



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 REDACTED) ISCR Case No. 20-01188
)
 Applicant for Security Clearance)

Appearances

For Government: Nicholas T. Temple, Esq., Department Counsel
For Applicant: *Pro se*

03/31/2022

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant did not fully mitigate the risks of foreign influence raised by his familial ties through his spouse to the People’s Republic of China (China). Clearance eligibility is denied.

Statement of the Case

On April 15, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline B, foreign influence. The SOR explained why the DCSA CAF was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DCSA CAF took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) 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 within the DOD on June 8, 2017.

On April 24, 2021, Applicant responded to the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On July 21, 2021, Department Counsel indicated that the Government was ready to proceed to a hearing. On September 27, 2021, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant. I received the case assignment and file on October 6, 2021.

On February 11, 2022, I informed Applicant that I was scheduling online hearings via Microsoft Teams for March 2022, and inquired about his availability for a hearing. He requested a hearing on March 7, 2022 or March 8, 2022, and indicated he would waive the 15-day advance-notice requirement under the Directive. On February 23, 2022, I scheduled a Microsoft Teams video teleconference hearing for March 8, 2022. In response to a Case Management Order of February 23, 2022, the parties provided their proposed exhibits in advance of the hearing. The Government also provided a July 21, 2021 Request for Administrative Notice concerning China.

On March 7, 2022, I informed the parties that the file I was provided included Applicant's May 2020 response to DOHA interrogatories. The document was not included in the potential exhibits forwarded to me by the parties before the scheduled hearing. I advised the parties that I would not consider it unless it was accepted in evidence at the hearing.

At the March 8, 2022 hearing, four Government exhibits (GEs 1 through 4), including Applicant's response to the DOHA interrogatories as GE 4, and eight Applicant exhibits (AEs A through H) were admitted without objection. Shortly after his March 8, 2022 hearing, Applicant submitted by electronic mail a security contact report, which was accepted into evidence as AE I without any objection from the Government. Applicant and his spouse testified, as reflected in a hearing transcript (Tr.) received on March 15, 2022.

At the Government's request, I indicated at the hearing that I would accept the Government's July 21, 2021 request for administrative notice as a hearing exhibit (HE 1), subject to any comments or objections by Applicant. Applicant did not object to any of the facts proposed for administrative notice, and he declined an opportunity to propose additional facts for administrative notice.

Administrative Notice

At the hearing, the Government submitted for administrative notice several facts pertinent to China, as set forth in its July 21, 2021 request for administrative notice. The administrative notice request for China was based on seven issuances from the U.S. State Department: *China 2020 Human Rights Report (Includes Tibet, Hong Kong, and Macau)*; *Hong Kong Travel Advisory*, dated June 16, 2021; *Country Reports on Terrorism 2019*, dated June 24, 2020; *China Travel Advisory*, dated June 16, 2021; two press statements dated January 6, 2021, and January 19, 2021; and on a statement from the

U.S. Embassy in Georgia, dated August 12, 2020. In addition, the Government requested administrative notice be taken of relevant facts based on the U.S. President's *Interim National Security Strategic Guidance*, dated March 3, 2021; a statement from the Director of National Intelligence, *Worldwide Threat Assessment of the U.S. Intelligence Community*, dated January 29, 2019; a report of the National Counterintelligence and Security Center, *Foreign Economic Espionage in Cyberspace 2018*, published July 26, 2018; a report of the Office of National Counterintelligence Executive, *Report to Congress on Foreign Economic Collection and Industrial Espionage, 2009-2011*; a December 22, 2020 advisory concerning data security by the Department of Homeland Security; the DOD's annual report to Congress on military and security developments involving China, dated September 1, 2020; a December 12, 2018 statement of the Assistant Attorney General before the U.S. Senate's Committee on the Judiciary; and on eight press releases from the U.S. Department of Justice reporting recent economic espionage activity targeting the United States and U.S commercial entities.

Applicant confirmed that he received the Government's request for administrative notice with extracts of the source documents, and he had no objection to any of the facts proposed for administrative notice with respect to China. Applicant elected not to propose any facts of his own for administrative notice.

Pursuant to my obligation to take administrative notice of the most current political conditions in evaluating Guideline B concerns (see ISCR Case No. 05-11292 at 3-4 (App. Bd. Apr. 12, 2007)), I informed the parties of my intention to take administrative notice of the facts requested by the Government with respect to China, subject to the reliability of the source documentation and the relevance and materiality of the facts proposed.

Concerning the reports and press releases of criminal activity and export violations on behalf of people with connections to China, they were presented by the Government apparently to substantiate that China engages in espionage against the United States and actively pursues collection of U.S. economic and proprietary information. Neither Applicant, his spouse, nor her family members in China were implicated in that criminal activity, although the Government does not have to prove that they were so implicated. With those caveats, and considering the Government's request for administrative notice, the facts administratively noticed are set forth below.

