



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



In the matter of:	)	
	)	
	)	ISCR Case No. 12-05809
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Eric Borgstrom, Esq., Department Counsel  
For Applicant: *Pro se*

05/28/2013

**Decision**

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings, testimony, and exhibits, I conclude that Applicant failed to mitigate the Government's security concerns under the foreign influence adjudicative guideline. Her eligibility for a security clearance is denied.

**Statement of the Case**

On November 12, 2010, Applicant signed and certified an Electronic Questionnaire for Investigations Processing (e-QIP). On January 9, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, Foreign Influence. The DOD acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines for Determining Eligibility for Access to

Classified Information (AG), effective within DOD for SORs issued after September 1, 2006.

On February 22, 2013, Applicant answered the SOR, provided additional information, and requested a hearing before an administrative judge at the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on April 8, 2013, and a notice of hearing was issued on April 18, 2013. I convened a hearing on May 6, 2013, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

During the hearing, the Government called no witnesses and introduced two exhibits, which I marked as Ex. 1 and Ex. 2 and admitted without objection. The Government offered for administrative notice a summary memorandum containing facts about the People's Republic of China (China) as found in 14 official U.S. Government documents. The Government also provided for administrative notice the 12 source documents from which the facts in the summary memorandum were derived. I marked the Government's summary memorandum as Hearing Exhibit (HE) 1. Applicant did not object to my taking notice of the facts about China in the summary memorandum or in the source documents.

Applicant testified and called no witnesses. She introduced 12 exhibits, which were identified as Ex. A through Ex. L and admitted without objection. Applicant also offered one document for administrative notice, which I marked as HE 2 and admitted without objection. Applicant offered one post-hearing document, which was marked as Ex. M and entered in the record without objection. DOHA received the transcript (Tr.) of the hearing on May 16, 2013, and on that day, the record was closed.

### **Findings of Fact**

The SOR contains seven allegations under Guideline B, Foreign Influence (SOR ¶¶ 1.a. through 1.g.). In her Answer to the SOR, Applicant admitted the allegations at ¶¶ 1.c., 1.d., 1.e., and 1.f. She denied the allegations at ¶¶ 1.a., 1.b., and 1.g. and provided additional information. Applicant's admissions are admitted as findings of fact.

After a thorough review of the record in the case, including Applicant's testimony, all exhibits, all relevant policies, and the applicable adjudicative guideline, I make the following findings of fact:

In her answer to the SOR, Applicant provided a certificate of naturalization for her husband, establishing that he became a naturalized U.S. citizen in January 2013. She also provided a certificate of citizenship for her older son, establishing that, as her minor dependent, he became a U.S. citizen at the time she was naturalized as a U.S. citizen in August 2010. Since these documents rebutted the allegations in SOR ¶¶ 1.a. and 1.b., the Government withdrew these allegations at the hearing. (Ex. A; Ex. C; Tr. 19.)

Applicant's answer to the SOR provided information showing that SOR allegations 1.f. and 1.g. referred to the same individual, Applicant's sister-in-law. At the hearing, the Government also withdrew SOR allegation 1.g. since it was a duplicate of allegation 1.f. (Tr. 21.)

Applicant is 44 years old, and, since 2006, she has been employed as a software engineer by a government contractor. She was born and raised in China. After completing her secondary education, she earned an undergraduate degree in 1990, and in 1993, she earned a master's degree. In 1994, she married, and she and her husband served as junior faculty at the Chinese university where she received her master's degree. In 1996, their older son was born. Soon thereafter, Applicant joined her husband in the United States for further graduate study, leaving her baby in the care of her husband's parents. In 1999, she earned a master's degree in electrical and computer engineering from a U.S. university. (Ex. 1; Answer to SOR; Tr. 45-49.)

When Applicant's son was two and one-half years old, he was brought to the United States and joined his parents. He has lived in the United States since that time, with occasional visits back to China to visit his grandparents. (Ex. 1; Tr. 68-69.)

