



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 19-02300  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O’Connell, Esq., Department Counsel  
For Applicant: Alan V. Edmunds, Esq.

08/12/2020

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**Decision**  
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LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny or revoke her eligibility for access to classified information due to her family ties to China. A U.S. resident since 1991 and a U.S. citizen since 2002, Applicant met her burden to present sufficient evidence to explain, extenuate, or mitigate the security concern for foreign influence based on her family ties to China. Accordingly, this case is decided for Applicant.

**Statement of the Case**

Applicant completed and submitted a Standard Form (SF) 86, Questionnaire for National Security Positions, the official form used for personnel security investigations, on July 11, 2018. (Exhibit 1) This document is commonly known as a security clearance application. She provided a sworn affidavit in November 2018. (Exhibit 3) She provided written answers to interrogatories in June 2019. (Exhibit 2) Thereafter, on December 12, 2019, the Defense Counterintelligence and Security Agency, Consolidated Adjudications Facility, Fort Meade, Maryland, sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national

interest to grant her eligibility for access to classified information. The SOR is similar to a complaint. It detailed the factual reasons for the action under the security guidelines known as Guideline B for foreign influence due to her family ties to China, the country of her birth, Guideline M for misuse of information technology, and Guideline E for personal conduct.

Applicant answered the SOR on December 30, 2019. She admitted the SOR's factual allegations with explanations detailed in two-page memorandum. She also requested an in-person hearing before an administrative judge.

The case was assigned to an administrative judge on February 21, 2020. The hearing was previously scheduled to occur on March 23 and then April 23, 2020. It was postponed on both occasions due to the ongoing COVID-19 pandemic.

On July 14, 2020, Department Counsel amended the SOR by withdrawing the allegations concerning misuse of information technology and personal conduct. (Tr. 9-10) Accordingly, those matters were no longer germane to the case and were not litigated during the hearing.

The hearing took place as scheduled on July 29, 2020, which was the same day the case was assigned to me due to unavailability of the assigned judge. Both Department Counsel and Applicant offered documentary exhibits, which were admitted as Government Exhibits 1-4 and Applicant's Exhibits A-L. Post-hearing, Department Counsel offered Exhibit 5 to establish Applicant's security clearance history, and it is admitted without objection.

I took administrative or official notice, which is similar to judicial notice, of certain facts concerning the country of China per Department Counsel's written request. (Exhibit 4) The essential facts about China are discussed below. The hearing transcript (Tr.) was received on August 7, 2020.

### **Findings of Fact**

Applicant is a 53-year-old employee who is seeking to obtain or retain a security clearance for her job as a software developer with a consulting firm. She has worked for the firm since 2009. She has a good employment record with the firm as well as highly favorable letters of recommendation (Exhibits G, H, and L)

Applicant was born, raised, and educated in China. She earned a bachelor's degree from a Chinese university in 1991. She then immigrated to the United States on a student visa. She earned a master's degree from a U.S. state university in 1993. She has since been continuously employed in the United States while at the same time having lawful immigration status. She became a naturalized U.S. citizen in 2002, and she obtained a U.S. passport. Upon becoming a U.S. citizen, she swore an oath of allegiance to the United States, thereby renouncing all allegiance and fidelity to China and any other foreign country. China does not recognize dual nationality, and she automatically lost, under Chinese law, Chinese citizenship when she acquired U.S.

citizenship. *E.g.* ISCR Case No. 18-02960 (May 13, 2019) at 3 n. 3. Her Chinese passport had previously expired and she destroyed it after obtaining U.S. citizenship. She has not returned to China since departing there in 1991, because she has “no interest” in doing so. (Tr. 33-34)

Applicant married in 1992; her spouse was also from China; and they divorced in 2007. She has not remarried. She has two children from the marriage. (Exhibit K) Both are native-born U.S. citizens. (Exhibit C) Both are now college students, ages 21 and 18. And both continue to live with her in the same home she has owned since 1999.

The SOR concerns Applicant’s family ties to China via her mother, brother, and sister-in-law. The relevant details are set forth below.

Applicant’s father is not alleged in the SOR as he passed away in 2017. He had been long retired from his employment as an aerospace engineer with a research institution. Before he passed, Applicant typically had weekly contact (once or twice per week) with her father by telephone calls, video chats, or texting. The last time she saw her father in-person was in August 1991 when she left China.

Applicant’s mother, age 82, is long retired from her employment as an electrical engineer with a manufacturing company. Applicant typically had weekly contact (once or twice per week) with her mother by telephone calls, video chats, or texting. Applicant explained during the hearing that she has reduced her contact with her mother to monthly due to the Government’s concern about her family ties to China. (Tr. 25-26) She does not provide financial support to her mother, although she understands her brother does. The last time she saw her mother in-person was in August 1991 when she left China.

Applicant’s brother is employed as a civil engineer with a contracting and engineering company. Applicant typically had weekly contact with her brother by phone calls, video chats, or texting, although such contact has also been reduced. The last time she saw her brother in-person was in May 2015, when he visited her over a weekend while in the United States on a business trip.

