



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



In the matter of: )  
 )  
 ----- ) ISCR Case No. 14-02548  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Andre Gregorian, Esq., Department Counsel  
For Applicant: *Pro se*

05/12/2016

**Decision**

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to revoke his eligibility for access to classified information. He presented sufficient evidence to explain the foreign influence concern stemming from his family ties to China. But he has financial problems that are largely unresolved and ongoing. Accordingly, this case is decided against Applicant.

**Statement of the Case**

Applicant completed and submitted a Questionnaire for National Security Positions (SF 86 Format) on April 11, 2011.<sup>1</sup> Thereafter, on November 7, 2014, after reviewing the application and information gathered during a background investigation,

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<sup>1</sup> Exhibit 1 (this document is commonly known as a security clearance application).

the Department of Defense (DOD)<sup>2</sup> sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant him eligibility for access to classified information.<sup>3</sup> The SOR is similar to a complaint. It detailed the reasons for the action under the security guidelines known as Guideline B for foreign influence and Guideline F for financial considerations. Applicant timely answered the SOR and requested a hearing.

The case was assigned to me on September 18, 2015. The hearing was held as scheduled on November 13, 2015, and December 14, 2015. At the first session in November I *sua sponte* continued the case because I was concerned Applicant was unprepared and was having difficulty hearing in a large courtroom.<sup>4</sup> Applicant was given an additional 30 days to prepare, and the second session in December was held in a small conference room.

Department Counsel offered Exhibits 1–10, and they were admitted. Applicant offered Exhibits A–E, and they were admitted. The hearing transcripts (Tr.) were received on November 24, 2015, and December 22, 2015, respectively.

The record was kept open until December 31, 2015, to allow Applicant to submit additional documentation. No post-hearing exhibits were received.

### **Procedural Matters**

Administrative or official notice was taken of certain facts concerning the People's Republic of China (China) as set forth in Department Counsel's rather extensive written request.<sup>5</sup> The most pertinent of those facts are the following: (1) China is an authoritarian state in which the Chinese Communist Party is the paramount authority; (2) China is actively engaged in intelligence gathering (industrial and military) that targets U.S. information and technology; and (3) China has a poor record of human rights regarding respect for the integrity of the person (e.g., freedom from arbitrary or unlawful deprivation of life, disappearance, torture, and arbitrary arrest or detention), respect for civil liberties, respect for political rights, corruption and lack of transparency

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<sup>2</sup> The SOR was issued by the DOD Consolidated Adjudications Facility, Fort Meade, Maryland. It is a separate and distinct organization from the Defense Office of Hearings and Appeals, which is part of the Defense Legal Services Agency, with headquarters in Arlington, Virginia.

<sup>3</sup> This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as Department of Defense 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 here. 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.

<sup>4</sup> Appellate Exhibit I.

<sup>5</sup> Exhibit 10; Tr. 19–24.

in government, worker rights, as well as discrimination, societal abuses, and trafficking in persons. The maltreatment and oppression of the people of Tibet is but one example of China's poor record of human rights.

### **Findings of Fact**

Applicant is a 67-year-old employee who is seeking to retain a security clearance. He is employed as a data-operations analyst for a large aerospace company. He has worked for the same company since 1989. He was unemployed from February 2012 to October 2013 due to a reduction in force.<sup>6</sup> He was earning about \$102,000 when he was laid off in 2012; he was rehired in 2013 at a lower salary; and his current salary is now about \$65,000.<sup>7</sup>

Applicant married for the fourth time in 2008. He has six children and one stepchild. His household consists of his spouse and four minor children, including a 16-year-old stepson. His 42-year-old spouse is a native of China. She immigrated to the United States in 2003. He met her in 2004. She became a naturalized U.S. citizen in December 2014, and she obtained a U.S. passport in 2015.<sup>8</sup> Applicant does not believe his wife was ever employed by the Chinese government, although she worked as a high school English teacher for about a year.<sup>9</sup> She is not employed outside the home. His stepson immigrated to the United States in 2009, and he became a naturalized U.S. citizen recently.<sup>10</sup> His stepson is a student at a public high school.

Applicant has a mother- and father-in-law who are citizens of and residents in China.<sup>11</sup> His mother-in-law is in her 70s. He understands she was employed as an accountant for a department store. His father-in-law is in his 70s. Applicant understands he was employed as a physics teacher at a local school. Applicant has never met his in-laws or spoken to them over the telephone since he does not speak Chinese. Applicant has never traveled to China, and his in-laws have not traveled to the United States. Applicant's spouse visited China when their children were young. She has twice monthly telephone calls with her mother, but speaks to her father about once a year, as her parents are living separately. Applicant does not provide financial support to his in-laws. Other than a sister, his spouse has no contact with other people living in China. She has a distant relationship with and rarely speaks to her sister. Applicant understands that his

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<sup>6</sup> Tr. 32–33.

<sup>7</sup> Tr. 34.

<sup>8</sup> Exhibits A and B.

<sup>9</sup> Tr. 37–38.

<sup>10</sup> Tr. 40; Exhibit C.

