



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



In the matter of: )  
)  
) ISCR Case No. 18-02523  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Brittany White, Esq., Department Counsel  
For Applicant: Alan V. Edmunds, Esq.  
11/13/2019

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**Decision**

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NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to deny her eligibility for a security clearance to work in the defense industry. Applicant, a naturalized U.S. citizen from China, failed to mitigate the security concerns raised by her familial relationships with individuals who are citizens of China. Clearance is denied.

**Statement of the Case**

The DOD CAF issued a Statement of Reasons (SOR) detailing security concerns under the foreign influence guideline on November 9, 2018. The DOD CAF took this action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive), and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, implemented on June 8, 2017. Based on the available information, DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant Applicant’s security clearance and recommended that the case be submitted to an administrative judge for a determination whether to revoke or deny Applicant’s security clearance.

Applicant timely answered the SOR and requested a hearing. The Government served discovery on Applicant on February 25, 2019. The Government’s discovery letter

is appended to the record as Hearing Exhibit (HE I). At the hearing, convened on May 5, 2019, I admitted Government's Exhibits (GE) 1 and 2, and Applicant's Exhibits (AE) A through Y without objection. Applicant testified at the hearing, as did three character witnesses on her behalf. DOHA received the transcript (Tr.) on June 13, 2019. On September 5, 2019, Applicant forwarded a document related to her husband's citizenship status. This document is admitted to the record as AE Z, without objection from Department Counsel.

## **Procedural Matters**

### **SOR Amendment**

Without objection from Applicant, I granted Department Counsel's motion to withdraw SOR ¶ 1.a, which alleged that Applicant's husband is citizen of China. (Tr. 8.)

### **Request for Administrative Notice**

Department Counsel requested that I take administrative notice of certain facts regarding the People's Republic of China. Without objection from Applicant, I approved the request and the document is appended to the record as HE II. (Tr. 10-11.)

## **Findings of Fact**

Applicant, 50, has worked for university-affiliated research institutes as a materials scientist since at least 2005. Her current employer, also a university-affiliated research institute, hired her in July 2017 and she began working on projects in August 2018. Her current research is sponsored by the DOD. Throughout her career, Applicant has published 70 articles in U.S.-based journals and has given presentations at conferences sponsored by U.S. entities. She has participated in three international conferences in the United Kingdom, Australia, and Japan. She does not have any continuing contact with any people she may have met during those events. She completed a security clearance application, her first, in August 2017, disclosing eight relatives who are citizens and residents of China, as well as two relatives who are Chinese citizens residing in the United States. These relationships serve as the basis for the SOR allegations. (Tr. 47-48, 93-99; GE 1, AE C.)

Applicant is a naturalized U.S. citizen from The People's Republic of China (China). China is an authoritarian state in which the Chinese Communist Party (CCP) is the paramount authority. CCP members hold almost all top government and security apparatus positions. Chinese leaders are focused on developing the capabilities they deem necessary to deter or defeat adversary power projection and counter third-parties including the United States in conflicts. China's military modernization is producing capabilities that have the potential to reduce core U.S. military technological advantages. The National Counterintelligence Executive has identified China and Russia as the most aggressive collectors of U.S. economic information and technology. China's intelligence services, as well as private companies and other entities, frequently seek to exploit Chinese citizens or persons with family ties to China who can use their

insider access to steal secrets. Agents of the Chinese government are the world's most active and persistent perpetrators of economic espionage. Chinese attempts to collect U.S. technological and economic information continue and represent a persistent threat to U.S. economic security. (HE II.)

In assessing the national security implications of the bilateral trade and economic relationship between the U.S. and China, the U.S.-China Economic and Security Review Commission has reported that the Chinese government has conducted large-scale cyber espionage against the United States. China has compromised a range of U.S. networks, including those of DOD, defense contractors, and private enterprises. China's substantial and sustained investment in defense research and development (R&D) has helped China improve its military-industrial complex. China's state sponsored theft of intellectual property and proprietary information has allowed China to fill knowledge gaps in its domestic defense and commercial R&D. (HE II.)

Chinese government repression and coercion against organizations and individuals involved in civil and political rights advocacy, and public interest and ethnic minority issues occurs. Human rights concerns in China include: repression of speech, religion, association, assembly, the press, and movement for certain minorities; extrajudicial killings; enforced disappearance and incommunicado detention; torture and coerced confessions of prisoners; a lack of due process in judicial proceedings; searches of premises without warrants; monitoring of communications (including telephone conversations, facsimile transmissions, e-mail, text messaging, and Internet communications); and opening of domestic and international mail. Additionally, citizens lacked the right to change their government and had limited forms of redress against the government. (HE II.)