Applicant and her husband have a second child, a son who was born in the United States in 2007. Like his older brother, the younger son attends a public school in the United States. The family speaks Chinese at home, and both sons also attend Chinese language school in their community as one of their extracurricular activities. (Ex. 1; Ex. I; Tr. 70-72.)

The SOR alleges at ¶ 1.c. that Applicant's father and mother are citizens of China and reside with her in the United States. Applicant reported that her parents are citizens of China and U.S. permanent residents. They travel to China, where they own an apartment, for her mother's medical treatments. When her parents are living in China, Applicant communicates with them by telephone every week or two. When they are in the United States, they reside with Applicant or with her brother, who is a Chinese citizen residing in the United States. (Ex. 1; Ex. D; Ex. E; Tr. 50-56.)

Applicant's parents are in their 70s and retired. Her mother was employed as a communication equipment engineer by a business. Her father was employed by the government as a building inspector. Her mother receives retirement payments from the business, and her father receives a pension from an entity of the Chinese government. (Tr. 49-51.)

The SOR alleges at ¶ 1.d. that Applicant's brother is a citizen of China and resides in the United States. Applicant testified that her brother came to the United States to pursue a Ph.D. degree. After receiving his degree, he remained in the United States and received permanent resident status. Applicant's brother owns a medical equipment company in the United States. He is married to a woman who was born in China, but Applicant does not know if she is at present a citizen of China. Applicant's brother and his wife have a 13-year-old child. Applicant's brother travels to China, but

Applicant does not know how frequently he travels to China. Applicant communicates with her brother about ten times a year. (Answer to SOR; Tr. 29, 55, 75.)

Applicant's mother-in-law and father-in-law are citizens and residents of China. Applicant's father-in-law is a retired high school teacher. Her mother-in-law is a retired vocational school teacher. Applicant's parents-in-law own an apartment in China. In 2008, they visited their son and Applicant after the birth of their second child. In 2009, Applicant, her husband, and their two children visited her husband's parents in China. Applicant communicates with her parents-in-law once or twice a year. (Answer to SOR; Tr. 29, 58-60.)

Applicant's husband has one sibling, a sister, who is a citizen and resident of China. Applicant met her sister-in-law about 20 years ago, when she was dating her husband. The sister-in-law is now married and teaches in a normal school in China. Her husband is a bank employee. Applicant's sister-in-law and her husband have one son, who is a student in a Chinese middle school. Applicant communicates with her sister-in-law at most once a year. (Answer to SOR; Tr. 29-30, 60-62.)

Applicant and her husband have established themselves as U.S. citizens. In 2007, they purchased a home for \$650,000 in the community where they now live. In a post-hearing document, Applicant stated that the balance on her home mortgage is \$54,226. (Ex. M; Tr.64.)

Applicant's annual salary is approximately \$100,000. Her husband's annual salary is approximately \$125,000. She reported she had two 401(k) accounts, one with a current balance of \$149,677 and one with a current balance of \$129,776. (Ex. M; Tr. 63-64.)

Applicant's facility security manager provided a letter, dated February 12, 2013, stating that Applicant had surrendered her Chinese passport in November 2010, when she initially applied for access to classified information. The facility security officer also noted that Applicant was a model employee "who has completed all the required training of company policies and security briefings to properly perform her daily tasks." (Ex. F.)

The director of software engineering at Applicant's workplace provided a letter of support on her behalf. The director stated that Applicant had worked for the government contracting company since 2006. During that time, the director noted, Applicant "has proven to be hard-working, conscientious, and meticulous in performing her tasks and delivering her work. She is well liked by the team and is always responsive to helping others." (Ex. J)

The official who hired Applicant and who was her supervisor in 2006 also provided a letter of support. He reported that he and Applicant had worked together on a number of projects, many of which required access to sensitive information. The official stated that he had always trusted Applicant and found her to be "compliant with

all applicable privacy and classified information rules, restrictions, and procedures.” (Ex. K.)

I take administrative notice of a document entitled “U.S. Naturalizations: 2011,” prepared by the Office of Immigration Statistics, U.S. Department of Homeland Security. This document, which was provided by Applicant, reported that in 2011, 32,864 individuals whose country of origin was China became U.S. citizens. (HE 2.)

