

KEYWORD: Foreign Influence

DIGEST: Applicant is a 57-year-old senior systems analyst for a defense contractor. A native of the People's Republic of China (PRC), he came to the U.S. in November 1989 at the behest of the Chinese university where he had been employed as an instructor since 1982. He took advantage of the Chinese Student Protection Act of 1992 and acquired U.S. permanent residency in 1993, and naturalized U.S. citizenship in 2003. Foreign influence concerns are raised by the PRC residency and citizenship of his three sisters, one of whom works for the local people's congress, and by the PRC citizenship of a niece who lived with him for several months in 2006. Clearance is denied.

CASENO: 06-09980.h1

DATE: 04/06/2007

DATE: April 6, 2007

In re:

-----

SSN: -----

Applicant for Security Clearance

ISCR Case No. 06-09980

**DECISION OF ADMINISTRATIVE JUDGE  
ELIZABETH M. MATCHINSKI**

**APPEARANCES**

**FOR GOVERNMENT**

Francisco Mendez, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a 57-year-old senior systems analyst for a defense contractor. A native of the People's Republic of China (PRC), he came to the U.S. in November 1989 at the behest of the Chinese university where he had been employed as an instructor since 1982. He took advantage of the Chinese Student Protection Act of 1992 and acquired U.S. permanent residency in 1993, and naturalized U.S. citizenship in 2003. Foreign influence concerns are raised by the PRC residency and citizenship of his three sisters, one of whom works for the local people's congress, and by the PRC citizenship of a niece who lived with him for several months in 2006. Clearance is denied.

### **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. As required by Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan. 2, 1992), as amended, DOHA issued a Statement of Reasons (SOR) on June 22, 2006, detailing the basis for its decision—security concerns raised under Guideline B (foreign influence). Applicant filed an initial response to the SOR on July 7, 2006, in which he responded to the allegations and requested a hearing. In a supplemental response dated December 14, 2006, Applicant amended his responses to SOR ¶¶ 1.d and 1.g, and indicated he now wanted a decision based on the written record without a hearing.

The government submitted a File of Relevant Material (FORM) on January 24, 2007, consisting of 13 Items (1-13). On January 26, 2007, DOHA forwarded a copy of the FORM to Applicant and instructed him to respond within 30 days of receipt. Applicant filed a timely rebuttal to the FORM on February 21, 2007. On review, Department Counsel had no objections to Applicant's submission. The case was assigned to me on February 28, 2007, to determine whether it was clearly consistent with the national interest to grant or continue a security clearance for Applicant.

### **RULINGS ON PROCEDURE**

The government requested administrative notice be taken of several facts concerning the PRC, including that it is an economically powerful country with an authoritarian government dominated by the Chinese Communist Party; has a poor human rights record; possesses large and increasingly sophisticated military forces and weapons; is a foreign rival of the U.S.; targets U.S. intelligence; may place travelers to the PRC under surveillance; and was known to be an active collector of U.S. economic intelligence as of 2000. Source documents were included in the FORM as Items 7 through 12 for administrative notice.

Authority to consider the government's request is set forth in ¶ E3.1.10 of Department of Defense Directive 5220.6 (*The Administrative Judge may rule on questions of procedure, discovery, and evidence and shall conduct all proceedings in a fair, timely, and orderly manner.*). The DOHA Appeal Board has ruled that administrative or official notice in administrative proceedings is broader than judicial notice under the Federal Rules of Evidence. In ISCR Case No. 02-24875 (decided Oct. 12, 2006), the Appeal Board found no error in a DOHA administrative judge taking administrative

notice of a U.S. State Department *Country Reports on Human Rights 2000: Laos*, as the document was an official U.S. government report relevant to the issues in the case before him, and it was provided in advance to the applicant who had an opportunity to rebut its contents or to present alternative information for the judge to notice.

