



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



In the matter of: )  
)  
) ISCR Case No. 23-01050  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O’Connell, Esq., Department Counsel  
For Applicant: *Pro Se*

01/30/2024

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**Decision**

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BORGSTROM, Eric H., Administrative Judge

Applicant did not mitigate the foreign influence security concerns arising from his foreign family members who are citizens and residents of the People's Republic of China. Eligibility for access to classified information is denied.

**Statement of the Case**

On June 26, 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). The CAS acted 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.

In Applicant's July 5, 2023 response to the SOR (Answer), he admitted all three allegations without any explanations or further information. He did not attach any documentary evidence. He requested a decision by a Defense Office of Hearings and Appeals (DOHA) administrative judge based upon the written record in lieu of a hearing. (Answer)

On September 6, 2023, Department Counsel submitted a file of relevant material (FORM) and provided a complete copy to Applicant. Department Counsel's FORM includes Government Exhibits (GE) 1 through 7. GE 7 consists of a request for administrative notice of facts concerning the People's Republic of China (China) and appends excerpts of the U.S. Government documents referenced within the request. In the FORM, Department Counsel provided Applicant notice that failure to respond to the FORM may be considered a waiver of any objections to the admissibility of GE 1 through 7.

On September 12, 2023, Applicant received the FORM and its attachments. He did not submit a response to the FORM within 30 days of receipt or raise any objections to the admissibility of any of the FORM exhibits. This case was assigned to me on December 20, 2023. GE 1 through 6 are admitted into evidence without objection. I accepted GE 7 for administrative notice of the overall security profile and concerns regarding China.

### **Findings of Fact**

Applicant is 43 years old. He earned a bachelor's degree in 2002, master's degrees in 2004 and 2006, and a doctoral degree in August 2008. He has been employed in the computer science field with a DOD contractor since June 2015. He has been married since 2011, and he has two children, ages 11 and 7. (GE 5)

Applicant's wife was born in China in 1978. In 2004, she moved from China to Canada, where she lived until 2010. In 2010, she moved to the United States. She is a citizen of China (SOR ¶ 1.a.) and a U.S. legal permanent resident (LPR). She resides with Applicant and their two children in the United States. She is employed as a U.S. college professor. (GE 5-6)

Applicant's parents-in-law are citizens and residents of China (SOR ¶ 1.b.). They are employed by a local farm in China. Applicant and his wife have monthly telephonic contact with his parents-in-law. (GE 5-6)

Applicant's four sisters-in-law and their husbands are citizens and residents of China (SOR ¶ 1.c.). One sister-in-law and her husband are employed in retail sales. The second sister-in-law and her husband are both employed by the municipal government. The third sister-in-law is employed by the local tax bureau, and her husband is employed with the local courts. The fourth sister-in-law is also employed by the local government. Applicant and his wife have monthly to quarterly contact with each of her sisters. (GE 5-6)

Applicant's wife has two nephews who are citizens and residents of China (SOR ¶ 1.c.). There is no record evidence as to their employment or any connections with the Chinese government or military. Applicant and his wife have annual contact with her nephews. (GE 5-6)

### **Facts for Administrative Notice**

I have taken administrative notice of the following facts concerning the People's Republic of China (China) excerpted from the materials proffered by Department Counsel:

China is an authoritarian state in which the Chinese Communist Party is the paramount authority. China will remain the top threat to U.S. technological competitiveness, as China targets key sectors and proprietary commercial and military technology from U.S. and allied companies and institutions. (GE 7)

China likely represents the broadest, most active, and persistent cyber espionage threat to the U.S. Government and private-sector networks. China has expansive efforts in place to acquire U.S. technology to include sensitive trade secrets and proprietary information. It continues to use cyberespionage to support its strategic development goals - science and technology advancement, military modernization, and economic policy objectives. (GE 7)

China also uses threats, blackmail, and other forms of coercion to force members of Chinese diaspora communities to assist in carrying out China's priorities. China's hundreds of known "talent recruitment programs," such as the Thousand Talents, target ethnic Chinese and non-Chinese scientists and experts around the world to support a systematic strategy of identifying and acquiring technologies critical to Chinese scientific and technical modernization.

