



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-01499

Appearances

For Government: Daniel Crowley, Esq., Department Counsel

For Applicant: *Pro se*

05/23/2018

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

On May 24, 2017, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B (Foreign Influence).¹ In a notarized response dated June 22, 2017, Applicant admitted all allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). I was assigned this case on February 27, 2018. On April 6, 2018, a notice was issued setting the hearing for May 3, 2018. The hearing commenced as scheduled.

The Government offered four documents, which were accepted into the record without objection as Government exhibits (Exs.) 1-4. Applicant gave testimony, introduced two witnesses, and offered two documents, which were accepted into the record without objection as Exs. A-B. A transcript (Tr.) of the proceedings was received on May 17, 2018, and the record was closed. After my review of the record as a whole, I find that Applicant failed to mitigate foreign influence security concerns.

¹ The action was taken 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 or after September 1, 2006. Since that time, the AG were amended. The present AG, applied here, is in effect for any adjudication dated on or after June 8, 2017.

Request for Administrative Notice

Department Counsel submitted a written request that I take administrative notice of certain facts about the People's Republic of China (China). The request was offered as Government Ex. 3. Applicant did not object to its admission. I have taken administrative notice of the facts contained in the request that are supported by source documents from official U.S. Government publications. The facts considered include, but are not limited to, the following:

China has an authoritarian government, dominated by its Communist Party. It has a poor human rights record. China suppresses political dissent, engages in arbitrary arrests and detentions, forced confessions, torture, and mistreatment of prisoners.

China is the world's most active and persistent perpetrator of economic espionage. It is among the most aggressive countries in seeking sensitive and protected U.S. technology, as well as military and economic intelligence. China targets the United States with active intelligence-gathering programs, both legal and illegal. Its focus is on obtaining information and technologies from the United States that could be beneficial to China's military modernization and economic development. 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 who can use their insider access at work to steal trade secrets, often using removable media devices or e-mail. Recent cases involving actual or attempted espionage by China against the United States, as well as incidents involving the illegal export of sensitive technology to China, exist.

In China, authorities routinely monitor telephone conversations, facsimile transmissions, e-mail, text messaging, and Internet communications. Authorities open and censor mail. Its security services have entered personal residences and offices to gain access to computers, telephones and fax machines. Hotel guest rooms are sometimes bugged and searched for sensitive or proprietary materials.

Findings of Fact

Applicant is a 49-year-old software engineer who has worked for the same employer, a defense contractor, for 12 years. He has earned two masters' degrees at U.S.-based universities, and a bachelor's degree in his native China. He is married and has two children, ages 21 and 17. In the past 15 years, Applicant has visited China three times, mostly to visit family and introduce his children to a foreign culture. He has maintained a secret clearance for over a decade without adverse incident while handling advanced technologies. He understands that his former country now poses a more significant security threat than it did in the past. (Tr. 26)

In 1993, Applicant came to the United States to pursue graduate studies. Eventually, he chose to permanently settle in this country. He applied to be a naturalized U.S. citizen, a status which was granted in 2004. Applicant is married to a U.S. citizen. Both Applicant and his spouse are active in their professions as engineers. Their children attended local public schools, where Applicant and his wife volunteered and supported their children's school teams. Their eldest child is now in college. Aside

from Applicant's home, which he estimates has a value of about \$1,000,000, Applicant and his wife have about \$500,000 in a retirement account. (Tr. 23)

At issue are several relatives of Applicant who are citizens and residents of China. His father, age 81, retired from the Chinese Army about 35 years ago after about two decades of military service as a non-combatant administrative officer of high rank. (Tr. 13-14, 39) After his military discharge, he worked with a Chinese governmental entity for about 10 to 12 years, and also served as part of the leadership of a governmental committee. (Tr. 13) He retired from these positions within the past 25 years. Applicant's father is financially reliant on his government pension for income. (Tr. 16-17) Applicant speaks with his father by telephone or by Internet messaging every month or two. (Tr. 14) Applicant stressed that, to the best of his knowledge, his father no longer associated with his former colleagues. (Tr. 39)

Applicant's mother is divorced from Applicant's father. She was a professor at a Chinese institute of higher learning which was under state control. She also served in a leadership role for a minor Chinese governmental entity. She has been retired for over 20 years. Like her former spouse, she has a government pension on which she relies for income. (Tr. 16-17) Applicant communicates with his mother about once a month.

Applicant's brother is also a citizen and resident of China. He is in his early-30s. The brother is a network engineer who has worked for the same company for a decade. While he and Applicant sometimes exchange messages, mostly to discuss family matters, they more often keep up-to-date through their parents.

