



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



In the matter of:)
)
) ISCR Case No. 14-03287
)
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esquire, Department Counsel
For Applicant: Elaine L. Fitch, Esq.

04/07/2015

Decision

CURRY, Marc E., Administrative Judge:

Given Applicant’s deep and longstanding relationships in the United States, he can be expected to resolve in favor of the U.S. interest any potential conflict of interest that may arise based upon his family ties to China. Clearance is granted.

Statement of the Case

On August 4, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) detailing a security concern under Guidelines B, foreign influence. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the adjudicative guidelines (AG).

Applicant answered the SOR on August 28, 2014, admitting the allegation and requesting a hearing. On December 5, 2014, I received the case assignment. The

Defense Department of Hearings and Appeals (DOHA) issued a notice of hearing on January 2, 2015, scheduling it for January 23, 2015. Applicant then retained counsel who entered her appearance and requested a continuance. I granted the request and rescheduled the hearing for February 4, 2015. I held the hearing as rescheduled. During the hearing, I received one Government exhibit (GE 1) and the testimony of Applicant and four character witnesses. Also, I took administrative notice, at Department Counsel's request, of the facts set forth in 20 federal government publications about China, marked as Hearing Exhibits (HE) I through XX. DOHA received the hearing transcript (Tr.) on February 2, 2015.

Findings of Fact

Applicant is a 52-year-old married man with two adult children. He is a computer engineer who works for a company that develops human resource software. Currently, he is working on a contract with a federal government agency.

Applicant was born and raised in China. He attended college and graduate school in China earning a bachelor of science degree in computer science (Tr. 73) in 1983, and a master's degree in the same field in 1985. (GE 1 at 11) Applicant worked as a professor at a university in China from 1987 to 1989. (Tr. 22) He taught computer science. (Tr. 74)

In 1989, Applicant got married. In January 1990, he emigrated from China. His wife, a Chinese national, followed him to the United States approximately 18 months later. After immigrating to the United States, Applicant returned to school, earning a second master's degree in 1991. (GE 1 at 48) He has spent his career working in software development.(GE 1 at 12-16) Both Applicant and his wife became naturalized U.S. citizens in 1998. (Tr. 36, 94)

Applicant is highly respected by his peers and coworkers, three of whom testified. They testified that he has an "excellent work ethic, [is] very professional, [and] helps everybody on the team," is "someone you can rely on 100%," and that there are a very small group of people who can match his level of expertise. (Tr. 99,111,115)

Applicant's parents are citizens and residents of China. Both are in their mid-70s and have been retired for more than 20 years. (Tr. 49) Applicant's father worked for a privately-owned water pump manufacturer as an electrician. (Tr. 50) His mother worked at a privately-owned factory on an assembly line. Both receive pensions from their employers.

Applicant speaks to his parents approximately once per month for ten minutes. They do not text or e-mail because his parents do not own cell phones or computers. (Tr. 55)

Applicant's mother has visited him in the United States twice over the years. The first time was in 1994 when his oldest son was born. She stayed for six months. (Tr. 56)

She returned with Applicant's father in 1997 to help with Applicant's youngest son shortly after he was born. (Tr. 56)

Applicant has two younger sisters who are China citizens and residents. The older of the two sisters is age 51. She is married and has an adult child. She works in a grocery store as a cashier. (Tr. 57) Her husband owns a business that sells paper to print and copy shops. (Tr. 59) Neither individual is involved with the government. Applicant's contact with her is limited to the exchange of routine pleasantries communicated via e-mail approximately three times yearly. He last saw her when he visited China in September 2013, and has only talked to her once since that trip. (Tr. 60)

Applicant's youngest sister is married and has an adult child. She works for a privately-owned, power generator factory. (Tr. 62) Her duties include monitoring meters in the factory control room. (Tr. 62) Applicant's sister's husband is a civil engineer who works for a highway construction company. (Tr. 62) Applicant has talked with his sister and her husband once in the past year. This conversation occurred when he called his parents and she happened to be at their home when he called. Applicant has had no other communication with his younger sister and her husband. None of Applicant's relatives are involved in politics or are members of the military. (Tr. 54)

Applicant has visited China four times since immigrating to the United States. (Tr. 65) Those visits occurred in 2003, 2006, 2011, and 2013. (Tr. 65; GE 1 at 33, 35,38-39) In 2003, he went to see his mother who was sick, and in 2006, he went to see his father who was sick. Applicant's family did not travel with him on those trips. (Tr. 68)

None of Applicant's wife's family members are citizens or residents of China. She visited her parents in China on two occasions, in 1998 and 2000, before they immigrated to the United States.