Approximately 80 percent of economic espionage prosecution and about 60 percent of all trade secret theft cases involve actions to benefit the Chinese state. Multiple U.S. criminal indictments since 2015 involve Chinese nationals, naturalized U.S. citizens or permanent resident aliens from China, and U.S. citizens, who have been alleged to procure and export controlled items to China, economic espionage, and sanctions-related criminal cases. In 2022 and 2023, there were several cases involving Chinese government intelligence officers actively targeting and recruiting U.S. service members, U.S. citizens, Chinese nationals in the United States, and U.S. government contractors to acquire sensitive or classified information. (GE 7)

In February 2023, a U.S. Air Force fighter shot down a Chinese high-altitude surveillance balloon over the United States coastline. The balloon had purposely traversed the United States seeking to monitor sensitive military sites. (GE 7)

The U.S. Department of State has reported significant concerns about human rights abuses inflicted by the Chinese government and its security forces, including arbitrary or unlawful killings by the government; forced disappearances by the government; torture by the government; arbitrary arrest and detention by the government; serious restrictions on free expression and media; and serious government corruption. (GE 7)

### **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 sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive 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.

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

AG ¶ 7(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

AG ¶ 7(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.

"The United States has a compelling interest in protecting and safeguarding [sensitive] information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). 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.

To establish AG ¶ 7(a), the Government must demonstrate a "heightened risk" of exploitation due to Applicant's contacts with his wife and her family members in China. The materials for administrative notice concerning China detail the significant security concerns raised by China's active targeting of U.S. classified and sensitive information through numerous collection methods. "An applicant with family members living in a country hostile to the U.S. has a very heavy burden to show that they are not a means through which the applicant can be subjected to coercion or exploitation." ISCR Case No. 11-12659 at 3 (May 30, 2013). Given China's intelligence-gathering capabilities and its interests inimical to the United States and collection capabilities, the Government has established a "heightened risk" required under AG ¶ 7(a). Applicant must overcome the "very heavy burden" to show that his foreign family members are not a means through which he may be influenced or coerced. AG ¶¶ 7(a) and 7(b) apply.

The following mitigating conditions under this guideline are potentially relevant:

AG ¶ 8(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;

AG ¶ 8(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; and

AG ¶ 8(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 parents-in-law, four sisters-in-law and their spouses, and two nephews are citizens and residents of China. Three of these sisters-in-law and their husbands are employed by the municipal government, local government, or courts. I have also considered the Chinese intelligence services' use of Chinese nationals and the Chinese diaspora to acquire sensitive or protected information. Applicant has not presented any evidence to show that it is unlikely for him or his wife to be placed in a position of having to choose between the interests of the family member and the interests of the United States. AG ¶ 8(a) does not apply.

Although Applicant has been employed by a DOD contractor for eight years, he has not presented further evidence of his and his wife's connections with the United States. Similarly, he has not presented information showing that his relationships with his in-laws are "so minimal," as required under AG ¶ 8(b). Given the paucity of evidence presented by Applicant, AG ¶ 8(b) does not apply.

Applicant and his wife maintain monthly contact with her parents and sisters. There is a rebuttable presumption that a person has obligations to his or her immediate family members, and this presumption extends to the immediate family members of an individual's spouse. See ISCR Case No. 02-1150 at 7 (App. Bd. May 19, 2007); ISCR Case No. 14-03112 at 3 n.1 (App. Bd. Nov. 3, 2015). Applicant has not presented any evidence to rebut this presumption of non-casual relationships. AG ¶ 8(c) does not apply. He did not mitigate the foreign influence security concerns.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a position of trust 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 position of trust must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline B and the factors in AG ¶ 2(d) in this whole-person analysis.

Applicant has been employed with a DOD contractor for over eight years, and he resides in the United States with his wife and two children. Given the paucity of evidence presented by Applicant, he has not established his and his wife's connections with the United States or rebutted the presumptions of non-casual relationships with his wife's parents and sisters in China. The foreign influence security concerns are aggravated by the several family members' employment with foreign municipal or local governments. He has not overcome the "very heavy burden" to show that his foreign family members are not a means through which he may be influenced or coerced. Applicant has not mitigated the foreign influence 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
Subparagraphs 1.a.-1.c.:	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 the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Eric H. Borgstrom  
Administrative Judge