



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



In the matter of: )  
)  
) ISCR Case No. 20-03202  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff Kent, Esq., Department Counsel  
For Applicant: *Pro se*

03/04/2022

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**Decision**

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MURPHY, Braden M., Administrative Judge:

Applicant did not provide sufficient information to mitigate the security concerns under Guideline B, foreign influence, regarding her connections to the People’s Republic of China (PRC). Applicant’s eligibility for a security clearance is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on November 8, 2018. On January 20, 2020, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, foreign influence. DOD issued the SOR under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4 (SEAD 4) *National Security Adjudicative Guidelines* (AG), which became effective on June 8, 2017.

On August 10, 2021, Applicant answered the SOR and requested a decision by an administrative judge from the Defense Office of Hearings and Appeals (DOHA) based on the administrative (written) record, rather than a hearing. On September 17, 2021, Department Counsel submitted the Government's File of Relevant Material (FORM), including substantive documents identified as Items 1 through 4. Department Counsel also submitted Requests for Administrative Notice regarding the PRC, Hong Kong, and Taiwan, with supporting documentation for each request. The FORM was mailed to Applicant on September 17, 2021. She was afforded an opportunity to note objections and to submit material in refutation, extenuation, or mitigation, and was given 30 days from receipt of the FORM to do so. Applicant received the FORM on September 23, 2021. She did not respond to the FORM and did not note objections to the Government's materials. The case was assigned to me on December 8, 2021.

Government Items 1 and 2, the SOR and the answer, are the pleadings in the case. Item 3 is Applicant's SCA. Item 4 is the summary of her personal subject interviews, dated March 7, 2019, and May 22-24, 2019. Applicant was advised in the FORM that she had a right to make corrections, additions, deletions, and updates to the interview summaries, as well as to object to the reports on the grounds that they were not authenticated. I determine that Applicant has waived any objection to admission of Items 3 and 4, and they are admitted without objection.

### **Request for Administrative Notice**

As part of the FORM, Department Counsel submitted three written requests that I take administrative notice of certain facts about the People's Republic of China (China), about Hong Kong, and about Taiwan, and about the United States' relations with them. Department Counsel provided supporting documents that verify and provide context for those facts. They are detailed in the Government's administrative notice filings (AN I, AN II, and AN III) and addressed in the Findings of Fact.

Official pronouncements by the President, the State Department, the Defense Department, or other appropriate federal agencies on matters of national security are legislative facts for purposes of DOHA adjudications and must govern the judge's analysis. See ISCR Case No. 17-04208 at 3 (App. Bd. Aug, 7, 2019) Where appropriate, I have taken administrative notice of updated and current information from the websites of the State Department and the White House, consistent with my obligation to make assessments based on timely information in cases involving the potential for foreign influence. See ISCR Case No. 05-11292 at 4 (App. Bd. Apr. 12, 2007) ("Decisions in Guideline B cases should be made to the greatest extent possible in the context of current political conditions in the country at issue.")

### **Evidentiary Issue**

Both the SOR and the Answer contain nine allegations (SOR ¶¶ 1.a-1.i) about Applicant's family and various unnamed friends. In the Government's FORM, Department Counsel refers to SOR ¶¶ 1.a-1.m, including several paragraphs with

named individuals. (FORM at 3, 6) All of the individuals referenced are family members or acquaintances of Applicant whom she disclosed on her SCA. (FORM at 3; Item 3) This is likely due to a clerical error in the SOR issuance process. Nevertheless, the pleadings in the case concern SOR ¶¶ 1.a-1.i, as written and as alleged.

