



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



In the matter of:	)	
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	)	ISCR Case No. 19-03931
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Andrew Henderson, Esq., Department Counsel

For Applicant: *Pro se*

February 25, 2021

**Decision**

ROSS, Wilford H., Administrative Judge:

Based on a review of the pleadings, testimony, and exhibits, I conclude that Applicant has mitigated the concerns related to possible foreign influence. Her request for national security eligibility and a security clearance is granted.

**Statement of the Case**

On March 6, 2020, in accordance with Department of Defense (DoD) Directive 5220.6, as amended (Directive), the DoD Central Adjudication Facility (CAF) issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline B. The SOR further informed Applicant that based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's national security eligibility for a security clearance.

Applicant answered the SOR on March 17, 2020, and requested a hearing before an administrative judge. (Answer.) Department Counsel was prepared to proceed on October 19, 2020. The case was assigned to me on November 2, 2020. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 13, 2020, scheduling the hearing for January 21, 2021. The hearing was convened as scheduled. The Government offered Government Exhibits 1 through 7, which were admitted without objection. Applicant testified on her own behalf. The record was left open for receipt of additional documentation. Applicant presented two documents, which I marked Applicant Exhibits A and B, and admitted without objection. DOHA received the transcript of the hearing (Tr.) on January 29, 2021.

### **Procedural Ruling**

The Government requested I take administrative notice of certain facts relating to the People's Republic of China (China). Department Counsel provided a 14-page summary of the facts, supported by relevant excerpts from 33 Government documents pertaining to China, identified as Government Exhibit 6. The documents provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, not subject to reasonable dispute. The facts so noticed are set out in the Findings of Fact.

### **Findings of Fact**

Applicant admitted all six SOR allegations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 56 years old and married with two children. Applicant has a Master's degree in Engineering. She has been employed by the same defense contractor since 1997, with a three-year break in service to care for her two sons between January 2015 and November 2017. At that point she returned to work. She held a security clearance during her earlier period of employment without incident. She is attempting to reacquire national security eligibility. (Government Exhibit 4 at Sections 12, 13A, 17, and 18; Applicant's Exhibit B.)

#### **Paragraph 1 – Guideline B (Foreign Influence)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because she has foreign contacts that could possibly lead to divided loyalties. Applicant was born in China in 1964. After finishing undergraduate school in China Applicant moved to the United States in 1990 to attend graduate school. As stated, she first began working for her present employer in 1997. She became an American citizen in 2000. Her husband, who was also born in China, is a naturalized American citizen. Her two children were born in the United States. (Government Exhibit 4 at Sections 9, 17, 18; Tr. 25-26.)

1.a. Applicant's mother is 83 years old. Before she retired in approximately 2000 she was a professor at a university in China.

1.b. Applicant's father is 85 years old. He retired in 1998 as a professor at a university in China.

Applicant's parents were caught up in the Cultural Revolution period in China. Applicant describes what happened to her family on page 2 of Applicant Exhibit A. (See Tr. 22-23.)

1.f. Applicant sponsored her mother and father to live full-time in the United States as lawful permanent residents from 2000 to 2014. From 2004 to 2014 her parents would visit the United States every year or so for three months to retain their status as lawful permanent residents. They have not returned to the United States since 2014 and no longer have permanent resident status. They continue to live in China. Applicant has regular contact with her parents to talk about their health. (Tr. 26-33.)

1.c. Applicant's brother is a citizen and resident of China. He is 49 years old. Applicant does not know the exact nature of his business activities in China. At one point her brother was a lawful permanent resident of the United States and would visit the United States on a regular basis, the last time being in 2018. According to Applicant, "We had very little in common and we hardly can understand each other's situations. Over the years, our only point of communication is around our parent's health and our children." (Government Exhibit 5 at 3; Applicant Exhibit A at 1; Tr. 33-35.)

1.d. Applicant has two brothers-in-law who are citizens and residents of China. One is a farmer. The other brother-in-law is a road engineer. (Government Exhibit 4 at 3-4; Applicant Exhibit A at 1-2; Tr. 35-36, 39-40.)

