



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



In the matter of:)
)
) ISCR Case No. 18-02960
)
Applicant for Security Clearance)

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

05/13/2019

Decision

HARVEY, Mark, Administrative Judge:

Applicant’s spouse’s connections to her parents who are citizens and residents of the People’s Republic of China (China) are close and continuing. China aggressively seeks classified and protected information from the United States. Foreign influence security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On January 18, 2016, Applicant signed a Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). Government Exhibit (GE) 1. On January 7, 2019, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to him, alleging security concerns under Guideline B (foreign influence). (Hearing Exhibit (HE) 2) The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Hearing Exhibit (HE) 2)

On February 1, 2019, Applicant provided a response to the SOR, and he requested a hearing. (HE 3) On February 28, 2019, Department Counsel was ready to proceed. On March 4, 2019, the case was assigned to me. On April 5, 2019, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for April 25, 2019. (HE 1) Applicant's hearing was held as scheduled using video teleconference.

During the hearing, Department Counsel offered two exhibits; Applicant offered four exhibits; there were no objections; and all proffered exhibits were admitted into evidence. (Tr. 15-18; GE 1-2; Applicant Exhibits (AE) A-D) On April 29, 2019, Applicant provided 12 exhibits, which were admitted into evidence without objection. (AE E-AE P) On May 3, 2019, the record closed. (Tr. 56) On May 5, 2019, DOHA received a copy of the transcript of the hearing.

Procedural Rulings

Department Counsel requested administrative notice (AN) of facts concerning China. (Tr. 15-16; HE 4) The request listed supporting documents to show detail and context for those facts. Portions of Department Counsel's AN request are quoted without footnotes and quotation marks. AG ¶ 6, Foreign Influence, provides, "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." A risk assessment in this case necessitates administrative notice of facts concerning China.

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). Usually administrative notice at ISCR proceedings is accorded to facts that are either well known or from government reports. See Stein, *ADMINISTRATIVE LAW*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

Findings of Fact¹

The SOR alleges: in ¶ 1.a, that Applicant's spouse is a citizen of China; in ¶ 1.b, that Applicant's father-in-law is a citizen and resident of China and owns a company in China; and in ¶ 1.c, that Applicant's mother-in-law is a citizen and resident of China. Applicant admitted all of the SOR allegations, and he provided some clarifications, extenuating, and mitigating information. His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

¹ To protect Applicant and his family's privacy, the facts in this decision do not specifically describe employment, names of witnesses, and names of other groups or locations. The cited sources contain more specific information.

Applicant is a 38-year-old systems engineer employed by a major defense contractor since December 2015. (Tr. 6-7) He was born, raised, and educated in the United States. (Tr. 25; GE 1) In 1999, he graduated from high school, and in 2003, he received a bachelor's degree in aerospace engineering. (Tr. 6) In 2006, he earned a master's degree in aerospace engineering. (Tr. 6) Defense contractors have sporadically employed him since 2006. (Tr. 25-28) He has not served in the military. (Tr. 7)

Applicant's 31-year-old spouse was born in China. (Tr. 31) She received a bachelor's degree in China. (Tr. 31) In 2010, she came to the United States to attend a university and obtain a master's degree in biology. (Tr. 32) She met Applicant in 2012, and they married in 2013. (Tr. 7, 33) In 2013, she applied for U.S. permanent residence, and in September 2018, she became a U.S. citizen. (Tr. 33-34; SOR response) When she became a U.S. citizen, she took the Naturalization Oath of Allegiance to the United States of America, which states:

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will bear arms on behalf of the United States when required by the law; that I will perform noncombatant service in the Armed Forces of the United States when required by the law; that I will perform work of national importance under civilian direction when required by the law; and that I take this obligation freely, without any mental reservation or purpose of evasion; so help me God.²

She lost her Chinese citizenship when she became a U.S. citizen.³ Applicant and his spouse do not have any children. (Tr. 7, 33) She works in management for a financial company. (Tr. 29-30)

² The language of the current Oath of Allegiance is found in the Code of Federal Regulations Section 337.1 and is closely based upon the statutory elements in Section 337(a) of the Immigration and Nationality Act. U.S. Citizenship and Immigration Services, 8 U.S.C. § 1448, <https://www.uscis.gov/us-citizenship/naturalization-test/naturalization-oath-allegiance-united-states-america>.

