



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



In the matter of: )  
)  
) ISCR Case No. 14-01837  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Caroline E. Heintzelman, Esq., Department Counsel  
For Applicant: Christopher Burks, Esq.

11/15/2015

**Decision**

NOEL, Nichole L., Administrative Judge:

Applicant failed to mitigate the foreign influence and personal conduct concerns raised by his failure to provide full, frank, and candid disclosure about his foreign interests and contacts during the security clearance adjudication process. Clearance is denied.

**Statement of the Case**

Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> on June 27, 2014, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under the foreign influence and personal conduct

<sup>1</sup> This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

guidelines. DOHA recommended the case be submitted to an administrative judge for a determination to revoke or deny Applicant's access to classified information.

Applicant timely answered the SOR and requested a hearing.<sup>2</sup> At the hearing convened on June 4, 2015, Government's Exhibits (GE) 1 and 2 and Applicant's Exhibit (AE) A, were admitted without objection. Applicant testified and presented the testimony of one witness. DOHA received the transcript (Tr.) on June 12, 2015.

### **Request for Administrative Notice**

Department Counsel requested that I take administrative notice of certain facts about the People's Republic of China (China). Without objection from Applicant, I approved the request. China has an authoritarian government, dominated by the Chinese Communist Party. China has a poor record with respect to human rights, suppresses political dissent, and its practices include arbitrary arrest and detention, forced confessions, torture, and mistreatment of prisoners. Also, China actively engages in espionage against the United States.<sup>3</sup>

### **Findings of Fact**

Applicant, 60, has worked for a federal contractor since 2003, working at U.S. embassy locations in Europe, Asia, and the Middle East. He has worked for his current employer since October 2008. A retired U.S. Army master sergeant, Applicant has held a security clearance since at least 1980. Applicant described his 22-year military career and his employment history with federal contractors in favorable terms, but he did not submit any other evidence to support these claims. Applicant completed his most recent security clearance application in June 2012, when he was working at a U.S. embassy in Southeast Asia. He disclosed maintaining monthly contact with one foreign national who is a resident and citizen of China. Before the subject interview, a background investigator contacted Applicant requesting information about any other foreign contacts. Applicant did not disclose any additional contacts.<sup>4</sup>

During his September 2012 subject interview Applicant revealed that he has a girlfriend and a daughter, now 4 years old, who are residents and citizens of China. He concealed these relationships from his wife of 29 years, his mother, and other family members and friends. Applicant met the woman, a masseuse, in October 2007 when he was working at a U.S. embassy in China. She provided massage services to Applicant. Their relationship eventually became sexual. Applicant claims he reported the contact to his security officer, but those reports are not in the record.<sup>5</sup>

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<sup>2</sup> The Government's discovery letter, dated January 16, 2015, is appended to the record as Hearing Exhibit (HE) I.

<sup>3</sup> The request and the attached documents have been included in the record as HE II.

<sup>4</sup> Tr. 32-38, 90-92; GE 1.

<sup>5</sup> Tr. 92-93; GE 2.

In 2009, Applicant began sending the woman, whom he considers his girlfriend, \$1,500 per month to pay for her housing and other expenses. To facilitate the transfer of money to her, Applicant opened a bank account in China in 2010. He allowed the account to go inactive after learning that he would be required to disclose the foreign asset. According to Applicant, his girlfriend used some of the monthly income she received from Applicant to purchase a home. Applicant believes the house, which he repeatedly referred to as 'his home' during the background interview, is valued at \$30,000. Between October 2007 and December 2011, Applicant took at least five trips to China to visit her. His last visit coincided with the birth of their daughter. Applicant admitted to the investigator that he did not disclose his connections to China because he feared adverse employment action. He also told the investigator that his connections to China did not warrant disclosure on the security clearance application. Applicant explained that he does not provide financial support to his girlfriend, but makes donations to her to use in the manner she sees fit. He does not classify their child as his relative, but an obligation. Applying this reasoning, Applicant did not report his child as a foreign contact to the security officer at his work location at the time of her birth.<sup>6</sup>