Findings of Fact

The SOR alleges under Guideline B that Applicant's parents-in-law, five sisters-in-law, and four brothers-in-law are resident citizens of China (SOR ¶ 1.a). The SOR also alleges that of his sisters-in-law with citizenship and residency in China, one had previously worked as a radar engineer with a missile institute in China (SOR ¶ 1.b); another is employed as a software engineer for the Chinese government (SOR ¶ 1.c), and a third is employed as a civil servant for a forestry bureau in China (SOR ¶ 1.d).

When Applicant responded to the SOR, he admitted the Chinese residency and citizenships of his spouse's family members and the alleged employment information for

the three sister-in-laws (SOR ¶¶ 1.b through 1.d). Yet, he explained that his spouse's relatives all speak only Mandarin so his spouse has to translate for him. Consequently, his conversations with her family members are "brief and infrequent."

After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 34-year-old senior systems engineer. He, his parents, and his two siblings (an older sister and a younger brother) are all native U.S. resident citizens. (GEs 1, 3.) Applicant earned a bachelor's degree in electrical engineering in May 2009 and a master's degree in electrical and computer engineering in May 2011. While Applicant was an undergraduate, he worked as an intern in the semiconductor industry during the summers of 2006, 2007, and 2008. He did not hold a DOD security clearance during those times. (GEs 1, 3; AE H.)

On earning his bachelor's degree, Applicant worked as an intern for a defense contractor (company X) in the summer of 2009. That fall, he started his graduate studies, and the following summer again worked for the company as an intern. In early 2011, Applicant and his future spouse were introduced to each other by a mutual friend. (Tr. 45.) A native citizen of China (GE 3; Tr. 39), she was pursuing her master's degree in statistics at the same university as Applicant. (Tr. 44, 50.) She began her studies in 2010. (Tr. 44.) Applicant and his spouse began dating in May 2011. (Tr. 46.)

Applicant became a full-time employee of company X in June 2011. On July 7, 2011, Applicant completed and certified as accurate a Questionnaire for National Security Positions (SF 86) for a security clearance for company X, having no prior experience with the form. (Tr. 55.) He responded negatively to an SF 86 inquiry concerning whether he had any close or continuing contact with any foreign nationals within the last seven years. (GE 1.) He was dating his spouse, then a Chinese national, but it did not occur to him to report her as a foreign contact. He does not now recall the specifics of any training that he had to take while at company X, including any about reporting foreign contacts. (Tr. 56.) Applicant was granted a DOD secret clearance in August 2011. (GE 3.) The majority of his work for company X from June 2011 to December 2015 was unclassified. (Tr. 13, 32.)

Applicant and his spouse traveled together to China on July 24, 2012. She wanted him to meet her parents and other members of her immediate family. Applicant returned from China on August 10, 2012, while his spouse stayed in China for two months. (Tr. 46.) Applicant did not report his trip to China to company X because he did not then know that it was required. (Tr. 57.)

Applicant and his spouse married in the United States in August 2015. (GE 3.) Her parents, two sisters, and one brother came from China for the wedding. (Tr. 51.) Applicant did not report his marriage to a Chinese citizen to company X because he did not realize that it was required. Some of his co-workers at company X attended the wedding and voiced no concern to Applicant about his spouse having family in China. (Tr. 63.)

Applicant traveled to China with his spouse in mid-May 2016 for her cousin's wedding. Applicant stayed in China for two weeks. He visited with his parents-in-law and other members of his spouse's family during that time. (Tr. 46-47.) Applicant told his immediate manager that he was going to China as he had to obtain his approval for leave. (Tr. 63.)

Applicant's spouse pursued a doctorate degree in computational statistics and measurement at a public university in another U.S. state. (Tr. 50.) She attended the graduation ceremony for her doctorate degree in 2016, and her parents came from China for the ceremony. However, she delayed her institutional defense for three semesters because she and Applicant were expecting their first child, a daughter who was born in the United States in January 2018. (GE 3; Tr. 48, 52.) She finished all the requirements and earned her doctorate degree in 2018. (Tr. 45.)

In September 2017, Applicant resigned from company X and began working as a senior systems engineer for his current employer, another defense contractor. (GE 3, AE H.) He took the job for reasons of career advancement and less travel. (Tr. 64.)

During the on-boarding process for his current employment, Applicant took some security training (AE E), including about the requirement to report foreign contacts. (Tr. 57.) On October 24, 2017, Applicant self-reported to his current employer's security office that he was married to a Chinese citizen who holds U.S. permanent residency status (a "green card"); that this personal relationship began in 2011; and that he had traveled to China for two weeks in 2012 and 2016 to visit his in-laws, with whom he had contact since 2012. Applicant informed his new employer that he had not reported his spouse as a close contact on his SF 86 completed in 2011 for his previous employer, and that he had not told his previous employer about his marriage to a Chinese citizen or about his two trips to China. Applicant provided his new employer with the names of his parents-in-law, his spouse's three sisters, and her two brothers, all resident citizens of China. (GE 2.) Applicant offered no explanation for waiting until October 24, 2017, to inform his current employer about his foreign contacts. He is not sure what prompted him to tell his security office on that date other than it "just occurred to him" that it was important." (Tr. 58.) On November 14, 2017, Applicant's employer filed an adverse information report to the DOD about Applicant's foreign contacts and his failure to report them to his previous employer. (GE 2.)

