



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



In the matter of: )  
)  
) ISCR Case No. 18-01966  
)  
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Applicant for Security Clearance )

**Appearances**

For Government: Aubrey M. De Angelis, Esq., Department Counsel  
For Applicant: *Pro se*

07/31/2019

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**Decision**

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GLENDON, John Bayard, Administrative Judge:

Applicant contests the decision of the Department of Defense Consolidated Adjudications Facility (DOD CAF) that it was unable to find that it was clearly consistent with the national interest to continue his eligibility for access to classified information. The DOD CAF alleges in its Statement of Reasons (SOR) that Applicant has significant contacts with Chinese citizens and used a Chinese-based online chat program to meet Chinese women who resided in China. Applicant’s evidence in mitigation is insufficient to support a favorable decision. Applicant’s access to classified information is revoked.

**Statement of the Case**

In March 2016, Applicant submitted a security clearance application (SCA) in connection with the periodic review of his security clearance, which he has held since about 2005. Following an investigation, the DOD CAF issued its SOR on September 7, 2018, setting forth allegations under Guideline B (foreign influence). Applicant timely

responded to the SOR and requested a decision based upon the written record in lieu of a hearing. He was living and working in Africa at the time.

On April 22, 2019, Department Counsel submitted a File of Relevant Material (FORM) with seven government exhibits (GE) attached along with a request for administrative notice with respect to the People's Republic of China (China). Applicant received the FORM on April 27, 2019, and over the period May 2-29, 2019, he submitted multiple responses to the FORM in emails and sometimes with attached documents. On June 18, 2019, the case was assigned to me. Absent any objection, all of the parties' documentary evidence is admitted into the record.

### **Findings of Fact**

In his SOR response, Applicant denied the first two SOR allegations, SOR ¶¶ 1.a and 1.b, and admitted the remaining allegation, SOR ¶ 1.c. He also provided some additional information. I have incorporated his admissions in my findings of fact. Applicant's personal information is extracted from his SCA, FORM Item 5, and a November 2010 security clearance application (2010 SCA), FORM Item 4, unless otherwise indicated by a parenthetical citation to the record.

Since 2004, Applicant, 60, has worked as a contractor in U.S. facilities in overseas locations, including two years in Beijing, China (2006-2008). He has a high school diploma. He was granted a security clearance in 2005, which was reviewed and continued in 2010-11. (FORM response at 26-28.)

Applicant's marital history is complicated, and his marital status has changed since he submitted his SCA in March 2016. He married his first wife, a U.S.-born citizen, in 1986. They divorced in 1995, but then remarried in 1999 only to separate a year later and divorce again. They have three children, who are all adults at this time.

In April 2008, Applicant married a Chinese citizen and resident, who he met in 2007 while working in China. They dated in China for about six months until his security officer imposed a cease and desist order, requiring Applicant to terminate all contact with this woman or lose his clearance and job. He chose to stop seeing her, though when his contract in China ended in October 2007, they reconnected and married in China in April 2008. Applicant's second wife, who was 24 years old when they married, received her visa to enter the United States in March 2009. She became a naturalized U.S. citizen in 2014. They have one child, who was born in the United States in 2010. His wife had a second child two years later. This child was fathered by an illegal immigrant from Latin America, who the second wife met in an English class. Applicant's wife had an ongoing affair with this person since 2011. The second child has Applicant's last name, and Applicant refers to the child as his child. At one point, the lover of his second wife moved into Applicant's house while Applicant worked overseas. Applicant and his second wife divorced in August 2017. She married her lover a week later. She has told Applicant that

once her new husband becomes a legal U.S. resident alien, she wants to divorce him and remarry Applicant. (FORM response at 26; FORM Exhibit 7 at 2, 9; FORM Exhibit 6 at 2, 4; FORM Item 3 at 2, 4.)

Beginning in April 2009, the mother of Applicant's second wife spent part of each year living in Applicant's marital home in the United States. At that time, she was a Chinese citizen and resident. After his 2008 marriage, Applicant provided his then mother-in-law \$330 per month of financial support. Applicant's former father-in-law is a Chinese citizen and resident. Applicant last saw him in 2009 when Applicant traveled to China to bring his second wife to the United States after she received her U.S. visa. In his SOR response, he wrote that he stopped the payments to his second wife's mother "years ago," which was presumably after his 2016 SCA, where he reported the support payments. He also represents that his wife's mother "has no current husband" and that she has become a legal U.S. resident. (FORM Item 7 at 8-9; FORM Item 6 at 4, 5; FORM Item 3 at 1.)