At each opportunity presented, Applicant has tried to distance himself from the disclosures he made during his September 2012 subject interview. In his answer to the SOR, Applicant reported that he and his wife had been separated since 2008. Applicant claims that his wife knows about the girlfriend and their daughter. He also states that she supports his relationship with them. The record does not contain any evidence to corroborate this statement. In both his answer to the SOR and his testimony at hearing, Applicant continued to disavow his child despite maintaining daily electronic and telephonic contact with her mother. Applicant continues to hide the existence of his girlfriend and child from his family and friends. He told his mother, who testified on his behalf, about them only a month before the hearing. Conversely, Applicant declared his intention to marry his girlfriend and bring her and the child to the United States. He believes that marriage will legitimize the relationship and his paternity of the child. However, he has not taken any steps to dissolve his existing marriage.<sup>7</sup>

At hearing, Applicant continued to justify his omissions from his June 2012 security clearance application. Applicant claims that he did not understand the foreign contacts and interests questions posed on the questionnaire. Applicant testified that he interpreted the question regarding providing financial support to foreign nationals to apply only to financial support provided to a foreign government. He interpreted the question about foreign travel as applying to travel that occurred from the United States. He did not believe the security clearance application required him to report private international travel that occurred while he was working outside the United States. He did not report the Chinese bank account because he never used it.<sup>8</sup>

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<sup>6</sup> Tr. 32-32; GE 2.

<sup>7</sup> Tr. 39-40, 67-77, 85, 107-108; Answer; GE 2; AE A.

<sup>8</sup> Tr. 29, 57-61, 80-81, 87-89.

When asked at hearing, Applicant, who prides himself on his security consciousness, was able to clearly articulate the potential security concerns raised by having foreign contacts and interests. He believes that his foreign contacts and interests did not present a security issue. In Applicant's opinion, he fulfilled the reporting requirement by reporting his girlfriend as a foreign contact and his trips to China to the security officer at his work site. In doing so, he considered the foreign contacts approved and believed that disclosing these contacts again on the security clearance application would have been redundant. (Since meeting his girlfriend in 2007, Applicant has worked for the same federal contractor, at three different locations, in two countries. It is unclear from the record if he reported the foreign contact to the security officer at each location.) Applicant also reasoned that he did not need to report his daughter to his security manager as a foreign contact. Although she is Applicant's biological child, he does not consider her a relative. At the time he completed the security clearance application, Applicant believes that his daughter was not a reportable foreign contact because she could not yet talk.<sup>9</sup>

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be 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, administrative judges apply the 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.

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

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<sup>9</sup> Tr. 38-44, 66-67, 72 -77, 88-90, 95-97.

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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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**

“[F]oreign contacts and interest may be a security concern if the individual has divided loyalties or 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.”<sup>10</sup> Heavily weighted in this calculus is the identity of the country.<sup>11</sup> Typically, an applicant’s close contacts and significant financial interests in China, a country that is known for its acts of industrial espionage against the United States and its poor human rights record, would be enough to find a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion.<sup>12</sup> However, this case is atypical in that the situs of Applicant’s foreign contacts and interests, while relevant, is not the primary concern. While it is possible that Applicant’s girlfriend and child could be subject to pressure from the Chinese government, based on Applicant’s statements during this adjudication, I find it unlikely that any such pressure would cause Applicant to compromise U.S. interests. Applicant’s statements make it clear that, in response to any pressure, he could easily disencumber himself of the relationships. He can continue to deny paternity of his child, stop any donations he may send to her mother, and cease all contact.

Here, the primary security concern is raised by Applicant’s failure to report, when required, his association with foreign nationals and the depth of his interests in a foreign country.<sup>13</sup> Although Applicant recognized the particular problem with having foreign connections and interests in China, the identity of the country was not the motivation for

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<sup>10</sup> AG ¶ 6.

<sup>11</sup> AG ¶ 6.

<sup>12</sup> See AG ¶ 7(a).

