



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 14-01748
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Eric H. Borgstrom, Esq., Department Counsel  
For Applicant: Cathryn E. Young, Esq.

12/19/2014

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**Decision**

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FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines C (Foreign Preference) and B (Foreign Influence). Guideline C concerns are mitigated, but Guideline B concerns are not mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application on October 31, 2013. On July 1, 2014, the Department of Defense (DOD) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines C and B. The DOD acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by DOD on September 1, 2006.

Applicant received the SOR on July 24, 2014; answered it on August 5, 2014; and requested a hearing before an administrative judge. Department Counsel was ready to proceed on September 22, 2014, and the case was assigned to me on

September 26, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 7, 2014, scheduling the hearing for October 28, 2014.<sup>1</sup> I convened the hearing as scheduled. Government Exhibits (GX) 1 through 3 were admitted in evidence without objection. Applicant testified, and submitted Applicant's Exhibits (AX) A through CC, which were admitted without objection. DOHA received the transcript (Tr.) on November 7, 2014.

I kept the record open until December 5, 2014, to enable Applicant to submit additional documentary evidence. Applicant's counsel subsequently informed me that no additional evidence would be submitted, and the record closed on December 2, 2014. On December 4, 2014, on my own motion, I issued an order reopening the record for additional evidence. (Hearing Exhibit (HX) II.) (HX I is discussed below.) Applicant submitted AX DD and EE, and Department Counsel submitted GX 4. The record closed on December 17, 2014.

### **Administrative Notice**

Department Counsel requested that I take administrative notice of relevant facts about the People's Republic of China (PRC). The request and supporting documents are attached to the record as Hearing Exhibit (HX) I. I took administrative notice as requested by Department Counsel. The facts administratively noticed are set out below in my findings of fact.

### **Findings of Fact**

Applicant denied the allegation in SOR ¶ 1.a. He admitted the allegations in SOR ¶¶ 2.a-2.g. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 38-year-old senior scientist employed by a federal contractor. He has worked for his current employer since September 2013. He applied for eligibility for a public trust position in 2010. A national agency check with interrogatories (NACI) was opened in January 2011 and closed in February 2011 without adjudication.<sup>2</sup> He has never held a security clearance.

Applicant was born in the PRC. He attended universities in the PRC from September 1994 to July 2001, receiving a bachelor's degree in July 1998 and a master's degree in July 2001. (AX S and T.)

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<sup>1</sup> DOHA issued an amended notice of hearing on October 9, 2014, moving the hearing to another courtroom at the same address, but not changing the date or time of the hearing.

<sup>2</sup> Applicant erroneously testified that he held a public trust position before becoming a U.S. citizen. (Tr. 30, 46.) I am satisfied that Applicant's testimony was an honest mistake, due to his unfamiliarity with the clearance process, and not an intentional misrepresentation.

Applicant co-authored a scientific article while in his master's degree program in the PRC. (Tr. 65.) He has not stayed in contact with his fellow authors. He does not have any contact with his former professors or classmates in the PRC, except for one classmate who lives in the United States. (Tr. 67-68.)

Applicant came to the United States in August 2001 on a student visa. Before leaving the PRC, he reimbursed the PRC government for the cost of his education (about \$3,000). (AX E.) He testified that it was a "big relief" when he was able to reimburse the PRC government, because it was a requirement for being allowed to leave the PRC. (Tr. 39-40, 48.)

Applicant attended a U.S. university and worked as a teaching assistant from August 2001 to May 2006. He received his doctorate in May 2006. (AX U.) He received a work visa (H-1) and worked as a research associate from June 2006 to August 2009 and a research assistant professor from September 2009 to September 2013, when he began his current job. (GX 1 at 13-15.) He became a permanent U.S. resident in 2008 and a naturalized U.S. citizen in March 2013. (AX C; Tr. 21-24.)

Applicant retained his active PRC passport after becoming a U.S. citizen. During a personal subject interview in December 2013, he told a security investigator that he retained the PRC passport because he did not know that he was required to surrender it. (GX 3 at 3.) On August 1, 2014, Applicant surrendered his PRC passport to his facility security officer, who shredded it at Applicant's request. (AX A.)

Applicant married a PRC national in August 2003. His wife has resided in the United States with him since their marriage. She attended a university in the PRC and earned a bachelor's degree in accounting. She is not currently employed outside the home, because she and Applicant have two small children, ages three and one. Their children are native-born U.S. citizens. They had a son in February 2010, who passed away shortly after birth. (GX 1 at 23-24; AX D.) Applicant spends most of his weekends and holidays with his family. He describes his two daughters as "the center of [his] life." (AX W.)

