



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



In the matter of: )  
)  
) ISCR Case No. 14-01811  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Chris Morin, Esq., Department Counsel  
For Applicant: Nicole A. Smith, Esq.

05/19/2015

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant and her spouse’s foreign family contacts create a heightened risk of foreign exploitation, inducement, manipulation, pressure, coercion, and an unacceptable security risk. The mitigating information taken together is insufficient to fully overcome the foreign influence security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On September 4, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B, foreign influence.<sup>1</sup> Applicant answered the SOR on September 23, 2014, and requested a hearing before an administrative judge. The case was assigned to me on January 27, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing

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<sup>1</sup> 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* (Directive) (January 2, 1992), as amended; and the Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (AG), implemented by the DOD on September 1, 2006.

on January 30, 2015, scheduling a hearing for February 23, 2015. The hearing was convened as scheduled. DOHA received the hearing transcript (Tr.) on March 4, 2015.

### **Procedural and Evidentiary Rulings**

At the hearing, Applicant testified, presented no witnesses, and offered exhibits A through I. The Government offered exhibits (GE) 1 through 3. GE 1 and 2, and AE A through G and I were admitted without objections. GE 3 and AE H are requests for me to take administrative notice of facts concerning the government of China. GE 3 and AE H were marked and attached to the record, but not admitted into evidence. Neither side objected, and I took administrative notice of facts concerning the government of China as outlined in both parties' requests.

The Government moved to amend SOR ¶ 1.f to conform the allegation with the evidence presented by inserting the word "spouse's" between the words "Your" and "cousin" in the first sentence of the allegation. Applicant did not object, and I granted the motion as requested.

### **Findings of Fact**

Applicant admitted all the SOR allegations, as amended. Her admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, and having observed Applicant's demeanor while testifying, I make the following additional findings of fact:

Applicant is a 51-year-old systems analyst lead employed by a government contractor. She was born and raised in the Peoples' Republic of China (China) to Chinese parents. She left her parents' home to attend a Beijing university where she earned a mechanical engineering degree. Applicant testified that her college education was funded by her parents. She then worked as a mechanical engineer at a factory for about five years. She claimed she did not know whether the factory was affiliated with the Chinese government.

Applicant married her Chinese-born spouse in China in 1987. Her spouse received a higher-education student visa and she accompanied him to the United States in 1991. She became a naturalized U.S. citizen in May 2000. She attended a U.S. university and earned a master's degree in computer science in 1999. She last traveled to China in 2006 to visit her family and go sightseeing. They stayed with relatives in China for three weeks.

Applicant and her spouse have two U.S.-born children, ages 18 and 16. Her son recently travelled to China for a summer camp.

Applicant was hired by her current employer, a government contractor, when she completed her master's degree in 1999. Through the years, she has been detailed to work for different government agencies. Applicant claimed she was granted a security

clearance in 2005 while in detail to another government agency, but that her clearance was never active.

Applicant testified that all of her financial and property interests are in the United States. She denied owning any financial or property interests in China, or in any other foreign country. Applicant and her spouse have substantial assets in the United States, which include approximately \$233,000 in equity in their residence, and two investment rental properties with equity of about \$310,000 and \$80,000. Additionally, she has a 401(k) retirement account and an IRA investment account.

Concerning her relatives who are residents and citizens of China, Applicant testified that her father is 89 years old. She claimed that he was the director of a research facility associated with the department of agriculture, but that he has been retired for a long time. Her father receives a retiree pension, but Applicant does not know how much he receives or whether the pension is paid by the Chinese government. Applicant does not know whether the research facility was connected with the Chinese government. She claimed not knowing whether the department of agriculture was an agency of the Chinese government.

Applicant stated that her father may have served in the Chinese army before 1947, but she is not sure. She does not know whether her father was or is a member of the Chinese communist party. During her April 2012 interview, Applicant indicated she communicated with her father once a month by phone. At her hearing, she claimed she communicates with her father every two to three months for a period of five minutes. She denied talking to her father about her work or about her request for a security clearance.

