



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



In the matter of: )  
 )  
 REDACTED ) ISCR Case No. 18-02408  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Andre M. Gregorian, Esq., Department Counsel  
For Applicant: Peter Noone, Esq. and Ngai Otieno, Esq.

07/26/2019

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**Decision**

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MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant mitigated the risk of foreign influence raised by his spouse’s family members, who are resident citizens of the People’s Republic of China (China). Applicant does not have close relations with his spouse’s foreign family members. A lifelong resident citizen of the United States, he has shown that he can handle classified information appropriately. Clearance is granted.

**Statement of the Case**

On November 20, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline B, foreign influence. The SOR explained why the DOD CAF was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DOD CAF took the action under Executive Order (EO) 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG) effective within the DOD on June 8, 2017.

Applicant filed a detailed *pro se* response to the SOR allegations on December 21, 2018. He requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On April 9, 2019, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On April 15, 2019, I scheduled a hearing for May 8, 2019.

At the hearing, two Government exhibits (GEs 1-2) were admitted. Three hearing exhibits (HEs) were marked for the record but not admitted: a January 25, 2019 letter forwarding copies of the proposed GEs to Applicant and the Government's Request for Administrative Notice—People's Republic of China as HE I; a list of the GEs as HE II; and the Request for Administrative Notice with extracts of the source documents as HE III. Twenty-five Applicant exhibits (AEs A-Y) were admitted in evidence without objection. Applicant and three witnesses testified, as reflected in a transcript (Tr.) received on June 4, 2019.

### **Administrative Notice**

At the hearing, the Government submitted for administrative notice several facts pertinent to China, as set forth in a Request for Administrative Notice—People's Republic of China, dated January 25, 2019. The Government's request was based on excerpts of U.S. government publications, including the DOD's reports to Congress on military and security developments involving China for 2012, 2013, and 2018; a report of the Office of National Counterintelligence Executive, *Report to Congress on Foreign Economic Collection and Industrial Espionage, 2009-2011*; February 9, 2016 remarks by the Director of National Intelligence to the Senate Armed Services Committee; a 2016 report to Congress by the U.S.-China Economic and Security Review Commission; the U.S. State Department's 2017 human rights report for China; the State Department's travel information for China dated January 3, 2019; and two summaries and six press releases from the U.S. Department of Justice reporting recent economic espionage activity targeting the United States and U.S. commercial entities.

Pursuant to my obligation to take administrative notice of the most current political conditions in evaluating Guideline B concerns (see ISCR Case No. 05-11292 (App. Bd. Apr. 12, 2007)), I informed the parties of my intention to take administrative notice, subject to the reliability of the source documentation and the relevance and materiality of the facts proposed. Applicant confirmed through his counsel his receipt of the Request for Administrative Notice with extracts of the source documents. Applicant filed no objections to the facts set forth in the Government's Administrative Notice request. He declined an opportunity to propose additional facts for administrative notice.

Concerning the reports and press releases of criminal activity and export violations on China's behalf, they were presented by the Government apparently to substantiate that China engages in espionage against the United States and actively pursues collection of U.S. economic and proprietary information. Neither Applicant nor his

spouse's family members in China were implicated in that criminal activity. With that caveat, the facts administratively noticed are set forth below.

### **Findings of Fact**

The SOR alleges under Guideline B that Applicant's parents-in law (SOR ¶ 1.a), brother-in-law and his spouse (SOR ¶ 1.b), and spouse's grandmother (SOR ¶ 1.c) are resident citizens of China. In a detailed response to the SOR allegations, which was included in AE B, Applicant admitted that his spouse's relatives are resident citizens of China, but he indicated that his and his spouse's contacts with her family in China are so casual, infrequent, and minimal that they do not create a risk of foreign exploitation, inducement, manipulation, persuasion, or coercion. After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 32-year-old technical staff member at a federally-funded research and development laboratory. (GE 1; AE B.) He has a bachelor's degree in aerospace engineering awarded in June 2009, and a master's degree in engineering and management awarded in June 2014 from the same university. (GE 1; AEs A-C, N-O; Tr. 29-30.) Applicant previously worked for his current employer from July 2009 to August 2013 (GE 1; AE A; Tr. 28-29, 92), and he was granted a Secret clearance in October 2009. His clearance was upgraded to Top Secret in March 2010. He ended his employment because the university could not give him a scholarship while he was working for the laboratory, and his clearance eligibility lapsed. After he returned to work for the laboratory full time in April 2015, his security clearance eligibility was renewed at the Secret level. He was granted an interim Top Secret clearance in June 2016. He currently holds a Secret clearance. (GE 1; AEs A-B, R; Tr. 32-33, 93.)

A lifelong resident citizen of the United States (GE 1; AEs A-D), Applicant was raised with his only sibling in a small town by his U.S. native-citizen mother, who moved back home after her divorce when Applicant was four years old. His maternal grandparents, both U.S. native citizens, helped raised Applicant and his sister, and they remained an important part of his life, even after his mother remarried. He lived with his mother, stepfather, and sister during his youth, before his mother and stepfather divorced. Applicant was raised with strong American values. He celebrated holidays with his family, played hockey throughout his youth, and was a Boy Scout. After excelling in high school, he received a scholarship from a prestigious university in the United States. He was active in his fraternity in college, and he is still active in fundraising for capital improvements for the local chapter of his fraternity. (GE 1; AEs A-D, N-Q; Tr. 19-26.)

Applicant met his spouse in October 2013 at a housewarming party of a mutual acquaintance. He was in graduate school and did not have a security clearance at that time. (Tr. 38.) A native of China with Chinese citizenship, his spouse was raised in China with her twin brother. She graduated from a Chinese university in June 2007, having spent the previous summer as an exchange student in the United States. In August 2007, she came to the United States on an F-1 student visa to pursue a doctorate degree in computational biology. While a graduate student, she traveled to China twice in 2008 to

visit her parents and grandparents. She traveled to China to renew her visa in April 2010. Although her parents disapproved, she elected to stay in the United States after she earned her doctorate degree in May 2012 because of the high scientific standards in the United States and for the career opportunities in her field. She began working, initially under her student visa, which was extended for training purposes. In 2013, she obtained an H-1B visa under the sponsorship of her employer. (AEs B, X; Tr. 36-39, 94-95.) She has been consistently employed by the same parent company in the United States, working for different units after some corporate reorganizations. (GE 2; AE X; Tr. 41-42.) Her current salary is \$120,000 a year. (Tr. 95.)

