



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



In the matter of:)
)
XXXXXXXXXXXXXXXXXXXXXXXXXXXX) ISCR Case No. 14-02149
)
Applicant for Security Clearance)

Appearances

For Government: Allison Marie, Esquire, Department Counsel
For Applicant: Gregory F. Greiner, Esquire

09/26/2018

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,¹ I grant Applicant's clearance.

On 23 June 2016, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR)² raising security concerns under Guideline F, Financial Considerations and Guideline B, Foreign influence.³ Applicant timely answered the

¹Consisting of the transcript (Tr.), Government exhibits 1-5, hearing exhibits I-II, and Applicant exhibits (AE) A-KK. AE T-1 was admitted for the sole purpose of identifying AE A-S for the record. AE KK was admitted for the sole purpose of identifying AE T-2-JJ for the record. AE T-2-JJ were timely received post hearing. I have also taken administrative notice of United States (U.S.) Government documents on U.S. relations with the People's Republic of China (PRC), as requested by Department Counsel (HE II).

²At hearing, DC moved to amend SOR 2.a to reflect that Applicant married his girlfriend and she was now his wife, and to add SOR 2.b to reflect that Applicant's parents-in-law were resident citizens of the PRC. Applicant voiced no objection, and I granted the motion (Tr. 140).

³DoD acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on

SOR, requesting a hearing before the Defense Office of Hearings and Appeals (DOHA). DOHA assigned the case to me 4 April 2017, and I convened a hearing 2 June 2017. The record in this case closed 5 July 2017, when Department Counsel stated no objection to Applicant's post-hearing exhibits.

Findings of Fact

Applicant admitted his bankruptcy and tax issues (SOR 1.a and 1.e-1.h), but denied the delinquent debts (SOR 1.b -1.d and 1.i) claiming they were paid. He admitted that his wife and parents-in-laws were resident citizens of the PRC.⁴ He is a 40-year-old action officer employed by a defense contractor since December 2015. He had previously worked for two other defense contractors from July 2011 to October 2014. He was unemployed from about October 2014 to November 2015, and from December 2009 to June 2011, after sustaining a career-ending injury. He seeks to retain the clearance he has held, as necessary, since he enlisted in the military in August 1996.

The SOR alleges, and Government exhibits (Items 1-5) substantiate, a March 2011 Chapter 7 bankruptcy petition discharged in March 2014 (SOR 1.a), four delinquent medical debts totaling nearly \$4,000 (SOR 1.b-1.d and 1.i), and tax debt totaling about \$13,000 (SOR 1.e-1.h).⁵ Applicant's July 2014 clearance application (GE 1) reported his recently discharged bankruptcy petition and potential issues with the Internal Revenue Service (IRS) over whether he was due refunds or owed money. He also disclosed that he had personal contacts who were resident citizens of the PRC. Applicant's Answer documented his wife's current immigration status and proved that SOR 1.i had been paid in May 2016, before the SOR was issued. He also documented that in March 2016, he entered into a repayment agreement with IRS covering tax years 2011-2014, where he agreed to pay \$212 monthly beginning April 2016. He also provided proof of the required payments through August 2016. However, Applicant did not document the claimed payments to SOR debts 1.b-1.d, and provided scant evidence of efforts to contact those creditors. Nevertheless, those debts appear to have aged off Applicant's credit reports.

Applicant enlisted in the United States (U.S.) military in August 1996, and served on active duty until he was honorably discharged in August 2000. After a brief gap in

1 September 2006. On 10 December 2016, the Director of National Intelligence (DNI) signed Security Executive Agent Directive 4, implementing new AG, effective with any decision issued on or after 8 June 2017. This decision is issued under the new AG, but I have examined the old AG to ensure that I would not reach a different result if I issued this decision under the old AG. I would not rule differently under either set of AG.

⁴Although at the time the SOR was issued, Applicant's girlfriend had become his wife, had been authorized to work in the U.S., and was pending legal permanent resident status.

⁵Although the Government alleged approximately \$15,000 delinquent tax debt for tax years 2011, 2012, and 2013 (SOR 1.e-1.g), those tax years are subsumed by the March 2016 tax lien covering tax years 2011, 2013, and 2014, and the March 2016 installment agreement covering tax years 2011-2014.

employment, in January 2001 he became employed as a merchant mariner with the U.S. Government agency tasked with transporting necessary supplies to U.S. entities around the world. He served without incident until early 2009, when he underwent what was supposed to be routine surgery while in Singapore. However, he suffered a medical misadventure which rendered him physically unable to perform his duties. He retained counsel to pursue a medical malpractice claim, and on the advice of counsel, remained in Singapore to be more readily available to participate in his case.