Applicant has three brothers that are residents and citizens of China. The oldest brother is 64 years old. He retired from a job at the supreme court of a province, but he was not a lawyer. Applicant has five-minute conversations with this brother once a year during the celebration of the Chinese New Year. Their last in-person contact was in 2006 when Applicant visited China.

The second brother is 58 years old, and he is a retired policeman. Applicant has contact with this brother approximately three to four times a year. She has more contact with him than with other family members because he is taking care of their father. Applicant's last in-person contact with this brother was in 2014. He, his daughter, and his son-in-law visited Applicant in the United States. Some of the relatives stayed in the United States for two and one-half months.

Applicant's third brother is 56 years old. She believes he is retired from his job at a utensils manufacturing company. Applicant has five-minute conversations with this brother once a year during the celebration of the Chinese New Year. Their last in-person contact was in 2006 when Applicant visited China.

Applicant has two sisters, ages 60 and 53, both of whom are retired. The first retired from a clothing factory, and the second performed custodial work. Applicant

claimed she has contact with her sisters about once or twice a year. Their last in person contact was in 2006.

Applicant stepbrother is 48 years old. He works as a technician at a power company. She claimed she does not know whether the company is affiliated with the Chinese government. She stated she has no frequent contact with him, and the last in-person contact was in 2006.

Applicant stepmother is 77 years old. Applicant believes she is retired, but does not know what her job was. She has contact with her stepmother three to four times a year. Their last in-person contact was in 2006. Applicant's father-in-law is 84 years old. He is a retired college professor. Applicant does not know if the college was a government institution. She has no contact with him; however, her husband calls his father every two months.

Applicant's husband is a naturalized U.S. citizen. He works as a realtor. He has two brothers that are citizens and residents of China. One works in a bank and the other is retired. Applicant does not know what his job was. Applicant claimed she has no contact with her brothers-in-law. Her spouse communicates with his brothers approximately twice a year.

Applicant's husband has a cousin who is a Chinese citizen residing in the United States. He has been residing in the United States for more than 10 years, is a green card holder, and intends to apply for U.S. citizenship. He works for a federal government agency as a contractor employee. Applicant has contact with him a few times a month because their families get together for dinners and family events.

At her hearing, Applicant stated that she did not know whether her husband, her husband's relatives, or any of her relatives living in China served in the Chinese army or were members of the Chinese communist party. After the hearing, she submitted a statement indicating that she did not understand the question, and clarified that her husband never served in the Chinese army.

Applicant testified that she has been living in the United States for about 23 years. She considers the United States her home and she intends to retire here. She promised that if anyone asked her for classified information, or threatened her or her family, she would notify her company security officials. She believes that she has stronger ties with the United States than with China. She averred that she would do nothing to compromise her and her children's life in the United States. Applicant considers her relationships with her family living in China as casual and infrequent.

Applicant submitted a reference statement from her supervisor. They have worked together during the last 10 years. He considers Applicant to be a highly professional and trustworthy employee. To his knowledge, Applicant has never disclosed any sensitive or classified information. She is mindful of other people's privacy and follows rules and regulations.

China has an authoritarian government, dominated by the Chinese Communist Party whose members hold almost all top government, police, and military positions. China has a poor human rights record, suppresses political dissent, and practices arbitrary arrest and detention, forced confessions, torture, and other prisoner mistreatment. China also monitors communications devices, such as telephones, telefaxes, and internet servers.

China is the most aggressive country conducting espionage against the United States, focusing on obtaining information and technologies beneficial to China's military modernization and economic development. The Chinese government encourages and rewards the action of private individuals who obtain technology on its behalf. China's intelligence services as well as private companies and other entities frequently seek to exploit Chinese citizens or persons with family ties to China who can use their insider access to corporate networks to steal secrets. They also have offered financial inducements to U.S. government officials to encourage them to compromise classified information. Chinese attempts to collect U.S. technological and economic information represent a growing and persistent threat to U.S. economic security.