In this case, Applicant had the opportunity to review the source documents and he filed no objections. The State Department publications (*Background Note: China*; *Country Reports on Human Rights Practices-2005 for China (includes Tibet, Hong Kong, and Macau)*; and *Consular Information Sheet*) (Items 7, 8 and 12, respectively), and the Office of the National Counterintelligence Executive's *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage-2005* (Item 11) may properly be considered as official U.S. government reports. The unclassified excerpts from a bipartisan Select Committee of the U.S. House of Representatives, *U.S. National Security and Military/Commercial Concerns with the People's Republic of China* (Item 9) is also accepted, but primarily as a historical reference given its dated nature (May 1999). The Centre for Counterintelligence and Security Studies' *Intelligence Threat Handbook* (Item 10) is distinguishable as a product of a private contractor at the behest of the Interagency/OPSEC Support Staff. Administrative notice may be taken of non-governmental issuances, and will be accepted of this document given the absence of any objections from Applicant.

While the source documents may properly be considered, the government has requested notice of certain facts that may or may not be supported by the documentation. After review of Items 7, 8, 9, 10, 11, and 12, I agree to take administrative notice of the facts concerning the PRC and activities therein as requested by Department Counsel with the following caveats:

**In foreign relations, China and the United States have been rivals since the cold war, with particular disagreement on the status of Taiwan, and China has continued to resist what it considers to be superpower dominance by the United States, despite improving economic relations.** The U.S. House's Select Committee on U.S. National Security reported in 1999 that the U.S. assisted the PRC in avionics modernization of its jet fighters during the Cold War. In its *Background Note: China*, the U.S. State Department reports that in the 1970s and 1980s, China maintained its consistent opposition to "superpower hegemony" but China's focus was almost exclusively on the expansionist actions of the Soviet Union and Soviet proxies, such as Vietnam and Cuba. While U.S. China relations are sometimes complicated by events in Taiwan and Hong Kong, since the issuance of the Shanghai Communiqué in February 1972, the U.S. has supported the Chinese position that all Chinese on both sides of the Taiwan Strait maintain that there is only one China and that Taiwan is part of China. Tensions between the countries raised by the Chinese crackdown of dissident students in Tiananmen Square and other incidents have not led to a permanent disruption in U.S-China relations. Moreover, the U.S. wants China to be a "global partner," a responsible stakeholder in the international community, and China has been an "important partner in U.S. counterterrorism efforts" since September 2001.

**Industrial espionage is intelligence-gathering "conducted by a foreign government or by a foreign company with direct assistance of a foreign government against a private U.S. company for the purpose of obtaining**

**commercial secrets.** The source document on which Department Counsel relies, *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage, 2005*, defines industrial espionage as “the acquisition of sensitive information that has independent economic value and that the owner has taken reasonable measures to protect, regardless of the perpetrator’s country of origin or whether a foreign government agent can be linked to the theft.” Nothing in this definition suggests that industrial espionage must be conducted directly by or with the direct assistance of a foreign government.

**Known to be active collectors of U.S. economic intelligence as of 2000, the National Counterintelligence Center (NACIC)’s 2000 Annual Report to Congress on Foreign Economic Collection and Industrial Espionage lists Taiwan and China among the active collectors of U.S. economic and proprietary information.** Department Counsel did not request administrative notice of the annual report for 2000. In the annual report for 2005 (Item 11), China and Russia are specifically cited as two of the most aggressive collectors for 2005. Taiwan is listed as one of the countries sending the most foreign visitors to DOE and DoD facilities during fiscal year 2005, but it is not identified specifically as one of the most active collectors.

### **FINDINGS OF FACT**

DOHA alleged under Guideline B, foreign influence, that Applicant’s brother (§ 1.a), three sisters (§ 1.b), and mother-in-law (§ 1.e) are resident citizens of the PRC; one of his sisters worked as a local government representative in the PRC (§ 1.c); a niece who is a citizen of the PRC lived with him in the U.S. (§ 1.d); Applicant was an instructor at a university in the PRC from about November 1982 to November 1989 (§ 1.f), and his first year of graduate study in the U.S. was financed by the Chinese university (§ 1.g), and Applicant and his spouse visited family members in the PRC from June 21, 1998 until July 27, 1998 (§ 1.h).

