



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



In the matter of: )  
)  
) ISCR Case No. 21-02446  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Bryan Olmos, Esq., Department Counsel  
For Applicant: *Pro se*

11/30/2022

**Decision**

PRICE, Eric C., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline B (foreign influence). Eligibility for access to classified information is denied.

**Statement of the Case**

On December 16, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, foreign influence. The action was taken 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 adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

On December 23, 2021, Applicant answered the SOR, and elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted the Government’s written file of relevant material (FORM) dated March 22, 2022, including Items 1 through 4. Applicant was afforded an opportunity to file objections and

submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant submitted no response. There were no objections by Applicant, and Items 1-4 are admitted into evidence. The case was assigned to me on June 16, 2022.

### **Request for Administrative Notice**

As part of the FORM, Department Counsel requested that I take administrative notice of certain facts about the People's Republic of China (PRC or China) and about the United States' relations with China. The request was not admitted in evidence but is included in the record as Hearing Exhibit (HE) I. I have taken administrative notice of the facts contained in HE I. The most pertinent facts are summarized in the Findings of Fact, below.

### **Findings of Fact**

Applicant was born in the PRC and is 58 years old. She was initially educated in China, graduating from high school in 1980 and earning a bachelor's degree at a university in 1984. She earned a master's degree in the United States in 1994. She has been married since 1988; her husband was born in the PRC and is a naturalized U.S. citizen. They have two children, ages 21 and 26. She entered into the United States in 1993 and became a naturalized U.S. citizen in 2009. She has been employed by a federal contractor since January 2019. (Item 3 at 7-26; Item 4)

Under Guideline B, the SOR alleges that Applicant's mother, father, sisters, and mother-in-law are citizens and residents of China, and that she provides her mother with approximately \$1,000 in financial support annually. Applicant admitted all SOR allegations and noted that her father passed away in March 2021; she provided no additional information or documentary evidence. (Item 2)

In addition to admitting that each person identified in SOR ¶¶ 1.a through 1.e is a citizen and resident of the PRC, Applicant disclosed the following:

Her mother is 80 years old and retired. She loves her mother "dearly," and communicates with her daily. She has provided her mother financial support since 2000 to assist with food and rent, and as a sign of respect. She has provided approximately \$20,000 in total financial support in \$1,000 increments, "every few years." (SOR ¶¶ 1.a and 1.e) (Item 3 at 23-24, 32; Item 4 at 2-3)

Applicant's father died before the SOR issued. (SOR ¶ 1.b) (Item 1; Item 2 at 1)

Applicant has two sisters and both are employed by components of the Chinese government; one sister works for a public university and the other sister works for a city housing bureau. Applicant has deep affection for her sisters and communicates with them daily. (SOR ¶ 1.c) (Item 3 at 28-31; Item 4 at 2-3)

Applicant's mother-in-law is 87 years old and retired. She describes her mother-in-law as "nice," and indicated that she loves her and her family. They communicate monthly. (SOR ¶ 1.d) (Item 3 at 27-28; Item 4 at 2-3)

Applicant reported traveling to the PRC to visit family and for tourism in 2003, 2006, 2009, 2012 (for 21-30 days), 2016 (for greater than 30 days), and 2018 (for 6-10 days). (Item 3 at 34-38; Item 4 at 3)

The PRC is an authoritarian state in which the Chinese Communist Party is the paramount authority. China is one of two countries that pose the greatest espionage and cyber-attack threats to the United States. China is the most active strategic competitor responsible for cyber espionage against the U.S. Government, corporations and allies. The PRC has expansive efforts 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 its military modernization and economic development. About 80 percent of all economic espionage prosecutions brought by the U.S. Department of Justice allege conduct that would benefit the PRC, and at least 60 percent of all trade secret theft cases have at least some nexus to China. (HE I)

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 access to steal secrets. The PRC sometimes uses coercion or blackmail to manipulate its citizens overseas to conduct influence operations on behalf of China. Additionally, the PRC targets individuals in other countries to support its acquisition of foreign technology; seeks to recruit individuals primarily, but not exclusively, from relevant diaspora populations and recent emigrants from the PRC, as well as foreign national experts whose recruitment the PRC views as necessary to its scientific and technical modernization, especially with regard to defense technology. The PRC also has significant human rights issues including pervasive and intrusive technical surveillance, arbitrary detention, forced labor, trafficking in persons, and has been found to have committed crimes against humanity against members of ethnic and religious minority groups in the China. (HE I)

### **Policies**

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.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied 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, reliable information about the person, past and present, favorable and unfavorable.