³ See China Travel Guide website, Dual Nationality, (stating "China does not recognize dual nationality. . . . Article 9 of that law declares that as soon as a Chinese takes a foreign citizenship, he will automatically lose his Chinese citizenship."), <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=2ahUKEwiW6N7gkIjiAhXlnuAKHU3BCI8QFjAAegQIAhAB&url=https%3A%2F%2Fwww.travelchinaguide.com%2Fessential%2Fdual-nationality.htm&usq=AOvVaw1a29Gix6NFWRpnmqakAw0z>. See also U.S. State Department website, *U.S. Embassy and Consulates in China*, (noting "China does not recognize dual nationality" and may not recognize U.S. citizenship for someone born in China of Chinese parents), https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&uact=8&ved=2ahUKEwiulo3Ik4jiAhWwneAKHfdLAD0QFjABegQIDBAE&url=https%3A%2F%2Fchina.usembassy-china.org.cn%2Fu-s-citizen-services%2Flocal-resources-of-u-s-citizens%2Finformation-chinese-visas%2F&usq=AOvVaw0BIZbnDmM_iXnp0jTh39B3.

Applicant's mother-in-law and father-in-law are citizens and residents of China. (Tr. 35-36) His mother-in-law has not worked outside her home for 20 years. (Tr. 35) His father-in-law is employed in a senior position for a Chinese Government-owned entity that trades in agricultural commodities in China. (Tr. 19-20, 37-39, 55) He does not own a company in China. (SOR response)

Applicant has less than monthly frequency of contact with his parents-in-law; however, his spouse has almost daily contact with them. (Tr. 43-44) Applicant's Chinese language skills are limited. (Tr. 44-45) Applicant's parents-in-law intend to move to the United States. (Tr. 41-42) In January 2019, Applicant filed the initial application for them to immigrate to the United States (Form I-130). (Tr. 42; AE E; AE F) Applicant's spouse's grandmother lives in China, and she does not intend to move to the United States. (Tr. 52, 56)

From September 2012 to April 2019, Applicant and his spouse had in-person contact with his parents-in-law ten times over those seven years. (Tr. 45) They had in-person contact with his father-in-law 103 days (4.3 percent of the total days) and with his mother-in-law 163 days (6.7 percent of the total days). (Tr. 20-24, 45-46; AE A) They met in the United States, Canada, and China. (AE A) Applicant and his spouse went to China in 2014, 2017, and 2019. (Tr. 20-24; AE A) Applicant's parents-in-law are generally aware of Applicant's employment, and they know he is applying for a security clearance. (Tr. 46-47)

Applicant pays federal income taxes, and he and his spouse are financially stable. (Tr. 24-25; AE B; AE C) He and his spouse's total annual income is about \$210,000. (Tr. 25; AE G; AE H) His net worth is all invested in the United States, mostly in stocks, banks, and mutual funds, and totals approximately \$300,000 to \$400,000. (Tr. 47-48; AE I-AE P)

Applicant has numerous relatives who live in the United States, including his parents, one sibling, and numerous aunts, uncles, and cousins. (Tr. 54; GE 1)

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. The nature of the cyber threat evolves with continuing technological advances in the global information environment.

China uses its intelligence services and employs other illicit approaches that violate U.S. laws and export controls to obtain national security and export-restricted technologies, controlled equipment, and other materials unobtainable through legal means. Chinese agents have engaged in multiple criminal acts to obtain classified and sensitive information. Chinese agents have stolen sensitive military information and violated federal export control laws by illegally exporting defense equipment to China. China uses its cyber capabilities to support intelligence collection against the U.S. diplomatic, economic, and defense industrial base sectors that support U.S. national defense programs. The information targeted benefits China's defense and high-technology industries and provides insights into U.S. leadership views on China issues. Additionally, targeted information informs Chinese military planners about U.S. defense networks, logistics, and related military capabilities.

