



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



In the matter of:

Applicant for Security Clearance

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) ISCR Case No. 15-08530
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Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

03/13/2018

Decision

Curry, Marc, Administrative Judge:

Applicant's relatives living in the People's Republic of China (PRC) generate a vulnerability to coercion that she was unable to mitigate. Clearance is denied.

Statement of the Case

On May 25, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) alleging security concerns under Guideline B (foreign influence) and Guideline C (foreign preference). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on September 1, 2006.

The SOR further informed Applicant that, based on information available to the Government, DOD adjudicators could not make the affirmative finding that it is clearly consistent with the interests of national security to grant or continue Applicant's security clearance. It recommended that her case be submitted to an administrative judge for a determination whether her clearance should be granted, continued, denied, or revoked.

On June 14, 2016, Applicant responded to the SOR, denying the allegations and requesting a hearing. On February 17, 2017, Applicant withdrew her request for a hearing and requested a decision on the written record. On March 8, 2017, Department Counsel submitted a File of Relevant Material (FORM). Applicant received the FORM on March 9, 2017. She did not file a response. On October 1, 2017, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me.

While my decision was pending, Security Executive Agent Directive 4 was issued establishing 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 AG supersede the adjudicative guidelines implemented in September 2006 and are effective for any adjudication made on or after June 8, 2017. Accordingly, I have adjudicated Applicant's security clearance eligibility under the new AG.¹

Preliminary Rulings

1. Item 2 is a Report of Investigation (ROI) summarizing Applicant's Personal Subject Interview conducted on September 22, 2014. In the FORM, Department Counsel informed Applicant that such reports are typically inadmissible without authenticating witnesses, and that she could either object to its admissibility, or clarify any inaccuracies Directive ¶ E3.1.20. Applicant did not respond. Consequently, I have considered this document in my disposition of this case.
2. I took administrative notice of the information in Item 4 regarding the security profile of PRC vis a vis the United States.
3. Department Counsel conceded that Applicant mitigated the Guideline C security concern. Therefore, I resolve it in her favor.

Findings of Fact

Applicant is a 29-year-old married woman with two children. She was born, raised, and educated through high school in the PRC. She immigrated to the United States in 2009 and became a naturalized U.S. citizen in 2013. In 2010, she married her husband, a naturalized U.S. citizen. (Item 2 at 18) In 2015, she earned a bachelor's degree. Since graduating, she has worked for a federal contractor as a technologist. (Item 2 at 13)

Applicant's parents are citizens and residents of the PRC. (Item 2 at 20, 22) Both parents work in an energy-related field. (Item 2 at 21, 23) Applicant talks to her mother weekly and her father monthly. (Item 2 at 20, 23) They desire to immigrate to the United States to be closer to their grandchildren. (Item 1 at 3)

¹ Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case.

In 2014, when Applicant was in college, she met and became friends with a student who was a PRC citizen. They stayed in touch for the remainder of the school year, but gradually lost touch after her friend returned to the PRC in 2015. She has not had any contact with her since then. (Item 1 at 3)

Administrative Notice

The PRC is a totalitarian state that intimidates its citizens by resorting to extralegal measures such as enforced disappearances and house arrest to quash dissent. (Item 4 at 36) The PRC considers itself a strategic competitor of the United States and is one of the most aggressive collectors of U.S. information and technology. (Item 4 at 7) PRC intelligence services frequently seek to exploit Chinese citizens or persons with family ties to the PRC to steal trade secrets. (Item 4 at 11)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

Analysis

Guideline B, Foreign Influence

Under this guideline, “foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance.” (AG ¶ 6)

The PRC is a strategic competitor of the United States, with a totalitarian government that routinely monitors its citizens. It engages in espionage against the United States. Consequently, Applicant’s relationship with her parents, both citizens and residents of the PRC, triggers the application of the following disqualifying conditions under AG ¶ 7:

- (a) contact, regardless of method, 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; and
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual’s obligation to protect classified or sensitive information or technology and the individual’s desire to help a foreign person, group, or country by providing that information or technology.

Applicant has not been in contact with her friend whom she met while in college, since her friend returned home to PRC. This relationship generates no security concern, therefore, I resolve subparagraph 2.c in her favor.

Applicant has been living in the United States for approximately eight years. She graduated from college, met her husband, and settled down in the United States, starting and raising a family. These factors, though significant, are insufficient to overcome the heavy burden generated by the PRC. AG ¶ 8(b), “there is no conflict of interest, either because the individual’s sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United states, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest,” does not apply.

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(d):

(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 is a naturalized U.S. citizen who has become thoroughly integrated into American culture and society. However, the totalitarian nature of the PRC, together with its history of espionage against the United States, creates a heavy burden with respect to the vulnerability to coercion through her parents. The evidence she supplied is insufficient to overcome the security concern of potential foreign influence.

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

Conclusion

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

Marc Curry
Administrative Judge