On February 9, 2018, Applicant completed an SF 86 on which he reported his August 2015 marriage to a Chinese citizen who was subsequently granted U.S. permanent residency. He included as family members his parents-in-law, both resident citizens of China, and stated that he had in-person contact with them during his two trips to China, at his wedding to their daughter in the United States, and "last year." Applicant reported that they came to the United States to help with his first child on her birth. He explained that his in-laws speak only Mandarin, so his spouse has to translate their conversations. In response to an SF 86 inquiry into foreign contacts, he listed his spouse's three sisters, two brothers, and their spouses; their occupations; and his contacts with

them, which were solely in-person because they speak only Mandarin and his spouse has to translate for him. (GE 3.)

On his February 2018 SF 86, Applicant disclosed that he had sponsored his spouse for U.S. permanent residency. He included as reportable foreign travel his trips to China in July 2012 and May 2016. He responded negatively to inquiries concerning whether he had been detailed by local customs or security service officials; whether he had any encounters with the police; whether he had been in contact with any person suspected of being involved or associated with any foreign intelligence, terrorist, security or military organizations; whether he had been involved in any counterintelligence or security issues; whether he had been in contact with anyone showing undue interest in his job or attempting to obtain classified or sensitive information from him; and whether he had been coerced, threatened, or pressured in any way to cooperate with a foreign government official or foreign intelligence or security service. (GE 3.)

On January 16, 2019, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM) in part about his foreign contacts. He indicated that he and his spouse were in the process of renewing her U.S. permanent residency status (which was scheduled to expire on January 19, 2019, see GE 3) and removing the conditions on her U.S. permanent residency. She completed the biometrics requirements on January 3, 2019. Applicant stated that he and his spouse planned to continue to reside in the United States, but he was uncertain whether she intended to acquire U.S. citizenship. Applicant indicated that with respect to his spouse's family members in China, he planned to maintain "minimal contact" with them in the future. (GE 4.)

On February 12, 2019, Applicant reported through his employer's computer-based Security Contact Reporting and International Protection Travel System that he planned personal travel to China from March 30, 2019 to April 13, 2019, to visit a sister-in-law and her family and his parents-in-law. (AE I.) His U.S. passport shows the travel occurred from April 3, 2019, to April 13, 2019. (Tr. 47.) Applicant was accompanied by his spouse and their daughter, who remained in China for two months. (Tr. 47.) Applicant has not been to China since that trip. (Tr. 60.) His spouse and daughter again traveled to China in October 2019 as her mother was in ill health. They stayed in China for "nearly two months." (Tr. 48.)

In response to DOHA interrogatories, Applicant indicated on May 29, 2020, that he and his spouse had discussed her intentions about acquiring U.S. citizenship and that she believed it would be beneficial for her career. (GE 4.) She became a naturalized U.S. citizen on April 29, 2021. (Tr. 37-38.) While she retains her Chinese passport, she understands that it is invalid and that she is no longer a citizen of China. China does not recognize dual citizenship, and when she entered her passport number into the computer, there was no record of her holding a Chinese passport. (Tr. 49.)

Applicant has owned his home in the United States since December 2015. (GE 3.) There is no evidence that he has any foreign assets. His spouse does not currently work

outside the home. (Tr. 50.) She and Applicant had their second child, a son, in October 2020. Their two children are both citizens solely of the United States. (Tr. 49.)

Relevant details about Applicant's and his spouse's contacts with her family members in China and the occupations of these foreign family members follow.

Applicant's father-in-law is now retired. (Tr. 51.) As of January 16, 2019, he was employed as a manager for a family-owned business in construction and property management. Applicant's mother-in-law did not work outside the home. Applicant had in-person contact with his parents-in-law during Applicant's trips to China in July 2012 to meet them; in May 2016 for his spouse's cousin's wedding; and in April 2019 with his spouse so her family could see their daughter. Applicant had in-person contact with his parents-in-law in the United States at his wedding to their daughter, and for about six weeks in early 2018 when they came to help care for his newborn daughter. (GEs 3-4.) Applicant has not had any contact with his parents-in-law since his trip to China in April 2019. (Tr. 60.) Since they do not speak English (Tr. 36), and he does not speak Mandarin Chinese (Tr. 60), he does not converse with them when his spouse calls them. (Tr. 60.) Applicant's spouse contacts her parents weekly or every other week. (Tr. 35.)

