

KEYWORD: Foreign Influence

DIGEST: Applicant is a 45-year-old employee of a defense contractor. Applicant was born in the People’s Republic of China. She came to the U.S. after personally witnessing the Tiananmen Square massacre. Her husband maintained his Chinese citizenship to ease his travel to China if his parents became ill. Applicant has not mitigated the foreign influence concerns raised by her husband’s Chinese citizenship, and the Chinese citizenship and residency of her parents-in-law. Clearance is denied.

CASENO: 07-00311.h1

DATE: 09/17/2007

DATE: September 17, 2007

In re:	)	
	)	
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SSN: -----	)	ISCR Case No. 07-00311
	)	
Applicant for Security Clearance	)	
	)	

**DECISION OF ADMINISTRATIVE JUDGE  
EDWARD W. LOUGHRAN**

**APPEARANCES**

**FOR GOVERNMENT**

Fahryn Hoffman, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a 45-year-old employee of a defense contractor. Applicant was born in the People's Republic of China. She came to the U.S. after personally witnessing the Tiananmen Square massacre. Her husband maintained his Chinese citizenship to ease his travel to China if his parents became ill. Applicant has not mitigated the foreign influence concerns raised by her husband's Chinese citizenship, and the Chinese citizenship and residency of her parents-in-law. Clearance is denied.

## STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On March 28, 2007, DOHA issued a Statement of Reasons<sup>1</sup> (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 for SORs issued after September 1, 2006. The revised guidelines were provided to Applicant when the SOR was issued. Applicant answered the SOR in writing on April 11, 2007, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government’s written case on June 27, 2007. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on July 9, 2007, and responded on August 3, 2007. Department Counsel did not object to Applicant’s response. The case was assigned to me on August 15, 2007.

## RULINGS ON PROCEDURE AND EVIDENCE

Department Counsel requested administrative notice be taken of the facts contained in a request for administrative notice, I have marked as FORM Exhibit (FE) VII. The source documents for the facts are U.S. Department of State, Background Note: China, dated January 2007 (FE I); U.S. Department of State, Country Reports on Human Rights Practices - 2006: China, dated March 6, 2007 (FE II); U.S. Department of State, Consular Information Sheet on China, dated March 19, 2007 (FE III); Interagency OPSEC Support Staff, Intelligence Threat Handbook, select pages (FE IV); Office of the National Counterintelligence Executive, Annual Report to Congress on Foreign Economic Collection and Industrial Espionage - 2005, dated August 2006 (FE V); 2006 Report to Congress of the U.S.-China Economic and Security Review Commission, dated November 2006, select pages (FE VI).

I take administrative notice of the facts contained in FE I through III, V, and VI, as requested in FE VII. I do not take administrative notice of the facts contained in FE IV. In accordance with ISCR Case No. 03-21434 (App. Bd. Feb. 20, 2007), I will consider the document as evidence.

## FINDINGS OF FACT

Applicant is a 45-year-old employee of a defense contractor. She has a Ph.D. in electrical engineering. Applicant married in 1988. She has two children, ages 15 and 11.

Applicant was born in the People’s Republic of China. Applicant’s grandparents worked for the Chinese government before the Communist revolution. Because Applicant’s grandparents worked in the “old government,” and were well off in the “old society,” Applicant was marked since birth as the descendant of the “exploiting class,” and was considered the target and enemy of the

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<sup>1</sup>Pursuant 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 (Directive).

Communist Party. During the Cultural Revolution (1966-1976), Applicant and her family were deprived of equal opportunity rights in many aspects of their lives.<sup>2</sup>

In 1988 to 1989, dissatisfaction with the Chinese government and growing economic hardship caused by high inflation, provided the backdrop for a large-scale protest movement by students, intellectuals and other parts of a disaffected urban population. University students and other citizens camped out in Beijing's Tiananmen Square to mourn the death of a reformist leader and to protest against those who would slow reform. Their protests, which grew despite government efforts to contain them, called for an end to official corruption and for defense of freedoms guaranteed by the Chinese constitution. Protests also spread to many other cities. Martial law was declared on May 20, 1989. Late on June 3, and early on the morning of June 4, 1989, military units were brought into Beijing. They used armed force to clear demonstrators from the streets. There were no official estimates of deaths, but most observers believe that casualties numbered in the hundreds. After June 4, while foreign governments expressed horror at the brutal suppression of the demonstrators, the central government eliminated remaining sources of organized opposition, detained large numbers of protesters, and required political reeducation not only for students but also for large numbers of party cadre and government officials.<sup>3</sup>