Meanwhile, Applicant used all his accumulated leave with his Government employer, and went on leave without pay in spring 2009. Because he was physically unable to perform his regular duties, in September 2009, his employer proposed to remove him from his job (AE J). Applicant eventually chose to resign instead of being removed, and he was released from his job in November 2009. Applicant used his retirement accounts for living expenses. Nevertheless, Applicant was not idle while waiting for his case to resolve. He returned to school to retrain for a new career, and compiled an impressive array of certifications in furtherance of that career (AE K).

However, Applicant's case was taking longer to resolve than his counsel had led him to believe would be necessary, and he was beginning to feel financial pressure, despite having received disability payments for a portion of 2011. He was also using credit cards to cover his living expenses. He began looking for jobs in the U.S. and was hired by a defense contractor in July 2011. He worked there until he moved to a better job with another defense contractor in December 2013. This is the job that generated his most recent clearance application. Unfortunately, in late September 2014, the company notified him that he was being laid off effective mid-October because the company had no work for someone with his qualifications. He was unable to find work in any of the company's other divisions, and with accumulated paid time off, he was terminated in November 2014. He remained unemployed until he was hired for his current position in December 2015.

Sometime in 2007, Applicant started an internet technology (IT) company. The early years were spent in development, and the related website is still not ready to launch. Since starting the company, Applicant has used professional accountants to prepare his Federal income tax returns. However, he provided the numbers for the returns. He mistakenly believed that he was able to declare his investments in the company as losses, because he had no income from the company. He did not learn until sometime in 2014 that the IRS considered his investments "hobby losses" which could not be recouped until the company was generating income. With the disallowed deductions, Applicant had unpaid tax debt for tax years 2011, 2012, 2013, and eventually 2014.

Applicant experienced financial problems beyond those alleged in the SOR. The economic decline of 2007-2008 caused him to sustain losses on rental properties he had purchased. His 2009 injury and subsequent unemployment caused him to fall behind on his mortgage payments, education loans, and credit cards. He consulted an attorney and was recommended to file for Chapter 7 bankruptcy protection, which he

did in March 2011 (GE 5; Answer, AE A). He was discharged of all dischargeable debt in March 2014. However, the discharge did not absolve him of his tax debt or his education loans, all of which had fallen into default because of his unemployment.

In early 2014, Applicant received a \$380,000 medical malpractice settlement. Applicant estimates he spent \$62,000 paying off his education loan, invested \$70,000 in his business, and paid \$15,000 for his continuing education. With the \$20,000 he gave to his father (for helping Applicant out in tough times), Applicant has fuzzily explained where the remaining \$203,000 went (Tr. 96-99).

Applicant earns about \$94,000 annually; his wife earns \$40,000. His credit reports reflect no delinquent debt, beyond the tax lien. His education loans are all reported as paid. Applicant received the financial counseling required by his bankruptcy petition in May 2011. His character references consider him honest and trustworthy, and recommend him for his clearance.

Applicant's wife was born in the PRC in December 1986. She is an only child. Her mother is a retired accountant; her father works as an associate consultant at the district level of the PRC government. Neither of them speaks any English, and Applicant speaks no Chinese. Since her marriage, she has not been back to the PRC, and her parents have not visited the U.S. She texts her mother once or twice per week and talks to her on the telephone once a month; she seldom talks to her father. She has two aunts and four uncles on one side of the family, and one aunt and two uncles on the other, all of whom are resident citizens of the PRC. She has not seen any of them since she left the PRC in November 2015. Similarly, she has seven cousins on one side of the family, and two on the other, but has not had any contact with them since November 2015. None of them are associated with the government of the PRC. She describes them as farmers and factory workers (Tr. 35).

In August 2007, she immigrated to the U.S. on a student visa to attend college (Tr. 24). She obtained her bachelor's degree in May 2009, and her post-graduate degree in May 2011 from another college. Between August 2011 and April 2012, she completed two internships in her professional field. She then returned to the PRC. She worked for a non-profit company for two years, and a private company for another year

She met Applicant in October 2011, when he moved into her apartment (Tr. 23; 29-31).⁶ Their romantic relationship began in January 2012.⁷ They continued to communicate by email and telephone. He saw her for five days in Singapore in July

⁶Her roommates were moving out of the apartment, and she had advertised for a new roommate online. Applicant's clearance application states that he moved into this address in July 2011, which corresponds to the date he came into town to start his new job. At the time of his clearance application, he was in a different apartment, with a different housemate.

