



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



In the matter of:)
)
) ISCR Case No. 15-07068
)
Applicant for Security Clearance)

Appearances

For Government: Benjamin R. Dorsey, Esq., Department Counsel
For Applicant: *Pro se*

05/03/2018

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense's (DOD) intent to deny his eligibility for a security clearance to work in the defense industry. Despite having access to classified information for over 40 years, Applicant failed to mitigate the foreign influence concerns raised by his 2011 marriage to a woman with significant family and financial ties to China. Accordingly, Applicant's continued access to classified information is revoked.

Statement of the Case

On June 2, 2016, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the foreign influence guideline.¹ DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue Applicant's security clearance and recommended that the case be submitted to an administrative judge for a determination whether to revoke Applicant's security clearance.

¹ The DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive), and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, implemented on September 1, 2006.

Applicant timely answered the SOR and requested a decision on the written record. The Government submitted its case, called a File of Relevant Material (FORM), to Applicant on August 26, 2016. Applicant received the FORM on September 20, 2016, and provided a response. The documents offered by the Government are admitted to the record as Government's Exhibits (GE) 1 through 5. Applicant's FORM response is admitted as Applicant's Exhibit (AE) A. All documents are admitted without objection.

Procedural Matters

Implementation of Revised Adjudicative Guidelines

While the case was pending decision, the Director of National Intelligence (DNI) issued Security Executive Agent Directive 4, establishing the National Security Adjudicative Guidelines (AG) applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The 2017 AG superseded the AG implemented in September 2006, and they are effective for any adjudication made on or after June 8, 2017. Accordingly, I have applied them in this case.

Request for Administrative Notice

Department Counsel requested that I take administrative notice of certain facts about China. Without objection from Applicant, I approved the request. The relevant facts are highlighted in the Findings of Fact section, below.²

Findings of Fact³

Applicant, 66, is an employee of a federal contractor. He currently lives and works abroad. Applicant immigrated to the United States when he was ten years old and became a naturalized U.S. citizen four years later. His mother, three siblings, and three children are citizens and residents of the United States. Applicant was initially granted a security clearance in 1972 in connection with his service in the U.S. Army from 1972 to 1974, when he was honorably discharged. Applicant worked as a federal civilian employee from 1978 until his retirement in 2007. He held a security clearance for the duration of his civilian employment. Applicant began working as a federal contractor in 2007. Since then, he has worked on various projects around the world. Applicant completed his most recent security clearance application in October 2014, disclosing his wife's foreign relatives and foreign assets.

In November 2011, Applicant married a native of the People's Republic of China (China). Their wedding took place in China. She became a U.S. naturalized citizen in June 2014. Applicant's wife has an adult son, a brother, and two sisters who are also citizens and residents of China. Her son works for a local police department. Her sisters

² The Government's administrative notice summary and attached documents are admitted to the record as HE I.

³ Unless otherwise identified, these findings are supported by information in GE 1-4 and AE A.

are homemakers and her brother currently works in a factory. Both of her parents are deceased. Applicant traveled to China in June 2011, March 2013, and December 2013. During the June 2011 trip, which lasted until February 2012, Applicant and his wife married. The two latter trips were taken to visit his wife's family. However, Applicant and his in-laws do not share a common language, and are unable to communicate directly. Applicant does not believe his ties to his stepson or in-laws are a potential source of vulnerability or exploitation. Applicant's wife, on the other hand, maintains regular contact with her son and siblings.

Applicant's wife also owns real estate in China, consisting of two apartments, valued at \$140,000. According to Applicant, his wife owned the assets before their marriage. Applicant admits that one of the apartments was purchased with the intention of serving as their primary residence. Ultimately, the couple decided to designate the United States as their permanent residence. However, their current living situation is unclear from the record. Applicant's wife also has an account with a Chinese bank, which the SOR alleges contained \$11,000. Applicant claims to have no ownership interest in the properties or any control over his wife's foreign assets, and that his wife is in the process of divesting herself of her foreign financial interests. He did not provide any corroborating documentation. Although Applicant reports that he receives a pension from his federal civilian service and has significant savings, he did not provide detailed corroborating information about financial ties to the United States.

