



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



In the matter of:)
)
) ISCR Case No. 21-01199
)
Applicant for Security Clearance)

Appearances

For Government: Nicole Smith, Esq., Department Counsel
For Applicant: Carl Marrone, Esq.

09/20/2023

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant mitigated the sexual behavior, use of information technology, and personal conduct security concerns, but he did not mitigate the foreign influence security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On November 24, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline D (sexual behavior), Guideline M (use of information technology), Guideline E (personal conduct), and Guideline B (foreign influence). The action was taken 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 adjudicative guidelines (AG) implemented by DOD on June 8, 2017.

Applicant responded to the SOR on February 3, 2022, and he requested a hearing. The case was assigned to me on February 16, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing (NOH) on February 23, 2023,

scheduling a video teleconference hearing for April 12, 2023. On March 27, 2023, Applicant requested a Mandarin Chinese translator for his hearing, due to his language barrier. A translator was assigned to the hearing, and I convened the hearing as scheduled.

I marked Department Counsel's discovery letter and exhibit list, and her request for administrative notice of facts pertaining to the People's Republic of China (China), as Hearing Exhibits (HE) I and II, and Applicant's exhibit and witness list as HE III. Government Exhibits (GE) 1 through 3 were admitted in evidence without objection. Applicant testified, called three witnesses, and submitted Applicant's Exhibits (AE) A through BB, which were admitted in evidence without objection. At Applicant's request, I kept the record open until April 26, 2023, for him to provide additional documents. By that date, he provided documentation that I marked as AE CC and DD and admitted in evidence without objection. I marked his accompanying exhibit list as HE IV. DOHA received the hearing transcript (Tr.) on May 1, 2023.

SOR Amendment

At the hearing, I granted Department Counsel's motion to amend the SOR, pursuant to ¶ E3.1.17 of the Directive, to conform to the evidence. She amended SOR ¶¶ 1.a and 1.b to strike the word "thumb" and replace it with "personal external." She amended SOR ¶ 4.c so that it reads, "Your brother is a citizen of China and resident of Japan." She amended SOR ¶ 4.d so that it reads "Your mother-in-law is a citizen and resident of China."

Findings of Fact

Applicant admitted all the SOR allegations. He is 60 years old. He was born in China, where he graduated from high school in 1980, earned an associate degree in 1983, and married in 1987. In September 1995, at age 32, he immigrated to the United States and earned a bachelor's degree in 1999. He divorced and remarried in 2006, became a naturalized U.S. citizen in 2008, divorced in 2011, and remarried in 2012. He has an adult child from his first marriage, who was born in China, became a naturalized U.S. citizen, and resides in the United States. He also has a minor child from his current marriage, who was born in the United States and resides with Applicant and his spouse in the United States. He has owned his home in the United States since October 2020. (Tr. at 25-35, 77, 87-88, 100, 107, 128-132; GE 1-2; AE A, P, Q)

When Applicant was solely a Chinese citizen, he held two Chinese passports that were issued to him in China in 1995 and 1999, and which expired in 1997 and 2009, respectively. When he became a naturalized U.S. citizen in 2008, he was issued a U.S. passport that expired in 2018. He was subsequently issued another U.S. passport in 2018, and it is not scheduled to expire until 2028. In 2017, he obtained a Chinese visa that is not scheduled to expire until 2027, and he uses this visa, along with his U.S. passport, when he travels to China, as further discussed below. (Tr. at 31-34, 93-95, 100-103, 112-113; GE 1-2)

Applicant worked in the private sector from 2007 to 2015. He also owned a health, beauty, and home care products business from 2010 to 2019. He was fired by a previous employer in October 2015, as further discussed below. He was subsequently unemployed until May 2016, when he first began working for a defense contractor. As of the date of the hearing, he worked as a technical support engineer for his current employer, another defense contractor, since approximately 2017. He earned certificates in security training in 2018, 2020, and 2021. He was granted an interim security clearance in approximately 2016. (Tr. at 7-8, 23-25, 73; GE 1-3; AE H, T)

Applicant's 51-year-old spouse was born in China. He met her in 2011. She worked as a medical doctor in China before immigrating to the United States in 2012. As of Applicant's June 2018 security clearance application (SCA), she was a Chinese citizen and held a permanent resident card. She became a naturalized U.S. citizen in January 2020. Applicant believed her previously issued Chinese passport expired. As of the date of the hearing, she was a licensed acupuncturist in the United States. She is aware that Applicant is seeking a DOD security clearance. (Tr. at 34-37, 105, 127-132; GE 1-2)