In 2011, the sister of Applicant's second wife, who was a Chinese citizen and resident at that time, entered the United States with her two children and spent time living in Applicant's marital home. In 2016, the sister-in-law married Applicant's son from his first marriage. Despite Applicant's divorce, the former sister-in-law remains Applicant's daughter-in-law and the former mother-in-law remains his son's mother-in-law. The two children of Applicant's former sister-in-law's are now his son's stepchildren. (FORM Item 7 at 8-9; FORM Item 6 at 4, 5.)

In an April 2017 follow-up background interview, Applicant disclosed that a week earlier he had met a Chinese woman over a Chinese-based online chat program. She is a Chinese citizen, and she resided in China at that time. He met this woman online after another person suggested online that he chat with her. Applicant did not identify the person who introduced them. He told the interviewer that if his divorce was finalized, he was interested in having a relationship with this Chinese woman. He told the interviewer that he does not know anything about her employment or relationship to the Chinese government, military, or intelligence service. (FORM Item 6 at 9.)

In November 2017, after his divorce from his second wife was official, Applicant traveled to China to meet his new romantic interest. Upon his return a week later, he reported to his security official in an email that he intended to marry her. Applicant's remarriage occurred after his 2016 SCA and his January and April 2017 background interviews. The date of their marriage does not appear in the record evidence. As a result, the DOD CAF adjudicators were unaware of Applicant's marriage to a second Chinese citizen and resident. Applicant's remarriage to a Chinese citizen and resident is not alleged in the SOR. In her FORM, Department Counsel declined to amend the SOR, although she noted that Applicant's marriage to another Chinese citizen is relevant to the issue of mitigation and the facts set forth in SOR ¶ 1.c about his efforts to seek out relationships with Chinese citizens. (FORM Response at 2-8; FORM at 5.)

Applicant's third wife is 48 years old and has a 20-year-old child, who is a student in a Chinese technological institute. Applicant pays her school expenses. His new wife presently lives with him at his job location in Africa while he sponsors her to become a U.S. resident alien. Before they married, his wife was a general manager of an insurance company in China. Everything the U.S. Government knows about this woman is limited to some details in his FORM response. (FORM Item 6 at 9; FORM response at 2, 4, 9, 10-13, 22, 26-27; FORM Item 3 at 1.)

In his SOR response, Applicant admitted the allegation in SOR ¶ 1.c that he regularly uses a Chinese online chat program to meet and communicate with Chinese citizens. In his April 2017 background interview, he reported contact with the woman who would become his third wife and three other women. Women in China would contact him using a search function in the chat program. The contacts with these women were typically of a limited duration. In his SOR response, he wrote that he now uses a different Chinese chat system, which he uses to stay in contact with his new wife and her adult child, his second wife and their two children, and his second wife's mother, sister and the sister's two children. He claims he only talks to his second wife and her mother if he is contacting his two children with his ex-wife. (FORM Item 6 at 6; FORM Item 3 at 1; FORM response at 9, 27.)

Applicant submitted a number of character reference letters. The references praise Applicant as dedicated and trustworthy. In his FORM response, he wrote that neither his current wife nor his second wife have any affiliation with the Chinese government, but that he was aware that either of them could be exploited by the Chinese government. He wrote further that if he ever faced that "hypothetical scenario," he would report it to his security officials and remove himself from his overseas project. He writes further that he has always reported his travel to China and that he has always followed the rules and intends to do so in the future. (FORM Response at 22-26.)

Applicant's U.S. connections and contacts are largely limited to real estate investments he owns in this country and his immediate family, which includes his father, two brothers and a sister, and his three children from his first marriage, all of whom are U.S. citizens and residents. The record is silent on the nature of his relationships with these family members. He also has some relationships with other U.S. contractors with whom he has worked overseas since 2004, though he rarely stays in contact with other contractors unless they happen to work on the same overseas project again. Applicant has limited connections with other Americans. He describes himself as a "homebody" and is "not social." (FORM Item 6 at 5; FORM Item 7 at 12.)

## **China**

Administrative or official notice was taken of certain facts concerning China as set forth in Department Counsel's rather extensive written request (FORM Item 8). The most pertinent of those facts are the following: (1) China is an authoritarian state in which

the Chinese Communist Party is the paramount authority; (2) China is actively engaged in intelligence gathering (industrial and military) that targets U.S. information and technology; (3) 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 steal secrets; (4) the intelligence services also routinely monitor communications, including telephone conversations, facsimile transmissions, e-mail, text messaging, and Internet communications; and (5) China has a poor record of human rights regarding respect for the integrity of the person (e.g., freedom from arbitrary or unlawful deprivation of life, disappearance, torture, and arbitrary arrest or detention), respect for civil liberties, respect for political rights, corruption, lack of transparency in government, worker rights, as well as discrimination, societal abuses, and trafficking in persons. The maltreatment and oppression of the people of Tibet is but one example of China's poor record of human rights.

