It is one of the most aggressive conductors of espionage against the United States in the world. (HE I at 2) Chinese state-sponsored actors continuously attempt to exploit U.S. government, military, industrial, and nongovernmental computer systems. (HE III at 6; HE V at 7)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied together with the factors

listed in the adjudicative process. 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.”

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.

Analysis

Guideline B, Foreign Influence

Under this guideline, “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 United States’ interests, or is vulnerable to pressure or coercion by any foreign interest.” Moreover, “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 ¶ 6)

Given the PRC’s status as one of the most active conductors of espionage against the United States in the world, I conclude that Applicant’s friends and relatives who are PRC residents living in Hong Kong trigger the application of AG ¶ 7(a) “contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or a resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.” Although the PRC, as a totalitarian country and strategic competitor of the United States, would certainly not refrain from intimidating its citizens living abroad for competitive advantage, such coercion of Applicant’s parents would be unlikely given the length of time that they have lived in the United States. Therefore, AG ¶ 7(a) does not apply to Applicant’s relationship with her parents.

Applicant’s relationship with each friend in the PRC is limited to social media contacts a few times per year and an occasional trip to Hong Kong. Each of these relationships, when considered alone, appear to be casual and infrequent. However, when considered in their totality - the relatives with whom she stays when she visits

Hong Kong, the length of time that she has known her friends from the PRC, and the fact that two of her friends know she is applying for a security clearance - AG ¶ 8(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,” does not apply.

Applicant has spent her entire adult life in the United States, earning her college degree and her professional certification. However, in light of the heavy burden of proof required to overcome the security concern generated by a country like the PRC, these facts are insufficient to trigger the application of AG ¶ 8(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.”

Guideline C, Foreign Preference

Under this guideline, “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 ¶ 9) Applicant’s continued possession of a PRC passport after becoming a U.S. citizen in 2012 triggers the application of AG ¶ 10(a)(1), “exercise of any right privilege, or obligation of foreign citizenship after becoming a U.S. citizen . . . includ[ing] . . . possession of a foreign passport.”

When Applicant became a naturalized U.S. citizen in 2012, she was unaware of the negative security ramifications of possessing a foreign passport. She did not use it to travel after becoming a U.S. citizen. Since the hearing, she has destroyed both the passport and her foreign country national identification card in the presence of her company’s FSO. I conclude AG ¶ 10(e), “the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated,” applies.

Whole-Person Concept

Under the whole-person concept, 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.

Applicant's destruction of her PRC passport mitigates the foreign preference security concern. Conversely, given the heavy burden of proof generated by the citizenship and residence of Applicant's friends in the PRC, a totalitarian country that is one of the most active conductors of espionage against the United States, I conclude that Applicant failed to mitigate the foreign influence security concern.

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
Subparagraph 1.a - 1.b:	For Applicant
Subparagraph 1.c - 1.d:	Against Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

MARC E. CURRY
Administrative Judge