Applicant and his spouse began dating in late 2013. Applicant had left the employment of the federally-funded research laboratory and had started his own business in the energy sector. (GE 1; AE A; Tr. 30.) In December 2013, Applicant's spouse traveled to China to renew her H-1B visa. She visited her mother, father, and brother during her 19-day stay, and shared a photo of Applicant with them. In June 2014, Applicant and his spouse began cohabiting. (GE 1; AEs A-B, X; Tr. 40.) Applicant made an effort to have his spouse involved in gatherings of his family, who welcomed her. (AEs Q, Y.) He took her to meet his family for the first time in 2014, and over time his spouse developed close relationships with his mother and sister. (AE X.)

Applicant's spouse traveled to China in September 2014 to give a presentation for her U.S.-based employer at an international conference. She visited her parents and brother during that trip and told her parents that she and Applicant were in a stable relationship. Applicant returned to work for the laboratory in April 2015. (GE 1; AE A; Tr. 31.) In September 2015, he and his spouse traveled to China for him to meet her parents, for tourism, and for her to renew her H-1B visa. (AEs B, X; Tr. 69.) He informed his employer about his trip ahead of time. (Tr. 69.) During his three-week stay in China, Applicant and his spouse visited her parents, her grandparents, and her brother and his fiancée. Applicant had limited communication with them because of the language barrier. He had to rely on his spouse to translate. (Tr. 49.) When Applicant's in-laws asked his spouse about Applicant's occupation, she told them that he founded a start-up energy company. He was still pursuing the business venture while working for his defense contractor employer, but she did not inform her parents of his employment in the U.S. defense industry. Applicant's spouse traveled to China without him for her brother's wedding in December 2015. During her stay, her parents inquired about her relationship with Applicant but not about his employment. (AEs B, X.)

Applicant and his spouse became engaged in May 2016. (Tr. 40, 96.) A few days later, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86) for a clearance upgrade. (GE 1; AE A; Tr. 79.) He reported his cohabitation since June 2014 with his spouse and indicated that she was born in China. In response to an inquiry concerning whether he or an immediate family member had any foreign government contacts in the last seven years, Applicant reported that his cohabitant had contact with the Chinese Consulate in December 2010 to renew her Chinese passport. In response to a question concerning foreign travel in the last seven years, Applicant disclosed his trip to China from September 2015 to October 2015 for

tourism purposes. He answered negatively to inquiries concerning whether he had any contacts or issues outside of routine border contacts. (GE 1; AE B.)

Applicant closed his start-up business in September 2016 due to a lack of funding and customers. (GE 2; AE B; Tr. 30.) Applicant and his spouse traveled to China in April 2017 so that she could renew her H-1B visa. Applicant stayed in China for one week, and he and his spouse visited her grandparents. (Tr. 70, 116.) Applicant's spouse stayed in China for a few weeks after Applicant returned to the United States because her grandfather was near death. (AE B.)

In July 2017, Applicant and his spouse married in the United States. Several of Applicant's family members, including his mother, sister, maternal grandparents, and maternal uncles attended the wedding. (AEs B, N-P.) His spouse's parents, brother, and brother's wife came from China for the wedding (AE B, Tr. 115), even though they disapproved of the marriage. (AEs E, J, N-P, Tr. 50, 52.) His spouse's family stayed in a hotel. (Tr. 52, 107, 115.) Applicant explained that they made the decision to attend only a week before the wedding after his spouse convinced them it was the right thing to do. (Tr. 115.)

Applicant updated his SF-86 to reflect that his cohabitant was now his spouse. (AE B.) In August 2017, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). He disclosed that he had in-person contact with his parents-in-law in September 2015 and July 2017. He did not know their occupations and denied that they had any association with a foreign government, including its security or intelligence services, or its defense industry. When asked about developed foreign contacts, Applicant related that he had quarterly contact with his spouse's brother, a self-employed web designer in China, and with her brother's wife, a translator in China. Applicant indicated that he had annual contact with his spouse's grandmother. Applicant denied that he could be placed in a position of having to choose between the interests of a foreign individual or government and the United States, and stated that if a conflict arose, he would resolve the matter in the U.S. interests. He asserted he would abide by reporting requirements and added that these foreign contacts do not know that he is undergoing consideration for a national security position. (GE 2; AE B.)

Applicant was re-interviewed by the OPM investigator on August 22, 2017, for details about the occupations of his spouse's parents and grandparents. He related that his parents-in-law are professors at the same university in China. His spouse's grandmother and grandfather had worked for a telecommunications school, as a teacher and engineer, respectively. (GE 2; AE B.) His spouse's grandmother retired approximately 20 years ago. (AE B; Tr. 117.)

Applicant and his spouse traveled to China for five days in September 2017 after spending their honeymoon elsewhere in Asia. They had an informal celebration of their marriage for his spouse's family and friends who were unable to attend their wedding in the United States as a sign of respect for her family. (Tr. 70, 115.) Applicant's spouse's family, including her grandmother and some extended family members, and some of her

college friends attended the informal celebration. (Tr. 125-126.) To Applicant's knowledge, his employment was not discussed during that trip. (AEs B, X.) As with his previous trips to China, he reported his travel to his employer. (Tr. 69.)