Applicant has not traveled to the PRC since his marriage, because he disagrees with many of the PRC's policies, including its human rights policy. (AX W at 2.) His wife has visited the PRC three times since their marriage. (Tr. 25.) His wife received her "green card" in 2008, but she has not applied for U.S. citizenship. (Tr. 54-55.)

Applicant's parents are citizens and residents of the PRC. His mother was never employed outside the home. His parents were publicly humiliated by the PRC government during the Cultural Revolution, because his mother came from a wealthy family. (Tr. 49-50.) His father is a retired elementary school teacher and receives a government pension. His parents have no connection with the PRC government other than the pension. (Tr. 27-28.) Applicant has weekly telephonic contact with his parents. (GX 1 at 20-22; Tr. 29.) They have visited him twice in the United States and stayed

with him for about six months. (Tr. 31.) His parents and his brother know that he conducts research, but they think he is still a university professor. (Tr. 29-30, 34.)

Applicant has two brothers and a sister who are citizens and residents of the PRC. His oldest brother participated in the Tiananmen Square protests in 1989, and he now is an industrial manufacturing safety officer employed by a local government in the PRC. Applicant was about ten years old when his oldest brother left home to attend a boarding school and then went away to attend college. As a result, he and his oldest brother have never been close. (Tr. 32.) Applicant talks to his older brother about once a month to check on the welfare of his parents. (Tr. 34.) His older brother has a daughter who is attending college in the United States. (Tr. 35.)

Applicant's youngest brother and his sister are self-employed store owners. His brother's store sells agricultural materials and his sister's store sells fishing equipment. (GX 1 at 24-28; AX W.) Applicant talks to his younger brother and his sister two or three times a year, and they talk primarily about their parents and their children. (Tr. 36.)

Applicant's father-in-law and mother-in-law are citizens are residents of the PRC. His father-in-law is a retired bus driver and his mother-in-law is a retired ticket seller for the bus company. Applicant has weekly contact with his in-laws, but the calls are initiated by his wife and his participation is limited to a greeting and exchange of pleasantries. Applicant has difficulty communicating with his in-laws because he cannot understand their dialect. His mother-in-law visited for about five months during the spring of 2014. (GX 1 at 28-30; Tr. 37-38.) His in-laws receive government pensions, but they have no other contact with the PRC government. (Tr. 39.) He testified that his in-laws' and father's monthly pensions were each the equivalent of about \$300, and he does not worry about threats to cut off their pensions because he can support them. (Tr. 43.) His in-laws do not know that he is employed by a federal contractor, and they have expressed no interest in his employment. (Tr. 38.)

Applicant owns two apartments in the United States. He lives in one and rents the other. His annual salary is more than \$100,000. He has two retirement accounts with current balances of about \$10,600 and \$54,000. All his bank accounts and retirement accounts are in the United States. He has no property or assets in the PRC. (AX F through AX L; Tr. 26, 68.)

Applicant is a well-known and highly-respected expert in nanoenergetics.<sup>3</sup> He often participates in professional conferences, and he has authored numerous published manuscripts on nanoenergetics. (AX X.) In October 2010, Applicant attended and made a presentation at an international symposium on energetic materials. His attendance was sponsored by a defense contractor. (GX 1 at 35.) He is careful to clear his publications through his employer's public release approval process. (AX CC.) He

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<sup>3</sup> Nanoenergetics is the study of extremely small particles of matter. The prefix "nano" means one billionth of a unit of measure. Nanoenergetics has many military applications in explosives, propellants, and neutralization of chemical or biological agents.

recently tried to submit an abstract to another important conference but withheld it because it was not approved for public release in time for submission at the conference. (Tr. 46.)

In 2011, Applicant was contacted by an agent of the Federal Bureau of Investigation (FBI) because of his work on a U.S. Army-sponsored research project, and the agent asked him if anyone had approached him about his project and whether there were any foreign nationals working on his project. Although Applicant is wary of associating with Chinese-American societies because he suspects that most of them are operated or monitored by the PRC government, he was not aware that the use of Chinese-American societies for intelligence gathering was so wide-spread. He voluntarily met with the FBI agent every three or four months to update him on suspicious persons and activities. He last met with the agent in December 2013. He does not believe that he has ever been approached by anyone who may have been a PRC agent or official. (AX W at 3; Tr. 40-42.) He testified that he believed the agent was protecting him and educating him rather than keeping him under surveillance. (Tr. 73-74.)

Two of Applicant's colleagues in a U.S. Army research program submitted letters describing Applicant's professional reputation, technical skills, personal integrity, honesty, trustworthiness, and dedication. (AX M and N.) Applicant's program manager and direct supervisor regards him and honest and trustworthy. (AX BB.) Two of Applicant's colleagues during his employment as an assistant professor lauded his technical skill, honesty, reliability, and integrity. (AX O and P.)