"The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15. 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." *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988); see AG ¶ 2(b).

The protection of the national security is the paramount consideration. Under AG ¶ 2(b), any doubt will be resolved in favor of the national security." 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 *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

The security concern for foreign influence is set out in AG ¶ 6:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. Those that are potentially applicable in this case include:

(a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or

resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology.

Applicant's mother, two sisters, and mother-in-law are citizens and residents of China. In-laws represent a class of persons contemplated by the Directive as presenting a potential security risk. As a matter of common sense and human experience, there is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of that person's spouse. See, e.g., ISCR Case No. 09-06831 at 3 (App. Bd. Mar. 8, 2011).

China actively engages in espionage efforts against the United States and exploits Chinese citizens or persons with family ties to the PRC to gain information. Applicant's connections to her Chinese family members and mother-in-law create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. AG ¶¶ 7(a) and 7(b) have been raised by the evidence.

The security concerning condition alleged in SOR ¶1.b is now moot. Additionally, SOR ¶ 1.e alleges Applicant provides financial support to her mother, a fact relevant to assessment of the nature and depth of her relationship with her mother, but it does not raise any independent security concern beyond those alleged in SOR ¶ 1.a. When the same conduct is alleged twice in the SOR under the same guideline, as in SOR ¶¶ 1.a and 1.e one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005). SOR ¶ 1.e is concluded for Applicant.

AG ¶ 8 provides conditions that could mitigate security concerns. Three potentially apply in this case:

(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.

I considered the totality of Applicant's ties to China and the adversarial relationship China has with the United States. *See, e.g.*, ISCR Case No. 17-03450 at 3 (App. Bd. Feb. 28, 2019). Because of that adversarial relationship, Applicant has a "very heavy burden" of persuasion as to mitigation. *See, e.g.*, ISCR Case No. 17-04208 at 5 (App. Bd. Aug. 7, 2019). In foreign influence cases, the nature of the foreign government and its intelligence-gathering history are important considerations. There is a rational connection between an applicant's family ties in a country whose interests are adverse to those of the United States and the risk that the applicant may fail to protect classified information. *See, e.g.*, ISCR Case No. 12-08412 at 2-3 (App. Bd. Sep. 11, 2015).

AG ¶¶ 8(a) and 8(c) do not apply. Applicant has regular, frequent contact with her mother, two sisters, and mother-in-law in China, including regular visits. She provides regular financial support to her mother and maintains deeply held bonds of affection to her mother and sisters, and imputed bonds of affection to her mother-in-law. The foreign influence concerns are increased because China aggressively and actively engages in espionage against the U.S., and seeks to exploit Chinese citizens or persons with family ties to China, especially with regard to defense technology. There is insufficient evidence to conclude that the nature of Applicant's familial connections in China make it unlikely that she would be placed in a position of having to choose between her family interests and the interests of the United States.

Applicant was raised, educated, and lived in China until the age of 29; she then entered the U.S. and continued her advanced education, became a U.S. citizen, and has raised a family here. She understandably has close ties to her family in China, visits them regularly, and maintains close contact. However, there is insufficient evidence to find there is no conflict of interest; either because her sense of loyalty or obligation to the foreign person or the PRC is so minimal, or because she has such deep and longstanding relationships and loyalties in the U.S., that she can be expected to resolve any conflict of interest in favor of the U.S. interest. AG ¶¶ 8(b) does not apply.

### **Whole-Person Analysis**

I have incorporated my comments under Guidelines B in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). 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 also considered that Applicant offered no documentary evidence in response to the SOR, and did not respond to the FORM, and therefore did not submit any additional explanation or evidence about her family

connections in China. I conclude that she did not present sufficient evidence to sustain the very heavy burden of persuasion necessary to overcome the security concerns established by her close connections to her family in China.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant failed to mitigate the security concerns raised 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.c, 1.d:	Against Applicant
Subparagraphs 1.b, 1.e:	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 security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Eric C. Price  
Administrative Judge