



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



In the matter of:	)	
	)	
	)	ISCR Case No. 23-00544
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Andrea Corrales, Esq., Deputy Chief Department Counsel  
For Applicant: *Pro se*

07/10/2024

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**Decision**

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BENSON, Pamela C., Administrative Judge:

Based on a review of the pleadings, testimony, and exhibits, I conclude that Applicant has not mitigated the foreign influence and personal conduct security concerns. His request for national security eligibility is denied.

**Statement of the Case**

On April 12, 2023, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudication Services (CAS) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B (foreign influence) and Guideline E (personal conduct). This 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 implemented by the DOD on June 8, 2017.

On May 14, 2023, Applicant responded to the SOR and admitted in part, and denied in part SOR ¶ 1.a, and he admitted SOR ¶¶ 1.b and 2.a. He also submitted

documentation, and he requested a hearing before a Defense Office and Appeals (DOHA) administrative judge.

On April 4, 2024, DOHA issued a notice scheduling the hearing for May 13, 2024. The hearing proceeded as scheduled. Department Counsel submitted five documents, Government Exhibits (GE) 1 through 5, and a disclosure letter dated June 9, 2023, which I marked as Hearing Exhibit (HE) I. Applicant had a witness testify on his behalf, Applicant testified, and he submitted four documents labeled as Applicant's Exhibits (AE) A through D. All proffered documents were admitted into evidence without objection.

The Government requested that I take administrative notice of certain facts relating to the People's Republic of China (China). Department Counsel provided an eight-page summary of the facts, supported by 22 Government references pertaining to China, identified as HE II. The documents provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters not subject to reasonable dispute. They are set out in the Findings of Fact.

Applicant provided 19 pages of documents post-hearing, combined as AE E and AE F. There were no objections, and the documents were entered into evidence. The Defense Office of Hearings and Appeals (DOHA) received the transcript (Tr.) on May 22, 2024.

### **Findings of Fact**

After a thorough and careful review of the pleadings, testimony, and exhibits, I make the following findings of fact:

Applicant is 41 years old. In August 2010, he graduated from college with two bachelor's degrees. In May 2015, he earned a master's degree. He has been employed by a federal contractor since April 2021, and he is currently being sponsored for a DOD security clearance. He was previously employed by other federal contractors from December 2010 to February 2021, with one year of unemployment from August 2019 to August 2020. He held high-level security clearances while working for these federal contractors. He invented several high-tech projects and received five patents. He married a Chinese citizen in July 2019, they were separated a year later, and their divorce was finalized in September 2022. Applicant and his ex-wife share custody of their son, age four. (GE 1; Tr. 30, 53-55; AE E)

SOR ¶ 1.a alleges that Applicant's now ex-wife, ("D"), is a citizen of China, and he believes she is a spy for China. SOR ¶ 1.b alleges that his former parents-in-law are citizens and residents of China.

Applicant met D, a Chinese national, from a dating website. In February 2018, she initially contacted him, and her first question to Applicant was to ask who was his employer. They eventually scheduled a first date. In early summer of 2018, on their second date, D told Applicant that she was in the United States illegally. At the time,

Applicant held a Top Secret/SCI security clearance. He properly reported this information to his facility security officer (FSO) who advised him that he most likely would not be able to continue his employment if he maintained a relationship with an illegal alien. Applicant then told D that he could not date her because she was in the country illegally, but D then replied that she had been joking and showed him a green card. She asked Applicant to fix software on her laptop and also requested his assistance in improving her memory. (Tr. 37-38, 57-63, 65-67)

Applicant thought it was strange that D reached out to him initially on the dating website and that the first question she had asked him was about his employer. He also thought it peculiar that D claimed to be in the country illegally, but then stated she had been joking about it. He felt like she was testing him when she asked him to fix the software issue on her computer. He also wondered if she had investigated his background. His concerns, not all of which were reported in this decision, were labeled as "red flags." Applicant reported these red flags to his FSO, as required. (Tr. 37-38, 57-63, 65-67)

Within a month following their second date, Applicant and D were romantically involved. Another troubling incident occurred after they went to a party with D's co-workers, and she became extremely intoxicated. Later that night while they were lying in bed together, he was discussing some business models and how people made money from using these models. D told him that her business model was to steal technology and sell it to the Chinese government. After making that alarming statement, she passed out. Applicant reported this red flag to his FSO, and the Federal Bureau of Investigation (FBI) was notified of this information. (Tr. 39-41, 68)

