



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



In the matter of:	)	
	)	
[REDACTED]	)	ISCR Case No. 19-00376
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Andrew H. Henderson, Esq., Department Counsel  
 For Applicant: *Pro se*  
 10/04/2019

**Decision**

MARINE, Gina L., Administrative Judge:

This case involves security concerns raised under Guideline B (Foreign Influence). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on September 26, 2016. On March 18, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline B. The DOD CAF acted 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 adjudicative guidelines (AG) implemented by the DOD on June 8, 2017.

Applicant answered the SOR on May 11, 2019, and requested a decision on the written record without a hearing. On June 6, 2019, the Government sent Applicant a complete copy of its written case, a file of relevant material (FORM), including documents identified as Items 1 through 3, and AN I. He was given an opportunity to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation to the Government's evidence. He received the FORM on

June 25, 2019, and did not respond. Item 1 contains the pleadings in the case. Items 2 and 3 are admitted into evidence. Item AN I contains the Government's Administrative Notice request, which I have addressed below. The case was assigned to me on August 29, 2019.

### **Procedural Matter**

I extracted the below findings of facts from Applicant's SOR Answer (Item 1), his SCA (Item 2), and a summary of his security clearance interview (SI) (Item 3). Item 3 was not authenticated as required by Directive ¶ E3.1.20. However, I conclude that Applicant waived any objection to Item 3. In a section entitled "**NOTICE TO APPLICANT**," the Government notified Applicant of his right to object to the admissibility of Item 3 on the ground that it was not authenticated. In that section, Applicant was also notified that if he did not raise any objection to Item 3 in his response to the FORM, or if he did not respond to the FORM, he could be considered to have waived any such objection, and that Item 3 could be considered as evidence in his case. Applicant received the FORM, which included a copy of Item 3. He did not respond to the FORM or otherwise object to Item 3.

### **Findings of Fact**

Applicant, age 55, is married with two children, ages 18 and 16. He is a Chinese citizen by birth. He entered the United States in 1993, and became a U.S. citizen in 2008. His wife of 26 years, also born in China, is a naturalized U.S. citizen. Their children are U.S. citizens by birth. He received bachelor's and master's degrees from Chinese universities in 1985 and 1988, and his doctorate from a U.S. university in 1997. Applicant has been employed as an engineer by a U.S. manufacturer and service provider for jet engines since 2001. This is his first application for a DOD security clearance.

Applicant's father, age 82, is a resident and citizen of China (SOR ¶ 1.a). His mother is deceased. She worked for a local government's "clinic service" and his father, who retired more than 23 years ago, worked for that same local government's "health and family planning commission." Neither their job positions nor the nature of their work was specified in the record. Applicant communicates with his father weekly by telephone, and in person when he visits China. (Item 2 at 17-20, Item 3 at 6)

Applicant has one sibling, a 52-year-old sister, who is a citizen and resident of China (SOR ¶ 1.b). She is employed as a researcher of Chinese medicine by a Chinese university. He communicates with his sister telephonically and electronically on a monthly basis, and in person when he visits China. Her marital and family status were not specified in the record. (Item 2 at 20-21; Item 3 at 6)

Applicant's mother-in-law (MIL), age 81, and father-in law (FIL), age 85, are citizens and residents of China (SOR ¶ 1.c). His MIL, who retired more than 24 years ago, was employed by a Chinese commercial and industrial bank. His FIL, who retired more than 23 years ago, was employed as a "vice chair" of a local government. Neither

his MIL's job position nor the nature of her and her husband's work was specified in the record. Applicant communicates with them telephonically (and also electronically with his FIL) on a monthly basis, and in person when he visits China. (Item 2 at 21-24; Item 3 at 6-7)

After becoming a naturalized citizen, Applicant travelled to China to visit his family in 2009, 2011, 2013, 2016 (as of 2017). The record is silent as to how Applicant's father and parents-in-law are financially supported. Applicant reported that he gave both sets of parents approximately \$1,000 to \$2,000 during each of his last four to five visits to China. He referred to those sums as gifts, which he provided due to a Chinese tradition of supporting parents once a child reaches adulthood. (Item 2 at 27-28, 32-34, 41-42; Item 3 at 4 and 7)