Applicant's father has been deceased since 2011, and Applicant's 87-year-old mother is a Chinese citizen residing in China. (SOR ¶ 4.a) She is a retired merchandise store worker. She owns her home, which is Applicant's childhood home, the value of which Applicant estimated was \$58,000 USD. Applicant expects that his two sisters will inherit their mother's home. Occasionally, Applicant's older sister and her adult son reside with her in her home. Applicant maintains in-person, telephonic, and electronic contact with his mother. She visited him in the United States in approximately 2001, and he travels to China to see her approximately once every two years. He last saw her in China in 2019, when he visited and stayed with her. He talks to her by telephone or chat room once every two to three weeks. Applicant's mother is aware that he underwent a background investigation. (Tr. at 37-45, 89-90, 103-105, 107-108; GE 1-2; AE A, E, I, J)

Applicant's father-in-law has been deceased since 2021, and Applicant's 78-year-old mother-in-law is a Chinese citizen residing in China. (SOR ¶ 4.d) His mother-in-law was a professor at a university before she retired in 2000. She receives a pension from the Chinese government of approximately \$750 USD monthly. She owns the condominium in which she lives, the value of which Applicant was unaware. Applicant expects that his mother-in-law's home will be inherited by his spouse and his spouse's sibling upon his mother-in-law's passing. Applicant's spouse talks to her mother daily, and Applicant talks to his mother-in-law two to three times monthly. She visited Applicant and his spouse in the United States twice. He and his spouse last saw his mother-in-law in 2017, when they traveled to China with their child to visit. His spouse travels to China on her own to visit her mother, and she last did so in approximately 2018. Applicant's mother-in-law is aware that he underwent a background investigation. (Tr. at 59-68, 91-93, 103, 105-107; GE 1-2; AE A, E, I, N, O)

Applicant's brother, age 51, and two sisters, ages 59 and 54, are Chinese citizens; his brother lives in Japan and his sisters live in China. (SOR ¶¶ 4.b-4.c) Applicant's brother has lived in Japan since 2010, and his spouse lives with him.

Applicant's brother is a cook in a restaurant, and his spouse works in a hotel. Applicant's sisters work for a ceramics company. They are divorced. Applicant's older sister and her adult son, who was recently laid off from an automaker factory, live on occasion with their mother in her home, and Applicant's older sister is the primary caregiver for their mother. When their mother had health issues in 2022, Applicant sent his older sister approximately \$2,300 USD to pay for their mother's medical expenses; he also sent this sister approximately \$500 USD to help her as she cared for their mother. In 2023, Applicant sent this sister approximately \$1,025 USD so that she could hire a part-time caretaker for their mother. He intends to continue to financially assist his sister as necessary in the future. Applicant maintains in-person, telephonic, and electronic contact with his brother and sisters. He sees his brother approximately once every four to five years, when they visit their mother in China. He last saw his siblings in China in 2019, when he traveled there to visit their mother. He talks by chat room to his older sister once every two to three months, and to his brother and younger sister once or twice a year. Applicant's siblings are aware that he underwent a background investigation. (Tr. at 44-59, 61, 69-70, 90-91, 104-107; GE 1-2; AE A, E, I, K, L, M)

During his November 2018 background interview, Applicant indicated that he has contact with a high school friend in China. Applicant reaches out to this friend when he is in China visiting family. Applicant stated in his October 2021 response to interrogatories that when he saw this friend in 2014, the friend told him he was a "self-employee and teach a middle and high school Math one to one by private." (GE 2)

Applicant traveled to China to visit his family in approximately 2009, 2011, 2012, 2014, 2017, and 2019. He also went to China in 2011 because his father passed away. He traveled to China on his own in 2011, 2012, 2014, and 2019, and he traveled to China with his spouse and child in 2017. He intends to continue to travel to China in the future to visit his family there. He does not own property or have any bank accounts in China. He estimated that the value of his home in the United States was \$850,000, and his remaining assets in the United States were \$290,000. Applicant stated in his SCA and indicated during his background interview that none of his family, or his high-school friend, are affiliated with the Chinese government or military, and that none of his foreign contacts are aware that he is under consideration for a national security position. Since approximately 2017, he donates to a nonprofit organization dedicated to exposing the evils of the authoritarian Chinese Communist Party government and supporting those seeking freedom and human rights for China. He stated, "[The United States] is my home. This is where I belong. I will never ever favor China over the country that [has] given me the chance to survive in freedom." (Tr. at 64-65, 70-73, 88-90, 101-104, 107-108; AE AA-BB; GE 1-2)