In his initial answer, Applicant denied the PRC citizenship and residency of his brother, as his brother had retired to Canada where he was a permanent resident. He admitted his three sisters and mother-in-law are resident citizens of the PRC, but denied that a sister’s staff position with the local people’s congress made her a local government employee. As for his niece, he indicated his niece’s stay with him was only transitional, that she was relocating and would be moved out very soon. Applicant admitted he had been employed as a computer languages and systems and signals instructor at the Chinese university before he came to the U.S.; that while his living expenses during his first year in the U.S. were sponsored by the Chinese university, the U.S. institution covered the remaining expenses. Applicant acknowledged his and his spouse’s travel to the PRC in 1998 to visit his ill father.

In his supplemental answer of December 2006, Applicant provided the lease showing that his niece had moved out of his home in July 2006, and of the Chinese Student Protection Act of 1992 under which he adjusted his status to U.S. permanent resident. In rebuttal to the FORM, Applicant indicated that the systems and signals course which he taught at the Chinese university was a

beginner course for biomedical engineering majors that “mainly included the mathematical analyses for general signals, such as biomedical signals.”

Applicant’s admissions are incorporated as findings of fact. After a review of the documents of record, I make the following additional findings.

## **Applicant's background and foreign ties**

Applicant was born in the PRC in May 1949. The youngest of six children, he is predeceased by his parents as well as by the elder of his two brothers. His other brother (age 66) is a PRC citizen but a legal permanent resident of Canada since December 1, 2003. Applicant's three sisters (ages 72, 68, and 61) are resident citizens of the PRC.

Applicant and his spouse, also a native of the PRC, married in March 1977. They had a son in November 1981. After three years of graduate study at a scientific and technological university (hereafter "Chinese university") in the PRC, Applicant was awarded his master of science degree in March 1982. For the next seven years, Applicant was a lecturer/instructor at the Chinese university where he taught courses in computer languages and a beginner level course for biomedical engineering majors that focused on mathematical analyses for general, biomedical signals.

In about November 1989, Applicant came to the U.S. to pursue technical research in biomedical engineering at a renowned medical school.<sup>1</sup> The Chinese university financed much of the cost of his first year with the remainder covered by the U.S. medical school. Under the terms of the sponsorship, Applicant was to return to the Chinese university after one year.

On April 11, 1990, the President of the United States issued Executive Order 12711. It directed the Attorney General to take any steps necessary to defer until January 1, 1994, the enforced departure of all PRC nationals and their dependents who were in the U. S. on or after June 5, 1989, up to and including the date of the order. These PRC nationals were allowed to maintain lawful status in the U.S. without a valid passport through January 1, 1994. Applicant continued his research at the U.S. medical school and cut his financial ties to the Chinese university. In mid-August 1992, he began working as a software programmer at an institute affiliated with the medical school. On October 1, 1992, the U.S. Congress passed the Chinese Student Protection Act of 1992. It provided for the acquisition of U.S. permanent residency status for those PRC nationals who had resided continuously in the U.S. since April 11, 1990, and were not physically present in the PRC for longer than 90 days between April 11, 1990 and October 1, 1992, unless conditions permitted their safe return to the PRC as certified by the President. Applicant took advantage of that statute and acquired lawful permanent residence in the U.S. in 1993.

