



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



In the matter of:	)	
	)	
	)	ISCR Case No. 18-01504
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Daniel F. Crowley, Esq., Department Counsel

For Applicant: *Pro se*

03/08/2019

**Decision**

MARSHALL, Jr., Arthur E., Administrative Judge:

**Statement of the Case**

On June 8, 2018, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B (Foreign Influence).<sup>1</sup> In a response dated August 9, 2018, Applicant admitted the sole allegation raised and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). I was assigned this case on November 1, 2018. On January 7, 2019, a notice was issued setting the hearing for January 24, 2019. The hearing commenced as scheduled.

The Government offered three documents, which were accepted into the record without objection as Government exhibits (Exs.) 1-3. Applicant gave testimony, introduced four witnesses, and offered four items, which were accepted into the record without objection as Exs. A-D. A transcript (Tr.) of the proceedings was received on February 5, 2019, and the record was closed. After my review of the record as a whole, and in light of the applicable directive, I find that Applicant failed to mitigate foreign influence security concerns.

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<sup>1</sup> The action was taken under Executive Order 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) effective within the DOD on or after September 1, 2006. Since that time, the AG were amended. The present AG, applied here, is in effect for any adjudication dated on or after June 8, 2017.

## **Request for Administrative Notice**

Department Counsel submitted a written request that I take administrative notice of certain facts about the People's Republic of China (China). The request was offered as Government Ex. 3. Applicant did not object to its admission. I have taken administrative notice of the facts contained in the request that are supported by source documents from official U.S. Government publications.<sup>2</sup> The facts considered include, but are not limited to, the following:

China has an authoritarian government, dominated by its Communist Party. It has a poor human rights record. China suppresses political dissent, engages in arbitrary arrests and detentions, forced confessions, torture, mistreatment of prisoners, and religious suppression.

China is the world's most active and persistent perpetrator of economic espionage. It is among the most aggressive countries in seeking sensitive and protected U.S. technology, as well as military and economic intelligence. China targets the United States with active intelligence-gathering programs, both legal and illegal. Its focus is on obtaining information and technologies from the United States that could be beneficial to China's military modernization and economic development.

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 at work to steal trade secrets, often using removable media devices or e-mail. Recent cases involving actual or attempted espionage by China against the United States, as well as incidents involving the illegal export of sensitive technology to China, exist.

In China, authorities routinely monitor telephone conversations, facsimile transmissions, e-mail, text messaging, and Internet communications. Authorities open and censor mail. Its security services have entered personal residences and offices to gain access to computers, telephones and fax machines. Hotel guest rooms are sometimes bugged and searched for sensitive or proprietary materials. The U.S. State Department warns that United States citizens have been interrogated or detained for reasons stated to be related to "state security" whilst in China.

### **Findings of Fact**

Applicant is a 56-year-old information technology professional (assistant administrator) who has worked in the same capacity for various contractors for almost 12 years. She has been in her current job for eight years. Applicant has earned a

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<sup>2</sup> I also take notice of an Associated Press (AP) article, dated September 10, 2018, by Christopher Bodeen (Group: Officials destroying crosses, burning bibles in China): "China's government is ratcheting up a crackdown on Christian congregations in Beijing and several provinces, destroying crosses, burning bibles, shutting churches and ordering followers to sign papers renouncing their faith, according to pastors and a group that monitors religion in China. . . . The campaign corresponds with a drive to "Sinicize" religion by demanding loyalty to the officially atheist Communist Party and eliminating any challenge to its power over people's lives.

bachelor's degree, completed two years of post-graduate study, and received a post-graduate certificate. Applicant is proud of her U.S. citizenship and this country. Moreover, she enjoys her right to vote and her ability to serve on a jury.

Raised in China, Applicant and her husband immigrated to the United States in 1999 after living in Europe for several years. She became a United States citizen in 2010. The couple has two adult children who were raised and educated in the United States. The couple owns their own home. Remaining in China as citizens and residents are Applicant's mother, father, one sister, and Applicant's parents-in-law.

A well-regarded colleague, neighbor, and friend, Applicant, her husband, and children have notable roots in their community. They are active in their Christian faith and have a strong interest in the faith and culture of their Jewish friends. Applicant's husband has a long history of work for the United States government and with American media. They believe they have been fortunate to build careers and a family in the United States over the past two decades.

Applicant has worked to impress upon her family and in-laws in China "how much she loves this country" and has "shared with all her four elder parents her most important treasure, her Christian faith." (Tr. 26) Applicant also has one sister who is a long-term citizen of the United States, where she has raised her own family. Another sister lives close to their parents in China, where the sibling and her parents visit multiple times a week. (Tr. 40) Applicant maintains contact with her parents anywhere from daily to multiple times a week via telephone, email, and social media. She regularly contacts her sister in China. Applicant's husband communicates with his parents weekly. Applicant visits her family in China annually. (Tr. 41, 45) Her parents and sister have visited the United States from China once or twice in the past decade. (Tr. 42-43)

Applicant is personally aware of the nature of the Chinese government. During the uprising at Tiananmen Square in 1989, Applicant joined her fellows from academe in demonstration against that government. As a result, she was interrogated several times and threatened with imprisonment. During China's Cultural Revolution, her parents and in-laws "all were made to suffer physically and emotionally, how bad you can't imagine." (Tr. 33) None of these kin mention Applicant's husband's work with a U.S. governmental entity. (Tr. 33) She noted that her husband's employment placed them at risk every year when they traveled to China. (Tr. 33) Every time they return to China they keep a "very low profile . . . and don't want to tell people where [they] work because [they are] concerned and worried about [their] security." (Tr. 33) Applicant noted: "every time when we go back to China, we feel our life is threatened." (Tr. 37)

