



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



In the matter of:

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) ISCR Case No. 14-06572  
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Applicant for Security Clearance

**Appearances**

For Government: Alison O'Connell, Esq., Department Counsel

For Applicant: *Pro se*

02/19/2016

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**Decision**

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CURRY, Marc E., Administrative Judge:

Applicant failed to mitigate the security concerns generated by his family ties to the People's Republic of China (PRC). Clearance is denied.

**Statement of the Case**

On January 29, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline 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 February 24, 2015, admitting all of the allegations and requesting a hearing. On September 17, 2015, the case was assigned to me. On October 6, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing scheduling the case for October 22, 2015. I held the hearing as

scheduled and considered two Government exhibits (GE), marked as GE 1 and 2. The transcript was received on October 30, 2015.

### **Ruling of Evidence**

GE 2 is a brief that Department Counsel prepared in support of her contention that Applicant's family ties to PRC generate a heightened risk of exploitation, inducement, manipulation, or coercion. In support of her contention, she referenced 30 documents prepared by U.S. agencies or commissions regarding PRC.

Upon reading the brief and reviewing Department Counsel's source documents, I have decided *sua sponte* to take administrative notice of facts set forth in three of the source documents, as follows:

Hearing Exhibit (HE) I. U.S. Department of State, *Country Reports on Human Rights Practices for 2013: China (Includes Tibet, Hong Kong, and Macau)*;

HE II. U.S. Department of Defense OSD, *Annual Report to Congress: Military and Security Developments Involving the People's Republic of China 2011* (OSD 2011 Annual Report - PRC Developments; and

HE III. Office of National Counterintelligence Executive, *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage, 2009-2011*, October 2011.

Consistent with an Appeal Board decision issued while my decision was pending (ADP Case No. 14-0165 (App. Bd. November 3, 2015)), I have included these three administrative notice source documents in their entirety in the case file.

### **Findings of Fact**

Applicant is a 53-year-old married man with an adult child from a previous marriage. He has been married to his current wife since 2014. (GE 1 at 20) He grew up in PRC, graduating from college with a degree in agricultural machinery in 1982. After immigrating to the United States in 1986, he earned a master's degree in 1988 and a Ph.D. He earned both post-graduate degrees in the field of agricultural engineering. (Tr. 14-15)

Applicant became a naturalized U.S. citizen in 2000. (Tr. 16) For the past 18 months, he has worked as a software developer for a defense contractor. This is the first job that he has held which requires a security clearance.

Applicant has several relatives who are citizens and residents of PRC, including his father, his siblings, and his father-in-law. Applicant's father, before retiring, managed a government-owned sugar factory. (Tr. 25) He receives a pension. Applicant last saw

his father when he travelled to PRC to attend his mother's funeral in 2013. (Tr. 25)<sup>1</sup> Applicant does not e-mail his father because his father is not computer literate. (Tr. 18) They do, however, speak during special occasions and holidays.

Applicant's has two brothers and two sisters. His younger brother worked at the same factory where their father worked. He retired after experiencing a disabling injury. (Tr. 26) Applicant last saw him during a 2002 visit to PRC. They talk by phone approximately once per year.

Applicant's older brother is a PRC citizen who moved to Canada in 2003. Before moving to Canada, he worked as a college teacher in PRC. (Tr. 27) When he immigrated to Canada, he took a job with a utility company. He has not worked since being laid off in 2005. (Tr. 20) Applicant last visited his older brother in PRC in 2002. Since his brother moved to Canada, Applicant has travelled to Canada twice to visit him, and his brother has visited him in the United States twice. (Tr. 20) The number of times they communicate annually is unknown from the record.