I also take administrative notice of the following facts, which appear in official U.S. Government documents:<sup>1</sup>

China has powerful military forces, including strategic nuclear missiles. China is geographically vast, and has a population of over a billion people. It has significant resources and an economy that in recent years has expanded about 10% per year. China aggressively competes with the United States in many areas. China’s competitive relationship with the United States exacerbates the risk posed by Applicant’s connections to family members living in the China.

China has an authoritarian, Communist government. In China reported human rights problems include suppression of political dissent, arbitrary arrest and detention, forced confessions, torture and mistreatment of prisoners. China also monitors communications devices, such as telephones, telefaxes, and internet servers.

China actively collects military, economic, and proprietary industrial information about the United States for the following reasons: (1) its position as a global power; (2) its military, political, and economic investments in the Pacific Rim and Asia; and (3) its leading role in the development of advanced technology that China desires for economic growth. China’s active intelligence gathering programs focus on sensitive and protected U.S. technologies. Chinese intelligence services and private companies frequently try to target Chinese citizens or individuals with family ties to China who can use their insider access to corporate networks to steal secrets using removable media devices or e-mail. Additionally, it is projected that Chinese attempts to collect U.S. technological and economic information will continue at a high level and will represent a growing and persistent threat to U.S. economic security.

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that “no 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

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<sup>1</sup> The facts in the administrative notice narrative are from the Department Counsel’s documents submitted for Administrative Notice. I have omitted footnotes. See HE 1.

whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant an applicant’s 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), as amended and modified.

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, the administrative judge applies these 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 access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion in seeking 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the

applicant concerned.” See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Foreign Influence**

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 indicates three conditions that could raise a security concern and may be disqualifying in this case:

- (a) contact 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 sensitive information or technology and the individual’s desire to help a foreign person, group, or country by providing that information; and
- (d) sharing 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.

Applicant’s parents, brother, parents-in-law, and sister-in-law are citizens of China. Applicant’s parents-in-law and sister-in-law are also residents of China. Applicant’s parents, who are Chinese citizens and U.S. permanent residents, travel to China and reside there when Applicant’s mother is undergoing medical treatments. They own an apartment in China, and Applicant’s father receives pension benefits from the Chinese government. Applicant’s brother, a Chinese citizen and a U.S. permanent resident, also travels between the United States and China.

Applicant is a good daughter and solicitous of her parents. Applicant's parents reside with her and her family or with her brother and his family when they are in the United States. Applicant's mother, father, and brother have resident alien status and retain their Chinese passports. Their status and their presence in the United States diminish but do not extinguish the possibility of foreign exploitation or coercion.

AG ¶ 7(a) requires substantial evidence of a "heightened risk." The "heightened risk" required to raise this disqualifying condition is a relatively low standard. However, the facts must demonstrate a risk higher than normally occurs when a family member lives under a foreign government. China's active collection of military, economic, and proprietary industrial information about the United States is sufficient to establish the "heightened risk" required in AG ¶ 7(a).

Applicant's relationship with her parents, parents-in-law, and sister-in-law, all of whom are Chinese citizens and all of whom reside, either permanently or occasionally, in China is sufficient to create "a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion." These relationships with residents and citizens of China create a potential conflict of interest between Applicant's "obligation to protect sensitive information or technology and [her] desire to help" family members who are in China.

The mere possession of close family ties with a family member living in China is not, as a matter of law, disqualifying under Guideline B. However, if an applicant has a close relationship with even one relative living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See *Generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

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 or inducement. 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 collection operations against the United States. The relationship of China with the United States places a significant, but not insurmountable, burden of persuasion on Applicant to demonstrate that her contacts with her family members residing in China do not pose a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.

