



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-02655

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel

For Applicant: *Pro se*

05/18/2018

Decision

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

Applicant failed to mitigate security concerns pertaining to Guideline B (foreign influence). Clearance is denied.

Statement of the Case

On October 26, 2017, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B (Foreign Influence).¹ In a letter dated November 14, 2017, Applicant answered the allegations and requested a determination based on the written record. On February 9, 2018, the Government issued a File of Relevant Material (FORM) with five attachments ("Items"). The case was assigned to me on May 10, 2018.

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, revisions have been made to the AG for any adjudication on or after June 8, 2017. The revised AG are applied here and are available at [http://ogc.osd.mil/doha/SEAD4 20170608.pdf](http://ogc.osd.mil/doha/SEAD4%20170608.pdf).

Request for Administrative Notice

As part of the FORM, Department Counsel submitted a written request that I take administrative notice of certain facts about the People's Republic of China (China). The request is included with the FORM as Item 5. 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 27-year-old who works with a defense contractor as an engineer, where he has been employed since about April 2015. He accepted this job upon graduation from college with a bachelor's degree. Applicant is currently taking some on-line graduate-level courses. Applicant is single, does not own a vehicle and has no problems meeting his financial obligations.

Born in China, Applicant came to this country with his mother in 2002, when he was 11 years old. He was told by his mother that his United States citizenship is derived from when she became a naturalized United States citizen in 2008, when U.S. law allowed minor children of immigrants to become U.S. citizens when the parents became citizens. The Chinese passport issued to Applicant in 2002, which he used to come to this country, has since expired.

Since April 2016, Applicant has lived in a “spouse-like relationship” with a former college roommate, although he does not know this person’s date of birth or middle name. (FOR, Item 4, at 4) In that same year, his mother remarried. Applicant’s stepfather is a United States citizen by birth and a former member of the U.S. military. (SOR Answer)

Applicant’s birth father is a citizen and resident of China, where he is a member of the Communist Party of China (CPC). Applicant visited his father in China from June or July 2011 through September 2011, and from December 2015 through January 2016. Applicant’s father does not talk to Applicant about his experiences in the CPC, but Applicant suspects his father joined the party at a young age. Applicant’s father presently works in a non-governmental sales position.

Applicant and his father trade messages via an Internet chat application about every two months. His father is aware that he is seeking a national security position in the United States. (FORM, Item 4, at 5) Since his parent’s divorce when he was young, Applicant has not considered himself to be close to his father. He was raised largely without his father in his life, despite the protracted 2011 visit and the briefer, more recent visit from December 2015 to January 2016. Today, Applicant considers himself to be independent and not reliant on his parents. (FORM, Item 4, at 5)

Applicant has a stepmother who is a citizen and resident of China. He does not know her name. He “only met her one time, when he stayed with his father in China” in 2011. (FORM, Item 4, at 5) At that time, she was referred to as “auntie.” During his trip to China between December 2015 and January 2016, he learned she had since married his father. Applicant knows little else about her.

In China, Applicant also has his paternal grandparents, who are citizens and residents of China. Both are almost 90 years old and have been retired for over two decades. Applicant last had contact with his grandmother in January 2017 via the Internet chat application. Applicant does not think she knows he is applying for a national security position, and he does not know if she has any ties to the Chinese government. Applicant’s grandfather is retired from a government job and Applicant assumes his grandfather is a member of the CPC. Applicant “could not speculate or provide a specific frequency of contact” he has with his grandfather, but he does communicate with him “in generalities” when someone who lives in China “sends a [Internet application] text message to the family-group text.” (FORM, Item 4, at 6)

In addition, Applicant has multiple extended family members who are citizens and residents of China. Like the relatives noted above, all were born in China. They are individuals with whom he may have some exchange through the above-referenced Internet-based chat and text application. These include three aunts, two uncles, and five cousins, who also use the family-group Internet application. (FORM, Item 4, at 7) Applicant has no other relations or friends who are citizens and residents of China.²

² Applicant does have an maternal grandmother who is a citizen of China, but she has resided with Applicant’s mother in the United States since January 2017. She is retired. She knows little about

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. Recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." All reliable information about the person must be considered in making a decision.