From January 1997 to November 1998, Applicant was employed as a software engineer for the medical institute. On April 15, 1998, he was issued his PRC passport, which was valid until April 14, 2003. On June 21, 1998, Applicant, his spouse, and their son traveled to the PRC to see his 93-

---

<sup>1</sup>An unsigned report of personal subject interview, included as Item 13, gives the date of Applicant's spouse's entry as November or December 1990. Under ¶ E3.1.20 of the Directive, official records or evidence compiled or created in the regular course of business, other than DoD personnel background reports of investigation (ROI), may be received and considered without authenticating witnesses, provided the information has been furnished by an investigative agency pursuant to its responsibilities in connection with assisting the Secretary of Defense or Agency head concerned, to safeguard classified information within industry under Executive Order 10865. A report of investigation may be received with an authenticating witness. The DOHA Appeal Board has held that the right to object to an ROI may be waived, just as a party can waive a hearing. (ISCR 01-23356 App. Bd., Nov. 24, 2003). Applicant did not object to its inclusion in the record. While Item 13 was reviewed and considered, it was afforded less weight than Applicant's SF 86 and his various answers in resolving factual discrepancies.

year-old father, who was very ill. They visited with other family members as well during their five-week stay. Applicant did not return to the PRC when his father died in 2001.

In late November 1998, Applicant went to work as a senior systems analyst for his current employer. On February 6, 2003, he became a naturalized U.S. citizen, taking an oath to renounce all foreign allegiances, to support and defend the U.S. Constitution and its laws, and to bear arms or perform noncombatant service or civilian service on behalf of the U.S. if required. His spouse became a U.S. citizen in March 2003 and his son in August 2003.

Needing a clearance for his duties with the defense contractor, Applicant executed a security clearance application (SF 86) on January 25, 2005. He disclosed the PRC births of his parents and eldest brother who were all deceased, and the PRC citizenship and residency of the sister closest to him in age. He indicated that his other siblings (two sisters and one brother) and mother-in-law were PRC citizens but indicated "Unknown" as to their addresses. Applicant also disclosed his foreign employment for the Chinese university as a lecturer from January 1982 to November 1989, his possession of a valid PRC passport from April 15, 1998 to April 14, 2003, and his trip to the PRC in June/July 1998. He also disclosed a pleasure trip to Canada for two days in February 2004.

On February 21, 2006, Applicant was interviewed by an Office of Personnel Management (OPM) investigator about his foreign ties. Applicant discussed his employment at the Chinese university before he came to the U.S. in 1989, but averred he had not maintained any contact with anyone from the university. Supposed to return to the PRC after one year of research, he remained in the U.S. as Congress passed a law that allowed Chinese students to stay without having to return to China to complete their two years of residency. Applicant denied dual citizenship with the U.S. and China as he understood China does not recognize dual citizenship. His PRC passport was no longer valid, although he was not certain whether it became invalid automatically on him acquiring U.S. citizenship or on its expiration in November 2003. Applicant told the OPM investigator he had telephone contact with his family members in China: with his brother two or three times per year, with the youngest of his sisters five times per year, and with his other sisters two or three times per year. He also indicated he had in-person contact with his brother in Canada in 2004, and with his sisters when he went to China in 1998. The interviewer reported that Applicant further indicated his brother worked as an engineer for a Chinese television station in China, that his youngest sister was employed by the local government as a representative, and that his other sisters had been university professors until their retirements. Applicant denied that his spouse had a close relationship with her mother, who is also a resident citizen of the PRC, and described her contact with her mother as limited to once every year or two. Applicant, his spouse, and their son, visited her mother when they went to the PRC in 1998. Applicant also described monthly contact with a nephew (son of his eldest sister), who is a naturalized U.S. citizen living in the U.S. and working for the federal government. A niece (daughter of his youngest sister) had been in the U.S. for three or four years. She had moved the week before to Applicant's area for a job and was residing with Applicant temporarily while looking for an apartment. Applicant denied any preference, sympathy, or alliance with any foreign interests and that he could be placed under duress because of his contacts with family members in the PRC.