In October 2015, Applicant's then-employer, for whom he had been working since 2009, terminated him from employment for a serious violation of a company resource directive, after he inserted a personal USB hard disk containing extensive adult pornography into his work-issued computer in approximately August 2015. (SOR ¶ 1.a, 1.b, 2.a, 3.a) As a result of Applicant's action, his then-employer received an alarm that child pornography had been accessed. (SOR ¶ 1.b, 1.b, 2.a, 3.a) After his then-employer turned the matter over to the authorities, the county sheriff's office

investigated Applicant, executed a search warrant at his residence for the offense of child pornography, and seized numerous items of electronic and digital media. He was not arrested. A December 2016 letter from the state's attorney states, "Forensic analysis of the items seized from his home revealed images of evidentiary value." It further reflects that the state informed Applicant that it was "willing to forego a prosecution if Applicant forfeited any claim, rights, and possessory interest in the offending items." Applicant was never charged with a crime. (Tr. at 73-88, 95-100, 108-111, 113-114; GE 1-3; AE A-D, F)

Applicant denied ever viewing child pornography. He also denied accessing illegal content on his company computer. He admitted to viewing adult pornography on his personal computer beginning in 1995, when he was living in the United States without his then-spouse, and he saved a personal collection of it onto his personal USB hard disc. He stopped viewing and downloading adult pornography in 2000, after his then-spouse moved to the United States, and he had not accessed his USB hard disc containing such content since that time. In 2015, when he used his USB hard disc to back up files from his company computer, due to issues with company laptops dying, software crashing, and the company's failure to provide employees with storage devices, he forgot that he had adult pornography on his USB hard disc. He acknowledged that he should have used an empty USB, and he was aware of the company policy against viewing pornography on his work computer. (Tr. at 73-88, 95-100, 108-111, 113-114; GE 1-3; AE A-D, F)

Applicant had no previous unfavorable incidents with this employer, and he has not had any unfavorable incidents since, to include with his current employer. He expressed remorse for his actions and stated that he learned his lesson not to use a personal device on his company computer and to follow company policies. He also stated that he timely completes annual training with his employer, and he follows his employer's policies and procedures. (Tr. at 73-88, 95-100, 108-111, 113-114; GE 1-3; AE A-D, F)

Applicant's manager, and coworker since 2018, described Applicant in her January 2022 letter, as a dedicated employee and asset. A coworker of approximately seven years also described him as a hard-working and dedicated employee. Three former coworkers, who are also close friends of Applicant, attested to his reliability, trustworthiness, and work ethic. Applicant's spouse, and his adult child, attested to Applicant's character, describing him as honest, trustworthy, personable, and a good family man. He received favorable performance evaluations from his employer in 2020 and 2021. (Tr. at 115-132; AE G, R-S, U-Y, CC, DD)

China

China is an authoritarian state in which the Chinese Communist Party is the paramount authority. Communist Party members hold almost all top government and security apparatus positions.

China has rapidly become more assertive, and it is the only competitor potentially capable of combining its economic, diplomatic, military, and technological power to mount a sustained challenge to a stable and open international system. It will remain the top threat to U.S. technological competitiveness as its government targets key sectors and proprietary commercial and military technology from the United States and allied companies and institutions. It uses a variety of tools, from public investment to espionage, to advance its technological capabilities.

China's National Intelligence Law of 2017 forms the baseline of the modern data collection regime, and compels all Chinese firms and entities to support, assist, and cooperate with Chinese intelligence services, creating a legal obligation for those entities to turn over data collected abroad and domestically. It has expansive efforts in place to acquire U.S. technology, to include sensitive trade secrets and proprietary information.

China's intelligence services, as well as private companies and other entities, frequently seek to exploit Chinese citizens or persons with family ties to China who can use their insider access to corporate networks to steal secrets using removable media devices or email. Most Chinese cyber operations against U.S. private industry that have been detected are focused on cleared defense contractors or information technology and communications firms whose products and services support government and private sector networks worldwide.

Multiple U.S. criminal indictments since 2015 involve Chinese nationals, naturalized U.S. citizens or permanent resident aliens from China, and U.S. citizens, procuring and exporting controlled items to China. China's efforts to acquire sensitive, dual-use, or military-grade equipment included radiation hardened integrated circuits, monolithic microwave integrated circuits, accelerometers, gyroscopes, naval and marine technologies, syntactic foam trade secrets, space communications, military communication jamming equipment, dynamic random-access memory, aviation technologies, and anti-submarine warfare technologies. About 80% of all economic espionage prosecutions brought by the U.S. Department of Justice allege conduct that would benefit the Chinese state, and there is at least some nexus to China in around 60% of all trade secret theft cases.

