



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



In the matter of:)
)
) ISCR Case No. 15-07242
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Department Counsel
For Applicant: Alan K. Hahn, Attorney At Law

February 28, 2017

Decision On Remand

LOKEY ANDERSON, Darlene D., Administrative Judge:

On November 8, 2016, the undersigned Administrative Judge issued a security clearance decision finding that it was not clearly consistent with the national interest to grant Applicant a security clearance. The Applicant appealed the decision, raising the following issues on appeal: whether the Judge erred in her whole-person assessment; whether the Judge failed to consider a mitigating condition; and whether the Judge's adverse decision is arbitrary, capricious, or contrary to law. The DOHA Appeal Board found that the Judge committed harmful error in her whole-person analysis, and that she did not address mitigation condition 8(a), in her decision. On February 9, 2017, the DOHA Appeal Board remanded the case for resolution concerning these two issues.

1. The Administrative Judge failed to mention in her decision, but has considered, the numerous reference letters offered into evidence on behalf of the Applicant, as well as the testimony of a supervisor that attested to his good character and professionalism. (Applicant's Exhibit D and Tr. pp. 61-65.) Applicant argues, and the Administrative Judge agrees, that under the whole-person analysis, Applicant has not shown poor judgment, untrustworthiness, unreliability, a lack of candor, unwillingness to comply with rules and regulation, and/or other characteristics indicating that the person may not properly safeguard classified information. However, in this case, it is not the character of the Applicant that is in question. It is the circumstances

surrounding the Applicant that place him in a position of great vulnerability, and thus a risk to the national security.

2. Turning to mitigating condition 8(a), which is applicable in this case, and states, “the nature of the relationship with foreign person, 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.”

At the hearing, Department Counsel requested that the Administrative Judge take administrative notice of certain facts concerning the current political conditions in the People’s Republic of China. (See Tr. p. 15.) There was no objection from Applicant. (See Tr. pp. 15-16.) The documents were admitted into evidence and included in the record. (Government Exhibit 3.) Administrative notice of the facts on China were incorporated into my decision.

The case involves an Applicant, who married his girlfriend in early 2016, and she is now his wife. She was born in China, and remains a Chinese citizen. She works for a U.S. corporation and frequently travels to China to perform work there. As part of her job, she deals with Chinese governmental and non-governmental entities. She recently applied for a green card to become a permanent resident alien, but had no plans to become a United States Citizen.

Applicant’s father-in-law and mother-in-law are citizens and residents of China. They own property in China. As their only child, Applicant’s wife stands to inherit the property in China. Applicant’s father is a general manager for a U.S. company. At one point, he was a member of the Community Party, but no longer considers himself part of it because he has not paid dues in 20 years. Applicant’s mother-in-law is a homemaker. Applicant’s wife communicates with her parents several times a week.

Mitigation Condition 8(a), is applicable, however, I do not find it to be controlling in this case. The country involved here is China. China is one of the most active and persistent perpetrators of foreign espionage in the world, and presents a growing and persistent threat, as the highest risk to the United States. Applicant’s close and continuing relationship with his wife, and her parents in China, create a significant security risk. Applicant’s wife is a Chinese citizen with no intent to become a United States citizen. Her parents are also citizens and residents of China who communicate with her on a regular basis. His wife travels to China frequently on business and interacts with her family there. There are assets in China that Applicant and his wife stand to inherit one day. His wife’s deep and continuing commitment to China, her family there, and the Chinese people, along with Applicant’s ongoing commitment to her, creates a heightened risk of foreign exploitation, inducement, manipulation, pressure and coercion.

Under Guideline B, Disqualifying Conditions 7(a), 7(b), and 7(d), clearly apply. Disqualifying Condition 7(a), states, “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;” 7(b) states, “connections to a foreign person, group, government, or country that creates 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 7(d), states, “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.”

I have considered all of the evidence presented. It does not mitigate Applicant’s foreign influence and the effects it can have on his ability to safeguard classified information. On balance, it is concluded that the Applicant has not overcome the Government’s case opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the SOR.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1	Against the Applicant.
Subpara. 1.a.	Against the Applicant.
Subpara. 1.b.	Against the Applicant.

DECISION

On remand, in light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson
Administrative Judge