Applicant's spouse, who is age 34, received her U.S. permanent residence status in July 2018. She intends to apply for U.S. citizenship when she becomes eligible in 2021 (Tr. 95-96), and she does not intend to travel to China in the future unless her parents or brother becomes gravely ill or dies. His spouse is bilingual, but she now considers English her primary language. She has not voted in a Chinese election since a 2002 local election, and she does not intend to vote in a Chinese election in the future. Applicant's spouse has adopted America as her home and become assimilated into American ways of life. She celebrates American holidays, enjoys and plays U.S. sports, and participates in monthly meetings of her condominium association. She has close friendships with U.S. citizens, and has a 401(k) account in the United States valued at \$120,000. She co-owns other assets with Applicant, including their residence, which they purchased in August 2017 (GE 2; AE B; Tr. 42-43), and a brokerage account valued at \$64,000. They have savings and checking account assets of approximately \$75,000. (AE X.) Their total net worth is about \$750,000. (Tr. 46.) Applicant's spouse has a dormant bank account in China with \$100 on deposit. She cannot access the account online. Her mother can access the account. Applicant's spouse plans to close the account should she go to China. She has no investment assets in China and owns no property in China. (AE X.)

On October 31, 2018, Applicant responded to DOHA interrogatories about his foreign contacts. Applicant reported that his spouse had acquired her U.S. permanent residence card. He listed his parents-in-law's employments as professors at a university in China, but denied that they were affiliated with a foreign government or military. He described the frequency of his contacts with them as quarterly, with his most recent contacts occurring in April 2018 with his father-in-law and in June 2018 with his mother-in-law. He indicated that his spouse has weekly contact with her parents. Concerning contacts with his spouse's brother, Applicant described the frequency of his contact as quarterly to as recently as September 2018, and his spouse's contact as weekly. As for his brother-in-law's wife, Applicant indicated that he did not know her current employment because she had recently changed jobs. It had been since May 2018 that he had any contact with her, but his spouse had monthly contact with her sister-in-law. Applicant reported that his spouse's grandfather had died in May 2017. He denied any contact with his spouse's grandmother beyond the in-person contacts in China. His spouse had contact with her on a weekly basis. (GE 2.)

On November 20, 2018, the DOD CAF issued an SOR to Applicant because his spouse's family members (parents, brother and brother's wife, and grandmother) are resident citizens of China. Applicant decided at that time to cease any communications with his spouse's family in China. He did not want to jeopardize his security clearance and career. (Tr. 50.)

In his response to the SOR dated December 21, 2018, Applicant detailed his spouse's increased ties to the United States since her arrival as a doctoral student in

August 2007. He explained that his spouse had planned in 2007 to return home to China every six months because she thought she would have difficulty adjusting to life in the United States, but that changed after two years. Since obtaining her “green card,” his spouse no longer needs to travel to China to renew her visa to stay in the United States, and she has no intention to return to China. He added that because she has adopted American ways and culture, she finds it more difficult to relate to her friends and family in China, which has led to decreased frequency of her communications with them over the years. Applicant described his relationship with his parents-in-law as “strained” and his interactions with them as “the minimum necessary to be polite,” elaborating as follows:

Upon hearing of my proposal to [spouse’s name omitted], they told her they would not approve of the marriage and I would not be accepted into the family because of the cultural differences between Americans and Chinese. They continue to disapprove of me since I do not have a doctoral degree and I have no intention of pursuing additional education to change their opinion. They don’t care to learn anything about me and I have no desire to learn about or interact with them. When we are in the room together, there are long periods of silence as my mother- and father-in-law do not speak to me and I do not speak to them. Because of my detached relationship with my mother- and father-in-law, it is extremely unlikely that I 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. (AE B.)

Applicant sees no reason to engage with his spouse’s family members in the future. He does not intend to travel to China in the future. (Tr. 52.) He testified that his mother-in-law “definitely has a dislike of [him].” (Tr. 54.) Their relationship has been particularly contentious because he is “a person of some color and American. Not Chinese.” (Tr. 57.) Applicant wants nothing to do with his spouse’s family in the future. (Tr. 68.) He indicated that he would absolutely keep them from coming to the United States if he could. (Tr. 67.) On the limited occasions where he had sent them a text message for their birthdays and major holidays, they responded politely in Chinese. They know little English and he knows little Chinese. They have not initiated any contact with him, and he has had no email or telephone correspondence with his parents-in-law. (AE B.)

Applicant’s spouse does not have any ongoing contact by telephone or email with her family in China. As of December 2018, she was communicating with them by text messaging every two weeks, to exchange greetings or comment about photos posted. Applicant indicated that, in the past, his spouse had given her parents \$1,000 each time that she traveled to China to cover the expenses of her trips, but neither he nor his spouse plan on giving any money to her parents in the future. Applicant’s spouse was given \$4,500 from her parents as a wedding gift, but she had not received any other money from her parents in recent years. (AE B; Tr. 45-48.)

Applicant understands from his spouse that her mother and father currently work part-time as auditors at a private college which has a partnership agreement with a state university in China. They officially retired from their academic careers at the college as professors of mathematics and engineering in 2010 and 2014, respectively. The college has its own funding. (Tr. 97-98.) His parents-in-law are members of the Chinese Communist Party (CCP). His mother-in-law is currently serving a two-year term from 2017 to 2019 as the CCP's representative to the college on retirement issues. She is responsible for organizing meetings of university teachers and professors to discuss retirement rulings and decisions from the central government. (AE B; Tr. 98-100.) His spouse learned about her mother's CCP position in the summer of 2018. (AE B; Tr. 102.) His parents-in-law's CCP affiliation was another motivation for Applicant to cease all communications with them. (AE B.)

Applicant does not believe that his spouse's family members know about his defense-contractor employment. Applicant's contact with his spouse's parents has been limited to his in-person contacts during his trips to China in September 2015 and September 2017 and his wedding in the United States in July 2017, and to a few text messages. When Applicant informed his brother-in-law about his engagement to his spouse, his brother-in-law told him the relationship would not work out. Applicant's relationship with his brother-in-law has been distant and strained since then. (AE B; Tr. 58-59.) Applicant's spouse's contact with her brother had decreased by December 2018 to once every two weeks. She gave her brother \$1,000 for his wedding in 2015 and \$1,000 in 2017 on the birth of his son. Neither Applicant nor his spouse intend to give any money to her brother in the future. Applicant and his spouse have very limited contact with his spouse's brother's wife, and they are not aware of their sister-in-law's current employment, if any. She previously worked at a shipping logistics company. (AE B; Tr. 60.) To Applicant's knowledge, neither his spouse's brother nor brother's wife is affiliated with the Chinese government or military. (Tr. 112.)