The U.S. Department of State reported that in 2021, significant human rights issues in China included: arbitrary or unlawful killings, forced disappearances, torture, and arbitrary detention by the Chinese government; harsh and life-threatening prison and detention conditions; political prisoners; politically motivated reprisal against individuals outside the country; the lack of an independent judiciary and Communist Party control over the judicial and legal system; arbitrary interference with privacy, including pervasive and intrusive technical surveillance and monitoring; punishment of family members for offenses allegedly committed by an individual; serious restrictions on free expression, the press, and the internet; serious restrictions on internet freedom; substantial interference with the freedom of peaceful assembly and freedom of association; severe restrictions and suppression of religious freedom; substantial restrictions on freedom of movement; refoulement of asylum seekers to North Korea;

the inability of citizens to choose their government peacefully through free and fair elections; serious restrictions on political participation; serious acts of government corruption; forced sterilization and coerced abortions; trafficking in persons; severe restrictions on labor rights; and child labor. Since the imposition of the National Security Law on June 30, 2020, China unilaterally and arbitrarily exercises police and security power in Hong Kong.

In 2019, China's response to terrorism remained difficult to distinguish from the government's suppression of peaceful activities that authorities deemed separatist or subversive in nature. Details about alleged terrorism-related incidents inside China were difficult to verify due to a lack of transparency and information from Chinese authorities. As in 2018, Chinese officials continued to claim that no violent terrorist incidents have occurred in the country since 2016, owing to the government's "new counter-extremism policies," to justify Beijing's repressive campaign in Xinjiang.

The U.S. Department of State in April 2022 rated China as Level 3: Reconsider Travel to China and Hong Kong, due to arbitrary enforcement of local laws and COVID-19 related restrictions, and it ordered the departure of non-emergency U.S. Government employees and all family members from the Consulate General Shanghai consular district, due to a surge in COVID-19 cases and the impact of restrictions related to China's response.

Policies

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 to be used in evaluating an applicant's eligibility for access to classified information.

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

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate,

or mitigate facts admitted by the applicant or proven by Department Counsel.” 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

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

Analysis

Guideline D, Sexual Behavior

AG ¶ 12 expresses the security concern for sexual behavior:

Sexual behavior that involves a criminal offense; reflects a lack of judgment or discretion; or may subject the individual to undue influence of coercion, exploitation, or duress. These issues, together or individually, may raise questions about an individual’s judgment, reliability, trustworthiness, and ability to protect classified or sensitive information. Sexual behavior includes conduct occurring in person or via audio, visual, electronic, or written transmission. No adverse inference concerning the standards in this Guideline may be raised solely on the basis of the sexual orientation of the individual.

AG ¶ 13 describes conditions that could raise a security concern and may be disqualifying. I considered the following relevant:

(a) sexual behavior of a criminal nature, whether or not the individual has been prosecuted; and

(d) sexual behavior of a public nature or that reflects lack of discretion or judgment.

In violation of company policy, Applicant inserted a personal USB hard disk containing extensive adult pornography into his work-issued computer in 2015, and his then-employer consequently received an alarm that child pornography had been accessed. Although Applicant denied ever viewing child pornography, the letter from the

state's attorney reflects that forensic analysis of the items seized from his home revealed images of evidentiary value. ¶¶ 13(a) and 13(d) apply.

I have considered all of the mitigating conditions under AG ¶ 14. I considered relevant AG ¶ 14(b), "the sexual behavior happened so long ago, so infrequently, or under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or judgment." This was an isolated incident that occurred nearly eight years ago. Applicant was not arrested or charged with any offense. He was remorseful and learned his lesson not to use a personal device on his company computer and to follow company policies. ¶ 14(b) is established.

Guideline M, Use of Information Technology

AG ¶ 39 expresses the security concern for use of information technology:

Failure to comply with rules, procedures, guidelines, or regulations pertaining to information technology systems may raise security concerns about an individual's reliability and trustworthiness, calling into question the willingness or ability to properly protect sensitive systems, networks, and information. Information Technology includes any computer-based, mobile, or wireless device used to create, store, access, process, manipulate, protect, or move information. This includes any component, whether integrated into a larger system or not, such as hardware, software, or firmware, used to enable or facilitate these operations.

AG ¶ 40 describes conditions that could raise a security concern and may be disqualifying. I considered the following relevant:

(e) unauthorized use of any information technology system; and

(f) introduction, removal, or duplication of hardware, firmware, software, or media to or from any information technology system when prohibited by rules, procedures, guidelines, or regulations or when otherwise not authorized.

