

DATE: November 19, 2007

In re:)
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 -----) ISCR Case No. 06-24371
 SSN: -----)
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 Applicant for Security Clearance)
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**DECISION OF ADMINISTRATIVE JUDGE
PHILIP S. HOWE**

APPEARANCES

FOR GOVERNMENT

Caroline Jeffreys, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 28 years old, unmarried, and is a U.S. citizen, as are his family members. His father works in the PRC for a Taiwanese auto parts company. His mother and sister live and work in the United States. Applicant came to the United States at the age of five years. Applicant mitigated the foreign influence security concern. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On March 23, 2007, DOHA issued a Statement of Reasons¹ (SOR) detailing the basis for its decision—security concerns raised under Guideline B (Foreign Influence) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006. Applicant answered the SOR in writing on May 8, 2007, and elected to have a hearing before an administrative judge. The case was assigned to me on June 27, 2007. On September 21, 2007, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government and the Applicant submitted exhibits that were admitted into evidence. DOHA received the hearing transcript (Tr.) on October 4, 2007.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated here as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 28 years old, a naturalized U.S. citizen, and unmarried. He works for a defense contractor in the aerospace business, but currently is on leave to study for his doctorate degree in aerospace engineering. He obtained dual bachelor's degrees in aerospace engineering and atmospheric, oceanic, and space sciences. Later, he obtained his master's degree in aerospace engineering. Applicant came to the United States with his parents when he was five years old. When he was in fourth grade, his parents and he became U.S. citizens. His sister was born in the United States. (Tr. 17, 21, 28, 31, 32; Answer; Exhibits 1, C, G)

Applicant's mother and sister live in the United States. His sister has a master's degree. His mother lives at home and does volunteer work. His father works overseas in the Peoples Republic of China (PRC), traveling on his U.S. passport only, and works for a Taiwanese company making automobile interior parts as the manager of the mainland China plant. Applicant telephones his father monthly to speak with him. His father will retire in a few years and return to live in the family home he and his wife have owned in the United States for the past 20 years. (Tr. 15, 22, 23, 26-28, 32; Answer; Exhibits 1, B)

Applicant and his family returned to live on Taiwan when Applicant was in the seventh grade. His father had a management job with an American company there. On Taiwan he attended an American high school. He returned to the United States to attend college in 1997. He graduated from his five-year program in 2002. His family returned to live in the United States in 2000 when his sister started college. Applicant went to Taiwan for a summer internship in 2000 at a prestigious research institute, then returned to the United States for the college the fall semester. He exchanges

¹Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).

one annual email message with his supervisor from that summer institute program. (Tr. 18-21, 24; Answer)

Applicant went to Taiwan in the summer of 2002 to visit his grandmother and aunt. His family traveled with him. He telephones his grandmother twice a year. He also traveled to the PRC to visit his father and make tourist visits in the PRC because he had never been there previously. He contacted his employer's security office before going to Taiwan and China to determine what he should or should not do while traveling there. He has no contact with his aunt and uncle on Taiwan. (Tr. 24-27; Answer; Exhibit A)

Applicant submitted six character letters from colleagues and supervisors. They regard him as intelligent, conscientious, hard-working, diligent, dependable, honest, discrete, and loyal. Applicant is also considered to have high ethical and moral standards. His integrity is highly regarded. On one project mentioned in one character letter, Applicant followed appropriate protocols to secure his data, and established several more procedures himself to guard his data and research. For the past three years, Applicant has had an interim security clearance and no violations are recorded. (Exhibits A to F)

I take administrative notice of the PRC having a government in which the Chinese Communist Party is the only political party allowed. The PRC is a one-party authoritarian government which has a long record of human rights abuses and espionage. The PRC human rights record has a history of serious abuses of fundamental human rights occurring, such a denial of free speech and press, fair and open trials, and other basic rights recognized by the international community. The PRC continues to modernize its armed forces and acquire or develop advanced weapons. The PRC engages regularly in military, economic, and industrial espionage, including stealing nuclear weapons technology, missile design information, and commercial technology. The PRC also obtains commercial information through the use of front companies, buying dual-use technologies, and the direct collection of technology by non-intelligence agencies and individuals. The PRC regards itself as the legitimate government of all of China, including Taiwan. Since 1979, the U.S. has recognized the PRC as the legal government of China under the "one China" policy. The PRC engages in industrial and military espionage designed to collect proprietary and classified information. Industrial espionage is intelligence gathering by a foreign country or a foreign company with its government's help against a private U.S. company to obtain commercial secrets. The United States does billions of dollars of trade with the PRC annually. (Exhibit 2)

POLICIES

"[N]o 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 occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information with Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of

demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required.

