



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



In the matter of:	)	
	)	
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	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Alison O’Connell, Esq., Department Counsel  
 For Applicant: *Pro se*  
 10/10/2019

**Decision**

MARSHALL, Jr., Arthur E., Administrative Judge:

**Statement of the Case**

On April 1, 2019, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B (Foreign Influence). The action was taken under Executive Order 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) effective within the DOD on or after June 8, 2017. In a response dated May 9, 2019, Applicant admitted five of the six allegations raised, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). I was assigned this case on July 9, 2019. On July 24, 2019, a notice was issued setting the hearing for September 10, 2019. The hearing commenced as scheduled.

The Government offered three documents, which were accepted into the record without objection as Government exhibits (Exs.) 1-3. Applicant gave testimony, introduced two witnesses, and offered three items, which were accepted into the record without objection as Exs. A-C. A transcript (Tr.) of the proceeding was received on September 19, 2019, and the record was closed. After my review of the record as a whole, and in light of the applicable directive, I find that Applicant failed to mitigate foreign influence security concerns.

## **Request for Administrative Notice**

Department Counsel submitted a written request that I take administrative notice of certain facts about the People's Republic of China (China). The request was offered as Government Ex. 2. Applicant did not object to its admission. I have taken administrative notice of the facts contained in the request that are supported by source documents from official U.S. Government publications, and similar information set forth in recent DOHA decisions regarding China. The facts considered include, but are not limited to, the following:

China has an authoritarian government, dominated by its Communist Party. It has a poor human rights record. China suppresses political dissent, engages in arbitrary arrests and detentions, forced confessions, torture, mistreatment of prisoners, and religious suppression.

China is the world's most active and persistent perpetrator of economic espionage. It is among the most aggressive countries in seeking sensitive and protected U.S. technology, as well as military and economic intelligence. China targets the United States with active intelligence-gathering programs, both legal and illegal. Its focus is on obtaining information and technologies from the United States that could be beneficial to China's military modernization and economic development.

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 at work to steal trade secrets, often using removable media devices or e-mail. Recent cases involving actual or attempted espionage by China against the United States, as well as incidents involving the illegal export of sensitive technology to China, exist.

In China, authorities routinely monitor telephone conversations, facsimile transmissions, e-mail, text messaging, and Internet communications. Authorities open and censor mail. Its security services have entered personal residences and offices to gain access to computers, telephones and fax machines. Hotel guest rooms are sometimes bugged and searched for sensitive or proprietary materials. The U.S. State Department warns that United States citizens have been interrogated or detained for reasons stated to be related to "state security" whilst in China.

## **Findings of Fact**

Applicant is a 54-year-old woman who was born and raised in China, where she earned the equivalent of a medical degree. Married in 1992, she had a child about three years later. Applicant and her child followed her husband to the United States in 1999 after he received a work visa. Applicant became a naturalized United States citizen in 2012. Shortly thereafter, she found a contractor position aiding in government medical research. Applicant was ultimately vetted and awarded clearance for a public trust position. She has been a research associate at her present place of business for about seven years.

Applicant has never owned real property in a foreign country. She has received no form of social security or government aid from China as a result of her birth or periods of employment in China. Applicant visited China in 2018 and 2019. (Tr. 28)

The circumstances surrounding Applicant's kin in China, for the most part, have been the same for several years. Relatives remaining in China as citizens and residents include her retired public school teacher mother, who receives a government pension, and her retired private school teacher father, who suffers from dementia. (Tr. 32, 56) Neither parent ever performed military service in China. Applicant also has two siblings who work for private institutions. (Tr. 35) Her parents-in-law are retired from work in the private sector. Applicant's niece is still a citizen of China, but is currently living in the United States with a green card status. (Tr. 41) Overall, Applicant describes these individuals as "very normal people" with no interest in her work. (Tr. 55-56)

Applicant sends her parents nominal amounts of money to encourage them to take and enjoy vacations. Applicant maintains relations with her parents and siblings through various communicative Internet-based social media, which permits her to "connect, not really talk." (Tr. 38) Annually, they speak by telephone to honor the New Year. Applicant and her husband maintain minimal contact with his parents. (Tr. 39)

A scientist, Applicant's husband previously worked for the United States government. (Tr. 21) He has no criminal background. (Ex. A) In 2018, he began working in senior management for a small company incorporated in the United States. (Tr. 22) This has added to the foreign influence concerns previously examined regarding Applicant. (Tr. 58-59) The company's owner lives in the United States, but Applicant is unsure whether the owner is a U.S. citizen. It is unknown whether the company has a nexus with the Chinese government. (Tr. 28) In June 2018, Applicant's husband was sent to China to work for the company because: "they are bringing some work in China. So, they need their people to monitor the work, so that's why he was sent there." (Tr. 24-25) The work at issue appears to be medical in nature.