### **Policies**

Eligibility for access to classified information may be granted "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. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person's suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own.

The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

## **Analysis**

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

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

[I]f the individual has divided loyalties or foreign financial interests, [he or she] 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.

The guideline indicates three conditions that could raise a security concern and may be disqualifying AG ¶ 7 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 and siblings are citizens and residents of China. Her spouse also has immediate and extended family members who are Chinese citizens and residents.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.<sup>2</sup>

Applicant, directly or through her spouse, has frequent contacts and a close relationship of affection and obligation with her parents, siblings, and her in-laws. These contacts create a risk of foreign pressure or attempted exploitation because there is always the possibility that Chinese agents or individuals operating in China may exploit the opportunity to obtain sensitive or classified information about the United States. Applicant's relatives in China create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion, both directly, through her spouse, or their family members in China. (See, Administrative Notice Support Documents)

The Government produced substantial evidence raising these three potentially disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove a mitigating condition. The burden of disproving a mitigating condition never shifts to the Government. AG ¶¶ 7(a), 7(b), and 7(d) apply, and further inquiry is necessary about potential application of any mitigating conditions.

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;

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<sup>2</sup> See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

(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.

Applicant was born, raised, educated, and married her Chinese-born spouse in China. She left China in 1991, at age 28. She has lived in the United States for close to 23 years. She became a naturalized U.S. citizen in 2000. She has been working for a government contractor since 1999. Applicant has a strong affection and sense of obligation to her spouse and two U.S.-born children, all of whom are living in the United States. She and her spouse have substantial financial and property interests 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 spouse and their family members living in China. Although there is no evidence that Chinese government agents, or other entities, have approached or threatened Applicant or her family living in China, she is nevertheless potentially vulnerable to threats, coercion, inducement, and manipulation made against her, her spouse, or their families living in China.

Considering China's government, its relationship with the United States, and its ongoing pervasive espionage practices against the United States, Applicant is not able to fully meet her burden of showing there is "little likelihood that [her relationships with her relatives, friends, and associates who are Chinese citizens and living in China] could create a risk for foreign influence or exploitation." AG ¶¶ 8(a) and (d) have limited applicability and do not mitigate the foreign influence concerns.

Applicant professed that her loyalty and sense of obligation is to her spouse, her children, and to the United States. She averred that she has no loyalty to China, and her sense of obligation to her relatives in China is minimal compared to her sense of loyalty and obligation to her immediate family. She noted that she has lived 23 years in the United States and all of her financial and property interests are in the United States.

Notwithstanding, the risk of coercion, persuasion, or duress are significantly greater because China has an authoritarian form of government. It appears that some of her relatives in China had jobs related to the government, and although retired, they still depend on the Chinese government for their pensions. I note that Applicant denied having knowledge of whether her spouse or her relatives or her spouse's relatives in China served in the Chinese military or were associated with the Chinese communist party.



## Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c).

I have incorporated my comments under Guidelines B in my whole-person analysis. I considered that Applicant has lived in the United States 23 years. She has worked for a government contractor since 1999, and became a naturalized U.S. citizen in 2000. Applicant has strong affection and a sense of obligation to her spouse and two U.S.-born children, all of whom are living in the United States. She and her spouse have substantial financial and property interests in the United States.

Notwithstanding, Applicant and her spouse's foreign family contacts create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion, and an unacceptable security risk. The mitigating information taken together is insufficient to fully overcome the foreign influence security concerns under Guideline B.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude Applicant has not carried her burden of persuasion and the foreign influence security concerns are not mitigated. Eligibility for access to classified information is denied.

## Formal Findings

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a- 1.g:	Against Applicant

## Conclusion

In light of all of the circumstances, 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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JUAN J. RIVERA  
Administrative Judge