### **Findings of Fact**

Applicant admitted all of allegations (SOR ¶¶ 1.a-1.i) without comment. Her admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 42 years old. She was born in the PRC in 1979. She earned her undergraduate degree at a university in China in 2001. (Item 4 at 2) She came to the United States in 2002, at the age of 23, to pursue a graduate education. She earned a master's degree in 2004 and a doctorate in 2011, both from a public university in the United States. She became a naturalized U.S. citizen in 2017. (Item 3 at 7-16) Applicant's husband is a U.S. citizen by birth. They married in 2013 and have a young daughter. (Item 3 at 25, 29)

Applicant worked as a graduate assistant and adjunct lecturer while pursuing her doctorate. She then worked as a professor at another state university from 2011 to 2014. From June 2014 to December 2015, she worked as a data scientist for a social media company. Since January 2016, she has worked as a senior research scientist for a defense contractor. (Item 3 at 17-22) She has never held a clearance before. (Item 3 at 76)

On her SCA, Applicant disclosed foreign family members who are citizens and residents of the PRC. She also disclosed various friends who are citizens and residents of either the PRC, Hong Kong, or Taiwan. (Item 3)

Applicant's parents are citizens and residents of China. They are retired and in their mid-70s. Her mother worked at a hospital and her father worked for the local government in food and drug administration. Applicant has weekly contact with her parents. (Item 3 at 28-29) (SOR ¶¶ 1.a, 1.b)

Applicant's sister is also a citizen and resident of China, along with her sister's husband (Applicant's brother-in-law) and their teenage son (Applicant's nephew). (SOR ¶¶ 1.c, 1.d, 1.e) Her sister works for a bank. Her husband works for a pharmaceutical company. Applicant has weekly contact with her sister and less frequent contact with her nephew and brother-in-law. (Item 3 at 30, 32-35)

Applicant travelled to China annually from 2011 to 2018. She visited her family members and friends. (Items 3, 4) There is no record evidence of Applicant's more recent travel to the PRC, either before (2019) or during the COVID-19 pandemic (2020 and later). The record does not indicate that Applicant has taken any trips to either Hong Kong or Taiwan. (Items 3, 4)

On her SCA, Applicant also disclosed various friends, who are citizens and residents of the PRC, Hong Kong, or Taiwan, with whom she maintains contact. (Item 3) SOR ¶ 1.f, which Applicant admitted, alleges that Applicant’s “friends are citizens and residents of China.” (Items 1, 2) The friends and acquaintances in the PRC that she disclosed on her SCA include:

- J.F. a friend from high school, with whom Applicant maintains contact about once a year when she visits China; (Item 3 at 37-38)
- X.T., a friend from graduate school in the U.S., who now works at a scientific academy in China; they maintain quarterly contact; (Item 3 at 41-42)
- Y.W., a former colleague who now works for a technology company in China. Applicant disclosed this person on her SCA, but provided no biographical details, noting that they have annual professional contact; (Item 3 at 45-46)
- X.Z, a graduate school friend who works for a university in China; they have quarterly contact. (Item 3 at 54-55)

SOR ¶ 1.g, which Applicant admitted, alleges that her “friends are citizens and residents of Taiwan.” (Items 1, 2) She disclosed two friends in Taiwan on her SCA:

- J.W. a graduate school friend and roommate who now lives and works in Taiwan as a university professor. They maintain occasional contact over social media (Item 3 at 40-41); and
- Y.C., a friend who now lives and works in Taiwan for an insurance company. They have quarterly contact. (Item 3 at 44-46)

SOR ¶ 1.h, which Applicant admitted, alleged that she has a friend who is a citizen of China and resident of Hong Kong. This is likely Y.S., a friend of Applicant’s from graduate school who was born in China and lives in Hong Kong. They maintain quarterly contact. (Item 3 at 35-36)

SOR ¶ 1.i, which Applicant admitted, alleged that she has a friend who is a citizen and resident of Hong Kong. This may be J.W., a friend who is a citizen of Hong Kong and New Zealand. He lives in Hong Kong and works for a financial organization. They have quarterly contact. (Item 34 at 50-51)

Applicant did not provide any additional information in her answer beyond her admissions. She did not respond to the FORM. She offered no additional evidence in explanation or mitigation of the Guideline B security concerns, or under the whole-person concept.

