



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 20-02763  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Mary Margaret Foreman, Esq., Department Counsel  
For Applicant: *Pro se*

August 2, 2021

**Decision**

GLENDON, John Bayard, Administrative Judge:

Applicant failed to mitigate security concerns regarding foreign influence and personal conduct. Based upon a review of the pleadings and the documentary evidence in the record, national security eligibility for access to classified information is denied.

**Statement of the Case**

On January 24, 2019, Applicant submitted a security clearance application (SCA). The Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant on January 4, 2021, detailing security concerns under Guidelines B (Foreign Influence) and E (Personal Conduct). The CAF acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended (Exec. Or.); Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (Dec. 10, 2016), effective within the DoD on June 8, 2017.

Applicant answered the SOR and requested a decision on the administrative record without a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On February 26, 2021, Department Counsel submitted the Government's written case in a File of Relevant Material (FORM), which included seven documents attached and identified as Items 1-4 and a Request for Administrative Notice, identified as Item 5. A complete copy of the FORM was provided to Applicant. He was afforded the opportunity within 30 days of his receipt of the FORM to file objections to the Government's evidence and a response to Department Counsel's arguments in the FORM. He was also advised that he could submit documents with his response to refute, extenuate, or mitigate the security concerns raised by the SOR allegations. He received the FORM on April 1, 2021. He did not respond to the FORM or raise any objections to the Government's evidence.

### **Findings of Fact**

Applicant's personal information is extracted from his SCA unless otherwise indicated by a parenthetical citation to the record. After a thorough and careful review of the pleadings and the documentary evidence in the record, I make the following findings of fact.

Applicant was born in the People's Republic of China (China) and is 25 years old. He has never married and has no children. His parents are divorced and he immigrated to the United States in 2001 with his mother. His mother remarried a U.S.-born citizen of the United States. Applicant became a naturalized U.S. citizen in September 2014 at the age of 18 and changed his last name to that of his stepfather, who had adopted him. He was educated in the United States, graduating from high school in May 2014 and college in December 2018. He was hired by a defense contractor and sponsored for a security clearance in January 2019. He works for that contractor as an aeronautical engineer. (FORM Item 3.)

Applicant's birth father is a citizen and resident of China. Applicant has had no contact with his father since July 2000, when Applicant was four years old. He does not know anything about his father's work, relationship with the Chinese Government, if any, or his personal life, including his address. (FORM Item 4 at 12, 15.)

Applicant's maternal grandmother is a citizen and resident of China. He speaks with her by phone every month. He visited her in China on three or four short trips during the period 2012 through 2017. He noted in his SCA that the trips were for the purpose of visiting family and friends. She is retired. The record is silent as to her prior employment. (FORM Item 3 at 29; FORM Item 4 at 12, 15-16.)

In 2017, Applicant worked as a paid research intern for the Chinese Automotive Research Institute (Chinese Institute) for about three months that summer. This research center tests the durability of automotive parts. A family friend was a manager at the Chinese Institute and arranged Applicant's summer internship. This person was referred to by Applicant as "uncle" even though he is not actually related to Applicant's mother.

During his internship, Applicant had daily contact with the manager. In his background interview, he claimed that he has had no contact with this person before his internship or since the end of his internship in 2017. (FORM Item 4 at 14-15.)

Applicant omitted his employment with the Chinese Institute in his responses to the question in Section 13A of his SCA titled “Employment Activities” and the question in Section 20 B titled “Foreign Business, Professional Activities, and Foreign Government Contacts.” He did not believe that he was required to list paid internships. He also failed to mention this employment in his initial background interview. He reported to the second government investigator who conducted a follow-up background interview that the omission in his SCA was not deliberate. He claimed in his Answer that he listed the internship with the Chinese Institute on his employment application with his current employer. Also, Applicant discussed in his initial background interview his short trips to China and reported they were with his family for the purpose of visiting his maternal grandmother. He failed to mention in his SCA or his initial background interview that his trip to China in 2017 was for the entire summer when he worked at the Chinese Institute. (FORM Item 2; FORM Item 4 at 5, 12-13, 14-15, 16-17.)

### **SOR Allegations**

Under Guideline B, the SOR sets forth five allegations of facts raising concerns under this guideline. The allegations list Applicant’s birth father and maternal grandmother as citizens and residents of China. (SOR ¶¶ 1.a and 1.b) The SOR also alleges Applicant’s employment at the Chinese Institute during the summer of 2017. (SOR ¶ 1.c.) Lastly, the SOR alleges that Applicant failed to disclose his employment with the Chinese Institute in both his SCA (Section 20B) and in his initial background interview on March 18, 2019. (SOR ¶¶ 1.d and 1.e.) In SOR ¶1.e, the Government alleges that it was not until Applicant was confronted with the information about his employment with the Chinese Institute, that he disclosed his foreign employment.

Under Guideline E, the SOR cross alleges as falsifications the information set forth in subparagraphs 1.d and 1.e of the SOR.