⁷Applicant listed her as his girlfriend on his clearance application, and stated that he had in-person contact with her from October 2011 to September 2013. That includes a five-day trip to Singapore in July 2013, when he met his mother-in-law for the only time (Tr. 28).

2013, during which time he met her mother. She visited him in the U.S for 11 days in 2014. By May 2015 they were engaged (AE P),⁸ and she returned to the U.S. in November 2015 (Tr. 25). They were married in February 2016. She applied for both legal permanent resident (LPR) status and for authorization to work. Her work authorization was approved in April 2016, and she obtained her LPR status in December 2016 (AE P).⁹ She has been employed as an administrative assistant since August 2016. Nothing in her professional background suggests future employment in the defense sector.

The PRC

The PRC is a large and economically powerful country, with a population of over a billion people. The PRC has an authoritarian government, dominated by the Chinese Communist Party. The PRC has a poor record with respect to human rights, suppresses political dissent, and its practices include arbitrary arrest and detention, forced confessions, torture, and mistreatment of prisoners. The PRC engages in espionage against the United States and is one of the two most active collectors of U.S. economic intelligence and technology. The PRC's intelligence services, as well as private companies and other entities, frequently seek to exploit Chinese citizens or persons with family ties to China who can use their insider access to corporate networks to steal state secrets.

Policies

The adjudicative guidelines (AG) list factors for evaluating a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also reflect a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). Any one disqualifying or mitigating condition is not, by itself, conclusive. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline F (Financial Considerations) and Guideline B (Foreign Influence).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case.

⁸The Government notified Applicant that her approved petition for a fiancée visa was being sent to the appropriate U.S. consulate in the PRC.

⁹Her status expires in December 2018, but is renewable indefinitely. She is eligible to apply for her U.S. citizenship in 2019.

Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government.¹⁰

Analysis

The Government established a case for disqualification under Guideline F, but Applicant mitigated the security concerns. Applicant experienced periods of financial difficulties from December 2009 to June 2011 and from October 2014 to December 2015, when he was unemployed.¹¹ He also ran afoul of the IRS in 2014, when he learned that he could not claim investments in his IT company as business losses because the IRS considered them to be hobby losses, deductible only once the company was generating income.¹² However, Applicant’s financial problems were caused by circumstances beyond his control, and he largely dealt with his finances responsibly.

Applicant meets most of the mitigating conditions for financial considerations. While his financial difficulties are multiple, they are not recent and the circumstances which led to his initial financial situation are unlikely to recur.¹³ The medical misadventure that Applicant experienced, costing him a well-established career, is an unusual experience. It is certainly a circumstance beyond his control, as was his October 2014 layoff. Applicant’s decision to remain in Singapore at his counsel’s request, and to pursue the necessary retraining to launch a new career, seem reasonable choices. His decision to file for Chapter 7 bankruptcy protection in March 2011 (even though it was not discharged until March 2014) and his decision to return to the U.S. in June 2011 to take a new job also seem reasonable choices.¹⁴ Applicant appears to have promptly begun paying off his education loans once he received his

¹⁰See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

¹¹¶19(a) inability to satisfy debts; (b) unwillingness to satisfy debts; (c) a history of not meeting financial obligations;

¹²¶19(f) failure to file or fraudulently filing annual Federal, state or local income tax returns or failure to pay annual Federal, state, or local income tax as required;

¹³¶20(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

¹⁴¶20(b) the conditions that resulted in the financial problem were largely beyond the person’s control . . . and the individual acted responsibly under the circumstances;

malpractice settlement in early 2014, and he entered a repayment plan with the IRS in May 2014.

Applicant received the required bankruptcy financial counseling, and he is resolving the most significant aspects of his financial problems.¹⁵ Bankruptcy can be a legitimate response to overwhelming financial problems, and Applicant did not take that course of action lightly. He was in contact with his creditors well before the SOR was issued, and he made a good-faith effort to address these debts and his IRS issues.¹⁶ What remains to be resolved is the three aged medical debts totaling about \$4,000 for which Applicant provided no proof of payment, and little or no evidence of efforts to contact the creditors before the accounts aged off his credit reports.