### **Policies**

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 have access to such information." *Id.* at 527. The President has 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." Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant

has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

## **Analysis**

### **Guideline B, Foreign Influence**

The security concern under this guideline 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.

Applicant was put on notice in 2007 that his relationship with a Chinese national was an unacceptable security risk. Nevertheless, he married his very young Chinese

girlfriend in 2008 brought her to the United States in 2009. She was closely followed by her mother, sister, and her sister's two children joining them in Applicant's marital home. When he was divorced by his Chinese wife in 2017, he married another Chinese citizen, who he met online on a Chinese chat program. His admissions in his SOR response and FORM response and the documentary evidence in the record, taken as a whole, establish the following potentially disqualifying conditions under this guideline:

AG ¶ 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;

AG ¶ 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; and

AG ¶ 7(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 following mitigating conditions are potentially applicable:

AG ¶ 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 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

AG ¶ 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; and,

AG ¶ 8(e): sharing 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.

Applicant has not established mitigation under AG ¶ 8(a). The nature of his relationships with his second wife, her mother, and her sister, as alleged in the SOR, is

ongoing despite his divorce from his second wife because they share two children. He maintains a direct relationship with her as well as an indirect relationship with her through their two children. He also maintains a relationship with the sister of his second wife through his son's marriage to her and the son's stepchildren. Moreover, he has entered into a new relationship with a woman he met through a Chinese website and subsequently married, which was one of the security concerns raised in the SOR. In light of the facts administratively noticed regarding China's intelligence operations and its human rights violations of its own citizens, Applicant has not established that it is unlikely Applicant 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.

Similarly, mitigation under AG ¶ 8(b) has not been established. The record evidence demonstrates that Applicant's sense of obligation to his second wife, her sister, and mother is not minimal. Also, Applicant's choice, even before his divorce was finalized, to search for a new wife in China using a Chinese online chat program undercuts his evidence in mitigation. Furthermore, Applicant has not provided sufficient evidence of his ties and loyalties in the United States, especially since he has not lived in the United States for much of the past 15 years. He has provided no evidence about the strength of his ties to his American family, specifically, his father, brothers, sister, and three children from his first marriage. Applicant states that he would resolve any conflicts of interest in favor of the United States, but it cannot be concluded that "there is no conflict of interest" because of his deep and long-standing relationships and loyalties in the United States.

AG ¶ 8(c) is established with respect to the father of Applicant's second wife. The record does not support the same conclusion with respect to his second wife, her mother, her sister, and her sister's children. Applicant has provided insufficient evidence about his current relationship with his wife and her family to show that he has become sufficiently distant or estranged from these women and related family members so as to create little likelihood that those contacts could create a risk for foreign influence or exploitation. Moreover, Applicant's stepchild, an adult with whom he communicates, is a Chinese citizen and resident studying technology at a university in China.

### **Whole-Person Analysis**

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. In applying the whole-person concept, an 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 and applying the adjudicative factors in AG ¶ 2(d). These factors are: (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.

In addition to the disqualifying and mitigating evidence in the record, I have given consideration to Applicant's maturity and history of serving the United States working overseas for most of the last 15 years. This work has come with considerable personal sacrifices by Applicant. I have also considered his history of having lived in the United States for the first 45 years of his life and having married a U.S.-born woman and raised a family with her. I have weighed, however, Applicant's ties to the United States in light of having been warned in 2007 that his relationship with a Chinese national while working in that country with a security clearance presented a security risk that the U.S. Government was unwilling to accept. Nevertheless, Applicant proceeded to marry this woman shortly after the conclusion of his work in China. With the knowledge of the Government's unwillingness to accept the security risk of Applicant having a relationship with a Chinese national, he married another Chinese national after his divorce from his second wife and maintains a close relationship with his third wife and her child, a student in a Chinese technological institute. Applicant's use of a Chinese online chat program in the past to meet women, including one who would become his third wife, shows a serious lack of concern for security, since his actions could readily be monitored by the Chinese security services. He continues to use a different Chinese online chat program to maintain contact with his present and former Chinese relatives. This pattern of careless or even reckless behavior over the last 11-12 years undermines Applicant's evidence in mitigation and raises serious questions about his judgment and trustworthiness.

After weighing the disqualifying and mitigating conditions under Guideline B and evaluating all of the evidence in the context of the whole person, I conclude Applicant has failed to mitigate the security concerns raised by his multiple contacts and connections with Chinese citizens.

### **Formal Findings**

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a-1.c:	Against Applicant

## **Conclusion**

I conclude that it is not clearly consistent with the national interests of the United States to continue Applicant's eligibility for access to classified information. Clearance is revoked.

John Bayard Glendon  
Administrative Judge