Applicant completed her undergraduate and masters education at the university in her hometown. Between 1991 and 1994, she worked for a China-based research institute. Applicant does not maintain any contacts with anyone from that employment. She immigrated to the United States in 1997 to commence studies on her doctoral degree, which she completed in 2001. She became a naturalized U.S. citizen in May 2010 and obtained a U.S. passport. When she traveled to China in 2013, entering the country with her U.S. passport, Chinese immigration officials cut the corners of her Chinese passport, invalidating the document. (Tr. 60-64; GE 1-2.)

Applicant's husband is also originally from China. He immigrated to the United States in 1991 on a student visa to complete his education. He then remained in the United States on an employment visa. The couple met in 2008 and married in June 2009. He applied for U.S. citizenship after their marriage. For unexplained reasons, his application stalled after he completed the fingerprinting process and in-person interview. He filed a second application in April 2019 at Applicant's request and became a naturalized U.S. citizen in September 2019. Applicant's husband works as an engineer in the private sector. He also works as a financial planner. Applicant and her husband have one child together, who is a U.S. citizen by birth. Applicant's husband also has two adult children from his first marriage, who are also U.S. citizens by birth. (Tr. 66-68, 99-102; GE 1.)

Applicant's father, stepmother, and oldest brother are residents and citizens of China. (SOR ¶ 1.b.) Applicant's father, 79, is a retired professor. He taught at a university in Applicant's hometown, not her alma mater. The record is silent as to her father's area of expertise. Her stepmother, 68, retired from her position as a computer engineer at a hospital. Before receiving the SOR, Applicant spoke to her father by phone at least once per month. She spoke to her stepmother less often. Applicant would also send her parents a \$3,000 lump sum each year to use toward their care and medical expenses. (SOR ¶ 1.d.) After receiving the SOR, Applicant reduced telephone contact to emergency occasions only. She also stopped sending financial support. Applicant's parents have traveled to the United States four times to visit Applicant, their most recent visit occurring in August 2018. Each trip lasted six months, and they stayed in Applicant's home. Applicant's father knows Applicant requires a security clearance, but does not know about her specific projects. Applicant's brother works as an electrical engineer for an automation company. They telephone each other on birthdays and see each other in person on Applicant's visits to China. Applicant last traveled to China in 2014 using her U.S. passport. She has no immediate plans to return. (Tr. 49-53, 69-77, 85-86; GE 1; AE O.)

Applicant's husband also has family members who are citizens and residents of China: three sisters, a brother-in-law, and a nephew. (SOR ¶ 1.c.) Applicant's sisters-in-law and brother-in-law are retired factory workers. The record does not contain information on Applicant's husband's contacts with his family members in China; however, each of his sisters has visited him and Applicant at their home in the United States. Applicant's contact with her three sisters-in-law (hereinafter referred to as SIL 1, SIL 2, and SIL 3) are limited to these visits. SIL 1 has visited Applicant and her husband three times, most recently in 2017. SIL 2 last visited Applicant's family in 2018. Applicant does not have independent contact with SIL 2's husband and it is unclear if he has traveled to the United States. SIL 2's daughter is a citizen of China, residing in the United States and married to a U.S. citizen. She has applied for U.S. citizenship. The niece and Applicant's husband work for the same financial services company. Applicant has the most contact with SIL 3, whose son, also a citizen of China, lived with Applicant and her family while studying at a community college local to Applicant's home. He is now a student at a U.S. university and lives on campus. He lives with Applicant when campus is closed. SIL 3's most recent visit occurred in early 2019. Applicant's husband has a second nephew who is a citizen and resident of China, but the record does not contain any additional information about him. Applicant does not provide any financial support to these relatives. She does not speak with her brother or her husband's relatives about her work. (Tr. 54-59, 66, 77-83, 100; GE 1; Answer.)

Applicant does not have any financial interests in China, but has significant U.S.-based assets. They enjoy a household income over \$350,000. They own their home and two rental properties, which have a total value of \$1.6 million. Applicant has over \$200,000 in short-term and retirement savings. In addition to her financial and familial ties to the United States, Applicant is also active in her local community. She volunteers at her child's school. She also volunteers with youth-oriented STEM activities in her community. (Tr. 44-46, 83, 88-91.)

Applicant presented the testimony of three character witnesses and several letters of support. She is described as a talented and hardworking scientist. Her character references attest to her integrity and overall good character.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## Analysis

“[F]oreign contacts and interests, including . . . business, financial and property interests, are a national security concern if they result in a divided allegiance [or] . . . 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.” An assessment of foreign contacts and interests should consider the country in which the foreign interest is located, including but not limited to, consideration such as whether it is known to target U.S. citizens to obtain classified or sensitive information or associated with a risk of terrorism.