China uses state-sponsored industrial and technical espionage to support military research, development, and acquisition. The organizational network of China's military-industrial complex is such that the People's Liberation Army (PLA) is able to access sensitive and dual-use technologies or knowledgeable experts under the guise of civilian research and development.

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.

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.

The U.S. Department of State warns visitors to China that they may be interrogated or detained without information about their alleged crime. Some U.S. citizens have been held in China based on an “exit ban” for years. Hotel rooms (including meeting rooms), offices, cars, taxis, telephones, Internet usage, and fax machines may be monitored onsite or remotely, and personal possessions in hotel rooms, including computers, may be searched without knowledge or consent.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

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

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See v.

Washington Metro. Area Transit Auth., 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Foreign Influence

AG ¶ 6 explains the security concern about foreign influence as follows:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

AG ¶ 7 indicates three conditions that could raise a security concern and may be disqualifying in this case:

(a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology; and

(e) shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

Applicant's spouse was born in China and educated there through the bachelor's degree level. In 2010, she moved to the United States, and in September 2018, she was naturalized as a U.S. citizen. Her parents are citizens and residents of China. She has frequent⁴ contact with her parents. Her father is a senior official employed by a Chinese-owned agricultural commodity company.

Applicant lives with and is close to his spouse. His spouse has relatives living in China. 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, 2002 DOHA LEXIS 94 at *8 (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)).

Applicant's spouse's relationships with citizens and residents of China create a concern about Applicant's "obligation to protect sensitive information or technology" and his desire to help his spouse. For example, if intelligence officials, or other entities in China, wanted to expose Applicant to coercion, they could exert pressure on his spouse's relatives living in China. Applicant would then be subject to coercion through his connections to China and classified information could potentially be compromised.

Applicant's spouse's close family ties with her family living in China, are not, as a matter of law, disqualifying under Guideline B. However, if an applicant or his spouse has a close relationship with even one relative, living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence collection operations against the United States. The relationship of China with the United States, places a significant, but not an

⁴ See ISCR Case No. 09-03114 at 2-3 (App. Bd. Oct. 22, 2010) (contact once a month is considered to be "frequent" under AG ¶¶ 7 and 8).

insurmountable burden of persuasion on Applicant to demonstrate that his spouse's relationships with her family members living in China do not pose a security risk. Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist his spouse's relatives in China.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002).

While there is no evidence that intelligence operatives from China seek or have sought classified or economic information 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's spouse's relationships with her family members living in China create a potential conflict of interest because these relationships are sufficiently close to raise a security concern about Applicant's desire to assist her relatives in China by providing sensitive or classified information. Department Counsel produced substantial evidence of his spouse's relationships with her family living in China and has raised the issue of potential foreign pressure or attempted exploitation. Further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

- (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 U.S.;
- (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 U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;
- (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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(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; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

AG ¶¶ 8(a) and 8(c) have limited applicability. Applicant's spouse has frequent contacts with her relatives living in China. There is no evidence that her contracts and communications are other than casual and family related; however, Applicant's in-laws in China are aware that Applicant is employed by a defense contractor and is seeking a security clearance. Moreover, Applicant has visited China three times in the last five years, and Chinese intelligence officials are likely to be aware of those visits. Loyalty to, support for, and connections to family are positive character traits. However, for security clearance purposes, those same relationships and Applicant's specialized education and background negate the possibility of full mitigation under AG ¶¶ 8(a) and 8(c). Applicant failed to fully meet his burden of showing there is little likelihood that his relationships with relatives in China could create a potential for risk of foreign influence or exploitation.

