



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



In the matter of:)
)
) ISCR Case No. 17-03620
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel
For Applicant: *Pro se*

10/10/2018

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Based on a review of the pleadings, testimony, and exhibits, I conclude that Applicant has mitigated foreign influence concerns raised by her father, stepmother, stepsister, grandparents, aunt and uncle, who are citizens and residents of China; as well as the concerns raised by her spouse, father-in-law, cousin, and friends who are all citizens of China residing in the United States. Her request for a security clearance is granted.

Statement of Case

On December 30, 2015, Applicant submitted a security clearance application (SF 86). On December 8, 2017, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline B for foreign influence. The SOR further informed Applicant that, based on information available to the Government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant answered the SOR on January 9, 2018 (Answer), and requested that her case be decided by an administrative judge on the written record without a hearing. (Item 1.) On April 6, 2018, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing four Items, was mailed to Applicant on April 10, 2018, and received by her on April 19, 2018. The FORM notified Applicant that she had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of her receipt of the FORM. Applicant's reply was due on May 19, 2018. On May 8, 2018, she submitted a two-page response to the FORM (Reply). She did not object to any of the Items, but did offer clarifications on Item 3. On July 26, 2018, the case was assigned to me. Items 1 through 3 are admitted into evidence, without objection.

Procedural Rulings

The Government and Applicant both requested I take administrative notice of certain facts relating to China. Department Counsel provided an 11-page summary of the facts, supported by 11 Government documents pertaining to China, marked as Item 4. The documents provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

Findings of Fact

The SOR alleged, and Applicant admitted SOR ¶¶ 1.a, 1.b, 1.c, 1.d, 1.f, and 1.g. She denied the allegations in SOR ¶ 1.e. Those admissions are incorporated into the following facts:

Applicant is 30 years old. She was born in China. She immigrated to the United States with her mother in February 2002. She obtained U.S. citizenship in 2005, through the naturalization of her mother, as she was a minor. Applicant is a graduate of a U.S. high school. She earned a bachelor's degree and master's degree from the same U.S. university. She has been an employee of a government contractor since December 2015. She is married and has one child, who was born in the United States and is a U.S. citizen. (Item 2.)

Applicant's foreign family members and friends were listed on the SOR as raising security concerns under the guideline for foreign influence. She has indicated that none of them are connected to the Chinese government or military. They are "just ordinary people." (Reply; Item 3.) Those family members and friends are discussed in greater detail, below.

Applicant's father is a citizen and resident of China. He works as a mechanical engineer. He lives there with his second wife, Applicant's stepmother, and their daughter. Her stepmother is a homemaker. Applicant is not close to her father. He "was

hardly present” during Applicant’s life. (Answer; Item 3.) Her parents divorced in the mid-1990s and she moved to the United States with her mother in 2002. Applicant last talked to her father “a few months ago.” She does not maintain any contact with her stepmother or stepsister. Her stepsister is a student. (Answer; Item 3.)

Applicant’s grandparents are citizens and residents of China. They are both in their 80s. Her grandfather has been retired for 20 years from his job as a university professor. Her grandmother is a retired middle school teacher. They did not work for the Chinese government. They are not aware of what Applicant does for a living. (Answer; Item 3.)

Applicant’s aunt and uncle are citizens and residents of China. Applicant admits that she is in contact with her aunt, but she does not contact her uncle. Her aunt is a homemaker. She knows nothing about Applicant’s work, other than that Applicant is an engineer. Her aunt’s daughter (Applicant’s cousin) resides in the United States, and is a 19-year-old freshman at a U.S. university. (Answer; Item 3.)

Applicant’s husband is a citizen of China residing in the United States. He immigrated to the United States when he was in high school. His father, Applicant’s father-in-law, was naturalized as a U.S. citizen in July 2017. He works as a driver. Applicant contacts her father-in-law once a year via telephone. (Answer; Item 3.)

Applicant has multiple friends who are Chinese citizens that reside in the United States. Her contact with them is casual and infrequent. She met these friends while working at a prior job, and she no longer is employed at the same firm. Similarly, those friends moved out-of-state to find better employment, and their bonds of friendship have not been maintained. (Answer; Reply.)

Applicant has been in the United States since she was 13 years old. She indicated that her values and standards matured here. She has chosen to live her life and start her family here. She is loyal to the United States and is grateful for the opportunities she has found here. She owns a home in the United States that she purchased in 2016. She has no property in China. (Answer; Reply; Item 3.)

China

China is an authoritarian state in which the Chinese Communist Party is the paramount authority. Human rights concerns include: illegal detention in unofficial holding facilities; torture and coerced confessions; and detention and harassment of journalists, lawyers, writers, bloggers, dissidents, and others whose actions are deemed unacceptable. There is a lack of due process and individuals have limited forms of redress against official abuse. Visitors may be placed under surveillance and may be searched without knowledge or consent. (Item 4.)

China has been identified as one of the most aggressive collectors of U.S. economic information and technology. Those attempts represent a growing and persistent threat to U.S. economic security. China uses a variety of methods to acquire foreign military and dual-use technologies, including cyber activity and exploitation of Chinese nationals. There are numerous examples of individuals who have been convicted of conspiring to violate federal export control laws by illegally exporting defense equipment to China. (Item 4.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 protect or safeguard classified information. Such decisions entail a certain degree of legally

permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 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 *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

The security concern for foreign influence is set out in AG ¶ 6:

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. 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 made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Three are potentially applicable in this case:

(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;

(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; and

(e) shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

Applicant's father, stepmother, stepsister, grandparents, aunt, and uncle are all citizens and residents of China. Her cousin and friends are citizens of China residing in the United States. She lives with her spouse, who is a citizen of China. There is an articulated heightened risk associated with having relationships with family members in or tied to China, due to China's targeting U.S. economic information and technologies, as well as the persistent human rights abuses present there. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 including:

(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.

Applicant's emotional bonds to her relatives in China have decreased since she left China at the age of 13 and moved with her mother to the United States. Her bonds with her immediate and extended family in the United States have strengthened her ties here. She attended high school in the United States. She earned bachelor's and master's degrees at U.S. universities. She has adapted to the American way of life and plans to remain in the United States. She owns a home here. She is connected to her local community through work and friends. She demonstrated sufficient relationships with the United States, which outweigh any risks associated with her family in China or with Chinese citizenship. AG ¶ 8(b) provides mitigation.

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 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept. Applicant's personal property and investments are located in the United States. She has adopted the American way of life and is thankful for the opportunities it has given her. I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Overall, the record evidence leaves me without doubt as to Applicant's suitability for a security clearance. She met her burden to mitigate the security concerns arising under the guideline for foreign influence.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B: FOR APPLICANT

Subparagraphs 1.a through 1.g: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant national security eligibility and a security clearance. National security eligibility is granted.

Jennifer I. Goldstein
Administrative Judge