Applicant's wife's brother (BIL) and his BIL's wife (SIL) are citizens of China who have resided in the United Kingdom (UK) for a period not specified in the record. Applicant communicates with them in person approximately every five years. He last visited the UK in 2010, and his BIL last visited the United States in 2011 (as of 2017). His SIL, age 51, is not employed outside the home. His BIL, age 52, is employed by a British-Dutch consumer goods company with no government affiliation. Neither his job position nor the nature of his work was specified in the record. Applicant averred that he only communicates with them when he sees them in person. While the record indicated that they have one or more children, no other information was provided about them. (Item 3 at 8 and 9)

Applicant previously maintained contact with a classmate from the Chinese university where he obtained his bachelor's degree, who is a citizen and resident of China. From approximately 1982 or 1983 through 2009, they had in-person contact approximately once every few years during his visits to China. They have not had contact since 2009 due to Applicant's family members taking up all of his time when he visits China. While Applicant stated that his classmate's employer was unknown, he asserted that the friend had no affiliation with a foreign government, military, security, defense industry, foreign movement, or intelligence service. (Item 3 at 5)

Applicant has owned his home since 2002. Neither he nor his wife and children maintain any foreign financial interests. Applicant reported that none of his family members who reside in China have ties to the Chinese military or government agencies which involve technologies related to Applicant's employment. The record did not specify how often or by what means Applicant's wife has contact with her family. (Items 1 and 2)

In his SOR answer, Applicant declared that he wants "to make contributions to this great nation I love so dearly, and for which I chose to live [sic] rest of my life and for which I chose to raise my children so they can achieve their own American dreams." Without providing any specifics, he claimed that he had been "in good standing" during all the years that he has lived in the United States. He also argued that his security clearance should be granted because "many" of his work colleagues "with background[s] similar" to his who have relatives in China have been granted one. He

also contended that his case is “no difference [sic]” to theirs and that he should be “treated the same way as them.” He did not specify any other details about those cases.

### **Administrative Notice (China)**

I have taken administrative notice of the U.S. Government’s pronouncements concerning China, as outlined in Item AN I and the documents appended thereto, including the following:

- 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.
- China commits significant human rights abuses against its citizens, including, but not limited to, arbitrary or unlawful killings, forced disappearances, torture, arbitrary detention, harsh and life-threatening prison and detention conditions, political prisoners, arbitrary interference with privacy, inability of citizens to choose their government, and corruption.
- China has long targeted the United States with intelligence collections operations, but reporting of Chinese espionage has increased significantly in recent years. Among the most serious threats are China’s efforts at cyber and human infiltration of U.S. national security organizations.
- China presents a persistent cyber-espionage threat and a growing cyber-attack threat to U.S. core military and critical infrastructure systems. China remains the most active strategic competitor responsible for cyberespionage against the U.S. Government.
- China’s pursuit of intellectual property, sensitive research and development plans, and U.S. person data, remains a significant threat to the U.S. Government.
- Most Chinese cyber operations against U.S. private industry that have been detected are focused on cleared defense contractors or IT and communications firms whose products and services support government and private sector networks worldwide.
- In 2019, the U.S. Department of Justice prosecuted three former U.S. intelligence officers who either pled guilty or were found guilty of participating in espionage and other crimes for agents of the Chinese intelligence service.

## Policies

“[N]o one has a ‘right’ to a security clearance.” (*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988)). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” (*Egan* at 527). The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” (EO 10865 § 2).

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

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

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” (EO 10865 § 7). Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. (*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. (ISCR Case No. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993)). Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. (Directive ¶ E3.1.15). An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005)).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” (ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002)). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” (*Egan*, 484 U.S. at 531; AG ¶ 2(b)).

## **Analysis**

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

The security concern under Guideline B (Foreign Influence) is set out in AG ¶ 6, 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.

The following are potentially relevant disqualifying conditions under this guideline:

AG ¶ 7(a): contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

AG ¶ 7(b): connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology; and

AG ¶ 7(e): shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

Applicant's direct ties to his father, sister, and parents-in-law establish AG ¶¶ 7(a) and 7(b). His indirect ties to his parents-in-law through his wife establish AG ¶¶ 7(a), 7(b), and 7(e). Because ties to Applicant's BIL, SIL, and university classmate were not alleged in the SOR, I will consider them only to evaluate mitigation and the whole-

person concept. A heightened risk is associated with the Chinese government because it conducts espionage against the United States and commits serious human rights abuses against its citizens. Applicant bears the burden of persuasion to mitigate these concerns. ISCR Case No. 99-0532 at 7 (App. Bd. Dec. 15, 2000). Because China is hostile to the United States, his burden is “very heavy” to show that neither he nor his family members are subject to influence by China. ISCR Case No. 06-17838 (App. Bd. Jan 28, 2008).