AG ¶ 8(b) partially applies. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant has significant connections to the United States. Applicant and his spouse are citizens and residents of the United States. Applicant has numerous relatives who are citizens and residents of the United States, including his parents, one sibling, and numerous aunts, uncles, and cousins. He and his spouse's total annual incomes are about \$210,000, and they have accumulated substantial financial resources.

China does not recognize dual citizenship, and Applicant's spouse is solely a citizen of the United States. When Applicant's spouse took the U.S. oath of allegiance and when Applicant volunteered to assist the U.S. Government as a contractor, they manifested their patriotism, loyalty, and fidelity to the United States over all other countries. Applicant's spouse's parents have expressed their intention to move to the United States, and Applicant has filed documents with the U.S. Government manifesting that intention. Once they have actually moved to the United States, and her father has ended his employment with a Chinese owned company, security concerns will be substantially reduced.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his spouse's relationships with family living in China. There is no evidence, however, that terrorists, criminals, the Chinese Government, or those conducting espionage have approached or threatened Applicant, his spouse, or their relatives living in China to coerce Applicant to provide classified or sensitive information.⁵ As such, there is a reduced possibility that Applicant, his spouse, or her relatives living in China would be specifically selected as targets for improper coercion or exploitation. Applicant's spouse's relatives living in China could become potential targets because Applicant's potential access to classified information could theoretically add some risk to them from intelligence elements in China.

While the U.S. Government does not have any burden to prove the presence of such evidence, if such record evidence were present, Applicant would have a heavier evidentiary burden to mitigate foreign influence security concerns. It is important to be mindful of the United States' sizable financial and diplomatic connections to China.

AG ¶¶ 8(d), 8(e), and 8(f) do not apply. The U.S. Government has not encouraged Applicant's involvement with anyone living in China. Applicant is not required to report his contacts with citizens or residents of China. Applicant does not have significant assets in China, and his assets in the United States do not mitigate security concerns.

In sum, Applicant's spouse's connections to her relatives living in China are close and raise a security concern. Her parents are citizens and residents of China. Applicant's spouse has frequent contact with them. Applicant and his spouse had in-person contact with them 10 times in the previous 7 years. Applicant and his spouse traveled to China three times in the past five years. Applicant and his spouse have significant connections to the United States; however, they are not sufficient to overcome his spouse's connections to China. Foreign influence security concerns are not mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's

⁵ There would be little reason for U.S. enemies to seek classified information from an applicant before that applicant has access to such information or before they learn of such access.

conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration" of the guidelines and the whole-person concept. My comments under Guideline B are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is a 38-year-old systems engineer employed by a major defense contractor since December 2015. He was born, raised, and educated in the United States. In 2006, he earned a master's degree in aerospace engineering. Defense contractors have sporadically employed him since 2006. Applicant has numerous relatives who are citizens and residents of the United States. He and his spouse have excellent annual incomes that total about \$210,000, and they have accumulated substantial financial resources. Applicant was a credible, intelligent witness that clearly wants to do what is best for national security. I have no doubt that he is completely loyal to the United States.

Applicant through his spouse has significant connections to China. His spouse was born in China and educated through the bachelor's degree level in China. In 2010, she moved from China to the United States, and she was naturalized as a U.S. citizen in 2018. Her parents are citizens and residents of China, and she has frequent contact with her parents. Applicant and his spouse have visited China three times in the last five years. Applicant's parents-in-law know he is a highly educated engineer with a security clearance. Chinese intelligence officials are likely to be aware of Applicant because of his visits to China.

In ISCR Case No. 15-00528 at 3-4 (App. Bd. Mar. 13, 2017) the Appeal Board considered a Guideline B case involving a U.S. citizen with family members in China and commented:

In Foreign Influence cases, the nature of the foreign government involved and the intelligence gathering history of that government are among the important considerations that provide context for the other record evidence and must be brought to bear on the Judge's ultimate conclusions in the case. The country's human rights record is another important consideration. See, e.g., ISCR Case No. 05-03250 at 4-5 (App. Bd. Apr. 6,

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Mark Harvey
Administrative Judge