Applicant’s sister-in-law is not employed outside the home and is a full-time homemaker. Applicant has the same level of contact with her sister-in-law as she has with her brother. Applicant has never met her sister-in-law in-person.

Applicant’s family in China is unaware of the specifics of her employment, and they are unaware of any security clearance matters. (Tr. 27)

Applicant’s financial interests are in the United States. In addition to her annual salary of about \$150,000, she has the following financial assets here: (1) her home with a market value of about \$1.2 million with a mortgage loan balance of about \$77,000; (2) about \$300,000 in a brokerage account; and (3) about \$200,000 in cash in credit union accounts. (Exhibits D, E, and F) She has no financial or business interests in China, nor does she have any financial accounts in China.

Concerning the country of China, Department Counsel's request for administrative notice contains an extensive discussion of the security concerns associated with China. (Exhibit 4) The essential facts about China are the following: (1) China is an authoritarian state in which the Chinese Communist Party is the paramount authority; (2) China (along with Russia) is the most aggressive collector of intelligence (both industrial and military) related to U.S. information and technology; and (3) China has a poor record of human rights regarding respect for the integrity of the person, respect for civil liberties, respect for political rights, corruption and lack of transparency in government, worker rights, as well as discrimination, societal abuses, and human trafficking.

### Law and Policies

This case is adjudicated under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective June 8, 2017.

It is well-established law that no one has a right to a security clearance.<sup>1</sup> As noted by the Supreme Court in *Department of the Navy v. Egan*, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>2</sup> Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security. In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.<sup>3</sup> The Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.<sup>4</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>5</sup> Under the Directive, the parties have the following burdens: (1) Department Counsel has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted; (2) an applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been

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<sup>1</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance"); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10<sup>th</sup> Cir. 2002) (no right to a security clearance).

<sup>2</sup> 484 U.S. at 531.

<sup>3</sup> 484 U.S. at 531.

<sup>4</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

<sup>5</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

admitted or proven; and (3) an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>6</sup>

## Discussion

The gravamen of the SOR under Guideline B for foreign influence is whether Applicant's ties to China should disqualify her from access to classified information. Under Guideline B for foreign influence, the suitability of an applicant may be questioned or put into doubt due to foreign contacts and interests. The overall concern is set forth 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 guideline notes several conditions that could raise a security concern under AG ¶ 7. The following are potentially applicable in this case:

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; and

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.

The starting point for the analysis is the country of China. Suffice it to say, the U.S. Government views the behavior of the Chinese government as presenting a serious national security concern. The heightened-risk element is easily satisfied. Given Applicant's family ties to China, the Government has established its case under Guideline B. The above disqualifying conditions are raised by the evidence.

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<sup>6</sup> Directive, Enclosure 3, ¶ E3.1.14 and E3.1.15.

The guideline provides that certain facts and circumstances may mitigate foreign influence concerns. Given the evidence here, I considered the following mitigating conditions:

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.

China's relationship with the United States and the heightened risk it presents place a heavy burden on Applicant to mitigate the security concern. With that said, Applicant has multiple indicators of a mature, stable, responsible, and trustworthy person. She was serious, candid, and credible at the hearing. She appears to have cooperated fully and provided truthful information during the security clearance process. She made a good impression upon me during the hearing.

I have considered the totality of Applicant's ties to China. Applicant came to the United States nearly 30 years ago in 1991. She has since established and made her life here. After earning a master's degree, she has had a long employment record in the United States. She gave birth to two children in the United States, and her adult children are pursuing their lives and educations in the United States. Her financial assets (her estimated net worth is more than \$1 million) are exclusively in the United States. Although her family ties to China still count and cannot be dismissed out of hand, the strength of those ties are diminished due to distance and time (the passage of nearly 30 years since she departed China and has never returned). On balance, her ties to the United States are much stronger than her now distant and largely nominal family ties to China.

Given the totality of facts and circumstances, I conclude that it is unlikely Applicant will be placed in a position of having to choose between the interests of the United States and the interests of the Chinese government or her family members who have Chinese citizenship. I further conclude there is no conflict of interest, because Applicant has developed such deep and long-standing relationships and loyalties in the United States that she can be expected to resolve any potential conflict of interest in the favor of the United States. AG ¶ 8(a) is partially applicable. AG ¶ 8(b) is applicable.

Following *Egan* and the clearly consistent standard, I have no doubts or concerns about Applicant's reliability, trustworthiness, good judgment, and ability to

protect classified or sensitive information. In reaching this conclusion, I weighted the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also considered the whole-person concept. Accordingly, I conclude that she met her ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

### **Formal Findings**

The formal findings on the SOR allegations are:

Paragraph 1, Guideline B: Subparagraphs 1.a – 1.c:	For Applicant For Applicant
Paragraph 2, Guideline M: Subparagraph 2.a:	Withdrawn Withdrawn
Paragraph 3, Guideline E: Subparagraphs 3.a – 3.b:	Withdrawn Withdrawn

### **Conclusion**

It is clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Eligibility granted.

Michael H. Leonard  
Administrative Judge