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. ISCR Case No. 08-10025 at 4 (App. Bd. Nov. 3, 2009). Family relationships can involve matters of influence or obligation. ISCR Case No. 02-04786 (App. Bd. Jun. 27, 2003). Moreover, the potential exists for pressure to be placed on the applicant’s in-laws that could then be extended to the applicant through the applicant’s spouse. ISCR Case No. 03-24144 at 3-4 (App. Bd. Dec. 6, 2005).

The following are potentially relevant mitigating conditions under this guideline:

AG ¶ 8(a): the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States;

AG ¶ 8(b): there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

AG ¶ 8(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.

Applicant maintains strong familial ties with his father, sister, and in-laws (directly and through his wife). Given the absence of details in the record about the positions that Applicant’s parents and FIL held with local governments in China, or whether they receive a pension from the Chinese government, I do not find sufficient evidence to conclude that their positions, from which they have long retired, present a current security concern. While it has not been established that any of his family have security-significant affiliations with the Chinese government, there remains a heightened risk associated with China regardless of any such affiliations. Under these circumstances, I cannot conclude that it is unlikely that Applicant will be placed in a position of having to choose between the interests of his family and that of the United States, or that

Applicant has met his heavy burden to mitigate the Guideline B concern. AG ¶ 8(a) is not established.

Applicant has strong ties to the United States. He and his wife chose to build their life in the United States 26 years ago. His wife is a naturalized U.S. citizen and his children are U.S. citizens by birth. He received his postgraduate degree from a U.S. university, has been employed by the same U.S. company for 18 years, and has owned a home in the United States for 17 years. However, the record contains insufficient facts to overcome the equally strong ties that he has to his father, sister, and in-laws (directly and through his wife), who are vulnerable to a foreign government known to conduct espionage against the United States and commit serious human rights violations against its citizens. Under these circumstances, I cannot conclude that Applicant could be expected resolve any conflict of interest in favor of the U.S. interest. AG ¶ 8(b) is not established.

None of Applicant's familial relationships are casual; nor is his contact with them infrequent. While their contact has not been frequent in 10 years, the close friendship that he maintained with his university classmate for at least 26 years cannot be considered casual. There remains a potential risk for foreign influence or exploitation given the length and closeness of their friendship in the past. AG ¶ 8(c) is not established.

I want to address Applicant's contention that his case is analogous to that of his colleagues who have been granted security clearances. First, pursuant to the Directive, "[t]he adjudicative process is an examination of a sufficient period and a careful weighing of a number of variables of an individual's life to make an affirmative determination that the individual is an acceptable security risk. . . ." (Enclosure 2 ¶ 2 (a)); and "[e]ach case must be judged on its own merits . . ." (Enclosure 2 ¶ 2 (b)). Moreover, Applicant did not provide details about the alleged analogous cases to establish that they addressed identical issues and facts. He also failed to demonstrate that those cases relied on reasoning or analysis that can be applied to the facts and circumstances of his case. ISCR Case No. 03-26176 (App. Bd. Oct. 14, 2005).

### **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the adjudicative guidelines, each of which is to be evaluated in the context of the whole-person concept. Under the whole-person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. This analysis requires individualized consideration of the facts and circumstances of each case, and the administrative judge cannot broadly apply the same conclusions from one case to another. 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.

I have incorporated my comments under Guideline B in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). I weighed the disqualifying and mitigating conditions under Guideline B, and evaluated all the evidence in the context of the whole person and the heightened risk associated with China. Applicant has not mitigated his familial ties to citizens and residents of China. Accordingly, I conclude that he has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

### **Formal Findings**

Formal findings on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:           AGAINST APPLICANT

Subparagraphs 1.a – 1.c:           Against Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Clearance is denied.

Gina L. Marine  
Administrative Judge