Applicant was a student in China in 1989. She, her husband, and her brother were in Beijing on June 4, 1989, and witnessed the killing of the demonstrators and fellow students. Applicant states this caused them to "los[e] faith in the Chinese government, and were made strong believers in a democratic society."<sup>4</sup> All three left China in 1989, and arrived in the United States at the end of 1989. Applicant Anglicized her name, and enrolled in a Ph.D. program at a university. Her husband and brother were studying for their Master's degrees at two other universities. Applicant received her Ph.D. in June 1994.<sup>5</sup>

Applicant's husband received a green card (permanent residency), for employment with a U.S. company in 1993, or earlier. Applicant received her green card in 1993, after her husband received his. Applicant became a U.S. citizen on February 3, 2000. As part of the oath of citizenship, Applicant renounced and abjured all allegiance to China. Her last Chinese passport expired in 1999. She does not consider herself a dual citizen.<sup>6</sup> Applicant visited China in 1999, 2000, 2001, 2003, and 2004.<sup>7</sup>

Applicant and her immediate family are entrenched in their community. They bought their first house in 1994. Both her children were born in the U.S., and attend public school. Applicant and her husband are involved in youth sports and other civic and community events. In August 2006,

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<sup>2</sup>Applicant's response to FORM; HE I at 4-5.

<sup>3</sup>HE I at 6.

<sup>4</sup>Applicant's response to FORM.

<sup>5</sup>*Id.*

<sup>6</sup>*Id.*

<sup>7</sup>Item 4 at 7.

they purchased a new house for more than \$650,000. They also have more than \$100,000 in her 401(k) and bank account.<sup>8</sup>

Applicant's brother became a U.S. citizen in May 2001. He obtained two Master's degrees from a preeminent U.S. university. He has worked for a well-known U.S. financial management corporation for several years. His wife is also a U.S. citizen. The corporation sent Applicant's brother on an assignment to China to set up a branch there. He is in China on a visa that allows a foreigner to work in China. This type of visa is good for one year, but may be renewed. His current visa expires in July 2008. Applicant believes it is his brother's intention to return to the U.S. after he completes his assignment.<sup>9</sup>

Applicant's mother and father are both 71 years old. They retired more than ten years ago. Her mother was a teacher and her father worked for a small private company. After they retired, Applicant's parents moved to the U.S. to live with Applicant and her family. Her mother became a U.S. citizen earlier this year. Her father has a green card. He is studying English for the citizenship exam, and plans on becoming a U.S. citizen.<sup>10</sup>

Applicant's parents-in-law are citizens and residents of China. Her father-in-law is 81, and his mother-in-law is 72 years old. They both are in poor health. They are presumably retired, but Applicant did not provide any details about them such as what they did before retirement, any association with the Chinese government, or whether they were/are members of the Communist Party. Applicant stated that neither of them speaks English, and that they found it difficult to adjust to the U.S., so they decided to spend their golden years in China.<sup>11</sup>

Applicant's husband is a Chinese citizen. China requires a visa for entry by U.S. citizens.<sup>12</sup> Her husband was reluctant to become a U.S. citizen because of his parents' health issues. He wanted to be able to go to China on a moment's notice if there was a medical emergency, something he might not be able to do if he had to wait the period of up to two weeks it could take to obtain a visa. He applied for U.S. citizenship in July 2007, in order to assist Applicant to obtain a security clearance.<sup>13</sup>

The President of Applicant's company wrote a letter on her behalf. She is described as conscientious and dependable, with unique engineering skills. She has had initial and follow-up security briefings. She keeps her company well informed of her foreign travel, and understands the

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<sup>8</sup>Applicant's response to FORM.

<sup>9</sup>*Id.*

<sup>10</sup>*Id.*

<sup>11</sup>*Id.*

<sup>12</sup>*Id.*; FE III.