When he filed his initial response to the SOR in July 2006, Applicant indicated that his brother retired "years ago," and was living in Canada as a lawful permanent resident; that the youngest of his three sisters was a part-time staff member of an office in the local people's congress,

which he maintained was not a government office. He provided proof showing his brother acquired Canadian permanent residency in December 2003, which in light of his brother's age, leads me to conclude that Applicant was likely talking about his brother's past employment during the subject interview. It is less clear whether Applicant's brother was in the PRC as of February 2006. There is no evidence to contradict Applicant's representation that his brother was living in Canada as of July 2006. Applicant's claim of his sister being on staff of the local people's congress is considered a further clarification of her employment in the PRC. It is not clear whether Applicant told the OPM investigator that his sister worked as a "representative" for the local government without naming the people's congress, which is a local legislative entity.<sup>2</sup>

As of July 2006, Applicant's spouse had contacted her mother in the PRC "several times" to check on her health. Applicant did not speak with his mother-in-law. Applicant's niece was employed in the U.S. by the same university where Applicant had conducted his research in the early 1990s. She resided in Applicant's home from about February 2006 to mid-July 2006 when she found her own apartment.

### **The PRC's political and economic state**

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. The National People's Congress, the PRC's legislative body, is the highest organ of state power. In 2002, a practice began of naming local Chinese Communist Party secretaries to serve concurrently as head of the local people's congresses. This move has strengthened Communist Party control over these legislatures. During 2005, the PRC government's human rights record remained poor, with a trend toward increased harassment, detention, and imprisonment by government and security authorities of those perceived as threatening to government authority. Foreign visitors in the PRC may be placed under surveillance by security personnel, their hotel rooms, telephones, and facsimile machines monitored, and their personal possessions, including computers, searched without their knowledge or consent.

The PRC possesses large military forces (strategic nuclear forces, army, navy and air force), which are in the process of transformation into a smaller, more mobile, high tech military. The PRC acquired some advanced weapon systems from Russia but much of its air and naval forces continue to be based on 1960s era technology. The U.S. has made significant, tangible progress with the PRC on nuclear nonproliferation. The PRC was the first state to pledge "no first use" of nuclear weapons.

While Taiwan has complicated the relationship and been a source of discord between the U.S. and PRC at times, the U.S. formally recognizes the government of the PRC as the sole legal government of China. Since Tiananmen, the PRC has sought a higher international profile through

---

<sup>2</sup>The National People's Congress is the PRC's legislative body and the highest organ of state power in the PRC. See U.S. State Department's *Background Note: China* (Item 7). Under the election law, citizens have the opportunity to vote for local people's congress representatives at the county level and below, although in most cases the nomination of candidates in those elections was strictly controlled in 2005. See *Country Reports on Human Rights Practices-2005 for China* (Item 8 p.25). While local subgovernmental village committees are not considered government bodies, the local people's congress is regarded as a legislative body. The State Department reports that beginning in late 2002, a practice began of naming local Chinese Communist Party secretaries to serve concurrently as head of the local people's congress, a move that dramatically strengthened party control over these legislatures. (*Id.*).



its seat as a permanent member of the United Nations, and through diplomatic relations with other countries. The U.S. and PRC have a history of cooperation on scientific, environmental and more recently counterterrorism. China is an important trading partner of the U.S. Its trade surplus with the U.S. was \$201.6 billion in 2005.

In an effort to acquire advanced technology, the PRC has aggressively targeted sensitive and protected U.S. economic and militarily critical information. The PRC blends intelligence and non-intelligence assets, relying on covert espionage activity by personnel from government ministries, commissions, institutes, and military industries independent of the PRC intelligence services, and by targeting ethnic Chinese who have access to sensitive information.

## **POLICIES**

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has “the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information.” *Id.* at 527. The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). 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).

The adjudicative guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

## **CONCLUSIONS**

### **Guideline B—foreign influence**

Applicant’s sisters are resident citizens of the PRC. His brother is also a citizen of the PRC, although he also has permanent residency in Canada and was living in Canada as of July 2006. Applicant has two to three times yearly telephone contact with his two older sisters and his brother, and about five times yearly contact with the youngest sister. He visited his siblings when he was in the PRC in 1998 and with his brother in Canada in 2004. Applicant also provided a home for his niece from late January/early February 2006 to mid-July 2006. She is a PRC citizen as well. Disqualifying condition ¶ E2.A2.1.2.1. *An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country*, applies.