While there is no evidence that intelligence operatives from China seek or have sought classified or economic information from or through Applicant or her family members living in China, it is not possible to rule out such a possibility in the future. Applicant's relationships with family members create a potential conflict of interest because these relationships are sufficiently close to raise a security concern about her desire to assist her family members in China, in the event they should be pressured or



coerced by agents of the Chinese government or intelligence services for sensitive or classified information. AG ¶¶ 7(a), 7(b), and 7(d) apply.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

(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 U.S.;

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

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(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; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

AG ¶¶ 8(a) and 8(c) have limited applicability. Applicant's close relatives are citizens of China. Her parents travel to China and reside there during her mother's medical treatments. When they are in the United States, Applicant's parents reside with her and her family or with Applicant's brother, who is a Chinese citizen living in the United States. Because of her connections to her close family members, Applicant is not able to fully meet her burden of showing there is "little likelihood that [her relationships with relatives who are Chinese citizens] could create a risk for foreign influence or exploitation."

AG ¶ 8(b) partially applies. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant has strong family connections to the United States. Applicant came to the United States in 1996,

and she became a U.S. citizen in 2010. She and her husband have established their professional lives in the United States. Their two children are U.S. citizens and attend public schools in their U.S. community. They have purchased a home and have created a family life in the United States.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by her relationships with her family members who are citizens of China, and who reside there permanently and occasionally. There is no evidence, however, that terrorists, criminals, the Chinese government, or those conducting espionage have approached or threatened Applicant or her family in China to coerce Applicant or her family for classified or sensitive information. As such, there is a reduced possibility that Applicant or Applicant's family would be specifically selected as targets for improper coercion or exploitation. While the Government does not have any burden to prove the presence of such evidence, if such record evidence was present, Applicant would have a heavy evidentiary burden to overcome to mitigate foreign influence security concerns. It is important to be mindful of the United States' relationship with China, and China's systematic human rights violations. China's conduct makes it more likely that China would coerce Applicant through her family living in China, if China determined it was advantageous to do so.

AG ¶¶ 8(d) and 8(e) do not apply. AG ¶ 8(f) has minimal applicability. Applicant has substantial property interests in the United States, which include her salary, her retirement accounts, and the value of her home. However, this mitigating condition can only fully mitigate security concerns raised under AG ¶ 7(e), and AG ¶ 7(e) is not raised in this case.

In sum, the primary security concern is Applicant's familial relationships with her parents, brother, parents-in-law, and sister-in-law, all of whom are citizens of China and who have contact with China. Applicant's parents reside in China while her mother undergoes medical treatments; Applicant's parents-in-law and sister-in-law reside permanently in China; and Applicant's brother, a Chinese citizen with U.S. permanent resident status, travels to China. All of these individuals are readily available for coercion. The Chinese government's history of espionage (especially industrial espionage) against the United States and its failure to follow the rule of law further increase the risk of coercion.

Nothing in Applicant's answers to the Guideline B allegations in the SOR suggested she was not a loyal U.S. citizen. Section 7 of Executive Order 10865 specifically provides that industrial security clearance 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."

### **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(a):

(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 the whole-person concept and all the facts and circumstances surrounding this case. Applicant is an engaging, talented, honorable, and hard-working U.S. citizen. She is considered to be a valued employee. She seeks to use her experience, skills, and knowledge to serve her adopted country, and she seeks a security clearance as a government contractor.

Applicant is an admirable family member. She is attentive and devoted to her mother and father, who are citizens of China and U.S. permanent residents. She stays in touch with her brother, a citizen of China and a U.S. permanent resident. She is respectful to her husband's three immediate family members who are citizens and residents of China. While security concerns about her contacts with her parents have been partially extenuated by their immigration to the United States and their status as resident aliens, their periodic travel to China for her mother's medical treatments exposes them to the possibility of coercion and pressure because China is a country that poses "an extraordinary threat to the national security, foreign policy, and economy of the United States."

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising under the foreign influence adjudicative guideline.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the amended 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.b.:	Withdrawn
Subparagraphs 1.c. - 1.f.:	Against Applicant
Subparagraph 1.g.:	Withdrawn

### **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 eligibility for a security clearance. Eligibility for access to classified information is denied.

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Joan Caton Anthony  
Administrative Judge