Applicant has been the subject of racist comments from his spouse's grandmother, who continues to disapprove of him. (Tr. 118.) Applicant's spouse's grandmother has no desire or interest to interact with him and the feeling is mutual. He has only interacted with her during his trips to China. He has otherwise had no communication with her. In December 2018, Applicant estimated the frequency of his spouse's contacts with her grandmother to be every two weeks. His spouse received \$1,000 from her grandmother as a wedding gift. (AE B; Tr. 63.)

Applicant's spouse provided an affidavit dated May 4, 2019, in which she described her connections to the United States, including employment, financial, friendships, familial through her marriage, legal immigration, activities, and interests. Should she and Applicant have children, they plan to raise them in the United States "learning American culture and practicing American values." Regarding her family members in China, Applicant's spouse asserts that she does not have close relations with them. Her correspondence with her grandmother consists of one text message a month "to politely require about her health." She indicated that her mother has shown little interest in her life throughout her life, and their relationship has become only more distant since she



moved to the United States. She texts her mother once a month to wish her well. About her mother's position as the CCP representative on retirement matters, Applicant's spouse described it as "the lowest level position one can hold in the Communist Party." Her communication with her father consists of text messaging once a month on "logistical topics" and nothing personal. She considers her relationship to her brother to be superficial and with her brother's wife to be distant but polite. She communicates with her brother by text messaging once a month and with her sister-in-law three or four times a year. Applicant's spouse indicates that Applicant has "cut off all communications" with her family members in China. Applicant's spouse expressed no intention of traveling to China unless her parents or brother becomes gravely ill or pass away. She indicated that should she and Applicant have children, her parents and brother and his wife might travel to the United States once every couple of years while the children are young. (AE X.) Applicant's spouse reduced the frequency of her contacts with her family in China after Applicant informed her that her communications with them was putting his job and career at risk, and because of the way her family has treated him. (Tr. 105, 119.) Applicant testified that since their marriage, her family has "really pushed [his spouse] away." (Tr. 105, 110.)

Applicant credibly professes sole allegiance to the United States. He has voted in every national election and most local elections since he became eligible to vote at age 18. (AEs B, V.) He registered for the U.S. Selective Service in August 2004. (AEs B, W.) He is on the finance committee for his homeowner's association. When he is not traveling for work, he plays in an adult sports league. He has served as alumni president for the local chapter of his fraternity for the past three years. His family members were all born in the United States with the exception of his paternal grandmother, who was raised in the United States and is a U.S. citizen. Applicant is not close to his paternal grandmother because of his parents' divorce. (AE B.) His financial assets are all in the United States. (Tr. 46.) His current salary at his defense-contractor employment is \$138,000 annually. (Tr. 93.) He understands that he could be targeted for classified information. If anything changes in terms of communication from his spouse's family, he would immediately report them. (Tr. 73.) He would not hesitate to report any improper contact to his security department, including if it came from his spouse. (Tr. 75.)

## **Employment and Character References**

Applicant accesses classified information for his duties with his current employer on a bi-weekly basis. He is required to maintain a minimum of a Secret clearance for his employment. (AE B; Tr. 32.) He has stayed up-to-date on his security trainings and takes his security responsibilities seriously. (AEs S-T; Tr. 72.) He considers it "the highest honor to be able to hold a security clearance." He has earned a reputation at work for performing at a level higher than expected. (AE U.) The chief security officer at the laboratory attests that Applicant has not had any security-related incidents on the job. Applicant was "purposeful and timely" in reporting all required updates to his personal background, such as his marriage to a Chinese national and her foreign relatives. He has been briefed about foreign intelligence recruitment and counterintelligence awareness topics and about his reporting requirements. The security officer sees no reason why Applicant would not

continue to report any information as required. He has demonstrated an understanding of his responsibilities and of the reporting requirements. (AE R.)

On his return to his employment with the federally-funded research and development laboratory in April 2015, Applicant made a major but seamless transition from a hardware engineer to a systems analysis role. His overall performance for 2015 was rated as very good, and excellent in the areas of technical breadth, productivity, and teaming. By the time of his performance rating for 2016, he had become one of the primary technical contributors to a DOD study and a U.S. military demonstration initiative. He was an asset to his group in that he was able to support both systems analysis and hardware development efforts. In 2017, Applicant traveled extensively to military sites and briefed military officers and government officials as a key contributor in his area of growing expertise. His overall performance for 2017 was rated as outstanding. In February 2018, he was promoted to technical staff, where he is now responsible for technical and financial oversight of his programs. (Tr. 32, 34.) He proved to be good at prioritizing program goals and tasks, and paying attention to staffing needs and finances to make sure that program goals were met on time. Applicant was given an outstanding performance rating for 2018. (AE U; Tr. 35.) Noting Applicant's dedication to performing above time and above expectations on projects, his rating supervisor advised him to find a sustainable work-life balance to ensure that he does not get burned out. (AE U.)