Applicant's current employer uses a five-point rating system: (1) does not meet expectations; (2) sometimes meets expectations; (3) consistently meets expectations; (4) frequently exceeds expectations; and (5) far exceeds expectations. Applicant's most recent performance review rated him as consistently meeting expectations. (AX Q.)

The PRC has an authoritarian government dominated by the Communist Party. The United States and the PRC have been rivals since the Cold War. Despite political disagreements, the United States and the PRC have become major economic and trading partners.

The PRC is pursuing a long-term, comprehensive modernization of its military forces. It is one of the world's most aggressive practitioners of economic espionage. It aggressively targets sensitive and protected U.S. technology and military information, using worldwide intelligence operations and a network of commercial enterprises, defense factories, research institutes, and computer operations to collect sensitive information and controlled technology, using technology conferences and symposia, joint commercial ventures, and partnerships with foreign firms. It uses multiple government entities to acquire restricted U.S. technologies and it encourages and rewards private individuals who obtain technology on its behalf. It is one of the leading destinations for illegal exports of restricted U.S. technology.

In recent years, the United States has sought to develop a “military-to-military relationship” with the PRC, in an effort to establish a positive, cooperative, and comprehensive U.S.-China relationship. The United States and the PRC have engaged in numerous military-to-military exchanges and conducted joint military exercises in counter-piracy, humanitarian and disaster relief, and search and rescue operations.<sup>4</sup>

The PRC usually gathers intelligence by appealing to an individual’s feelings of obligation to help the country. U.S. citizens of Chinese ancestry with family ties to the PRC are prime intelligence targets. The Department of Justice has successfully prosecuted numerous naturalized U.S citizens from the PRC for actual or attempted espionage and illegal export of sensitive technology to the PRC.

The PRC has a poor human rights record. It suppresses political dissent, and it practices arbitrary arrest and detention, forced confessions, torture, and mistreatment of prisoners. Repression and coercion are focused primarily on organizations and individuals involved in rights advocacy and public interest issues. Travelers to the PRC can expect to be placed under surveillance, with their hotel rooms, telephones, and fax machines monitored and personal possessions, including computers, searched without their knowledge or consent.

The PRC does not recognize dual nationality. PRC nationals who have settled abroad and been naturalized as foreign citizens lose their PRC citizenship.

### **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 have access to such information.” *Id.* at 527. The President has 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), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

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<sup>4</sup> HX I, Attachment II, U.S. Department of Defense, Office of the Secretary of Defense, *Annual Report to Congress, Military and Security Developments Involving the People’s Republic of China 2013*, at 1 (Executive Summary), 69-73.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance 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.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

### **Guideline C, Foreign Preference**

The SOR alleges that Applicant currently possesses a PRC passport that was issued in May 2011 with an expiration date of May 2021. (SOR ¶ 1.a). The concern under this guideline is set out in AG ¶ 9: “When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.” The relevant disqualifying condition is AG ¶ 10(a)(1): “exercise of

any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen,” including but not limited to “possession of a current foreign passport.”

AG ¶ 10(a)(1) is established. Applicant admitted to a security investigator that he retained his PRC passport after becoming a citizen, but he explained that he did not know he was required to surrender or destroy it. He did not use it after becoming a U.S. citizen. Under PRC law, Applicant lost his PRC citizenship when he became a U.S. citizen.

The relevant mitigating condition is AG ¶ 11(e): “the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.” This mitigating condition is established. In August 2014, Applicant surrendered his PRC passport to his facility security officer, who destroyed it. It is likely that, under PRC law, his PRC passport was invalidated by his naturalization as a U.S. citizen, but he resolved any doubt by causing his PRC passport to be destroyed.

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

The SOR alleges that Applicant’s mother, father, two brothers, sister, father-in-law, and mother-in-law are citizens and residents of the PRC. (SOR ¶¶ 2.a, 2.b, 2.c, 2.e, and 2.g.<sup>5</sup>) It also alleges that Applicant’s brother is employed by a local city government in the PRC as an industrial manufacturing safety officer (SOR ¶ 2.d).

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

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.

Applicant’s family ties in the PRC establish three disqualifying conditions under this guideline:

AG ¶ 7(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;

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<sup>5</sup> There is no SOR ¶ 2.f.



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 sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information; and

AG ¶ 7(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.

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." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Furthermore, "even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security." ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at \*\*15-16 (App. Bd. Mar. 29, 2002). Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, 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. 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 operations against the United States.