In about October 2018, three FBI agents showed up unannounced at Applicant's place of employment. He agreed to work with these agents and report any other red flag behaviors from D. Within two months he met with the FBI agents on about four occasions, and he reported approximately 40 red flags that made him suspect D was a Chinese spy. Some of the information he reported was that D had tried to recruit him to work as a software engineer for China and told him he would be provided a house for free. He also saw pictures of D on her phone wearing military fatigues. D had also been a member of the People's Liberation Army (PLA). After she completed her Chinese military service, D came to the United States to study at a state university. She had used different dates of birth on her Chinese passport and on her U.S. driver's license. She had attempted to log into his cell phone. She sent him emails with attachments that had the Trojan virus which could have potentially stolen his data, monitored his keystrokes, and enabled the use of his computer's microphone and camera. He also discovered that she was taking medication for a bipolar disorder. (Tr. 35-37, 55-57, 70-72, 74-75; GE 3)

The FBI agents told Applicant that he should break ties with D, but they never disclosed to Applicant whether they thought D was a Chinese spy. The FBI agents told him that he was listed as D's sponsor to obtain U.S. citizenship. Applicant did not recall filling out any sponsorship documents for D. He truly feared D was a risk to national security. In December 2018, Applicant ended the relationship with D, and he moved to another state. He received new employment as a contractor. (Tr. 74-79)

Applicant had no communication with D from December 2018 to March 2019. In about April 2019 D contacted him and said she missed him and wanted to work on their relationship. She also told him that she wanted to have a baby with him. At this point, Applicant testified that he no longer thought D was a Chinese spy because at some point the FBI agents told him that a spy would never have a baby with their intended target. During his July 19, 2022 background interview, Applicant told the investigator that in the back of his mind, however, he still thought there was a possibility that D was a spy. (Tr. 33-34, 41-42, 79-81; GE 3)

In April 2019 Applicant traveled to visit D. He did not tell the FBI agents about his plans to meet with her or their earlier conversation, and he did not report to his FSO about his planned encounter with a Chinese national because, he said, "it didn't occur" to him. D got pregnant during this visit. In May 2019 she moved in with Applicant, which he reported to his FSO, and in June 2019 they were married. Although Applicant reported to his FSO that D had moved in with him, he did not mention his misgivings about her being a Chinese spy, or that he had worked with FBI agents concerning these suspicions at his previous place of employment. (Tr. 42-44, 80-86; GE 3, 5)

In August 2019, two months after they married, Applicant reported to his FSO that he believed his wife was a Chinese spy due to her "solicitation" and asking specific questions about his work. New FBI agents from his current state of residence came to his place of employment to discuss these concerns. The FBI barred Applicant's entry to his designated workspace because he was considered a risk to national security. Shortly thereafter, the federal contractor terminated Applicant's employment. He remained unemployed for one year and the marital relationship with D deteriorated. (Tr. 42-44, 80-86; GE 3, 5)

In January 2020, Applicant's son was born. Applicant stayed with D until July 2020, when he decided they should separate. The day before he left the marriage, D brought over a purported Ph.D. Chinese doctoral student who was specializing in a specific field. He asked for Applicant's help in research methods in that field. Applicant was immediately suspicious about this meeting because he is highly regarded in that field. He has made significant contributions in this field, and if he does not receive his DOD security clearance, he believes it would be detrimental to the U.S. interests. Applicant did not help the Chinese student and he saw this incident as another red flag. (Tr. 44, 50-52, 74, 87)

D's mother left China and came to the United States to help care for their son. After Applicant separated from D, he did not have any contact with D, his mother-in-law, or his son for about nine months. In about April 2021, D sent Applicant a text that said she was going to harm their son. He picked up his son and maintained sole custody of him for approximately eight months. He testified that as of January 2022, they share custody of their son, who spends six months with one parent and then six months with the other parent. They are currently trying to determine who will have custody of their son during the school year. He believes D has remarried and that her new spouse lost his DOD security clearance based on a conversation Applicant overheard while Skyping with his son. He believed her current spouse served in the U.S. military. Applicant does not

know whether D is a naturalized U.S. citizen. For a while he admitted that he was apprehensive that D may try to leave the country and take his son to China. He reported his concern to the U.S. Department of State (DOS). He no longer worries about this issue since the DOS has a system in place to prevent this type of situation and they have all of the necessary information. (Tr. 86-96)