Applicant's direct supervisor provided a character reference letter (AE E) and also testified for Applicant. He has known Applicant since April 2015, initially as an officemate and colleague, and since October 2017 as his supervisor. He has had the opportunity to observe Applicant's work on a daily basis, and to travel with Applicant extensively to U.S. military installations. They have a close relationship outside of work as well. He was best man at Applicant's wedding, and he and his wife have had multiple social interactions with Applicant and his spouse. He has met Applicant's family, including extended family members who attended Applicant's wedding, and attests to the close relationship Applicant has with his family. He also met Applicant's spouse's parents and brother at the wedding and indicates that Applicant's in-laws continue to be "not particularly happy" about the marriage. He believes that their racism about Applicant's paternal heritage is the root cause of their disinterest in having a relationship with Applicant. The supervisor/friend opined that Applicant's spouse does not have a particularly warm relationship with her parents, and that her relationship with them has declined drastically as Applicant's spouse has become "Americanized in her thinking and actions." In his opinion, her parents are disappointed with her for staying in the United States and not returning to China to help them; that her mother feels that she has lost control of her daughter, "who is not displaying the appropriate thankfulness for the sacrifices that they made for her education and who is not submissive enough to her parent's wishes for who she should marry." Applicant's supervisor/friend is aware of the SOR, but he does not share the concerns. Applicant is "one of the most fastidious and careful people [he knows] of when it comes to handling classified information." He explained that, because of the nature of their work, there is no good security classification guidance. Applicant is extremely concerned about the aggregation of information and does not discuss his work outside of the office. He has no concerns about Applicant's ability to handle classified

information appropriately. (AE E; Tr. 129-140, 144-145.) Applicant has “a stellar reputation” at work. (Tr. 134.) The supervisor/friend knows that Applicant’s mother-in-law has some affiliation with the Chinese government. (Tr. 148.) In his opinion, Applicant does not have a relationship with his spouse’s Chinese family to exploit. (Tr. 143.) Based on his observations, the supervisor/friend believes that Applicant would probably choose the U.S. interests over his spouse’s interests in the event of undue pressure. (Tr. 144-145.) He elaborated that all Applicant has wanted to do in life is to help the government or make it better. He expressed confidence that Applicant would report any attempts at foreign influence. (Tr. 149, 151.)

A work colleague of Applicant’s since July 2015 has partnered with Applicant on several projects. She testified for him and provided a character reference letter (AE G). She attests to Applicant being “highly detail oriented [and] hyper-aware of operational security.” They have developed a friendship, and in that regard, she knows Applicant to be dedicated to his volunteer activities, including presently as the alumni president overseeing a massive house renovation for the local chapter of his fraternity. This colleague/friend knows that Applicant “does not particularly like his wife’s family.” (Tr. 175.) He made it clear to her that he considers his in-laws to be rude and insensitive; that if he and his spouse have any children, they will be raised only in the United States; and that he will limit his spouse’s family’s interactions with them. (Tr. 175-176.) Applicant has not given his colleague/friend any indication to doubt his loyalty. He has been vigilant about the confidentiality and sensitivity of his work. He does not take work home and chooses instead to spend late hours at the laboratory to ensure that deadlines are met. He inspires his co-workers to care about their projects. (AE G; Tr. 171-.176.)

A former senior advisor for the U.S. military, who is an attorney in the U.S. Reserves, now has his own consulting company. (Tr. 81, 153-154.) He testified for Applicant and also authored a character reference letter (AE F). He strongly endorses Applicant for continued security clearance eligibility. He met Applicant through their work on behalf of a branch of the U.S. military and has witnessed Applicant’s growth “as a leader and innovator in increasingly important national security and defense issues.” Applicant has always been focused on their mission and committed to operational security practices. He believes denying Applicant’s continued eligibility for a security clearance would be “a grave mistake and a significant setback to U.S. national security interests in an area of emerging importance.” (AE F.) Applicant has the highest reputation among their very broad network for his capabilities and contributions; for his integrity and honesty; and for his ability to maintain a high level of security. (Tr. 160.) Applicant treats his work “as a mission.” (Tr. 162.) He does not believe Applicant would be subject to foreign influence. (Tr. 164-168.)

A friend of Applicant’s, who works as a subcontractor for Applicant’s employer, met Applicant when they were both entrepreneurs. He has witnessed Applicant’s dedication to his job and to America. In his experience, Applicant “firmly firewalls his professional and personal lives.” He will spend nights and weekends at the office if necessary. He attests that Applicant has expressed that he cannot and will not divulge information about his work no matter the pressure. On travels together, Applicant has shared plenty about

his family with this friend, but nothing about his spouse's family. This friend knows that Applicant's in-laws are Chinese and that it is "an undeniable fact that China actively engages in espionage targeting America and the Department of Defense." Yet he wholeheartedly supports Applicant's application for a security clearance. (AE H.)

A consultant in national security, who retired in October 2014 from full-time employment as president and chief executive officer of a defense contractor, knows Applicant through their fraternity. The consultant's son was in the fraternity with Applicant, and the consultant was an active alumnus. Applicant was the local chapter's vice president while an undergraduate, and he impressed the consultant with his leadership ability. More recently, as president of the alumni house corporation, Applicant stepped up to help the chapter recover from a membership crisis, and he has led the efforts for infrastructure improvements and renovations. Applicant has been "open and transparent about [his spouse's] Chinese heritage" and about her relatives. Based on his interactions with Applicant and knowledge of Applicant's background, the security consultant is confident that Applicant is loyal to the United States and its security interests. (AE I.)

A licensed attorney, who attended college with Applicant and joined the same fraternity, has developed a close friendship with Applicant over the past 13 years. Applicant discussed with him the possible effect that his marriage to a Chinese national could have on his security clearance eligibility. This friend attests that Applicant married "after much consideration and with full belief that he could undertake both without adversely impairing either." As a groomsman at Applicant's wedding, this friend observed Applicant to be cordial to his in-laws, "who strongly considered not attending the wedding." In his observation, Applicant is extremely close to his own family, and he is "entrenched" in his community. This friend has no reservations about trusting Applicant with the responsibilities of a security clearance. (AE J.)

Another of their fraternity brothers currently works as a mechanical engineer for a defense contractor. This friend invested in Applicant's start-up energy company. He indicates that when Applicant closed the company, he paid back his investors because he wanted to honor the trust that they had placed in him. He knows Applicant as someone very conscious about his work and its sensitivity. He believes Applicant is a loyal citizen of the United States who will place the interests of the United States first. (AE K.)

The president of the fraternity house corporation before Applicant has had limited opportunities to interact with Applicant and his spouse socially. In his contacts with Applicant through their fraternity, he has seen Applicant react calmly and thoughtfully in stressful and sensitive situations. He does not believe that Applicant poses any threat to the United States. (AE L.)