The Appeal Board has stated that an applicant need not have paid every debt alleged in the SOR, need not pay the SOR debts first, and need not be paying on all debts simultaneously. Applicant need only establish that there is a credible and realistic plan to resolve the financial problems, accompanied by significant actions to implement the plan.¹⁷ When I consider the thousands of dollars Applicant paid on his education loans, and the thousands of dollars Applicant is paying in installment payments to the IRS,¹⁸ Applicant's actions constitute such a plan and execution, and the unpaid, uncollectible, and possibly unlocatable debts have little security significance. I conclude Guideline F for Applicant.

The Government also established a case for disqualification under Guideline B, but Applicant mitigated the security concerns. Under Guideline B (Foreign Influence), an applicant's foreign contacts and interests may raise security concerns if the individual 1) has divided loyalties or foreign financial interests, 2) may be manipulated or induced to help a foreign person, group, organization, or government in a way contrary to U.S. interests, or 3) is vulnerable to pressure or coercion by any foreign interest. Foreign influence adjudications 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, whether the country is known to target U.S. citizens to obtain protected information and/or is associated with a risk of terrorism.¹⁹ Evaluation of an individual's qualifications for access to protected information requires careful assessment of both the foreign entity's willingness and ability to target protected information, and to target ex-patriots

¹⁵ ¶20(c) the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control;

¹⁶ ¶20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

¹⁷ ISCR Case No. 07-06482 (App. Bd. 21 May 2008).

¹⁸ Which early credit reports showed to have been delinquent but now current and which later credit reports showed to have been paid. None of the education loans was alleged in the SOR, but Applicant's actions to resolve them are relevant to this decision.

¹⁹ AG ¶ 6.

who are U.S. citizens to obtain that information, and the individual's susceptibility to influence, whether negative or positive. More specifically, an individual's contacts with foreign family members (or other foreign entities or persons) raise security concerns only if those contacts create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.²⁰ In addition, security concerns may be raised by 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.²¹ Finally, security concerns may be raised by 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 a heightened risk of foreign influence or exploitation.²²

In this case, the Government established that Applicant's wife is a citizen of the PRC, residing in the U.S., her parents are resident citizens of the PRC, and these circumstances create a potential heightened risk of exploitation, inducement, manipulation, pressure, or coercion—but only because of the rebuttable presumption that Applicant has ties of affection and obligation to his wife, and to his in-laws through his wife.

Applicant's wife is an LPR of the U.S., authorized to work in the U.S. and eligible for U.S. citizenship in 2019. She is effectively beyond the reach of the PRC notwithstanding her PRC citizenship (SOR 2.a). She has withstood the U.S. Government vetting required for her to obtain a fiancé visa. She has no apparent connection to the PRC government, and her professional background has no relation to any information the PRC government might be interested in. There would be little enough risk of pressure if she were the applicant in this case, but she is not. If there is little risk that she could be pressured (even if in a position to provide information), there is even less risk that Applicant could be pressured through her. He has no connections whatsoever to the PRC. What remains are Applicant's wife's infrequent contacts with her parents in the PRC (SOR 2.b). How is the PRC to bring pressure on a retired accountant and a local government consultant, through their daughter, who has no professional background of interest to the PRC? How is the PRC expected to pressure (or even find) the daughter to pressure her to pressure Applicant to provide protected information? The connections are too attenuated to raise any security risks.

Although the U.S. and the PRC are global competitors, and the PRC is an active collector of protected U.S. information and commercial information, Applicant is not situated in a position where he is likely to be pressured. Examining Applicant's circumstances, the Government's evidence that there was a potential heightened risk of

²⁰AG ¶ 7(a).

²¹AG ¶ 7(b).

²²AG ¶ 7(e).

foreign exploitation, inducement, manipulation, pressure, or coercion because of Applicant's marriage to his wife, now permanently resident in the U.S., is extremely thin. He has never met his father-in-law; he met his mother-in-law for five days, with no conversation other than that brokered by his then fiancée. Her contacts with her parents are routine, and infrequent. There is nothing in the circumstances of their being in the PRC or in her contacts with them, to heighten the risk that Applicant could be impelled or compelled to provide protected information to the PRC.²³ I find Guideline B for Applicant.

Formal Findings

Paragraph 1. Guideline F:	FOR APPLICANT
Subparagraphs a-i:	For Applicant
Paragraph 2. Guideline B:	FOR APPLICANT
Subparagraphs a-b:	For Applicant

Conclusion

Under the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance granted.

JOHN GRATTAN METZ, JR
Administrative Judge

²³AG, ¶ 8(a), 8(b), 8(e)