Applicant believes that his wife's ties to China have no impact on him and should not impact his ongoing security worthiness. He has completed all his required security training, follows applicable security protocols, and is circumspect in his dealings with foreign nationals when working overseas. Given his professional expertise, Applicant believes that he is at low risk of being targeted by the Chinese government. He also asserts that through their marriage vows, Applicant's wife's loyalty is to him and any conflicts of interests she may face can be expected to be resolved in the interest of the United States. As further evidence of her U.S. preference, Applicant reports that his wife filed a petition in 2016 to sponsor her son's immigration to the United States.

According to the National Counterintelligence Executive, China is among the most aggressive collectors of U.S. economic information and technology and is the world's most active and persistent perpetrators of economic espionage. Chinese attempts to collect U.S. technological and economic information will continue at a high level and will continue to represent a growing and persistent threat to U.S. economic security. China's intelligence services, as well as private companies and other entities, frequently seek to exploit Chinese citizens or persons with family ties to China.⁴

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially

⁴ HE I.

disqualifying conditions and mitigating conditions, 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, administrative judges apply the guidelines 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 national security eligibility 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.

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain 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.

Section 7 of EO 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Foreign contacts and interests, including financial and property interests, may become a national security concern if they result in a divided allegiance, or may be manipulated or induced to help a foreign person, group, organization, or government in

a way inconsistent with U.S. interests, or make an individual otherwise made vulnerable to pressure or coercion by any foreign interest.⁵

The analysis and application of the disqualifying conditions in this case involves more than an evaluation of Applicant's foreign contacts and interests. While Applicant may not have any direct ties of affection or obligation to any foreign nationals or possess any foreign financial interests, his wife does. His wife's familial ties and financial interests are significant and material to a determination of Applicant's ongoing security worthiness. Her son and three siblings are residents and citizens of China and she holds approximately \$150,000 of assets in that country. This is enough to establish a *prima facie* case that these connections create a potential conflict of interest between Applicant's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, government or country.⁶

Applicant has failed to meet his burden of production or persuasion necessary to mitigate the identified foreign influence concern. Applicant argues that because of their marriage vows, his wife's primary loyalty is to him, his family, and the United States. She may have similar expectations of Applicant. Just as Applicant's family is rooted in the United States, his wife's family is just as rooted in China. Based on the information available in the record, Applicant's wife's ties to China may be as strong as Applicant's ties to the United States. Applicant and his wife married in China, and she bought an apartment with the intention of making it the couple's primary residence. Both are indicators of his wife's ties to her native country.

The record does not contain sufficient information to establish that, given his ties of loyalty, affection, and obligation to his wife, Applicant can be expected to resolve any conflict of interest in favor of U.S. interests. Furthermore, the record does not contain information to support a finding that Applicant's wife's significant financial interests in China are unlikely to result in a conflict or be used to effectively influence, manipulate or pressure him. The record is devoid of information about Applicant's U.S.-based finances before entering the marriage or about the couple's joint assets.

Based on the record, doubts remain about Applicant's continued eligibility for access to classified information. The purpose of the security clearance adjudication is to make "an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk."⁷ Applicant has held a security clearance for over 40 years as a military member, a civilian employee, and a federal contractor. However, there is no right to a security clearance.⁸ Similarly, there is no presumption in favor of granting a security clearance.⁹ Applicant's most recent

⁵ See, AG ¶ 6.

⁶ AG ¶ 7(b).

⁷ AG ¶ 2(d).

⁸ *Department of Navy v. Egan*, 484 U.S. 518 (1988).

⁹ *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), cert. denied 499 U.S. 905 (1991).

background investigation revealed a significant change in his circumstances. These changes, specifically his marriage to an individual with significant familial and financial ties to China have increased his vulnerability to exploitation, making him an unacceptable security risk.

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, Foreign Influence:	AGAINST APPLICANT
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Subparagraphs 1.a – 1.d:	Against Applicant
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Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for continued access to classified information is denied.

Nichole L. Noel
Administrative Judge