A married couple with whom Applicant and his spouse share a friendship "unequivocally pledge [their] support" of Applicant. He has given these friends no reason to doubt his character or his loyalty. The female friend interacted with Applicant through shared university alumni activities from 2005 to 2007. Applicant became reacquainted with her and met her husband in 2014, when he joined their weekly co-ed sports team.

The couple attended Applicant's wedding and consider him to be a "loving husband and a trustworthy friend." (AE M.)

Applicant remains close to his family, although he has told them that if anything improper were to occur involving them, all he could do is report it to the government. (Tr. 77.) Applicant's mother, sister, maternal grandparents, and maternal uncles favorably endorse his character and reliability and confirm Applicant's close ties to the United States. Applicant's mother, who works in the housekeeping business, indicates that her son "does things by the book and doesn't let anyone pressure him into decisions." He has high morals, and she has no doubt that he is a loyal U.S. citizen. She knows where Applicant is employed but not what he does or where he travels for work. To her knowledge, Applicant has limited contact with his spouse's family; his in-laws do not like him; and they did not want the marriage. She regards Applicant's spouse as a daughter and part of their American family. (AE N.)

Applicant's sister corroborates that Applicant's spouse became part of their family activities when she and Applicant were dating, and that his marriage has not changed his core values of honesty and integrity. Applicant's sister has always been able to trust him to give her rational, helpful advice. She knows of no one more consistent and stable as Applicant. He does not take his work lightly and has not shared the nature of his work with her. (AE Q.)

Applicant's maternal grandparents expressed their pride in Applicant. They were involved in raising him, including taking him to his sports games out of town. They knew before Applicant's wedding that there was some tension because of his in-laws' disapproval of the marriage, although "everyone got along fine during the wedding." To their understanding, Applicant's in-laws play "a very minor role" in Applicant's and his spouse's lives in the United States. (AE O.)

Applicant's uncles have maintained a close relationship with Applicant even though they live in another area of the country. In their experience, Applicant is determined in accomplishing his tasks and goals. Their family has adopted a policy of not asking him about his work because he will not tell them. Applicant's uncles found Applicant's in-laws to be courteous and polite at the wedding, despite their disapproval of the marriage because Applicant is not Chinese. Applicant's uncles strongly doubt that there is anything that Applicant's in-laws could say to him that would dissuade him from doing what is right. (AE P.)

### **Administrative Notice**

After reviewing U.S. government publications concerning China and its foreign relations and mindful of my obligation to consider updated information, I take administrative notice of the facts requested by the Government as supplemented by the following facts:

China is an authoritarian state with paramount authority vested in the CCP. CCP members hold almost all top government and security apparatus positions. In all important government, economic, and cultural institutions in China, the CCP ensures that party and state policy guidance is followed. China considers the first 20 years of this century to be a window of strategic opportunity for the country to focus on economic growth, independent innovation, scientific and technical advancement, and growth in renewable energy. China sees itself as a strategic competitor of the United States.

China continues to pursue a long-term, comprehensive military modernization program, which it views as essential to achieving the “China Dream” of a powerful and prosperous China. As of 2018, China was placing a growing emphasis on the importance of maritime and information domains, offensive air operations, long-distance mobility operations, and space and cyber operations. China is one of the most aggressive collectors of U.S. economic information and technology. To support its military modernization, China fills the gaps in its defense and commercial research by engaging in large-scale, state-sponsored theft of intellectual property and proprietary information. In accord with its national security objective to leverage legally and illegally acquired dual-use and military-related technologies to its advantage, China uses its intelligence services, computer intrusions, and other illicit approaches to obtain national security and export-controlled technologies, controlled equipment, and other materials. China leverages foreign investments, commercial joint ventures, academic exchanges, the experience of Chinese students and researchers, and state-sponsored industrial and technical espionage to increase the level of technologies and expertise available to support its military research, development, and acquisition. China blends intelligence and non-intelligence assets and frequently seeks to exploit Chinese citizens or persons with family ties to China who can use their insider access to steal trade secrets from U.S. companies.

U.S. corporations and cyber-security specialists continue to report computer network intrusions originating from Internet Protocol addresses in China. In March 2016, a Chinese national plead guilty to participating in a conspiracy between approximately October 2008 through March 2014 to hack into the computer networks of major U.S. defense contractors to steal sensitive military and export-controlled data for the benefit of China. Some Chinese nationals in the United States have acted as procurement agents or intermediaries to obtain key national security and export-restricted technologies or controlled equipment for China in violation of U.S. laws and export controls. In June 2016, a California resident was convicted of conspiring with a person in China to illegally acquire and export to China fighter jet engines, an unmanned aerial vehicle, and related technical data to China. In March 2017, a U.S. State Department employee with a Top Secret clearance was charged with making false statements to the FBI for allegedly failing to report her contacts with two Chinese foreign intelligence agents, who provided her with thousands of dollars of gifts and benefits over a span of five years.

In June 2018, a former Defense Intelligence Agency (DIA) officer, was arrested for the attempted transmission of national defense information to China’s intelligence services and for acting as an unregistered foreign agent for China. Fluent in Mandarin

Chinese and Russian, he held a Top Secret clearance for several years. Between 2013 and 2017, he regularly traveled between the United States and China and allegedly provided information that he learned at military and intelligence conferences in the United States to contacts in China associated with the country's intelligence services. He also allegedly improperly sold export-controlled technology to persons in China. He was reportedly paid at least \$800,000 for his activities on China's behalf.

In another illustration of China targeting former and present U.S. security clearance holders, in June 2018, a former Central Intelligence Agency (CIA) case officer, who had also worked for the DIA in the past, was convicted of espionage for transmitting classified documents to an agent of the Chinese government. In September 2018, a Chinese citizen living in Chicago was arrested for allegedly acting within the United States as an illegal agent for China. According to the criminal complaint, the Chinese national came to the United States on a student visa to study electrical engineering in 2013. In 2016, he enlisted in the U.S. Army Reserves under a program authorizing the recruitment of legal aliens with skills considered vital to the national interest, denying at that time that he had any contact with a foreign government in the past seven years. He allegedly worked at the direction of a high-level intelligence officer in a provincial department of the Ministry of State Security for the PRC. In October 2018, a Chinese intelligence officer was charged with economic espionage involving the theft of trade secrets from multiple U.S. aviation and aerospace companies. In a separate case, two Chinese intelligence officers who worked for a provincial foreign intelligence arm of China's Ministry of State Security and their team of hackers were charged in October 2018 with conspiracy to steal technology underlying a turbofan engine used in U.S. and European commercial airlines. The criminal computer intrusions reportedly targeted several private companies and persisted between January 2010 and May 2015. In reporting the charges, the FBI noted that "the threat posed by Chinese government-sponsored hacking activity is real and relentless."