In violation of company policy, Applicant inserted a personal USB hard disk containing extensive adult pornography into his work-issued computer in 2015, and his then-employer consequently received an alarm that child pornography had been accessed. AG ¶¶ 40(e) and 40(f) apply.

I have considered all of the mitigating conditions under AG ¶ 41 and considered relevant AG ¶ 41(a), "so much time has elapsed since the behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment." For the same reasons set forth above in my Guideline D analysis, I find that AG ¶ 41(a) is established.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

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

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I considered the following relevant:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information.

In violation of company policy, Applicant inserted a personal USB hard disk containing extensive adult pornography into his work-issued computer in 2015, and his then-employer consequently received an alarm that child pornography had been accessed. Although Applicant denied ever viewing child pornography, the letter from the state's attorney reflects that forensic analysis of the items seized from his home revealed images of evidentiary value. AG ¶ 16(c) applies.

I have considered all of the mitigating conditions under AG ¶ 17 and considered the following relevant:

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

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

For the same reasons set forth above in my Guideline D and Guideline M analyses, AG ¶¶ 17(c) and 17(d) are established.

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern for foreign influence:

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. I considered the following relevant:

(a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

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

(e) shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

The nature of a nation's government, its relationship with the United States, and its human rights record are 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 the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the United States. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. *See generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

AG ¶ 7(a) requires substantial evidence of a “heightened risk.” The “heightened risk” required to raise one of these disqualifying conditions 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.

Applicant’s brother, although a Chinese citizen, resides in Japan. He has lived with his spouse in Japan since 2010, and he works as a cook in a restaurant and his spouse works in a hotel. I find that none of the relevant disqualifying conditions under ¶ 7 apply to Applicant’s brother and I find SOR ¶ 4.c in Applicant’s favor.

Applicant’s mother, sisters, and mother-in-law are citizens and residents of China. He and his spouse maintain close contact with them. China remains the top threat to U.S. technological competitiveness as its government targets key sectors and proprietary commercial and military technology from the United States and allied companies and institutions. China’s intelligence services, as well as private companies and other entities, frequently seek to exploit Chinese citizens or persons with family ties to China who can use their insider access to corporate networks to steal secrets using removable media devices or email. Most Chinese cyber operations against U.S. private industry that have been detected are focused on cleared defense contractors or information technology and communications firms whose products and services support government and private sector networks worldwide. Significant human rights issues persist in China. Applicant’s family in China create a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. AG ¶¶ 7(a), 7(b), and 7(e) apply.

I have considered all of the mitigating conditions under AG ¶ 8 and considered the following relevant:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States;

(b) there is no conflict of interest, either because the individual’s sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

Applicant's mother, sisters, and mother-in-law are Chinese citizens residing in China. Accordingly, AG ¶ 8(a) is not established for the reasons set out in the above discussion of AG ¶¶ 7(a), 7(b), and 7(e). Applicant and his spouse maintain close contact with their family in China. AG ¶ 8(c) is not established.

Applicant immigrated to the United States in 1995. He earned a bachelor's degree in the United States in 1999, he became a naturalized U.S. citizen in 2008, his spouse became a naturalized U.S. citizen in 2020, and their child was born in the United States. He has owned his home in the United States since 2020, and his assets in the United States total approximately \$1,140,000. These are all factors that weigh in Applicant's favor. However, his ties to his family in China are also strong. As such, Applicant has not met his burden of demonstrating that he would resolve any conflict of interest in favor of the U.S. interest. AG ¶ 8(b) is not established.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress;
- and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(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 Guidelines D, M, E, and B in my whole-person analysis. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the sexual behavior, use of information technology, and personal conduct security concerns, but he did not mitigate the foreign influence security concerns

Applicant requested in his Answer for a waiver, in accordance with SEAD 4 Appendix C. The adjudicative guidelines authorize a waiver "despite the presence of substantial issue information that would normally preclude eligibility," with the provision that a waiver may be approved "only when the benefit of initial or continued eligibility clearly outweighs any security concerns," and that a waiver "may also require conditions for eligibility." I have concluded a waiver in this case is not warranted.

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 D: Subparagraphs 1.a - 1.b:	FOR APPLICANT For Applicant
Paragraph 2, Guideline M: Subparagraph 2.a:	FOR APPLICANT For Applicant
Paragraph 3, Guideline E: Subparagraph 3.a:	FOR APPLICANT For Applicant
Paragraph 4, Guideline B: Subparagraphs 4.a - 4.b: Subparagraph 4.c: Subparagraph 4.d:	AGAINST APPLICANT Against Applicant For Applicant Against 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.

Candace Le'i Garcia
Administrative Judge