The protection of the national security is the paramount consideration. Any doubt concerning personnel being considered for access to classified information will be resolved in favor of national security. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence.

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. The ultimate burden of persuasion to obtain a favorable security decision is on an applicant.

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. 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 protected information.

Analysis

Guideline B – Foreign Interests

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.

Applicant and he knows little about her and her affiliations. (FORM, Item 4, at 6-7) Applicant sees her on the weekends he visits his mother.

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 foreign 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. Indeed, it is known to specifically target the U.S. 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 the Internet. Consequently, heightened scrutiny is warranted in this matter.

Although Applicant stresses that he is not close to his father in China, Applicant visited his father in China for multiple months in 2011, and, more recently, for at least a few weeks during the winter of 2015-2016, shortly after Applicant started working for the defense contractor now supporting him for a security clearance. Moreover, the two regularly exchange salutations and news about every other month via the Internet. Such contact and communication has led to the father sharing with his son that he is a current member of the CPC, and resulted in the Applicant informing his father that he is seeking a national security position in the United States. The frequency of contact and the exchange of such information, intentionally or unintentionally, indicates that they share more than civil pleasantries. Meanwhile, albeit of less concern, little is known of Applicant's stepmother, her past, or her nexus with the Chinese government, if any.

Information regarding Applicant's paternal grandparents is scant, but Applicant admits they maintain some degree of contact via Internet and during his trips to China. Applicant believes his grandfather is a member of the CPC. Moreover, some degree of concern is raised by the fact that the grandfather may be dependent on the Chinese government in terms of a retirement pension or other form of public assistance. With regard to other relatives in China, insufficient information was provided to assess those individuals properly.

Applicant's continued communication and visits with his paternal relations in China reflect more than a perfunctory sense of loyalty to, at the very least, his father. This is true despite Applicant's 16 years in this country with his mother. Given the country at issue; China's known interests in, and methods of, targeting U.S. intelligence; and the activities and associations of, in particular, both Applicant's father and paternal grandfather, both Applicant and those kin could be made targets of Chinese interests. 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. Under 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. That analysis includes the fact that Applicant was born in China, then immigrated to the United States with his mother in 2002, when he was 11 years old. He became a naturalized U.S. citizen in 2008.

Now 27 years old, Applicant has worked for the same defense contractor since April 2015. He is financially independent, has earned a bachelor's degree, and is

pursuing graduate studies. Applicant cohabitates with a partner and remains close to his mother, who has since remarried.

Remaining behind in China, however, are Applicant's father, stepmother, paternal grandparents, and other relations. While Applicant's stepmother is a virtual stranger, Applicant maintains a relationship with his father. They communicate regularly, about every two months, through an Internet application, a mode of communication that has been known to be monitored by the Chinese government. It also appears that this application may feature a "family-group" function, where others can read what has been posted between communicants, leaving open the possibility that communications are not necessarily private even within Applicant's family.

Moreover, Applicant visited his father for several months in 2011, and between December 2015 and January 2016, after Applicant began working for his present defense contractor employer. Apparently, their personal conversations and Internet communications go beyond mere pleasantries: Applicant knows his father is an active member of the CPC, and his father knows he is applying for national security position.

Applicant also maintains some degree of communication with his paternal grandparents. Of interest there is the fact Applicant's grandfather is retired from government service and may be dependent to some degree on a government pension or some other form of government aid. As to his other foreign kin, the scant information provided limits the heightened level of inquiry needed here. Such vulnerabilities raise genuine concerns when the country at issue is China, given its record with regard to human rights, economic espionage, and efforts designed to cull protected information from the United States.

There is no question here as to Applicant's loyalty to the United States or his professionalism within his field. Genuine security concerns regarding foreign influence, however, remain unmitigated.

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.d

Against 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