Applicant's spouse's sister #1 is 50 years old. As of his February 2018, sister #1 was employed as a professor at a university of science and technology in China. She was no longer working outside the home as of Applicant's January 2019 OPM interview. Applicant does not know anything about the occupation of this sister-in-law's husband. (GEs 3-4.) Applicant had in-person contact with this sister-in-law during his trip to China in July 2012 and in the United States in August 2015 when she came for his and his spouse's marriage ceremony. Applicant does not have any ongoing contact with this sister-in-law or her spouse. (Tr. 61.) Applicant's spouse contacts her sister on Chinese holidays, such as Chinese New Year and Autumn Festival. (Tr. 35-36, 41.)

Applicant's spouse's sister #2 (SOR ¶ 1.d) is 46 years old. Applicant met her in China during his July 2012 trip and visited with her during his second trip to China in May 2016. This sister-in-law did not come to the United States for his wedding to her sister. As of Applicant's January 2019 OPM interview, she was employed as a civil servant for a forestry bureau in China. Applicant did not know whether it was a government position. (GEs 3-4.) As of March 2022, she was caring for her spouse who has medical issues. (Tr. 36.) Applicant's spouse is not sure whether her sister is on a leave of absence from her job or whether she has resigned from her employment. (Tr. 36-37.) Applicant has no ongoing contact with this sister-in-law or her husband. (Tr. 61.) They speak only Mandarin. (GEs 3-4; Tr. 36.) Applicant's spouse contacts her sister on Chinese holidays. (Tr. 35-36, 41.)

Applicant's spouse's sister #3 is 43 years old. Applicant met this sister-in-law and her spouse during his July 2012 trip to China. She attended his and his spouse's wedding in the United States, and Applicant visited her and her spouse when in China in May 2016. She is employed as a professor at a university of science and technology in China. Her spouse works for an electronics company in China. Applicant does not speak to this

sister-in-law or her husband because of the language barrier. (GEs 3-4; Tr. 61.) Applicant's spouse contacts her sister on Chinese holidays. (Tr. 35-36, 41.)

Applicant's spouse's brother #1 is age 42. (GE 3.) He is a physician on staff of a hospital in China. (Tr. 50.) As of Applicant's February 2018 SF 86, his wife was a radar engineer employed by a Chinese military university in China. By the time of Applicant's January 2019 OPM interview, she had left that employment and was a faculty member at a university of law and politics in China. (Tr. 36, 40.) Applicant had in-person contact with his brother-in-law and brother-in-law's wife in China in July 2012 and May 2016. Applicant has had very little contact with his brother-in-law or this sister-in-law because of the language barrier. (GEs 3-4, Tr. 36.) When Applicant's spouse contacts her brother on Chinese holidays, she does not speak to his wife. She does not know what subject her sister-in-law teaches. During her stays in China, Applicant's spouse shared some meals with her sister-in-law. (Tr. 40-41.)

Applicant's spouse's brother #2 is her twin. (GE 3; Tr. 43.) He is on the faculty of a college of communications technology in China. He is a Chinese language instructor. (Tr. 43-44.) His wife previously worked as a software engineer at a military or government-related satellite control center in China. (GEs 3-4.) She is currently pursuing a master's degree at a university in China. (Tr. 37, 42.) Applicant had in-person contact with this brother-in-law and brother-in-law's wife in China in July 2012 and May 2016. Spouse's brother #2 came to the United States for the wedding in August 2015 without his wife. Applicant has had very little contact with this brother-in-law or his wife because of the language barrier. Like the other members of his spouse's family in China, they speak only Mandarin. (GEs 3-4; Tr. 36.) When Applicant's spouse contacts her brother on Chinese holidays, she speaks with him but not with his wife. However, she visited with both her brother and sister-in-law during her trips to China. (Tr. 41-42.) Applicant's spouse does not know what her sister-in-law is studying. (Tr. 42.)

Applicant's spouse intends to travel to China to visit her family members in the future, hopefully within the next year, if she is able to get a visa and China's COVID-19 pandemic travel restrictions are lifted. (Tr. 48.) She does not believe that any of her family in China are members of the Chinese Communist Party, but she does not know for certain. (Tr. 51.) To Applicant's knowledge, none of his spouse's family members in China know that he works for a defense contractor. Applicant's spouse is aware that he holds a DOD security clearance. (Tr. 62.)

Character and Work References

Applicant's academic and professional accomplishments show dedication to his studies, internships, and then his duties as a full-time employee for his former and current defense contractors. (AE H.) In his current position, Applicant has served as a custodian of material classified as "Secret/NOFORN." (AE G.) There is no indication that he has violated any security requirements. A former co-worker, who has known Applicant for the past three years, is aware that Applicant has worked on two jobs involving sensitive information. This co-worker attests that Applicant "is always very respectful of privacy,

classified information, rules and restrictions.” Applicant gave him no reason to doubt or question his handling of security information. (AE A.)