Chinese actors are the world’s most active and persistent perpetrators of economic espionage against the United States. In the defense industry, foreign-born engineers and scientists play a critical role in developing and implementing new technology and that technology may be of interest to others whose interests are contrary to the United States. One method employed by the Chinese government relies on the exploitation of Chinese nationals in research positions. The Chinese government’s poor human rights towards its citizens also has the potential to create a source of vulnerability for Applicant. Accordingly, Applicant’s relationships and ongoing contact with individuals who are residents and citizens of China creates a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion. (AG ¶ 7(a).)

Applicant’s vulnerability also exists through her husband who has three sisters, a brother-in-law, and a nephew who are residents and citizens of China. He also has a niece and a nephew who are Chinese citizens residing in the United States. Although the record is largely silent on the extent of Applicant’s husband’s contacts with his siblings and their children, independent of Applicant, there is sufficient evidence to suggest that the relationships are close given the frequent visits Applicant’s sisters-in-law make to the U.S and time spent in Applicant’s home. Evidence also suggests Applicant’s husband likely has close relationships with his niece and nephew. Applicant’s husband and his niece work for the same company and his nephew resides in Applicant’s home.

There is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members. See *generally* ISCR Case No. 01-03120, (App. Bd. Feb. 20, 2002). “[A]s a matter of common sense and human experience, there is [also] a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person’s spouse.” ISCR Case No. 07-17673 at 3 (App. Bd. Apr. 2, 2009) (citing ISCR Case No. 01-03120 at 4 (App. Bd. Feb. 20, 2002)). This concept is the basis of AG ¶ 7(e). Indirect influence from a spouse’s relatives living in China result in a security concern. See ISCR Case No. 09-05812 at 2 (App. Bd. Dec. 1, 2011) (finding “presence in India of close family members, viewed in light of that country’s troubles with terrorism and its human rights abuses, and his sharing living quarters with a person (his spouse) having foreign family contacts, establish the ‘heightened risk’” in AG ¶¶ 7(b) and 7(e)). Given these facts, AG ¶¶ 7(b), “connections to a foreign person...that create a potential conflict of interests between the individual’s

obligation to protect classified or sensitive information or technology and the individuals desire to help a foreign person.... By providing that information and technology,” and 7(e), “shared living quarters with a person regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, ore coercion,” also apply.

Once the Government establishes its *prima facie* case, the burden shifts to Applicant to present witnesses and other evidence to rebut, explain, extenuate, or mitigate facts he has admitted or those established by Department Counsel. Applicant has the ultimate burden of persuasion as to obtaining a favorable clearance decision.

For her part, Applicant has taken a number of affirmative steps to distance herself from the Chinese government, including presenting her Chinese passport to Chinese immigration officers for destruction. Her son and two stepchildren are U.S. citizens by birth. Applicant and her husband have accumulated significant U.S.-based financial assets. Although Applicant’s ties to the United States are strong, a potential conflict of interests remains. Applicant’s relationships with her parents and her in-laws, while infrequent, are not casual. Furthermore, there is insufficient evidence in the record regarding the activities and positions of her relatives in China to support a finding that a potential conflict of interests is unlikely, or that the relationships are not a potential source of foreign influence or exploitation. None of the foreign influence mitigating conditions apply.

In reaching this conclusion, I have also considered the whole-person factors in AG ¶ 2(d). As discussed above, Applicant has significant ties to the United States. She is talented, hardworking, and possesses good character and integrity. A finding that Applicant failed to mitigate the security concerns raised by her relationships with her Chinese national relative does not suggest that Applicant is untrustworthy or unreliable. It is not a finding that Applicant is unable to follow the rules regarding the proper handling and safeguarding classified information. Stated otherwise, the Government need not prove 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 – such as having close relatives who are citizens or residents of foreign countries. (ISCR Case No.01-26893 at 8 (App. Bd. Oct. 16, 2002); *See also Department of Navy v. Egan*, 484 U.S. 518, 527-28 (1988). Applicant’s familial relationships with Chinese nationals present an unacceptable security risk given the Chinese government’s acts of espionage against the United States. Applicant should not be placed in a position where she might be forced to choose between loyalty to the United States and a desire to assist her relatives living in China who might be coerced entities operating in that country.

### **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, Foreign Preference	AGAINST APPLICANT
Subparagraph 1.a:	Withdrawn
Subparagraphs 1.b – 1.d.	Against Applicant

### **Conclusion**

In light of all of the circumstances presented, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

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Nichole L. Noel  
Administrative Judge