<sup>13</sup>Applicant's response to FORM.

security concerns associated with such travel. Her company considers her a valuable asset, and deems it vital for her clearance to be granted.<sup>14</sup>

China is a large and economically powerful country, with a population of more than a billion people and an economy growing at about 10% per year. China has an authoritarian government, dominated by the Chinese Communist Party. China has a poor record with respect to human rights, suppresses political dissent, and its practices include arbitrary arrest and detention, forced confessions, torture, and mistreatment of prisoners. China has a very active intelligence network, engages in military and economic espionage, and specifically targets the U.S.<sup>15</sup>

## POLICIES

“[N]o one has a ‘right’ to a security clearance.”<sup>16</sup> 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.”<sup>17</sup> The President 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 with the national interest to do so.”<sup>18</sup> An applicant has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance. The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.<sup>19</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>20</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. 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.<sup>21</sup>

The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the adjudicative process factors listed in the Directive and AG ¶ 2(a).

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<sup>14</sup>Applicant’s response to FORM, letter of President of company dated July 31, 2007.

<sup>15</sup>FE I-III, V, VI.

<sup>16</sup>*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>17</sup>*Id.* at 527.

<sup>18</sup>Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

<sup>19</sup>ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

<sup>20</sup>*Id.*; Directive, ¶ E2.2.2.

<sup>21</sup>Exec. Or. 10865 § 7.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, are set forth and discussed in the conclusions section below.

## CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

### **Guideline B: Foreign Influence**

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. This raises a security concern under the foreign influence guideline. 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.

I considered all the Foreign Influence Disqualifying Conditions (FI DC), and specifically FI DC 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, pressure, or coercion*) and FI DC 7(d) (*sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion*).

China has an authoritarian government, dominated by the Communist Party, with a poor human rights record, and targets the U.S. for espionage. Applicant's contact and relationship with her husband and his parents, create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. FI DC 7(a) and FI DC 7(d) are established for SOR ¶¶ 1.a. and 1.c.

Applicant's parents have lived in the U.S. for a number of years. Her mother is now a U.S. citizen. Her father is a permanent resident who plans on becoming a U.S. citizen. Her brother is a U.S. citizen working temporarily in China for a U.S. financial management corporation. I do not find that Applicant's relationship or contact with her parents or brother creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. No Foreign Influence Disqualifying Condition is applicable to SOR ¶¶ 1.b. or 1.d.

I considered all the Foreign Influence Mitigating Conditions (FI MC), and I especially considered FI MC 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 that 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 U.S.*). China is involved in espionage against the United States. China's human rights record is such that it is clear

that it would not hesitate to use its own citizens for espionage purposes. As such I am unable to find that it is unlikely that Applicant will be placed in a position of having to choose between the interests of her husband, his parents, or the Chinese government and the interests of the United States. No Foreign Influence Mitigating Condition is applicable.

### **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 an acceptable security risk. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. In evaluating Applicant's case, I have considered the adjudicative process factors listed in the Directive and AG ¶ 2(a). I have also considered all the evidence, and every finding of fact and conclusion discussed above.

Applicant's family was targeted by the Chinese government, and deprived of equal opportunity rights, because her grandparents worked for the Chinese government before the Communist revolution, and were well off in the "old society." Applicant, her husband, and her brother came to the U.S. after personally witnessing the atrocities associated with the Tiananmen Square massacre. Her family has thrived in the U.S. She, her husband, and her brother are very highly educated, accomplished professionals. She is respected in her job, and owns an expensive home, and considerable U.S. assets. Her children are U.S. citizens living a typical American life. Applicant has no reason to sympathize with the Communist Chinese government. There is absolutely no reason to doubt Applicant's loyalty to the U.S. However, the Chinese government's espionage program, combined with its disdain for the human rights of its own citizens, creates the potential for foreign exploitation, inducement, manipulation, pressure, or coercion.

After weighing the disqualifying and mitigating conditions and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the Foreign Influence security concerns.

### **FORMAL FINDINGS**

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

Paragraph 1. Guideline B:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant

### **DECISION**



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 or continue a security clearance for Applicant. Clearance is denied.

Edward W. Loughran  
Administrative Judge