A systems engineering lead who began interacting with Applicant on a daily basis for their work on a specific program in 2019 indicates that Applicant quickly assumed the responsibility of being the systems integration lead on the program. (AE B.) Their work together included the transfer of classified information onto an information system prior to destruction. (Tr. 28.) Applicant “worked diligently on classified requirements and was always very attentive.” This systems engineering lead came to admire Applicant’s work ethic and his coaching of other team members on the careful handling of classified material. He described Applicant’s character “as a model for many to follow.” (AE B.)

Applicant’s former functional manager for about two years witnessed Applicant’s “dedication and determination to succeed.” Applicant is required to maintain a secret-level clearance for his employment, and to this manager’s knowledge, Applicant is up-to-date on all security training. He has found Applicant to be enthusiastic, well-tempered, and diligent, and well-liked and respected by his peers. The manager recommends that Applicant retain his clearance eligibility. (AE C.)

Applicant’s current functional manager since approximately September 2021 indicates that it has been her pleasure to mentor Applicant. He is a high performer and conscientious engineer. In their interactions, Applicant has been “always open and honest and willing to speak up if something doesn’t feel right.” She describes Applicant as “hardworking, dependable, trustworthy, and security conscious, and concludes, “I have no doubt that this case was an honest oversight, which he understands the seriousness of, and recommend that [Applicant] maintain his clearance status.” (AE D.) When she rated Applicant for his performance in 2021, she commented that Applicant “always displays ethical behavior in his everyday work activities.” Applicant had an “outstanding year” and was given an overall performance rating of high performance in that his contributions exceeded expectations. (AE F.)

Applicant’s transcript of his training for his current employer since September 11, 2017, reflects the numerous training courses Applicant has completed, some online and some in the classroom. Applicant took his initial annual security training online on September 13, 2017, and closed area briefing and classified container custodian training online on September 14, 2017, with perfect scores. (AE E.)

Administrative Notice

After reviewing U.S. government publications concerning China and its foreign relations and mindful of my obligation to consider updated information, I take administrative notice of the facts requested by the Government as supplemented by the following facts:

China is an authoritarian state with paramount authority vested in the Chinese Communist Party (CCP). In all important government, economic, and cultural institutions

in China, the CCP ensures that party and state policy guidance is followed. President Xi has very few checks on his power as Beijing continues to restrict the personal freedoms of its citizens. China is the only competitor potentially capable of mounting a sustained challenge to a stable and open international system. Along with Russia, China presents a persistent cyber espionage and cyber-attack threat to the U.S. core military and critical infrastructure systems. The country has expansive efforts in place to acquire U.S. technology, to include trade secrets and proprietary information. To support its military modernization, China fills the gaps in its defense and commercial research by engaging in large-scale, state-sponsored theft of intellectual property and proprietary information. In accord with its national security objective to leverage legally and illegally acquired dual-use and military-related technologies to its advantage, China uses its intelligence services, computer intrusions, and other illicit approaches to obtain national security and export-controlled technologies, controlled equipment, and other materials. China's influence operations are coordinated at a high level within the party-state.

China leverages foreign investments, commercial joint ventures, academic exchanges, the experience of Chinese students and researchers, and state-sponsored industrial and technical espionage to increase the level of technologies and expertise available to support its military research, development, and acquisition. China blends intelligence and non-intelligence assets and frequently seeks to exploit Chinese citizens or persons with family ties to China who can use their insider access to steal trade secrets from U.S. companies. China's "Thousand Talents Program" seeks to recruit individuals from diaspora populations and recent emigrants to obtain scientific and technical information necessary for modernization of its defense technology. China's National Intelligence Law of 2017 compels all Chinese firms and entities to support, assist, and cooperate with Chinese intelligence services, and to turn over any data collected abroad or domestically to the Chinese government. The law provides for incentives for compliance and penalties for noncompliance.

About 80% of all economic espionage prosecutions brought by the U.S. Department of Justice have involved allegations of trade secret theft that would benefit China. About 60% of all trade secret theft cases had some nexus to China. It led the United States to launch a China initiative within the Department aimed at identifying and prosecuting those engaged in trade secret theft, computer hacking, and economic espionage with a dual focus of protecting the U.S. critical infrastructure against external threats through foreign direct investment and supply chain compromises, and combating covert efforts to influence the American public and policymakers without proper transparency.

In June 2020, a Chinese citizen was convicted of economic espionage, theft of trade secrets, and conspiracy to commit theft from two U.S. companies of semiconductor technology for China. He plotted with a Chinese university to steal the trade secrets for the benefit of China's government.

On July 23, 2020, the United States closed the Chinese Consulate in Houston, Texas, as the consulate was particularly aggressive in illegal spying and influence

operations and directly involved in fraud and theft of intellectual property from research institutions and companies in Texas. Chinese Communist Party agents working out of the consulate helped People's Liberation Army (PLA) officers "evade and obstruct" law enforcement to illegally conceal their military affiliations.