AG ¶¶ 7(a) and 7(d) require substantial evidence of a "heightened risk." The "heightened risk" required to raise one of these disqualifying conditions 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. When foreign family ties are involved, the totality of an applicant's family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). "[T]here is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse." ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at \* 8 (App. Bd. Feb. 20, 2002); see also ISCR Case No. 09-06457 at 4 (App. Bd. May 16, 2011). Applicant's international reputation in nanoenergetics heightens his vulnerability to attempted foreign influence. His vulnerability, the PRC's aggressive economic and military espionage program, and his multiple family ties in the PRC establish the "heightened risk" in AG ¶¶ 7(a) and 7(d) and raise the potential conflict of interest in AG ¶ 7(b).

Three 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 U.S;

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.

AG ¶ 8(a) is not established. An applicant with foreign family ties to a country that is hostile to the United States has a very heavy burden of persuasion to show that neither he nor his family members are subject to influence by that country. ISCR Case No. 11-01888 (App. Bd. Jun. 1, 2012), citing ISCR Case No. 07-00029 (App. Bd. Dec. 7, 2007). The PRC and the United States cooperate extensively in many economic and military matters. Thus, the PRC is not "hostile" to the United States in the same sense as countries like Iran and North Korea. However, its aggressive intelligence operations targeting the United States are "hostile" to the interests of the United States, and they thrust a heavy burden on Applicant to show that he and his family members are not subject to influence by the PRC.

Applicant's family members are not connected to the PRC government except for their receipt of government pensions. They do not know who employs Applicant. They have not been approached by PRC government officials. However, the failure of foreign authorities to contact them in the past does not provide a meaningful measure of whether Applicant's circumstances pose a security risk. ISCR Case No. 07-13696 at 5 (App. Bd. Feb. 9, 2009). Applicant's wife has not applied for U.S. citizenship, and she visits her family in the PRC regularly, subjecting herself to increased surveillance and possible contacts by PRC intelligence agents. See ISCR Case No. 13-00987 at 4 (App. Bd. Aug.14, 2014), *citing* ISCR Case No. 02-00305 (App. Bd. Feb. 12, 2003 (significance of foreign citizenship of spouse in security clearance adjudication)).

AG ¶ 8(b) is not established. Applicant's family ties to the PRC are not automatically disqualifying. Under the old adjudicative guidelines, a disqualifying condition based on foreign family members could not be mitigated unless an applicant could establish that the family members were not "in a position to be exploited." Directive ¶ E2.A2.1.3.1. The Appeal Board consistently applied this mitigating condition strictly, holding that an applicant should not be placed in a position where he or she is

forced to make a choice between the interests of the family member and the interests of the U.S. See ISCR Case No. 03-17620 at 4 (App. Bd. Apr. 17, 2006); ISCR Case No. 03-24933 at 6 (App. Bd. Jul. 28, 2005); ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2005); ISCR Case No. 03-15205 at 3 (App. Bd. Jan. 21, 2005). Thus, an administrative judge was not permitted to apply a balancing test to assess the extent of the security risk. Under the new guidelines, however, the potentially conflicting loyalties may be weighed to determine if an applicant “can be expected to resolve any conflict of interest in favor of the U.S. interest.”

Applicant satisfied his educational-assistance obligation to the PRC before he came to the United States. He has lived in the United States for 13 years. He applied for U.S. citizenship as soon as he was eligible. He left the PRC because of his distaste for the PRC’s human rights abuses. He has not returned to the PRC since his marriage in 2003.

Applicant’s parents and older brother have been subjected to mistreatment by the PRC government. Their mistreatment is a double-edged sword. On the one hand, it may make them less likely to be willing conduits for the PRC’s usual intelligence-gathering *modus operandi* of appealing to Applicant’s sense of obligation to the PRC. On the other hand, they are known dissidents and may be more likely to be targeted for increased surveillance.

Applicant is deeply devoted to his children, who are U.S. citizens. His career is closely connected to U.S. interests. He has taken extraordinary measures to avoid social and professional associations that might increase his vulnerability to attempts at foreign influence. He has destroyed his PRC passport and has not traveled to the PRC since his wedding in 2003. His distaste for the PRC government would complicate an effort by PRC agents or family members to exploit his feelings of obligation toward the PRC. However, all his immediate family members, his spouse, and his spouse’s parents are citizens and residents of the PRC. He and his infant daughters are the only U.S. citizens in his family. Although he has lived in the United States for more than 13 years, he has been a U.S. citizen for less than two years. His non-citizen spouse visits the PRC regularly to visit her family. I am not convinced that his relationships and loyalties in the United States are so deep and longstanding that he would resolve any conflict of interest in favor of the interests of the United States.

AG ¶ 8(c) is not established. There is a rebuttable presumption that contacts with an immediate family member in a foreign country are not casual. ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002). Applicant has not rebutted this presumption.

### **Whole-Person Concept**

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. In applying the whole-person concept, an administrative judge must evaluate an applicant’s eligibility for a



## **Conclusion**

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.

LeRoy F. Foreman  
Administrative Judge