China has a poor human rights record. The government was responsible for significant human rights issues in 2017, including arbitrary or unlawful deprivation of life and executions without due process; forced disappearances; torture and coerced confessions of prisoners; arbitrary and illegal detentions; restrictions on freedom of speech, press, assembly, association, religion, and travel; harassment of journalists, lawyers, writers, dissidents, and others; censorship and tight control of public discourse on the Internet, in the print, and other media; inability of citizens to choose their government; corruption; severe repression of human rights organizations and individuals; severe labor restrictions; and a coercive birth-limitation policy. The CCP continued to dominate the judiciary and controlled the appointment of judges. In some cases, the CCP directly dictated court rulings.

The U.S. State Department advises visitors to China to exercise increased caution due to arbitrary enforcement of local laws as well as special restrictions on U.S.-Chinese nationals. Chinese authorities have asserted broad authority to prohibit U.S. citizens from leaving China by using exit bans coercively to compel U.S. citizens to participate in Chinese government investigations; to lure individuals back to China from abroad; and to aid Chinese authorities in resolving civil disputes in favor of Chinese parties. The State

Department warns that U.S. citizens may be detained in China without access to U.S. consular services, and they may be subjected to prolonged interrogation and extended detention for reasons related to “state security.” China does not recognize dual nationality and U.S.-Chinese citizens and U.S. citizens of Chinese heritage may be subject to additional scrutiny and harassment. Visitors are required to register with the police within 24 hours of arrival in the country and failure to do so could result in fines and deportation. Foreign visitors in China may be placed under surveillance by security personnel; their hotel rooms, telephones, and facsimile machines may be monitored; and their personal possessions, including computers, may be searched without their knowledge or consent.

## Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall adjudicative goal is a fair, impartial, and commonsense decision. According 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 national security eligibility will be resolved in favor of the national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. 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 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 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. Section 7 of EO 10865 provides that 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

The security concern relating to the guideline for foreign influence is articulated 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 that is 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’s spouse’s parents, her twin brother and his wife, and her grandmother are resident citizens of China. Review of Applicant’s contacts and connections to these foreign citizens is warranted to determine whether they present a heightened risk under AG ¶ 7(a) or AG ¶ 7(e) or create a potential conflict of interest under AG ¶ 7(b). Those disqualifying conditions provide:

(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.

Not every foreign contact or tie presents the heightened risk under AG ¶ 7(a). The “heightened risk” denotes a risk greater than the normal risk inherent in having a family member living under a foreign government. The nature and strength of the family ties or other foreign interests and the country involved (*i.e.*, the nature of its government, its relationship with the United States, and its human rights record) are relevant in assessing whether there is a likelihood of vulnerability 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 on, the foreign government; or the country is known to conduct intelligence operations against the United States. In considering the nature of the foreign government, the administrative judge must take into account any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006).

There is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of his or her spouse. See *e.g.*, ISCR Case No. 11-12659 (App. Bd. May 30, 2013). Applicant had in-person contact with his spouse’s parents and brother during his trips to China to meet them in September 2015 and in September 2017 for their post-wedding celebration for his spouse’s family and friends, who did not attend their wedding in the United States. He had quarterly contact by text message with these in-laws as of October 2018, only on birthdays and major holidays, and they responded politely in Chinese. His contact with his brother-in-law’s wife was less frequent. Applicant had in-person contact with his spouse’s grandmother, only when he was in China. He has had no other contact with his spouse’s grandmother, who has made racist comments about him. On receiving the SOR, Applicant decided to have no future communications with his spouse’s family members. Applicant credibly denies any close bonds to his spouse’s family members, who do not approve of him because of their cultural and class prejudices and racism. They openly expressed their disapproval of his marriage to their daughter and have shown little interest in getting to know him. His relationship with them does not trigger AG ¶ 7(a).

Applicant’s spouse indicates that she does not have a close relationship with any of her family members in China. A close friend and work colleague of Applicant’s testified that Applicant’s parents-in-law are displeased with their daughter for not coming home to China and for not showing appropriate gratitude for the sacrifices they made for her. Applicant’s spouse’s contact with her family has decreased significantly as her ties to America have increased, and particularly since they have not accepted Applicant. Even so, these family members are not completely estranged from her. Her parents and her twin brother and his wife attended her wedding to Applicant in the United States. Applicant’s parents and grandmother gave her monetary gifts on her marriage. Applicant’s spouse sent \$1,000 to her brother on the birth of his son. Out of respect for her parents, Applicant’s spouse and Applicant had an informal celebration of their wedding in China in September 2017. She continues to contact her family members in China by text messaging once a month.

China is an authoritarian state with an extensive, pervasive history of engaging in economic and technological espionage against the United States, including in recent

years using cybercrime to steal sensitive information and technologies. China also has a poor human rights record in many aspects. Applicant's parents-in-law continue to work part time at a Chinese college affiliated with a state university; they are members of the CCP; and her mother serves as the CCP's representative to the university's professors and other instructors regarding retirement issues. While there is no evidence that intelligence operations from China seek or have sought classified information or sensitive economic technologies from or through Applicant, his spouse, or her relatives living in China, nevertheless, it is not possible to rule out such a possibility in the future. Applicant lives with and is close to his spouse. Her relationships and ongoing contacts with her family members in China create a risk of indirect foreign influence through her and establish disqualifying conditions AG ¶ 7(b) and AG ¶ 7(e).