The DOHA Appeal Board has held it reasonable for the administrative judge to consider the significance not only of an applicant's ties, but also of his spouse's ties to a foreign country and the possible effect they may have on Applicant's contacts under Guideline B (*see* ISCR Case No. 01-02452, App. Bd. Nov. 21, 2002). Applicant's spouse is also a native of the PRC. Applicant told an OPM investigator in February 2006 that his spouse did not have a close relationship with her mother, and that she had rare telephone contact with her, once every year or two. However, he indicated more recently in July 2006 that while he does not have contact with his mother-in-law, his spouse "calls her several times to check her health condition." Accordingly, DC ¶ E2.A2.1.2.2. *Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists*, also applies.

The government's case for DC ¶ E2.A2.1.2.3. *Relatives, cohabitants, or associates who are connected with any foreign government* is based on Applicant's sister's staff position with the local people's congress, which Department Counsel submits is "connected with the Communist regime that controls the PRC." (FORM at 7). The supremacy of the Chinese Communist Party over all other government, military, and civilian entities is well documented (*see* Item 8 at 25, "Beginning in late 2002, a practice began of naming local CCP secretaries to serve concurrently as the head of the local people's congress, a move that dramatically strengthened party control over these legislatures."). However, it is his sister's employment with the local people's congress, a legislative body, which triggers DC ¶ E2.A2.1.2.3., rather than any connection or influence with a political party, although clearly there is an increased risk because of the pervasive influence of the Chinese Communist Party even at the local level. DC ¶ E2.A2.1.2.6. *Conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government*, must also be considered, given Applicant's trip to the PRC in 1998 to visit his relatives and U.S. State Department reports of PRC security personnel targeting foreign visitors without their knowledge or consent (*see* Item 12).

In light of the existing foreign connections, Applicant has a heavy burden of persuasion as to whether it is clearly consistent with the national interest to grant him a security clearance. The Directive provides for mitigation where the family members and/or close associates are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the Applicant to choose between loyalty to them and the United States (*see* ¶ E2.A2.1.3.1.).<sup>3</sup> As affirmed by the DOHA Appeal Board in ISCR 02-14995 (App. Bd. Jul. 26, 2004), both prongs must be satisfied to meet this mitigating condition. Applicant has failed to satisfy either.

---

<sup>3</sup>See MC E2.A2.1.3.1. *A determination that the immediate family members(s), (spouse, father, mother, sons, daughters, brothers, sisters) cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States.* The mitigating condition is bifurcated in nature ["A determination that the immediate family member(s). . . are not agents of a foreign power or in a position to be exploited by a foreign power. . . ."]. To construe the conjunction "or" as "and" would be against the plain language. While MC E2.A2.1.3.1. can be applied if an applicant satisfies only one of the two parts, a given adjudicative condition (either disqualifying or mitigating) cannot be read in such a way to be inconsistent with other adjudicative conditions. Under Guideline B, if foreign relations, who are not government agents or employees, are in a position to be exploited then MC E2.A2.1.3.1. does not mitigate the foreign influence concerns.

The term "agent of a foreign power" is not defined in the Directive.<sup>4</sup> The DOHA Appeal Board has not defined the term, but has issued decisions explaining it. "An employee of a foreign government need not be employed at a high level or in a position involving intelligence, military, or other national security duties to be an agent of a foreign power for purposes of Foreign Influence Mitigating Condition 1." (ISCR Case No. 02-24254, App. Bd. Jun. 29, 2004). In declining to adopt the definition of "foreign agent" set forth in the Foreign Intelligence Surveillance Act, 50 U.S.C. §1801 (b), the Board suggested that "agent" could include a person whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in part by a foreign principal. (ISCR Case No. 03-10954, App. Bd. Mar. 8, 2006).