<sup>13</sup> AG ¶ 7(f).

the deception. Most likely, he would have acted similarly if he had foreign contacts and interests in a country considered politically neutral or friendly to the United States. Applicant's foreign contacts created a conflict of interest with his duties and obligations as a clearance holder. He resolved the conflict, not in favor of protecting his foreign contacts or interests, but in his own self-interest. Applicant feared that reporting his foreign contacts and interests would have had a negative effect on his employment opportunities. Once his fears proved correct, Applicant became more reticent about full disclosure, thwarting the government's efforts to fully evaluate the associated security risks. None of the foreign influence mitigating conditions apply.

## **Personal Conduct**

Applicant's failure to fully disclose his foreign contacts and interests also raises concerns under the personal conduct guideline. An applicant's failure to provide truthful and candid answers during the security clearance process raises issues about his reliability and trustworthiness that ultimately calls into question his ability to protect classified information.<sup>14</sup> Of special interest is an Applicant's failure to provide truthful and candid answers during the security clearance process.<sup>15</sup> The SOR alleges that Applicant concealed the existence of his girlfriend and daughter from his wife. (SOR ¶ 2.a.) The SOR also alleges that Applicant deliberately omitted the certain foreign contacts and interests he has in China from his June 2012 security clearance application, specifically: his daughter (SOR ¶ 2.b), the financial interest Applicant has in his girlfriend's home (SOR ¶¶ 2.c – 2.d), the bank account he opened in China in 2010 (SOR ¶ 2.c), the ongoing financial support Applicant provided his girlfriend (SOR ¶ 2.e), and his five trips to China between 2007 and 2011 (SOR ¶ 2.f).

Throughout this adjudication, Applicant has proved incredible, untrustworthy, and unreliable. For the past several years, Applicant has deliberately concealed his foreign contacts and interests from his spouse and the government.<sup>16</sup> He has doled out this information on what he determines is a need-to-know basis. While this is a decision Applicant is free to make in his personal life, it is unacceptable as a clearance holder. The purpose of the security clearance adjudication is to make "an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk."<sup>17</sup> Because Applicant has deliberately sought to conceal relevant and material information about his foreign interests and contacts, the government has been unable to complete this assessment.

The motive for Applicant's deception to his wife and to the government is clear; he wanted to avoid possible adverse personal and employment consequences. Applicant, who has undergone periodic reinvestigations for his security clearance every

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<sup>14</sup> See AG ¶ 15.

<sup>15</sup> See AG ¶ 15.

<sup>16</sup> AG ¶¶ 16(a) and (c).

<sup>17</sup> AG ¶ 2(a).

five years since at least 1980, feigned misunderstanding and offered disingenuous misinterpretations of the foreign contacts and foreign interest questions on the security clearance application. The language of the foreign contact and foreign interests questions at issue are plain. A reasonable person would have known to disclose the information he sought to conceal. Furthermore, Applicant demonstrated his understanding of the importance of the background investigation process and the necessity of disclosing the foreign contacts and interests he attempted to conceal from the government.

Applicant did not present any information to mitigate the personal conduct concerns raised by his deceptive conduct. Given Applicant's total lack of credibility, the government cannot assume with any degree of certainty that Applicant, who has worked in at least six different countries in the last 10 years, has fully disclosed all of his foreign contacts and interests as required or that he has been honest about the personal histories of his foreign contacts. Accordingly, Applicant's conduct cannot be considered minor and continues to reflect negatively on his current security worthiness.

### **Whole-Person Concept**

Based on the record, serious doubts remain about Applicant's ongoing security worthiness. In reaching this decision, I have also considered the whole-person factors at AG ¶ 2. Applicant irreparably breached his fiduciary duty to the government. His efforts to actively stymie the government's ability to assess his ongoing security worthiness represent an unacceptable security risk. This risk is not mitigated by Applicant's favorable characterization of his military career and post-military employment history.

### **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, Foreign Influence:	AGAINST APPLICANT
Subparagraphs 1.a -1.d:	Against Applicant
Paragraph 2, Personal Conduct:	AGAINST APPLICANT
Subparagraph 2.a - 2.f:	Against Applicant

## **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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Nichole L. Noel  
Administrative Judge