For an unknown reason, the head of the company is unable to come and go freely through China. Therefore, the owner wants Applicant's husband to act on his behalf. (Tr. 25-26) Such work is in collaboration with a pharmaceutical lab that is at least partly Chinese. (Tr. 26). In China, the husband rents a dwelling and maintains a personal bank account. Applicant does not know the sum maintained in this foreign account, but most or all of his regular pay check is deposited in their joint account in the United States. At present, the company owner is looking for a collaborator from another part of the world. (Tr. 29) It is presently unknown whether the husband will remain in China, return to the United States, or follow the company elsewhere. (Tr. 29, 44)

In the United States, Applicant and her husband own their own home. It was bought for \$540,000 and there is a mortgage balance currently of about \$400,000. Their child is enrolled in graduate school with plans to pursue a doctoral degree in this country. Applicant personally maintains a retirement account and a bank account in the United States, amounting to about \$60,000; she has no other financial investments. (Tr. 45) Her husband also has a retirement account in this country. Applicant participates in various community activities, including a local dance and exercise class.

Now retired, Applicant's former supervisor found Applicant to be a stellar performer, quick study, and popular colleague. (Tr. 49-51) She far outperformed the supervisor's initial expectations. She held a public trust position while working under him without adverse incident for many years. Applicant's current supervisor is eager to elevate Applicant and better utilize her many talents by moving her from a research associate to a principal investigator position. (Tr. 55)

### **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 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's adjudicative goal is a fair, impartial, and commonsense decision. Under the AG, 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 in making a decision. The protection of the national security is the paramount consideration. Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.

Under the Directive, the Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security decision.

A person seeking access to classified information enters into a fiduciary relationship with the Government based on trust and confidence that transcends beyond normal duty hours. The Government reposes a high degree of trust and confidence in those to whom it grants access to classified information. Decisions include consideration of the possible risk the applicant may fail to safeguard such information. The denial of a security clearance is in no way suggestive that an applicant is anything less than a loyal citizen.

### **Analysis**

Under the AG, foreign contact 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 be made vulnerable to pressure or coercion by any foreign interest.

Assessment of foreign contact and interests should consider the country (China) in which the foreign contact or interest is included.

The AG lists nine available disqualifying conditions. Given that Applicant has multiple members of her family with ties to China due to residency, citizenry, or both, I find the following apply:

¶ 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; and

¶ 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.

Under ¶ 8, two mitigating conditions are potentially applicable:

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

¶ 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.

As a threshold issue, I note that China has an authoritarian government dominated by its Communist Party. It is the world's most active and aggressive perpetrator of economic espionage, particularly with regard to its pursuit of sensitive and protected U.S. technology and both U.S. military and economic intelligence. It is known to specifically target the United States with its intelligence-gathering programs. Both its government and private entities within its borders are known to exploit Chinese citizens and those with family ties to China in order to gain access to trade secrets and other protected information of U.S. origin. Human rights violations and suppression of religious freedom is common. China is known to monitor various forms of communication, including those made via the Internet. Consequently, heightened scrutiny is warranted in this matter.

Applicant is caring daughter, sister, and daughter-in-law. She maintains communication with her family in China in varying degrees, and she has visited China twice in the past two years. The recent relocation of her husband to China has added fresh security concerns with regard to Applicant's family ties within the Chinese border. Those concerns are heightened because China's aggressive economic espionage and exploitation of its own citizens is well documented, and its monitoring of U.S. citizens is well known. Although most of Applicant's relatives were formerly vetted in terms of Applicant's application for a public trust position, the return of Applicant's husband to China for work adds a new dimension of concern. Such conditions obviate application of ¶ 8(a).

Moreover, Applicant stresses that her own life is tethered directly to the United States, where she enjoys her work, is part of her community, and continues her relationship with her child. In terms of assets, what she has is located here in the United States. The one thing deviating from this U.S.-centric focus is the voluntary relocation of her husband to China. Information regarding his position, the company, and the company's owner is hazy and incomplete, his need for a foreign bank account unexplained, and his future plans unknown. While Applicant may be patient with her husband's open-ended absence abroad, these facts are insufficient to raise ¶ 8(b).

### **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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed in the AG. The ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I incorporated my comments under the guideline at issue in my whole-person analysis. Some of the factors related to the whole person concept have already been discussed, but some warrant emphasis.

Applicant is a mature and highly regarded medical research professional. Since coming to this country, she has reinvented herself within the medical field with distinction. She successfully raised a child who is now a graduate student. She enjoys her home, her community, and her present life.

Previously vetted to hold a public trust position, Applicant's foreign kin in China have been examined previously. What again raises security concerns is Applicant's husband's voluntary move to China to work for a medical research facility. Little is known about this company, its management, or Applicant's husband's present position within the company. His future with this entity and his continued living in China is also unsure. The nexus between Applicant's foreign kin in China, as well as the unknown variables concerning Applicant's husband, sustain foreign influence security concerns.

## **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:	AGAINST APPLICANT
Subparagraphs 1.a-f:	Against Applicant

## **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 a security clearance. Eligibility for access to classified information is denied.

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Arthur E. Marshall, Jr.  
Administrative Judge