In April 2021, when Applicant started his new job with his current employer, he reported to his FSO and fully disclosed his relationship with his ex-wife. The FSO testified at the hearing as a witness. In May 2021, new FBI agents from his current state of residence, as well as other government agents, met with Applicant for a period of approximately three days discussing details about his relationship with D. An FBI agent informed Applicant that D was in the process of being deported in about early 2019. She most likely called him and asked him to father a child with her in order to remain in the United States. The FSO also established a “threat mitigation plan,” and stated that Applicant is fully compliant with this plan. After meeting with the FBI and other government agents, Applicant has reported to the FSO any concerns about his communications with D and her attempts to elicit information from him. Applicant last met with government agents approximately one year ago. (Tr. 18-29, 96-101; GE 3, 5)

In Applicant’s April 2023 response to interrogatories, he listed that D has attempted (unsuccessfully) to elicit information from him by using their son as leverage. She requested Applicant to discuss his thoughts about geopolitical current events, because whatever he predicts ends up coming true, weeks, months, and even years later. She told him if he would provide this information, she would not ask the court for child support. (GE 3)

### **Character Evidence**

Applicant’s current FSO recommended Applicant be granted a DOD security clearance because he self-reported, as required, his concerns about D, and he is fully compliant with the threat mitigation plan. He is loyal to the United States, and he is not considered a threat to national security. In addition, a retired Admiral stated that Applicant functions as the federal contractor’s authority in his field of expertise. If Applicant were to leave the company, the company would lose a critical share of its cutting-edge knowledge in that field. (Tr. 18-29; AE D)

### **Administrative Notice - China**

I take administrative notice of the facts set forth in the Administrative Notice documents concerning China, which are incorporated herein by reference. China is a large and economically powerful country, with a population of more than a billion people and an economy growing at about 10% per year. China has an authoritarian government, dominated by the Chinese Communist Party. It has a poor record with respect to human rights, suppresses political dissent, and engages in arbitrary arrests and detentions, forced confessions, torture, and mistreatment of prisoners.

China is one of the most aggressive countries in seeking sensitive and protected U.S. technology and economic intelligence. It targets the United States with active intelligence gathering programs, both legal and illegal. China is in direct competition with the United States in many geopolitical and economic areas, and it is known to actively collect military, economic and industrial information about the United States. In addition to being the leading threat to the security of U.S. technology, China of late has emerged as a persistent cyber espionage threat to U.S. military and critical infrastructure systems. Much of that activity is conducted through the auspices of the PLA.

China's focus is on obtaining U.S. information and technologies beneficial to its military modernization and economic development. China's intelligence services, as well as private companies and entities, frequently seek to exploit Chinese citizens or persons with family ties to China who can use their insider 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. As a result, it is a growing threat to U.S. national security.

### **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(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for 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 EO 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline B: Foreign Influence**

The security concern under this guideline is set out in AG ¶ 6 as follows:

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.

Five disqualifying conditions under this guideline are relevant to this case:

(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;

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

(d): counterintelligence information, whether classified or unclassified, that indicates the individual’s access to classified information or eligibility for a sensitive position may involve unacceptable risk to national security;

(g): unauthorized association with a suspected or known agent, associate, or employer of a foreign intelligence; and

(h): indications that representatives or nationals from a foreign country are acting to increase the vulnerability of the individual to possible future exploitation, inducement, manipulation, pressure, or coercion.

Applicant has continuing relationships with D, a foreign national, and their young son. Due to these relationships, D has leverage over Applicant which could create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion under AG ¶ 7(a). Applicant has held longstanding concerns that D is a Chinese spy. That relationship, combined with factual information about China and its relationship with the United States, and the record evidence as a whole, also require application of AG ¶¶ 7(c), 7(d), 7(g) and 7(h).

The following mitigating conditions under this guideline are potentially 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, 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 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.

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. See, e.g., ISCR Case No. 12-08412 at 2-3 (App. Bd. Sep. 11, 2015).