In November 2020, a Chinese national naturalized in the United States and employed for ten years by a defense contractor, was sentenced for exporting sensitive military technology to China. During a personal trip to China from December 2018 to January 2019, he brought unclassified technical information in his company-issued computer, in knowing violation of the Arms Export Control Act and the International Traffic in Arms Regulations.

In January 2021, a Chinese national was charged with criminal conspiracy to export U.S. power amplifiers to China from 2012 to 2015. He is alleged to have caused at least 18 shipments of export-controlled goods from the United States to Hong Kong, knowing that the goods would be then shipped to China.

In February 2021, a Chinese businessman residing in Hong Kong was indicted for conspiring to steal a U.S. company's trade secrets involving a silicon carbide technology worth millions with the intent of producing the technology in China. His co-conspirator allegedly was an engineer for the victimized company.

In April 2021, a Chinese national living in the United States, who had been admitted to the United States through the EB-5 Immigrant Investor Visa Program in 2014, pled guilty to conspiracy to unlawfully exporting hydrophones used for anti-submarine warfare from the United States to a Chinese military university without the required export licenses; visa fraud; making false statements to law enforcement agents regarding his customers and types of parts exported to China; money laundering; and smuggling hydrophones to the Chinese military university. The university has been on the U.S. Department of Commerce's Entity List for national security reasons since 2001.

In May 2021, a university researcher in the United States with strong ties to China was sentenced to 37 months in prison for making false statements to federal authorities as part of an immunology research fraud scheme. He had lied on applications to use approximately \$4.1 million in grants from the National Institutes of Health to develop China's expertise in rheumatology and immunology. For years, he concealed his participation in Chinese government talent recruitment programs and his affiliations with at least five research institutions in China.

In June 2021, the U.S. State Department issued a level 3 travel advisory for China due to China's arbitrary enforcement of local laws, including carrying out unlawful detentions and using bans on U.S. citizens and those of other countries without due process of law to compel individuals to participate in Chinese government investigations; pressure family members to return to China from abroad; influence Chinese authorities to resolve civil disputes in favor of Chinese citizens; and gain bargaining leverage over foreign governments. U.S. citizens traveling or residing in China may be detained without

access to U.S. consular services or information about their alleged crime, and may be subjected to prolonged interrogations and extended detention without due process of law.

China has a record of human rights abuses. Members of the security forces in China committed serious and pervasive abuses in 2020. Genocide and crimes against humanity occurred against the predominantly Muslim Uyghurs and other ethnic and religious minority groups in Xinjiang. Arbitrary detention by the government included the mass detention of more than one million Uyghurs and other members of predominantly Muslim minority groups in extrajudicial internment camps and subjected two million more to daytime-only “re-education” training. Other significant human rights abuses included arbitrary or unlawful killings, forced disappearances, and torture by the government; harsh and life-threatening prison conditions; political prisoners; the lack of an independent judiciary and Communist Party control over the judicial and legal system; arbitrary interference with privacy; pervasive and intrusive technical surveillance and monitoring; serious restrictions on free expression of the press and Internet with censorship and site blocking; interference with the rights of peaceful assembly, freedom of movement, assembly, and association; the inability of citizens to choose their government and restrictions on political participation; serious corruption; forced sterilization and abortion; forced labor and trafficking in person; several restrictions on labor rights; and child labor. Government officials and security services often committed human rights abuses with impunity.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall 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 the 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain 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 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. Section 7 of EO 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.” See *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B: Foreign Influence

The security concern relating to the guideline for foreign influence is articulated 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 that is 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.

Applicant’s parents-in-law and his spouse’s siblings and their spouses are all resident citizens of China. Review of Applicant’s contacts and connections to these foreign citizens are warranted to determine whether they present a heightened risk under AG ¶ 7(a) or create a potential conflict of interest under AG ¶ 7(b). Those disqualifying conditions provide:

(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.

Not every foreign contact or tie presents the heightened risk under AG ¶ 7(a). The "heightened risk" denotes a risk greater than the normal risk inherent in having a family member or a spouse's family member living under a foreign government. The nature and strength of the family ties or other foreign interests and the country involved (*i.e.*, the nature of its government, its relationship with the United States, and its human rights record) are relevant in assessing whether there is a likelihood of vulnerability to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government; a family member is associated with, or dependent on, the foreign government; or the country is known to conduct intelligence operations against the United States. In considering the nature of the foreign government, the administrative judge must take into account any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006).