In the past, a few of Applicant's husband's siblings were contacted to talk to the police. (Tr. 34, 44) The siblings feel threatened because of Applicant's husband's work. (Tr. 37) Applicant stated: "[the police] want to warn them 'why your brother works for [his employer?] . . . kind of threatening, you know?' Even our relatives feel a threat because my husband works for [that entity]. It's an anti-China entity." (Tr. 34) The brothers have been asked to observe and report on Applicant's husband's activities. (Tr. 38, 44) One particular contact left a brother scared. (Tr. 44) Consequently, Applicant and her husband try to keep a low profile in order to avoid trouble for their families. (Tr. 44)

It was also noted that Applicant's parents and parents-in-law, all of whom are in their mid- to late-80s or early-90s and in declining health, are Christians. Because of their age and faith, they "keep a low profile in their daily lives" in China. (Tr. 36) Applicant posited that her parents and parents-in-law have not been interrogated because of their age. (Tr. 38)

### **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 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's adjudicative goal is a fair, impartial, and commonsense decision. Under the AG, 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 in making a decision. The protection of the national security is the paramount consideration. Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.

Under the Directive, the Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security decision.

A person seeking access to classified information enters into a fiduciary relationship with the Government based on trust and confidence that transcends beyond normal duty hours. The Government reposes a high degree of trust and confidence in those to whom it grants access to classified information. Decisions include consideration of the possible risk the applicant may fail to safeguard such information. The denial of a security clearance is in no way suggestive that an applicant is anything less than a loyal citizen.

### **Analysis**

Under the AG, foreign contact 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 be made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contact and interests should consider the country (China) in which the foreign contact or interest is included.

The AG lists nine available disqualifying conditions. Given that Applicant has multiple members of his family who are Chinese nationals living in China, I find the following apply:

¶ 7(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, and

¶ 7(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.

Under ¶ 8, two mitigating conditions are potentially applicable:

¶ 8(a): the nature of the relationships with foreign persons, the country 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; and

¶ 8(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.

As a threshold issue, I note that China has an authoritarian government dominated by its Communist Party. It is the world's most active and aggressive perpetrator of economic espionage, particularly with regard to its pursuit of sensitive and protected U.S. technology and both U.S. military and economic intelligence. It is known to specifically target the United States with its intelligence-gathering programs. Both its government and private entities within its borders are known to exploit Chinese citizens and those with family ties to China in order to gain access to trade secrets and other protected information of U.S. origin. Human rights violations and suppression of religious freedom is common. China is known to monitor various forms of communication, including those made via the Internet. Consequently, heightened scrutiny is warranted in this matter.

Applicant is clearly and naturally a caring daughter, sister, and daughter-in-law. Regular communication is maintained with her family in China, and annual visits are made. What heightens interest in these relationships is that they involve citizens and residents of China, where aggressive economic espionage and exploitation of its own

citizens is well documented. Indeed, Applicant's own testimony emphasizes the concerns Chinese oversight has on its citizenry, and how her husband's work has singled out their family in the past. With Applicant's siblings advised by Chinese officials to observe and report on Applicant's husband's activities; Applicant and her family's past interest to the Chinese state; and the fears shared by her family and relations abroad - "staying under the radar" represents little assurance that, at present, Applicant will not or could not be placed in a position of having to choose between the interests of these kin and those of the United States. These conditions obviate application of ¶ 8(a).

Applicant presents a strong case tethering her life in and commitment to the United States. There is no question that her loyalty is to this country, and that she retains no sense of loyalty to China. Despite 20 years in the United States, and a lifetime raising her family, becoming a part of her church and community, and living her dream, certain factors cannot be overlooked. She is clearly devoted to her aged parents, parents-in-law, and sister in China. They maintain regular telephonic and electronic contact, and Applicant and her husband visit China annually. They do so in full knowledge that her husband's work lifts them from the low profile they attempt to maintain into a spotlight, a beam clearly proven to raise the interest of Chinese officials and which continues to engender fear in all involved. Consequently, Applicant's untested resolve cannot, at this time, be found to be unquestionably in favor of the United States. Therefore, ¶ 8(b) can only be found to apply in part.

### **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 in the AG. 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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I incorporated my comments under the guideline at issue in my whole-person analysis. Some of the factors related to the whole person concept have already been discussed, but some warrant emphasis.

Applicant is a mature, information technology professional with a bachelor's degree and post post-graduate certificate. Raised in China like her husband, the two married in Europe and moved here about 20 years ago. Applicant became a U.S. citizen in 2010. Applicant's parents, parents-in-law, and a sister at citizens and residents of China. Applicant's immediate family in China are known to Chinese officials due to her activities during the Tiananmen Square upheaval, and the activities of her parents and parents-in-law during the Chinese Cultural Revolution which led them to suffer unimaginable physical and emotional pain. Along with Applicant's in-laws and her husband's siblings, they are of interest currently to Chinese officials due to her husband's work, a situation that Applicant admits is the cause of considerable worry and life-threatening fear. Their Christian faith also raises issues under the current Chinese administration.

This process is not designed to elevate those already in fear of threat by a foreign entity into a position where their safety, or the safety of their loved ones, is further jeopardized. The situation here poses greater risk for Applicant, her family, and any safeguarded information in which she may be entrusted. This is particularly true during their worrisome annual trips to China, where they are made even more vulnerable to monitoring, threat, and manipulation. Applicant's candid and forthright testimony highlights the concerns raised in this case. Foreign influence security concerns remain unmitigated.

### **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

### **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 a security clearance. Eligibility for access to classified information is denied.

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Arthur E. Marshall, Jr.  
Administrative Judge