Nothing is known about Applicant's sister's specific position and duties for the local people's congress. While the risk associated with her job is likely primarily under the second prong of ¶ E2.A2.1.3.1 (in position to be exploited), I cannot state conclusively that she is not an agent of a foreign power. Applicant's other sisters are retired university professors. There is no indication they are currently agents of a foreign power, although there is a heightened risk of undue coercion because of their past academic positions where their activities were likely to be noticed by governmental or Party authorities. Applicant's mother-in-law did not work outside the home.

Although not specifically stated in the adjudicative guideline, the particular foreign country of which the close relative or associate is a citizen or resides is relevant in determining the likelihood of undue influence being brought to bear on its citizens/residents. Countries with strong democratic institutions and respect for the rule of law are generally regarded as presenting less of a risk than totalitarian regimes with a record of human rights abuses, support for terrorist activities, or hostility to the U.S. The PRC has a poor human rights record and a history of targeting the U.S. to obtain sensitive and protected technologies. Applicant has not lived in the PRC since late 1989, and while his first year of research in the U.S. was funded in part by the Chinese university where he served as an instructor in computer languages and biomedical signals and systems before he came to the U.S., he has not had any tie, financial or otherwise, to the Chinese university since then. Yet his present employment with a defense contractor, especially given his past affiliation with the Chinese university, makes him an attractive target. In the absence of any indication that Applicant plans to travel to the PRC in the future, the risk of undue foreign influence is primarily through his sisters in the PRC. The risk is substantially lessened with respect to his brother, who is a legal resident of Canada. Applicant's niece is similarly removed from the physical reach of the PRC military and security authorities, but her visa status in the U.S. is unknown.

Common sense suggests that the stronger the ties of affection or obligation, the more vulnerable a person is to being manipulated if the relative is improperly influenced, brought under control, or even used as a hostage by a foreign intelligence or security service. Even though his spouse has contacted her mother several times to check on her health, Applicant is not likely to jeopardize the life he has enjoyed in the U.S. for his mother-in-law, who is 91 and in ill health. He

---

<sup>4</sup>The phrase "agent of a foreign power" is a statutory term of art defined in 50 U.S.C. § 1801(b). It does not include a person who is simply employed by a foreign government, unless they are so employed in the U.S., or they are engaged in intelligence gathering or terrorism. The federal statute dealing with national security and access to classified information, 50 U.S.C. § 438(6), adopted the definitions of "foreign power" and "agent of a foreign power" from 50 U.S.C. § 1801. While I am not persuaded that the term "agent of a foreign power" should be more expansively defined than as set forth in 50 U.S.C. § 1801(b) and by reference 50 U.S.C. § 438(6), I am required to follow Appeal Board precedent.

has no personal relationship with her. In contrast, despite his limited contact with his sisters in the PRC (telephone contact from two to five times yearly depending on the sister), there is sufficient evidence of a bond with these siblings through his calls, his visit with them in 1998, and his assistance in providing a temporary home for his youngest sister’s daughter. His niece lived with him for several months in 2006 until she found her own apartment. While Applicant may well have seen this niece only twice in person before she came to the U.S., it is reasonable to infer that they developed a relationship over the months she resided in his home. MC ¶ E2.A2.1.3.3. *Contact and correspondence with foreign citizens are casual and infrequent*, does not apply.

**Whole Person Analysis**

“The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is eligible for a security clearance.” ¶ E2.2.1. Applicant has established significant bonds to the U.S., most notably citizenship in 2003 and continuous employment since August 1992. He has traveled to the PRC only once in the past ten years, which was in 1998 to see his ill father. Yet primarily because of his bond to his sisters who are resident citizens of the PRC—a circumstance clearly beyond his control—there is an unacceptable risk of undue foreign influence. With so little known about his relatives’ activities and associations in the PRC, I am unable to conclude that it is clearly consistent with the national interest to grant him access.

**FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline B:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant

**DECISION**

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Elizabeth M. Matchinski  
Administrative Judge