There is no evidence that Applicant's spouse's family members in China have engaged in any activities contrary to U.S. interests or that they have been targeted or pressured. However, China is an authoritarian state with an extensive, pervasive history of engaging in economic and technological espionage against the United States. The country's poor human rights record and its efforts to acquire sensitive technology from the U.S. and U.S.-based entities, which includes the implementation of legislation and programs to that end, continue to hinder relations between the United States and China. It is conceivable that China could use Applicant's parents-in-law or his spouse's siblings or their spouses to obtain sensitive information from Applicant, especially if Chinese authorities learn of his defense contractor employment and his regular access to classified information with military applications. Applicant's brother-in-law #2 is married to a woman who was previously employed as a software engineer for a satellite control center affiliated with China's military or government (SOR ¶ 1.c). Brother-in-law #1 is married to a woman who is now on the faculty of a Chinese university of politics and law. However, as recently as February 2018, she was employed as a radar engineer at a Chinese military university (SOR ¶ 1.b). Sister-in-law #2 had a civil service position with a forestry bureau as of January 2019 (SOR ¶ 1.d). While there is nothing about work at a forestry bureau that suggests a heightened concern, and she is not currently working because she has to care for her spouse, there is little information in the record about her activities and associates. Given the substantial familial ties in China, Applicant has a heavy burden of persuasion to demonstrate that his and his spouse's relationships and contacts with her family in China present an acceptable security risk.

Applicant's spouse has close ties of affection to her parents in China, whom she contacts weekly or every other week. Since meeting Applicant in early 2011, she has traveled to China with him at least three times: in July 2012 so that he could meet her

family; in May 2016 for a cousin's wedding; and in April 2019 with their young daughter. She remained in China for two months during her trips with Applicant in July 2012 and April 2019 and during a subsequent trip with her daughter in October 2019. She intends to travel to China in the future to see her parents when COVID-19 pandemic-related restrictions are eased by China if she is granted a visa. Her parents attended her August 2015 wedding to Applicant in the United States. They came for six weeks around the time that she and Applicant had their first child in January 2018, and they were present for her doctorate-degree ceremony in 2016. Applicant's spouse has less contact with her siblings. She speaks with them on Chinese holidays, such as Chinese New Year and Autumn Festival, but two of her sisters and her twin brother attended her wedding to Applicant in the United States. She visits with her siblings and their spouses when she is in China.

Applicant had in-person contact with his parents-in-law and spouse's siblings during his trips to China. He had contact with his parents-in-law and two of his sisters-in-law and a brother-in-law in the United States during his and his spouse's wedding. He had in-person contact with his parents-in-law during the six weeks they were in the United States in early 2018, although it is unclear whether his parents-in-law stayed with him and his spouse in their home. He does not have any ongoing contact by telephone or electronic means with his spouse's family members because of the language barrier.

There is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of his or her spouse. See *e.g.*, ISCR Case No. 11-12659 (App. Bd. May 30, 2013). Applicant does not appear to be close to his spouse's family. However, Applicant understandably has close bonds of affection and obligation to his spouse. There is a theoretical risk of pressure or coercion that could be exercised against Applicant through his spouse and her close bonds to her immediate family members, especially to her parents but also to her siblings in China. These relationships create a potential conflict of interest for Applicant between his obligation to protect sensitive information and his desire to help his wife or her family members. AGs ¶¶ 7(a) and 7(b) apply.

The evidence shows that Applicant did not timely report his dating relationship or his marriage to his spouse, who was a Chinese national before she acquired her U.S. citizenship in April 2021. He testified that it did not occur to him to report her as a close foreign contact, despite the fact that he held a clearance for his duties and despite the often-reported strained relationship between China and the United States. Yet, the Government did not allege the failure to report as an issue of security concern that could possibly have triggered disqualifying condition AG ¶ 7(c), "failure to report or fully disclose, when required, association with a foreign person, group, government, or country." In ISCR Case No. 12-11375 at 6 (App. Bd. June 17, 2016) citing ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) and also ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003), the Appeal Board reiterated:

[C]onduct not alleged in the SOR may be considered for limited purposes, such as assessing an applicant's credibility; evaluating an applicant's

evidence of extenuation, mitigation, or changed circumstances; considering whether an applicant has demonstrated successful rehabilitation; or providing evidence for whole-person analysis under Directive ¶ 6.3.

In accord with Appeal Board precedent, the issue of Applicant's failure to timely report his foreign contacts will not be considered as a basis to deny clearance eligibility. The Government's case for application of AG ¶ 7(c) is unfounded. That said, the reporting of foreign contacts is relevant to assessing mitigation and the whole-person evaluation.

Four mitigating conditions under AG ¶ 8 warrant some discussion in this case. They are:

(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;

(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; and

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country.

While Applicant's relationship with his spouse's family may reasonably be characterized as distant, the closeness of the familial ties of these Chinese resident citizens to his spouse; China's ongoing aggressive targeting of U.S. defense technology and intellectual property; China's poor human rights record; and the Chinese military or government-affiliated employments to as recently as 2018 or 2019 of his spouse's brothers' spouses, preclude mitigation under AG ¶ 8(a). Although not alleged as raising disqualifying security concern, two of his spouse's family members (her twin brother and her older brother's spouse) are faculty members at their respective universities. As of Applicant's SF 86, his spouse's oldest sister was a professor at a university of science and technology in China. It is unclear whether any of his spouse's family members in China are or were members of the Chinese Communist Party, either voluntarily or as a requirement of their jobs. Even so, it is possible that pressure could be placed on Applicant through his spouse's ties to her parents and her siblings and their spouses.