## **China (PRC)**

The PRC is an authoritarian state in which the Chinese Communist Party (CCP) is the paramount authority. China is the world’s most active and persistent perpetrator of economic espionage. China presents a persistent cyber-espionage threat to the United States. China is the most aggressive country conducting espionage against the United

States, and U.S corporations. China has expansive programs in place to acquire U.S. technology, including sensitive trade secrets and proprietary information to enhance its global strategic, military, diplomatic, and economic influence. China's focus is on obtaining U.S. information and technologies beneficial to China's military modernization and economic development. China's intelligence services, as well as private companies and entities, frequently seek to exploit Chinese citizens or persons with family ties to China who can use their insider information to access intellectual property and sensitive trade secrets. About 80 percent of all economic espionage prosecutions brought by the U.S. Department of Justice allege conduct that would benefit China and at least 60 percent of all trade secret theft cases have at least some nexus to China. Recent criminal cases that were prosecuted and involve actual or attempted espionage and illegal export of sensitive military technology to China. In addition, China has significant human rights problems, including the repression of freedom of speech, religion, and association. (AN I)

## **Hong Kong**

In 1997, after centuries in the British Empire, Hong Kong became the Hong Kong Special Administrative Region of the PRC. Under the PRC's "one country, two systems" formula, Hong Kong was to enjoy a "high degree of autonomy in all matters except foreign and defense affairs for the next 50 years. The people of have traditionally enjoyed substantial civil liberties and the rule of law under their local constitution. However, those freedoms have come under threat in recent years as the Chinese government has exerted increased control over the government and people of Hong Kong. (AN II)

In June 2020, the Chinese government announced a sweeping national security law that brought Hong Kong's 7.5 million residents under the direct authority of the CCP. Since the law's imposition, the PRC has unilaterally and arbitrarily exercised police and security power in Hong Kong. The PRC has demonstrated an intention to use this authority to target a broad range of activities it defines as acts of secession, subversion, terrorism, and collusion with foreign entities, including participation in demonstrations. The National Security Law also covers offenses committed by non-Hong Kong residents or organizations outside of Hong Kong, which could subject U.S. citizens who have been publicly critical of the PRC to a heightened risk of arrest, detention, expulsion, or prosecution. (See U.S. State Department Travel Advisory for China: <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/china-travel-advisory.html> (updated January 19, 2022))

## **Taiwan**

Taiwan is a democracy with a democratically elected president and parliament. The PRC is a large economic trading partner. Since 1979, the United States has recognized the government of the PRC as the sole legal government of China, and acknowledges the PRC's position that there is one China and that Taiwan is part of

China. The U.S. maintains robust cultural, commercial, and other unofficial relations with Taiwan, but the U.S. does not support Taiwanese independence.

In recent years, the PRC has adopted a more coercive policy towards Taiwan, seeking to isolate and intimidate Taiwan into unification with the PRC on their terms. The PRC has sharply escalated its military, diplomatic, and economic pressure on Taiwan. The United States has noted this shift with concern, and has urged the PRC to engage in meaningful dialogue with Taiwan's democratically elected representatives. In recent years, there have been multiple cases involving the illegal export, or attempted legal export, of U.S. restricted, dual use, or military technology to Taiwan, or by Taiwanese companies or nationals. (AN III)

### **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 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 overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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 access to classified information 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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 as to obtaining a favorable security 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 that an applicant may deliberately or inadvertently fail to 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 Executive Order 10865 provides that 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.”

## **Analysis**

### **Guideline B, Foreign Influence**

AG ¶ 6 expresses the security concern regarding foreign influence:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. I have considered all of them and the following are potentially applicable:

- (a) contact 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 sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information.

AG ¶ 7(a) requires evidence of a “heightened risk.” The “heightened risk” required to raise this disqualifying condition is a relatively low standard. “Heightened risk” denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or owning property in a foreign country. The totality of Applicant's family ties to a foreign country as well as each individual family tie must be considered.