Applicant's older sister worked in PRC at a factory. She is retired and receives a pension. She lives with Applicant's father. Applicant last saw her when he returned to PRC for a visit in 2015. In sum, he has visited her approximately four times in PRC over the past 30 years. They do not communicate regularly. (Tr. 21)

Applicant's younger sister was in middle school when Applicant immigrated to the United States. Currently, she works at a school that provides leadership training to government managers. (Tr. 31) It is unclear from the record whether the school where she works is government-run. (Tr. 30-31) Applicant communicates with her approximately once per year via text messaging. (Tr. 22) Applicant last saw her when he visited PRC in 2013. (Tr. 21)

Applicant's father-in-law is a retired doctor. He receives a government pension. (Tr. 32) He is 82 years old and in poor health. The main reason that Applicant and his wife visited PRC in July 2015 was to check on him, as he was rehabilitating from surgery. (Tr. 22)

Applicant's college roommate is a citizen and resident of PRC. He is a college professor. (Answer at 2) Applicant visited him when he travelled to PRC in 2013. He had lost contact with this classmate after graduating from college, and decided to visit him because he heard that he lived near his parents. (Tr. 23) After having dinner with his old roommate, he concluded that they had little in common. He has not seen or talked to this classmate since the 2013 visit. (Tr. 23, 33)

Applicant has no assets in PRC. His child was born in the United States. Applicant owns a home that is worth \$900,000, and he has \$560,000 invested in a 401(k)

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<sup>1</sup>Applicant made two trips to PRC that year. The first visit occurred two months before his mother's death. (Tr. 34)

retirement account. (Tr. 36) He provides no financial support to any of his relatives who are PRC citizens. (Tr. 33)

The PRC has an authoritarian government. (HE I at 1) Repression and coercion of its citizens is routine. (*Id.*) PRC uses its intelligence services and other illicit approaches to collect sensitive U.S. information and export-controlled technology with the goal of diminishing the U.S. technological edge in areas critical to the development of military weapons and communications systems. (HE II at 41). PRC's intelligence services frequently seek to exploit persons with family ties to PRC who can use their insider access to corporate networks to steal secrets using removable media devices or e-mail. (HE III at 5)

## **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 United States 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.*)

The PRC is a totalitarian country that competes with the United States for military, technological, and financial influence worldwide. To achieve its strategic objectives, the PRC aggressively conducts espionage against the U.S. Government and U.S. businesses, and has a history of seeking to conduct espionage through the exploitation of persons with familial ties to the PRC. Consequently, Applicant’s relationship with his father, siblings, father-in-law, and college roommate generate the application of the following disqualifying conditions:

- (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or a resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual’s obligation to protect sensitive information or technology and the individual’s desire to help a foreign person, group, or country by providing that information.

Applicant has only seen or spoken with his college roommate once in the nearly 30 years since they graduated. Although it is not inconceivable that a country that conducts espionage as aggressively as PRC could seek to exploit Applicant through a relative living abroad, such as his older brother who lives in Canada, it is unlikely given how long his brother has lived abroad. AG ¶ 8(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,” applies to these relationships. I resolve subparagraphs 1.c and 1.f in Applicant’s favor.

Conversely Applicant’s other family members, including his father-in-law, remain in PRC. Although Applicant’s contacts with these relatives is casual and infrequent, he traveled to PRC as recently as last year. Given the multifaceted and aggressive nature of PRC’s espionage activities, I cannot conclude that the infrequency of contact minimizes the risk of foreign influence or exploitation. AG ¶ 8(c) does not apply to these relationships.

Applicant has only visited PRC five times in the 30 years since immigrating to the United States. His immediate family and his property interests are located exclusively in the United States. These factors, though significant, are unable to overcome the heavy burden generated by the PRC’s status as a totalitarian state with a history of oppressing its citizens and aggressively collecting U.S. intelligence. AG ¶ 8(b) does not apply.

## **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.

Applicant immigrated to the United States in 1986 to attend graduate school. Ultimately, he stayed and became a naturalized U.S. citizen 14 years later in 2000. Although he presented no evidence of his work performance, it appears, judging by the amount of money he has saved for retirement, that he has nurtured a highly successful career. Given the pervasive nature of PRC's espionage activities, its role as a strategic competitor with the United States, and its status as a totalitarian country that does not respect individual rights, I cannot conclude that Applicant has carried the burden.

## **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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 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 national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

MARC E. CURRY  
Administrative Judge