1.e. Applicant has three sisters-in-law. One is married to her brother. That sister-in-law is a teacher. She is also a lawful permanent resident of the United States. The second is married to the farmer, discussed above. She is a homemaker. The third is married to the road engineer, discussed above. She is also a homemaker. (Government Exhibit 4 at 4, Exhibit 5 at 3; Applicant Exhibit A at 1-2; Tr. 37-40.)

All of these in-laws, except her brother's wife, are from a province hundreds of miles away from where Applicant grew up. She has had very little contact with them over the years. Their dialect is dramatically different from Mandarin, which Applicant speaks. She testified, "I had hard time to understand and communicate with them. So, for all those years, only the [sic] way to contact them is to send seasonal greetings at the Chinese New Year." (Tr. 20-21.)

## **Mitigation**

Applicant has lived in the United States over 30 years. She states:

I was lucky to have a chance to study abroad for my Master's Degree in the United States. And I really appreciated the opportunity that the United States has offered me. And I'm determined to contribute through my hard work and my technical skills. In my heart, I strong (sic) believe the ideas that this country holds dear, and I hope that I am able to provide my skills and expertise to the Government programs. Also, I would stand for the benefit of this country which give my husband, two sons and I a wonderful life. And I wouldn't do anything to hurt this country. (Tr. 23.)

Applicant owns no property in China. Nor does she have any bank accounts in China. Applicant has substantial monetary and property interests in the United States. (Tr. 42-47.)

Applicant's department manager submitted a letter on her behalf. This man has been her supervisor since she originally went to work for her defense contractor employer in 1997. He recommended her to receive her initial clearance, and further recommends that she receive national security eligibility at this time. He states, "During the time that [Applicant] held a DOD secret clearance, there were never any security violations and she followed all the rules to safeguard classified and proprietary information." (Applicant Exhibit B.)

## **China**

I take administrative notice of the facts set forth in the Administrative Notice documents concerning China, which are incorporated herein by reference.

China is a large and economically powerful country, with a population of more than billion people and an economy growing at about 10% per year. China has an authoritarian government, dominated by the Chinese Communist Party. It has a poor record with respect to human rights, suppresses political dissent, and engages in arbitrary arrests and detentions, forced confessions, torture, and mistreatment of prisoners.

China is one of the most aggressive countries in seeking sensitive and protected U.S. technology and economic intelligence. It targets the United States with active intelligence gathering programs, both legal and illegal. As a result, it is a growing threat to U.S. national security.

## Policies

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

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the whole-person concept. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

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

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

## Analysis

### Paragraph 1 - Guideline B (Foreign Influence)

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

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 security concerns under AG ¶ 7. Two are potentially applicable 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; and
- (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.

Applicant's parents, brother and various in-laws live in China. The evidence is sufficient to raise these disqualifying conditions.

China is an active collector of industrial espionage. Accordingly, Applicant's family connections in that country have the potential to generate a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion under AG ¶ 7(a). The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create a risk of 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).)

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 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 United States;

(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

(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 has minimal contact with her in-laws who live in China. She does have regular contact with her parents, though it is primarily about their health. On the other hand, Applicant has lived in the United States for 30 years and been a citizen for 20 years. Her husband and two children are also American citizens. Beyond her family, she has substantial financial ties to the United States and none in China.

Applicant is a proud American citizen. She appreciates and understands on a deeply personal level the benefits of American citizenship. Applicant also understands the responsibilities that come with holding a security clearance, and has a 20-year history of fulfilling them. (Applicant Exhibits A and B; Tr. 24, 54.)

Based on the evidence, AG ¶¶ 8(a), (b), and (c) apply. Applicant has completely mitigated the security significance of the presence of her relatives in China. Paragraph 1 is found for Applicant.

### **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 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(b), the ultimate determination of whether to grant national security 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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. Applicant has exhibited no potential for coercion or duress. She is knowledgeable of her security responsibilities. Her connections in the United States far outweigh those in China, even under the heightened risk standard. Overall, the record evidence leaves me without questions or doubts as to Applicant's suitability for national security eligibility and a security clearance. For all these reasons, I conclude Applicant mitigated the 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:	FOR APPLICANT
Subparagraphs 1.a through 1.f:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant national security eligibility for a security clearance. Eligibility for access to classified information is granted.

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Wilford H. Ross  
Administrative Judge