As detailed in the administrative notice documents, the PRC is actively and persistently engaged in espionage efforts against U.S. strategic, military, diplomatic, and economic interests. The PRC uses its intelligence services, as well as private companies and entities, to exploit Chinese citizens or persons with family ties to China to gain information and trade secrets, and the PRC has significant human rights problems. A heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion is established. The same analysis applies for Hong Kong and Taiwan, since they are considered part of the PRC even though Applicant's connections are limited to a few friends there. The PRC is also considered a hostile country for purposes of Guideline B analysis. An applicant who has relatives in a hostile country has a very heavy burden of persuasion as to mitigation. ISCR Case No. 17-04208 at 5 (App. Bd., Aug. 7, 2019)

Applicant's parents are citizens and residents of the PRC, as are her sister, brother-in-law and nephew. She has visited her family in China annually from 2011 to 2018. Applicant also has friends in PRC, Hong Kong, and Taiwan with whom she maintains contact. These family members and other connections create a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. They also create a potential conflict of interest. AG ¶¶ 7(a) and 7(b) have been raised by the evidence.

I have analyzed the facts and considered all of the mitigating conditions under AG ¶ 8 and conclude the following are potentially applicable:

- (a) the nature of the relationship 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 and interests of the U.S.;
- (b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interests in favor of the U.S. interests; 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(c) applies to Applicant's friends in Hong Kong and Taiwan (SOR ¶¶ 1.g, 1.h, and 1.i). She has no record of visiting Hong Kong or Taiwan, and her contact with friends who now live there is casual and fairly infrequent. Similarly, AG ¶ 8(c) also applies to Applicant's friends in China (SOR ¶ 1.f), even though she may see some of them on visits there to see her family.



Applicant has regular, frequent contact with her parents, sister, brother-in-law, and nephew in China, including regular visits there as recently as 2018. Applicant's contact with her family in China is not infrequent or casual. AG ¶ 8(c) does not apply to them.

The foreign influence concerns are increased because China aggressively and actively engages in foreign economic collection and industrial espionage against the United States. There is insufficient evidence to conclude that the Applicant's familial connections in China would make it unlikely that she would be placed in a position of having to choose between his family interests and the interests of the United States.

Applicant was raised and educated in China but she continued her advanced education in the U.S., has remained here for many years, became a U.S. citizen, and she has married and is raising a family here. She understandably has close ties to her family in China, has visited them regularly, and maintains close contact. There is insufficient evidence to conclude there is no conflict of interest, either because Applicant's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or because Applicant has such deep and longstanding relationships and loyalties in the U.S., that she can be expected to resolve any conflict of interests in favor of the U.S. interests.

The nature of a nation's government and its relationship with the United States is relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if a family member is associated with or dependent upon the foreign government or the country is known to conduct intelligence operations against the United States. Applicant therefore has a heavy burden to overcome the security concerns established by her understandably close connections to her family in China. Applicant did not provide sufficient information to find that mitigating conditions are applicable. AG ¶¶ 8(a) and 8(b) do not apply.

### **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. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (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(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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

As noted, Applicant offered no evidence in mitigation, as she merely admitted each SOR allegation without further comment. She also did not answer the FORM, and therefore did not submit any updated evidence about her family connections to China, or any other evidence which might have been considered under the whole-person concept. Since she elected a decision on the written record, in lieu of a hearing, I did not have the opportunity to question her about her family circumstances to learn more information. I also had no opportunity to observe Applicant's demeanor, and thus, to assess her credibility.

Applicant came to the United States to further her education. She earned a master's degree and a doctorate. She has chosen to live and work here, and to marry and to raise a family here. She understandably has close, ongoing ties with her family in China. However, I cannot ignore the strong evidence of an ongoing, hostile relationship between the United States and the PRC, and the Chinese government's persistent and ongoing intelligence efforts against the United States and its interests. There is a strong heightened risk shown by the Chinese government's relationship with the United States and with the Chinese people through their poor human rights record. Given Applicant's family connections to the PRC, I conclude that she did not present sufficient evidence to meet her very heavy burden of persuasion as to mitigation. This is not a commentary on her loyalty to the United States. It is merely a conclusion that she did not provide sufficient evidence to mitigate foreign influence security concerns under Guideline B. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility for access to classified information. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline B, foreign influence.

### **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-1.e:	Against Applicant
Subparagraphs 1.f-1.i:	For 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's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Braden M. Murphy  
Administrative Judge