



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



In the matter of: )  
)  
) ISCR Case No. 16-03770  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Raashid S. Williams, Esq., Department Counsel  
For Applicant: *Pro se*

05/10/2019

**Decision**

GARCIA, Candace Le'i, Administrative Judge:

Applicant did not mitigate the foreign influence security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On February 9, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B (foreign influence). The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD.<sup>1</sup>

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<sup>1</sup> I decided this case using the AG implemented by DOD on June 8, 2017. However, I also considered this case under the previous AG implemented on September 1, 2006, and my conclusions are the same using either set of AG.

Applicant responded to the SOR on February 22, 2017, and requested a hearing before an administrative judge. The case was assigned to me on November 1, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 27, 2018, scheduling the hearing for December 14, 2018.

I convened the hearing as scheduled. Department Counsel requested that I take administrative notice of certain facts about the People's Republic of China (China). The request was not admitted in evidence but was appended to the record as Hearing Exhibit (HE) I. The facts administratively noticed are summarized in the Findings of Fact, below. Government Exhibits (GE) 1 and 2 were admitted in evidence without objection. Applicant testified and submitted Applicant Exhibits (AE) A through E, which I admitted in evidence without objection. DOHA received the hearing transcript (Tr.) on January 2, 2019.

### **Findings of Fact**

Applicant admitted all of the SOR allegations. He is 48 years old, married, and he has two minor children. His wife was born in China and immigrated to the United States in 1996. She is a naturalized U.S. citizen, and their children are native-born U.S. citizens. He has owned a home in the United States since 2005.<sup>2</sup>

Applicant was born in China. He graduated from a high school in China in 1988, and he obtained a bachelor's degree from a university in China in 1993. He immigrated to the United States in 1996 and was naturalized as a U.S. citizen in 2008. He obtained a master's degree from a U.S. university in 2002. He has worked as a systems engineer for his current employer, a DOD contractor, since 2016. He was granted access to public trust information in 2011. He has never held a DOD security clearance.<sup>3</sup>

Applicant's mother, father, sister, mother-in-law, and father-in-law are citizens and residents of China. His mother and father are 75 and 82 years old, respectively. His mother retired as a school teacher at age 60. His father retired as a research institute professor between the age of 65 and 70. Applicant was unaware whether the research institute was affiliated with the Chinese government. Applicant testified that his father has never served in the Chinese military.<sup>4</sup>

Applicant's parents live together in an apartment they own, the value of which Applicant was unaware. They are supported by their monthly pensions from the Chinese government, totaling approximately \$1,600 monthly. Applicant talks to his mother weekly, primarily to check on her health as she was diagnosed with cancer. He talks to his father four to five times yearly. He visits his parents in China once every two years and last did so in August 2018. He usually travels to China with his wife and children. His mother visited Applicant and his family in the United States in 2016. He

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<sup>2</sup> Applicant's response to the SOR; Tr. at 6-7, 10-11, 14-16, 25-29, 37, 47-48; GE 1; AE A, B, C, D.

<sup>3</sup> Tr. at 14-16, 25-29, 50-52; GE 1; AE A, E.

<sup>4</sup> Tr. at 29-37, 46-47, 52-60; GE 1, 2; AE E.

sent his parents approximately \$1,000 in 2000, and he sends his mother vitamin supplements that he buys in the United States. He testified that his parents are aware only that he is an engineer.<sup>5</sup>

Applicant's sister is 47 years old. She is married, and her husband is 48 years old. They are joint owners of a private business, having applied for and received their business license from the Chinese government. Applicant testified that his brother-in-law never served in the Chinese military, but previously worked for the Chinese government. When Applicant visits their parents in China, his sister makes the short trip to their parents' hometown so that Applicant can also see her. Applicant talks to her four to five times yearly.<sup>6</sup>

Applicant's mother-in-law and father-in-law are ages 74 and 75, respectively. They are both retired. They live together in an apartment, the value of which Applicant was unaware. They are also supported by their pensions from the Chinese government. His mother-in-law previously worked as a school teacher. His father-in-law previously worked as a general manager of a private travel agency and a school teacher. Applicant testified that neither served in the Chinese military. Applicant speaks to his parents-in-law two to three times yearly. His wife speaks to her parents weekly. Applicant and his wife visit her parents in China once every two years, when they visit his parents.<sup>7</sup>

Applicant has two sisters-in-law, one of whom resides in China and the other in Canada. The sister-in-law in China does not work outside of the home, and her husband is a small business owner. Applicant was unaware how often his wife spoke to her sister in China. He testified that he does not have any connection to either sister-in-law. He testified that he was unaware whether his wife ever discussed with her family in China the nature of his employment or that he is seeking a security clearance.<sup>8</sup>

Applicant maintains contact with friends who are citizens and residents of China. He has known three to four of such friends since kindergarten. One is a stockbroker; the second works in information technology for an insurance company; the third is an assistant professor; and the fourth one is unemployed. He sees them when he travels to China to visit his parents, and he saw three of them during his August 2018 trip. In addition, Applicant has known three to four other such friends since high school and college. One works for a bank; two are professors at a local college; and the fourth is a nurse at a local hospital. He also saw these friends when he visited China in August 2018.<sup>9</sup>

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<sup>5</sup> Tr. at 29-37, 46-47, 52-60, 64-66; GE 1, 2; AE E.