Both of Applicant's sons were born in the United States. Applicant's oldest son, age 20, is a sophomore in college. (Tr. 44) Applicant's youngest son, age 18, is profoundly autistic. (Tr. 68) He needs intensive supervision. Applicant and his wife anticipate that he will probably never be able to live independently. (Tr. 44) Applicant spends approximately 90 percent of his free time working with him. (Tr. 46)

The local public school system arranged private school placement for Applicant's son. (Answer) The school system provides an attendant to accompany Applicant's son to school on the bus. (Tr. 75) Applicant receives disability assistance for his son from the U.S. Social Security Administration. Specifically, the federal government subsidizes the services of an in-home attendant who watches Applicant's son during the week. (Tr. 80)

Over the years, Applicant has relied upon the support of an extensive network of friends, daycare teachers, and community support groups to help raise his son. (Answer) His community network was particularly helpful in 2006 when his wife was diagnosed with breast cancer and was incapacitated for several months while undergoing

treatment. Friends helped with grocery shopping, and his son's school would often let his son stay late on occasions when Applicant could not pick him up on time. (Tr. 85)

Applicant remains active in autism support groups. Periodically, he attends training for raising autistic children. He then meets with local groups approximately once per month to share what he has learned and compare resources and child-rearing strategies. (Tr. 78)

Applicant considers the United States his home. He prefers it to China because U.S. citizens can move freely and change jobs when they want. (Tr. 23) Most importantly, he believes that the United States is the best place in the world to raise children with autism. (Tr. 46)

Applicant has never been contacted by anyone from the China government. If anyone from the China ever contacted him, he would report it to his security officer. (Tr. 68)

Administrative Notice

China is the most active country in conducting espionage against the United States. (HE VI at 165) China actively encourages and rewards private individuals who obtain technology on its behalf. (HE VI at 149) China is one of the top destinations for illegal exports of restricted U.S. technology. (HE VI at 149)

Chinese government security personal may at times place foreign visitors under surveillance.(HE I at 4) China routinely represses its citizens, particularly certain ethnic groups and individuals involved in rights advocacy. (HE I at 1)

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.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied together with the factors listed in the adjudicative process. According to AG ¶ 2(c), 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 access to classified information will be resolved in favor of national security."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the 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 applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

Analysis

Guideline B, Foreign Influence

Under this guideline, “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 the U.S. interests, or is vulnerable to pressure or coercion by any foreign interest” (AG ¶ 6). Moreover, “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” (*Id.*).

China is a police state that conducts more espionage against the United States than does nearly any other country in the world. Consequently, Applicant’s relatives who are both citizens and residents of China trigger the application of AG ¶ 7(a), “contact 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, or coercion.”

The following mitigating conditions under AG ¶ 8 are potentially applicable:

- (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 chose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;
- (b) there is no conflict of interest, either because the individual’s sense of loyalty or obligation to the foreign person, group, government, or country 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. interest; and
- (c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

The extent of China's intelligence-gathering operations against the United States, both through its military and its private sector render AG ¶ 8(a) inapplicable. Applicant last talked with one of his sisters in 2013, and he has only talked to the other sister once during the past year. AG ¶ 8(c) applies to these relationships.

Although Applicant does not communicate with his parents often, they remain an important part of his life, as his mother visited him in the United States in 1994 to help take care of his oldest son after his birth, and returned three years later with Applicant's father to help care for Applicant's youngest son. AG ¶ 8(c) does not apply to these relationships.

Applicant is thoroughly acclimated to U.S. culture. He has not lived in China for 25 years and has only returned four times in that span. Both of his children were born and raised in the United States. Applicant admires the United States and likes it better than China. This is not a particularly unusual sentiment among U.S. immigrants, particularly those from poor, developing, or totalitarian countries. Consequently, this sentiment is only marginally relevant to the security analysis.

What makes Applicant's experience unique is the role his status as a U.S. citizen and resident has played in raising his profoundly autistic son. Specifically, Applicant receives support from both the federal and his local government to help him maximize the educational and developmental potential of his son, including help with developing an individualized educational plan, a subsidized private school setting, subsidized home care aid assistance, and ongoing monitoring. Over the years, Applicant has developed a community of friends consisting of neighbors, friends, educators, and autism support group members who have assisted him by sharing strategies for working with autistic children. On occasion, members of his community network have even helped care for his son, particularly when his wife was incapacitated by breast cancer.

Applicant has reciprocated the support from his community by avidly participating in autism outreach groups, attending conferences on raising children with autism, and sharing information learned from those conferences with other parents of autistic children. In sum, Applicant has reaped extraordinary benefits from this country and his community, and he appreciates that his child is most likely receiving the best treatment for autism than he could receive anywhere else in the world. Under these circumstances, I conclude that Applicant's network of relationships that he has cultivated over the years, together with his sense of loyalty to the United States, is so strong that he "can be expected to resolve any conflict of interest in favor of the U.S. interest." (AG ¶ 8(b)) Applicant has mitigated the foreign influence security concerns.

Whole-Person Concept

Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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.

I discussed Applicant's favorable whole-person attributes in the Foreign Influence section of the Decision in reaching the conclusion that AG ¶ 8(b) applies.

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: FOR APPLICANT

Subparagraphs 1.a : For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

MARC E. CURRY
Administrative Judge