In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (4) the individual’s age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent 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 (See Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant’s security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.” Directive ¶ E2.2.2. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531. *See* Exec. Or. 12968 § 3.1(b).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guideline most pertinent to an evaluation of the facts of this case:

Guideline B: The Concern: Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism. ¶6

CONCLUSIONS

The Government established by substantial evidence and Applicant's admissions each of the allegations in the SOR.

Foreign Influence: The condition that could raise a security concern and may be disqualifying (DC), which is applicable here, is ¶7.a (contact with a foreign family member 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).

Applicant has family members on Taiwan, a grandmother whom he telephones twice a year, and an aunt and uncle with whom he has no contact. His father works in the PRC for a Taiwanese company making auto parts. His father, mother, and sister are U.S. citizens, as is Applicant.

After the Government raised a disqualification, the burden shifted to Applicant to mitigate or rebut the allegations. Two mitigating conditions (MC) apply: ¶8.a (the nature of the relationships with foreign persons, the country in 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 the foreign individual and the interests of the U.S.), and ¶8.b (there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interests).

Applicant has only distant familial relations with his grandmother on Taiwan. His father is a U.S. citizen working in the auto parts industry in the PRC. The auto industry in the PRC is expanding, and U.S. companies sell cars there and seek strategic alliances with PRC auto manufacturers. To coerce or pressure an auto parts production executive like Applicant's father would injure well-developed business relationships, prove counter-productive for PRC forces, and be highly unlikely because of the nature and position of Applicant's father in the total auto industry in the PRC. Therefore, there is unlikely he will be placed in a position of having to choose between those persons he knows in the PRC and the interests of the U.S. Applicant's summer internship in 2000 was part of his academic course of study. He worked on Taiwan, not the PRC. His travels to Taiwan and the PRC in 2002 were disclosed to his employer's security office before travel took

place. He undertook the travel only for family visits and tourist activities. His monthly talks with his father are normal family activities between two U.S. citizens.

There is no conflict of interest in Applicant's situation because of his deep and longstanding relationships and loyalties to the United States. There are many positive attributes to Applicant's life as a U.S. citizen that weigh in favor of granting him a security clearance. He has extensive and long-term contacts with the United States, arriving here 23 years ago as a child of five. He became a U.S. citizen when he was in fourth grade at the age of nine years. He has lived here from 1984 to 1992 when the family returned to Taiwan because his father had a management position there with a U.S. company. Applicant obtained a college degree here from 1997 to 2002, and has worked here continuously since then. His parents have a home in the United States which they bought 20 years ago, and his father returns home to the United States every opportunity he has when not working. His sister was born in the United States. He is a loyal American committed to his family and job in the United States, and would resolve any conflict of interest in favor of the United States. I give his history in the United States, his compliance with company security requirements, and his successful work on an interim security clearance for the past three years great weight. His testimony was credible and persuasive on his close and dedicated attachments to the United States.

Whole Person Analysis

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." AG ¶ 2(a). "Each security clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy." Directive ¶ 6.3. "Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination." AG ¶ 2(a). In evaluating Applicant's case, I have considered the adjudicative process factors listed in the AG ¶ 2(a).

I considered all the factors under the "whole person concept." Only the eighth factor, a potential for pressure, coercion, exploitation, or duress applies. Applicant's evidence is that he is not and would not be subject to pressure or coercion. His connections to the United States are too long and strong to allow him to be subjected to PRC influence just because his father happens to work in the PRC now. Applicant's history of living and working in the U.S., and his dedication to his immediate family in the United States and his job are significant factors in his favor. He is a serious student who already has three academic degrees from U.S. universities, and is working on his doctorate at another U.S. university in a professional area he enjoys. His father's job in the PRC is not sufficient to influence Applicant to choose between the father, the PRC, and the United States in any particular situation when all his other connections of family, friends, and colleagues are in the United States. All these factors show that there is no potential for pressure, coercion, exploitation, or duress upon Applicant. I give great weight to the character letters from his co-workers and supervisors about his work ethic, and dedication to his job and security requirements. I also conclude Applicant is credible in his explanations of his familial relationships and strong preference for the United States.

In addition to the above facts, security determinations are predictive judgments and the best predictor of future performance is past performance. Based on a review of his history and substantial

ties to the United States, I conclude Applicant's potential for exploitation by the PRC, where his father works presently, appears low and unlikely to occur. Therefore, I conclude the foreign influence security concern for Applicant. I also conclude the "whole person" concept for Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline B:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant

DECISION

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

Philip S. Howe
Administrative Judge