I have carefully considered the fact that Applicant, D, and their son reside in the United States. It is important to note he does not have a relationship or any contacts with his former Chinese parents-in-law, and this is no longer a security concern in this case. Applicant's relationship with D and his son, however, cannot be considered casual, and



his communications with them are continuing and consistent. Although Applicant's sense of loyalty to the United States and his ties in this country are significant, that information is not sufficient to outweigh the heightened risk of coercion presented by a Chinese national Applicant married, divorced, and who he believed to be a Chinese spy. During the hearing, Applicant stated that he may have exaggerated the facts and now sees there is a logical and reasonable explanation for D's behaviors that does not cause concerns for national security.

The Administrative Notice documents report that China's intelligence services frequently seek to exploit Chinese citizens who can use their insider access to steal secrets. Applicant was initially very diligent in reporting information that could impact national security, but he used extremely poor judgment and disregarded reporting requirements in about April 2021. He received a communication from D, she said she wanted to have his baby, and he made immediate plans to meet with her. He should have reported to the FBI agents he had previously worked with about D's conversation and his plans to visit her. If he had, he may have discovered she was currently in the process of deportation and having his baby was most likely her plan to remain in the United States. In addition, he did not report to his current FSO, as required, that he was meeting with a Chinese national because "it didn't occur" to him. After they were married, he was terminated from this employment because he was considered a risk to national security. D served in the Chinese military, and she is a member of PLA. There are too many troubling behaviors in the record to dismiss D as a threat to national security. I find there remains a conflict of interest because D has leverage with their son, and Applicant should never be placed into a position where he has to choose between his son and the protection of U.S. classified information. Applicant has not met his "very heavy burden" of persuasion, and the foreign influence security concerns are not mitigated.

#### **Guideline E: Personal Conduct**

AG ¶ 15 describes the security concern about personal conduct as follows:

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

AG ¶ 16 lists two conditions, one that may not fit the facts of this case exactly, but the essence of which still raises security concerns and may be disqualifying in this case:

(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; and

(e): personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual group. Such conduct includes:

(1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

Applicant married a Chinese national who he believed to be a Chinese spy. China's intelligence services frequently seek to use or exploit Chinese citizens who can use their insider access to steal secrets. In about April 2019, Applicant failed to report adverse information about the Chinese national to the FBI and his current FSO, which showed poor judgment and an unwillingness to comply with rules and regulations. Applicant and D, now divorced, have a son together. The above disqualifying condition applies.

AG ¶ 17 includes conditions that could mitigate security concerns:

(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;

(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;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

(f) the information was unsubstantiated or from a source of questionable reliability.

Applicant has a child with D, a woman whom he believed, up until the hearing was conducted, was a Chinese spy. According to Applicant, D has used his son as leverage to elicit information from him in the past, and I find it likely she will continue to use his son as leverage in the future. He is regarded as an expert in a specific field, and China and the U.S. are actively involved in this highly technological advancement and pursuit. I find Applicant to be an upstanding and loyal American, however, he used extremely poor judgment in this scenario, and has placed himself in a compromising position. Applicant was compliant with required adverse information reporting until approximately April 2019. Following his termination from employment and subsequent divorce, he has purportedly corrected his shortcomings and is now motivated to report all foreign national contacts through the use of a threat mitigation plan. However, his current prevention of such

problems in the future does not preclude careful consideration of his security worthiness in light of his recent poor decision-making and irresponsible behavior. Protection of our nation's secrets remains paramount. Based on the evidence in the record, I find that personal conduct security concerns are not mitigated.

### **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 B and E and the factors in AG ¶ 2(d) in this whole-person analysis.

Applicant has shown himself to be a patriotic American citizen and a well-respected contributor to the defense industry. Due to poor choices, he has placed himself in a precarious situation with a Chinese national he has long believed to be an active spy for China. Overall, the record evidence leaves me with questions and doubts as to Applicant's suitability for national security eligibility and a security clearance. For all these reasons, I conclude Applicant failed to mitigate the foreign influence and personal conduct security concerns.

### **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
Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b.:	For Applicant

Paragraph 2, Guideline E:

AGAINST APPLICANT

Subparagraph 2.a.:

Against Applicant

**Conclusion**

In light of all of the circumstances presented by the record in this case, I conclude that it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Pamela C. Benson  
Administrative Judge