<sup>6</sup> Tr. at 35-37, 46-47, 59-60; GE 1, 2; AE E.

<sup>7</sup> Tr. at 37-40, 47, 61-65; GE 1, 2; AE E.

<sup>8</sup> Tr. at 37-40, 47, 61-65; GE 2; AE E.

<sup>9</sup> Tr. at 40-46, 63-64; GE 2; AE E.

Applicant's home was valued at \$560,000 as of the date of the hearing. He and his wife's checking, savings, and retirement accounts in the United States total approximately \$1,000,000. They do not have any foreign assets. His July 2016 background interview reflects that he told the investigator that he is loyal solely to the United States. He testified that he is proud to be an American.<sup>10</sup>

## **China**

The National Counterintelligence Executive has identified China as among the most aggressive collectors of U.S. economic information and technology. China's intelligence services, as well as private companies and other entities, frequently seek to exploit Chinese citizens or persons with family ties to China who can use their insider access to corporate networks to steal secrets using removable media devices or email. Chinese attempts to collect U.S. economic and technological information will continue at a high level and will represent a growing threat to U.S. economic security. The nature of the cyber threat will evolve with continuing technological advances in the global information environment. China's military modernization is targeting capabilities with the potential to degrade core U.S. military-technological advances.

China is an authoritarian state in which the Chinese Communist Party is the paramount authority, with its members holding almost all top government and security apparatus positions. Human rights concerns observed in 2017 included arbitrary or unlawful deprivation of life; executions without due process; forced disappearances; torture and coerced confessions of prisoners; arbitrary detention; illegal detention at unofficial holding facilities; significant restrictions on freedom of speech, press, assembly, religion, and movement. Authorities continued to maintain ultimate authority over all published, online, and broadcast material.

The U.S. Department of State warns visitors to China that they may be placed under surveillance. Hotel rooms, offices, cars, taxis, telephones, internet usage, and fax machines may be monitored onsite or remotely. Personal possessions in hotel rooms, including computers, may be searched without knowledge or consent.

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used 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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According

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<sup>10</sup> Tr. at 46-50; GE 1, 2; AE A, B.

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 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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable security 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Exec. Or. 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 *also* Exec. Or. 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. The following 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.

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the United States. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. *See generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

AG ¶ 7(a) requires substantial evidence of a "heightened risk." The "heightened risk" required to raise one of these disqualifying conditions is a relatively low standard. "Heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government.

Applicant's parents, sister, parents-in-law, and friends are citizens and residents of China. China has been identified as among the most aggressive collectors of U.S. economic information and technology. China's intelligence services frequently seek to exploit Chinese citizens or persons with family ties to China who can use their insider access to steal secrets. Visitors to China may be placed under surveillance, and personal possessions in hotel rooms may be searched without knowledge or consent. Applicant's foreign contacts in China create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. AG ¶¶ 7(a), 7(b), and 7(e) have been raised by the evidence.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following 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 choose between the interests of a foreign individual, group, organization, or government and the interests of the United States;

(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; 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.

Applicant's parents, sister, parents-in-law, and friends are Chinese citizens residing in China. Accordingly, AG ¶ 8(a) is not established for the reasons set out in the above discussion of AG ¶¶ 7(a), 7(b), and 7(e). Applicant regularly contacts his parents, sister, and parents-in-law. His wife also does the same with her parents. Applicant also sees his friends in China when he travels there to visit his family. AG ¶ 8(c) is not established.

Applicant has lived in the United States since 1996. He obtained a master's degree from a U.S. university in 2002. He became a naturalized U.S. citizen in 2008. His wife is also a naturalized U.S. citizen, and their children are native-born U.S. citizens. They own a home and have substantial financial interests in the United States and none in China. These are factors that weigh in Applicant's favor. However, Applicant's ties to his family in China are equally as strong. Applicant failed to meet his burden to demonstrate that he would resolve any conflict of interest in favor of the U.S. interest. AG ¶ 8(b) is not established.

### **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.

Under 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 guidelines and the whole-person concept.

I have incorporated my comments under Guideline B in my whole-person analysis. I considered Applicant's access to public trust information since 2011. After weighing the disqualifying and mitigating conditions under Guideline B, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his family and friends in China. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

### **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 |
| Subparagraphs 1.a - 1.d:  | Against Applicant |

### **Conclusion**

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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Candace Le'i Garcia  
Administrative Judge