Applicant also has a half-sister, the product of one of his parent's second marriages. She is a college student in China. Applicant has only met her three times. They do not maintain regular contact, and Applicant is not close to her. (Tr. 18)

Applicant has only met his stepfather three times since the man married Applicant's mother. He last saw his stepfather on a visit to China. (Tr. 19) Now retired, the stepfather is a former engineer. Similarly, Applicant has only met his stepmother three times since she married Applicant's father. The stepmother is a former private sector salesperson and business owner, now serving as a housewife.

During the hearing, Applicant introduced two witnesses. His supervisor described Applicant as an upstanding citizen, hard worker, and devoted family man. It was noted that Applicant has never had any problems handling his responsibilities within a secure environment. He is noted for being cautious with sensitive data. A co-worker stated that Applicant is a good citizen and a fine employee who is an asset to their company.

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 disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's adjudicative goal is a fair, impartial, and commonsense decision. Under the AG, 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 in making a decision. The protection of the national security is the paramount consideration. Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.

Under the Directive, the Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security decision.

A person seeking access to classified information enters into a fiduciary relationship with the Government based on trust and confidence that transcends beyond normal duty hours. The Government reposes a high degree of trust and confidence in those to whom it grants access to classified information. Decisions include consideration of the possible risk the applicant may fail to safeguard such information.

Analysis

Under the AG, foreign contact and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U. S. interests or otherwise be made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contact and interests should consider the country (China) in which the foreign contact or interest is included.

The AG lists nine available disqualifying conditions. Given that Applicant has multiple members of his family who are Chinese nationals living in China, I find the following apply:

¶ 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

¶ 7(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.

Under ¶ 8, two mitigating conditions are potentially applicable:

¶ 8(a): the nature of the relationships with foreign persons, the country 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 United States; and

¶ 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.

As a threshold issue, I note that China has an authoritarian government dominated by its Communist Party. It is the world's most active and aggressive perpetrator of economic espionage, particularly with regard to its pursuit of sensitive and protected U.S. technology and both U.S. military and economic intelligence. It is known to specifically target the United States with its intelligence-gathering programs. Both its government and private entities within its borders are known to exploit Chinese citizens and those with family ties to China in order to gain access to trade secrets and other protected information of U.S. origin. China is known to monitor various forms of communication, including those made via the Internet. Consequently, heightened scrutiny is warranted in this matter.

Applicant stresses that his father is aged and does not have close ties with his former military and governmental colleagues and friends. However, at one time, he was apparently a man of some influence in military and governmental circles. Such recognition makes him more likely than not to be a person still known within such circles. Moreover, like Applicant's mother, who was also a Chinese government civil servant at some point, Applicant's father is dependent on his Chinese government pension. Such dependency has the potential of abuse by powers seeking to use either Applicant or his father to their own ends.

Otherwise, Applicant maintains regular contact with both his father and mother, by both telephone and Internet messaging. Contact, albeit to a lesser degree, is also maintained with Applicant's brother. While Applicant's nexus to his stepmother, stepfather, and stepsister may be relatively negligible, they potentially could pose some degree of vulnerability through their relationships with Applicant's parents.

Applicant's continued communication and visits with his parents reflect more than a perfunctory sense of loyalty to his parents. They have genuine and natural ties of affection. This is true despite Applicant's many years in this country, where he has married, raised children, and acquired financial assets. Given the country at issue; China's known interests in, and methods of, targeting U.S. intelligence; Applicant's profession; and the former military service and associations of, in particular, Applicant's

father, both Applicant and his relations remaining in China could well be targeted by Chinese interests. Their vulnerability is enhanced given the financial dependency of both Applicant's parents on their Chinese government pensions. Consequently, I find neither ¶ 8(a) nor ¶ 8 (b) 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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed in the AG. The ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I incorporated my comments under the guideline at issue in my whole-person analysis. Some of the factors related to the whole person concept have already been discussed, but some warrant emphasis.

Applicant is a 49-year-old software engineer who has worked for the same employer, a defense contractor, for 12 years. He has earned advanced degrees related to his profession. Indeed, Applicant came to this country in search of graduate studies and never left. Here, he has settled, married, built a career in technology within the defense industry, raised children, and acquired financial stability.

While these domestic ties are significant, Applicant's ties to his parents, who remain citizens and residents of China, cannot be readily dismissed. Applicant's father, while aged, was a former officer of some rank in the Chinese military. After his military career, he continued in the service of the Chinese government for many years. Both he and Applicant's mother, who also has a background in Chinese government service, are dependent on their state pension. Such backgrounds and economic dependence have the potential of being a powerful weapon that could compromise either parent or Applicant. While Applicant is clearly a loyal U.S. citizen, hard worker, valued employee, and established resident within his domestic community, his lingering ties to China through his parents sustain foreign influence security concerns.

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
Subparagraphs 1.a-1.b:	Against Applicant
Subparagraphs 1.c-1.f:	For Applicant

Conclusion

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

Arthur E. Marshall, Jr.
Administrative Judge