The burden shifts to Applicant to mitigate the risk of undue foreign influence that exists because of his ties through his spouse to China, a country known to target U.S. citizens to obtain classified or sensitive information, including persons who have held sensitive positions and clearances. AG ¶ 8(a) provides for mitigation as follows:

(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.

AG ¶ 8(a) does not apply because of the country involved. In recent years, Chinese intelligence agents operating from within and outside the United States have targeted insiders in sensitive government positions and the defense industry to obtain highly classified information. Cyber hacks originating from China intended to benefit China are likely to continue. Applicant could find himself in a position of having to choose between the interests of his spouse's family members and the interests of the United States.

Applicant credibly denies any loyalty to China or to his spouse's relatives in China. At the same time, it is difficult to satisfy the first part of AG ¶ 8(b). Chinese authorities could conceivably bring some pressure on his spouse's family in China and create a conflict between Applicant's obligation to protect sensitive technology and a desire to help his spouse. AG ¶ 8(b) provides:

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, 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.

AG ¶ 8(b) is established, however, in that Applicant's relationships and loyalties in the United States are so deep and longstanding that he can be counted on to resolve any conflict of interest in favor of the United States. A lifelong resident citizen of the United States, Applicant was raised to be a loyal American. He was educated in the United States

and has pursued his career here. His contributions to his employer and the U.S. military have been considerable. All of the persons to whom he is bound by feelings of affection (spouse, mother, sister, grandparents, uncles and other extended family members) are in the United States. His spouse has yet to acquire her U.S. citizenship, but she has U.S. permanent residency; she does not intend to travel to China unless her family members fall gravely ill or die; and she intends to become a naturalized U.S. citizen as soon as she is eligible. Should she and Applicant have any children, her parents will have to travel to the United States to see them. Applicant and his spouse own their condominium and have other considerable financial assets in the United States. Applicant has no assets in China, and while his spouse has a bank account in China, the balance is minimal and cannot be accessed from abroad.

In weighing Applicant's relationship with the United States against the potential conflict of interest, it is significant to note the deterioration in his spouse's relationship with her family living in China. Her choices to stay in the United States to pursue her life and career, and especially to marry Applicant despite their expressed disapproval of him, show that her family has little control over her. She recognizes the importance of Applicant's job to him and the distant nature of her relationship with her family in China makes her less likely to ask Applicant to help them in the event of any undue foreign influence. Given their prejudicial attitudes toward him, Applicant is not likely to succumb to pressure or influence from them or act on their behalf.

Moreover, 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," has some applicability. Applicant has cut off all contact with his spouse's family members in China. When he had contact previously, it was limited to polite exchanges and nothing more. His spouse's contacts by text message on a monthly basis with her parents, brother, and grandmother, and three to four times a year with her sister-in-law are ongoing, but superficial in nature.

AG ¶ 8(e), "the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country," also has some applicability. The chief security officer for Applicant's employer indicates that Applicant has been "purposeful and timely" in reporting all required updates to his personal background. He reported his marriage to a Chinese national and he reported her relatives. Applicant has given the security manager no reason to believe that Applicant would not continue to report any information required of him because of his security clearance eligibility.

### **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 his conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(d). Those factors are as follows:

(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 foreign influence cases, it must be acknowledged that people act in unpredictable ways when faced with choices that could be important to a family member. As stated by the DOHA Appeal Board in ISCR Case No. 08-10025 (App. Bd. Nov. 3, 2009), "Application of the guidelines is not a comment on an applicant's patriotism but merely an acknowledgment that people may act in unpredictable ways when faced with choices that could be important to a loved-one, such as a family member." Moreover, in evaluating Guideline B concerns, the Appeal Board has held that:

Evidence of good character and personal integrity is relevant and material under the whole person concept. However, a finding that an applicant possesses good character and integrity does not preclude the government from considering whether the applicant's facts and circumstances still pose a security risk. Stated otherwise, the government need not prove that an applicant is a bad person before it can deny or revoke access to classified information. Even good people can pose a security risk because of facts and circumstances not under their control. See ISCR Case No. 01-26893 (App. Bd. Oct. 16, 2002).

Applicant cannot control the actions of the Chinese government, intelligence, or security services, but he can control his response if placed in the untenable position of having to choose between the interests of the United States and the interests of his spouse's family members in China. He indicated that if undue pressure was to be placed on him, he would report it, even if the person making the improper inquiry was his spouse. Applicant's supervisor, who is well-acquainted with Applicant and his spouse, believes that Applicant would choose the interests of the United States over the interests of his spouse if faced with that situation. Although not controlling, it is relevant that Applicant has demonstrated that he can be counted on to handle classified information appropriately. He is known "as a leader and innovator in increasingly important national security and defense issues." Applicant's supervisor and work colleagues attest to his commitment to his work and to the importance with which he takes his security responsibilities. They believe it is in the best interest of the U.S. to continue Applicant's security clearance eligibility and that it would be a mistake to do otherwise.

Applicant has also shown that he can be relied on to comply with his reporting requirements. He informed security officials at work about his trips to China, about his marriage to a Chinese national, and about his in-laws in China. He has received counterintelligence briefings and is likely to recognize any attempt at undue influence or

pressure and to report it to the proper authorities. He entered into his marriage with a Chinese national only after giving careful due consideration to whether he could continue to adhere to his security responsibilities. There is no indication whatsoever that he has betrayed the confidence placed in him.

Certainly, Applicant's parents-in-law's memberships in the CCP, his mother-in-law's position as a representative of the CCP to the university, and his in-laws' continued work on behalf of the Chinese college raise significant security concerns, but they are not per se disqualifying. After considering all the facts and circumstances, including the importance of Applicant's work to him, his awareness of the potential risks posed by his marital ties to China, and the strained relations he has with his spouse's family in China, I find that it is clearly consistent with the national interest to continue security clearance eligibility for Applicant.

### **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:	FOR APPLICANT
Subparagraphs 1.a-1.c:	For Applicant

### **Conclusion**

In light of all of the circumstances, it is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Elizabeth M. Matchinski  
Administrative Judge