### **Administrative Notice – China**

I take administrative notice of the following facts about China as set forth in Department Counsel’s request and supported by the U.S. Government documents cited in and attached to the request. China is an authoritarian state in which the Chinese Communist Party (CCP) is the paramount authority. China poses the greatest national threat to the United States. It is the most active strategic competitor of the United States responsible for both general espionage and cyberespionage against the U.S. Government, corporations, and allies. The Chinese National Intelligence Law of 2017 requires all Chinese entities to support, assist, and cooperate with Chinese intelligence services. Chinese 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 corporate networks to steal secrets. The Chinese Government

is responsible for significant human rights abuses of its citizens, including unlawful killings, forced disappearances, and torture.

## 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.” *Id.* 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.” Exec. Or. 10865 § 2.

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, 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.” Exec. Or. 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. 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. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

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. See 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.

## **Analysis**

### **Paragraph 1, Guideline B, Foreign Influence**

The security concern under this guideline 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 maybe 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 evidence establishes the following disqualifying conditions under 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;

(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

(c): failure to report or fully disclose, when required, association with a foreign person, group, government, or country.

The guideline in AG ¶ 8 contains six conditions that could mitigate security concerns arising from foreign influence. Three of them have possible applicability to the facts of this case:

(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.

AG ¶ 8(a) is not established. The nature of Applicant's relationships with his maternal grandmother, and the country in which she is located create a possibility that Applicant could 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. Accordingly, it cannot be concluded that it is unlikely that Applicant could be placed in such a position.

AG ¶ 8(b) is not established. Applicant has deep and longstanding relationships and loyalties with the United States. His sense of loyalty or obligation to his maternal grandmother, however, is not so minimal as to eliminate the possibility of a conflict of interest that Applicant could be expected to resolve in favor of the U.S. interest. Applicant's repeated failures to disclose voluntarily his paid internship with the Chinese Institute reveals that he is aware of the sensitivity of his foreign connections and the possible conflicts of interest they create.

AG ¶ 8(c) is only partially established. Applicant has had no contact with his birth father since 2000, when Applicant was four years old. He has monthly contact with his maternal grandmother, which is neither infrequent nor casual. As a result, it cannot be concluded that there is little likelihood that his relationship with her could create a risk for foreign influence or exploitation.

Overall, Applicant has not mitigated the security concerns raised by his relationship and contacts with his maternal grandmother, a citizen and resident of China. He has also not mitigated his failures to disclose when required his past employment with the Chinese Institute. Applicant's lack of a relationship and lack of contacts since 2000 with his birth

father mitigates any security concerns raised by his birth father's Chinese citizenship and residency.

## **Paragraph 2, Guideline E, Personal Conduct**

The security concern under this guideline is set out in AG ¶ 15 as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

The guideline in AG ¶ 16 contains seven conditions that are potentially disqualifying under circumstances involving personal misconduct. Two of the conditions has possible applicability to the facts of this case:

(a): deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities; and

(b): deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative.

The record evidence of Applicant's failures to disclose his employment with the Chinese Institute in his SCA responses and in his initial background interview on March 18, 2019, provide substantial evidence that the omissions were intentional. Applicant misrepresented at his initial background information that his trips to China were short and for the purpose of visiting his maternal grandmother. He did not disclose that he spent the summer of 2017 in China for employment purposes. Applicant's statement in his Answer that he disclosed this foreign employment in the resume he submitted to his current employer evidences that he relied on this foreign work experience when it might be viewed as beneficial to his employment prospects and omitted the information when it might be viewed as a negative to his eligibility for a security clearance. Also, Applicant's statement in his Answer that he had assumed internships were not considered employment and were therefore not reportable evidences establishes that he made a deliberate and knowing choice not to disclose this employment. AG ¶¶ 16(a) and (b) are established.

The guideline in AG ¶ 17 contains seven conditions that could mitigate security concerns arising from financial difficulties. Two of these mitigating conditions possibly apply to the facts of this case:

(a): the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(c): the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

AG ¶ 17(a) is not established. Applicant failed to disclose to the investigator his foreign employment during his initial background interview.

AG ¶ 17(c) is not established. The falsifications are not minor and they were repeated twice during the application process. Applicant has not established that it is unlikely that such behavior will recur. His failure to provide accurate and truthful information to Government security investigators casts doubt on his reliability, trustworthiness, and judgment.

### **Whole-Person Analysis**

Under AG ¶ 2(c), 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. In applying the whole-person concept, an 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 and applying the adjudicative factors in AG ¶ 2(d), specifically:

(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 Guidelines B and E in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Overall, the record evidence as described above leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. After weighing the applicable disqualifying and mitigating conditions and evaluating all of the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his foreign contacts and personal conduct.



### **Formal Findings**

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b through 1.e:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the national interests of the United States to grant Applicant national security eligibility for a security clearance. Eligibility for access to classified information is denied

John Bayard Glendon  
Administrative Judge