



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-01460
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Pamela Benson, Esq., Department Counsel  
For Applicant: *Pro se*

04/13/2015

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**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline B, foreign influence. Applicant’s eligibility for a security clearance is denied.

**Statement of the Case**

On June 13, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, foreign influence. The action was taken 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 effective within the DOD for SORs issued after September 1, 2006.

In an undated answered to the SOR, Applicant elected to have his case decided on the written record. On November 26, 2014, Department Counsel submitted the Government’s file of relevant material (FORM). The FORM was mailed to Applicant on

December 8, 2014, and it was received on January 6, 2015. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did object to any of Items offered and they are admitted. He did not submit additional information. The case was assigned to me on March 16, 2015.

### **Request for Administrative Notice**

Department Counsel submitted a written request, as part of the FORM, that I take administrative notice of certain facts about the People's Republic of China (China). The request is attached to the record. Applicant did not object, and I have taken administrative notice of the facts contained in the request that is supported by source documents from official U.S. Government publications. The facts are summarized in the Findings of Fact, below.

### **Findings of Fact**

Applicant admitted the allegations in the SOR. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 24 years old. He was born in the United States. He attended high school from June 2006 to June 2008 in China and received his diploma. He graduated from college in the U.S. in 2012 and has been employed by a federal contractor since 2013. He is not married and has no children.

Applicant's parents were born in China. His mother became a naturalized citizen of the United States and passed away in 2010. His father is a citizen of China who immigrated to the United States. It is unknown what year he immigrated, but he became a resident alien in 1992. Applicant's father frequently travels back and forth between the United States and China. He owns his own business in China. When residing in the United States, his father stays with a friend. He last visited the friend in 2010. Applicant worked for his father in China during the summer of 2010. It was a part-time unpaid job. Applicant maintains regular monthly contact with his father.<sup>1</sup>

Applicant's grandparents are citizens and residents of China. It is unknown how often he is in contact with his grandparents in China. Applicant has two sisters who were born and reside in the United States.

### **China**

China is the world's most active and persistent perpetrator of economic espionage. China is the most aggressive country conducting espionage against the United States, focusing on obtaining U.S. information and technologies beneficial to China's military modernization and economic development. There are recent criminal

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<sup>1</sup> Item 4.

cases that were prosecuted and involve actual or attempted espionage and illegal export of sensitive military technology to China. In addition, China has significant human rights problems, including the repression of freedom of speech, religion, and association.<sup>2</sup>

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the 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, these guidelines are applied 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

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<sup>2</sup> Item 6.

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**

### **Guideline B, Foreign Influence**

AG ¶ 6 expresses the security concern regarding foreign influence:

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 describes conditions that could raise a security concern and may be disqualifying. I have considered all of them and the following are potentially applicable:

- (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; and
- (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.

AG ¶ 7(a) requires evidence of a “heightened risk.” The “heightened risk” required to raise this disqualifying condition is a relatively low standard. “Heightened risk” denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or owning property in a foreign country. The totality of Applicant's family ties to a foreign country as well as each individual family tie must be considered.

Guideline B is not limited to countries hostile to the United States. “The United States has a compelling interest in protecting and safeguarding classified 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.”<sup>3</sup>

Applicant’s father is a citizen of China. He owns his own business in China and travels frequently back and forth between the United States and China. It does not appear he owns a permanent residence in the United States, but rather stays with a friend when he is here. Applicant maintains regular contact with his father and worked for him in China in 2010. Applicant’s grandparents are citizens and residents of China. The frequency of his contact with them is unknown, but he visited them in China in 2010. China has a significant history of conducting espionage against the United States, to gain access to both industrial and military information. It has a poor human rights record. This creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. It also creates a potential conflict of interest. AG ¶¶ 7(a) and 7(b) have been raised by the evidence.

I have analyzed the facts and considered all of the mitigating conditions under AG ¶ 8 and conclude the following are potentially applicable:

- (a) the nature of the relationship 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 and 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 interests in favor of the U.S. interests; and
- (c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

Applicant has regular contact with his father and last visited his grandparents in 2010 when he was in China. It is unknown how often he may contact them. Applicant attended high school in China. It is unknown how much time his father resides in China. Applicant’s contact with his family is not infrequent or casual. Therefore, I cannot conclude that it is unlikely that his familial relationships could create a risk for foreign influence or exploitation. AG ¶ 8(c) does not apply.

The foreign influence concerns are increased because China aggressively and actively engages in foreign economic collection and industrial espionage against the United States. The fact that Applicant’s father owns and obviously is very involved in his

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<sup>3</sup> ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

business in China also creates a potential concern due to any possible government involvement in the business. There is insufficient evidence to conclude that the Applicant's familial connections in China would make it unlikely that Applicant would be placed in a position of having to choose between his family interests and the interests of the United States.

Applicant is a citizen of the United States who attended high school in China and worked in his father's business there. He obviously has significant ties to his father who travels to China frequently. There is insufficient evidence to conclude there is no conflict of interest, either because Applicant's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or Applicant has such deep and longstanding relationships and loyalties in the U.S., that he can be expected to resolve any conflict of interests in favor of the U.S. interests.

The nature of a nation's government and its relationship with the United States is relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if a family member is associated with or dependent upon the foreign government or the country is known to conduct intelligence operations against the United States. There is insufficient evidence to make a determination regarding Applicant's family's association with the Chinese government or their vulnerability to government coercion. However, owning a business in China very likely involves government regulation of the business. Although it is possible that Applicant's father and grandparents in China do not pose a security risk, I cannot make that determination without additional evidence. The record is void of sufficient information about Applicant or his family that would allow me to find that any of the mitigating conditions are applicable.

### **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 the 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.