AG ¶ 8(b) has some applicability in that Applicant has deep and longstanding relationships and loyalties in the United States. Applicant, his parents, and siblings are all native-born U.S. citizens. Applicant was raised and educated in the United States. All of his financial assets, including home ownership, are in the United States. His two children were born here. He and his spouse intend to remain permanently in the United States. To that end, his spouse became a naturalized U.S. citizen in April 2021, knowing that China does not recognize dual citizenship. She has a U.S. passport. There is no evidence that Applicant has any close relatives of his own in China.

AG ¶ 8(c) applies in that Applicant's contacts and communications with his parents-in-law and his spouse's siblings are infrequent. There is no evidence that Applicant has spoken to any of his spouse's family members since his last trip to China in April 2019. There is significant mitigating information in this case.

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 his conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(d). Those factors are as follows:

- (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.

Regarding the Government's concerns about Applicant's failure to inform company X, his first defense-contractor employer, about his dating relationship and then marriage to a Chinese national, it was not shown that he knowingly violated any policy or requirement in that regard. He testified that he cannot recall any security briefings or trainings at his former employment. Security Executive Agent Directive 3 (SEAD 3) established reporting requirements for personnel with access to classified information or who hold a sensitive position. Under SEAD 3, unofficial foreign travel and continuing association with known foreign nationals that involve bonds of affection, personal obligation, or intimate contact, are reportable activities. However, SEAD 3 was not effective until June 12, 2017, about three months before Applicant left company X for his current employment. There is no evidence that Applicant was made aware of his reporting responsibilities before he left company X.

Of some concern is Applicant's delay in informing his current employer about his marriage to a then Chinese national. He testified that he learned of the requirement during

onboard briefings in mid-September 2017, but he waited until October 24, 2017, to inform his current employer. He could not explain the delay in reporting the information other than that it occurred to him that it was important information. Applicant is credited with the voluntary disclosure, however. Also in his favor, his former and current managers hold him in high regard. He has demonstrated that he can handle classified information appropriately. Since beginning his present employment in September 2017, he has taken numerous trainings that have educated him about his security responsibilities, including the requirement to report foreign travel. He made a timely report of his April 2019 trip to China via his employer's Security Contact Reporting & International Protection Travel System computer program, which provides assurance that he will report any future foreign travel or contacts.

However, in foreign influence cases it must be acknowledged that people act in unpredictable ways when faced with choices that could be important to a family member. As reiterated by the Appeal Board in ISCR Case No. 19-01688 at 5 (App. Bd. Aug. 10, 2020), "Application of the guidelines is not a comment on an applicant's patriotism but merely an acknowledgment that people may act in unpredictable ways when faced with choices that could be important to a loved-one, such as a family member." Moreover, in evaluating Guideline B concerns, the Appeal Board has held that:

Evidence of good character and personal integrity is relevant and material under the whole person concept. However, a finding that an applicant possesses good character and integrity does not preclude the government from considering whether the applicant's facts and circumstances still pose a security risk. Stated otherwise, the government need not prove that an applicant is a bad person before it can deny or revoke access to classified information. Even good people can pose a security risk because of facts and circumstances not under their control.

ISCR Case No. 01-26893 (App. Bd. Oct. 16, 2002) (internal citation omitted).

Applicant's familial ties to China through his spouse currently present an unacceptable risk of undue foreign influence for the reasons noted above. His spouse intends to travel to China within the next year if she obtains a visa. Based on her history of previous travel, she is likely to take their two children with her and stay for an extended period. While she now enjoys the protections of U.S. citizenship, China has not always respected the rights of foreign travelers or its own citizens. Some of her siblings and their spouses have held or continue to hold positions that could bring their activities to the attention of Chinese authorities. The issue under Guideline B is whether Applicant could find himself in an untenable position of having to choose between the interests of his spouse or her family members China and his obligations as a clearance holder. Any country whose policies consistently threaten U.S. national security may be viewed as hostile for purposes of DOHA adjudications. See ISCR Case No. 19-00831 at 4 (App. Bd. July 29, 2020), citing *e.g.*, ISCR Case No. 17-04208 at 5 (App. Bd. Aug. 7, 2019). Given China's aggressive targeting of U.S. defense technology, it is conceivable that China could exert pressure on Applicant through his spouse and her close bonds to her family

in China. Applicant provided compelling evidence of his good character, but after considering his circumstances and Appeal Board precedent, I am unable to conclude that it is clearly consistent with the interests of national security to grant or continue security clearance eligibility for him.

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.d:	Against Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Elizabeth M. Matchinski
Administrative Judge