<sup>11</sup> Tr. 42–49.

in-laws know that he works for an aerospace company, but they are unaware that he holds a security clearance.

Applicant has a history of financial problems. Related to that history is his divorce from his third wife in 2008, which was preceded by a period of separation going back to 2004.<sup>12</sup> He was supporting two families at one point during this lengthy period of separation. Also related to that history is his period of unemployment in 2012–2013.

The SOR alleges 13 delinquent debts in amounts ranging from \$64 to \$39,317, for a total amount of about \$95,000. The SOR also alleges two Chapter 13 bankruptcy cases, both of which were dismissed in 2013. These matters are established by Applicant's admissions and explanations as well as the documentary evidence.<sup>13</sup> The indebtedness is unresolved, and the individual matters are discussed below.

SOR ¶ 2.a concerns an unpaid \$30,317 judgment.<sup>14</sup> Applicant incurred this judgment after he was laid off in 2012. The judgment was filed in February 2013, about a month after the initial Chapter 13 bankruptcy case was dismissed in January 2013. He stated that he made some efforts to communicate with the creditor; he has made no payments on the judgment since returning to work in 2013; and the judgment is unresolved.

SOR ¶ 2.b concerns an unpaid \$2,963 judgment.<sup>15</sup> Applicant incurred this judgment in 2009. He attributed the debt to his third wife who opened a credit card account in his name without his knowledge. He stated that the debt was settled in July or August 2015 for \$1,800, but had no supporting documentation. The judgment appears as unpaid in the most recent July and November 2015 credit reports.<sup>16</sup> The judgment is unresolved.

SOR ¶ 2.c concerns a \$3,285 charged-off credit card account.<sup>17</sup> Applicant thought this account might be related to the judgment in SOR ¶ 2.b, but he had no documentation. The debt is unresolved.

SOR ¶ 2.d concerns a \$635 charged-off credit card account.<sup>18</sup> The debt is unresolved.

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<sup>12</sup> Tr. 49–57.

<sup>13</sup> Exhibits 2–9, D and E.

<sup>14</sup> Exhibits 4 and 5; Tr. 58–62.

<sup>15</sup> Exhibits 4 and 5; Tr. 62–66.

<sup>16</sup> Exhibits D and E.

<sup>17</sup> Exhibit 5; Tr. 67–71.

<sup>18</sup> Exhibits 4 and 5; Tr. 71–75.

SOR ¶ 2.e concerns a \$5,341 charged-off credit card account.<sup>19</sup> The debt is unresolved.

SOR ¶ 2.f concerns a \$64 collection account.<sup>20</sup> Applicant stated that he sent the creditor a check, but he had no documentation. The debt is unresolved.

SOR ¶ 2.g concerns a \$506 collection account.<sup>21</sup> Applicant stated that he has a dispute with the original vendor, but he had no documentation. The debt is unresolved.

SOR ¶ 2.h concerns a \$535 medical collection account.<sup>22</sup> The debt is unresolved.

SOR ¶ 2.i concerns a \$955 medical collection account.<sup>23</sup> The debt is unresolved.

SOR ¶ 2.j concerns a \$77 medical collection account.<sup>24</sup> The debt is unresolved.

SOR ¶ 2.k concerns a \$39,317 charged-off account.<sup>25</sup> Applicant stated that he believes this debt may be the same debt as the judgment in SOR ¶ 2.a, but he had no documentation. The debt is unresolved.

SOR ¶ 2.l concerns a \$11,572 charged-off account.<sup>26</sup> Applicant stated that the debt may have been incurred by his third wife without his knowledge, but he had no documentation. The debt is unresolved.

SOR ¶ 2.o concerns a \$177 medical collection account.<sup>27</sup> The debt is unresolved.

SOR ¶¶ 2.m and 2.n concern the two Chapter 13 bankruptcy cases, both of which were dismissed in 2013.<sup>28</sup> Applicant sought relief in bankruptcy court in 2010, when he was unable to pay the required spousal support or alimony payments and

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<sup>19</sup> Exhibits 4 and 5; Tr. 75–77.

<sup>20</sup> Exhibit 5; Tr. 77–78.

<sup>21</sup> Exhibit 5; Tr. 78–79.

<sup>22</sup> Exhibit 5; Tr. 79–80.

<sup>23</sup> Exhibit 5; Tr. 80–81.

<sup>24</sup> Exhibit 5; Tr. 81–83.

<sup>25</sup> Exhibit 5; Tr. 83–86.

<sup>26</sup> Exhibit 5; Tr. 86–89.

<sup>27</sup> Exhibit 4; Tr. 89–90.

<sup>28</sup> Exhibits 4–9; Tr. 90–118.

meet his other financial obligations. He filed the Chapter 13 case in December 2010; the court confirmed a payment plan in May 2011; and he made a number of monthly payments. He defaulted on the payment plan because of his unemployment. Included in the case was about \$297,000 in secured claims, most of which was for a mortgage loan, and about \$83,630 in unsecured claims or debts.<sup>29</sup>

The bankruptcy trustee moved to have the case dismissed due to default by Applicant, and the court dismissed the case in January 2013. Bankruptcy court records show that Applicant paid a total of \$46,863 during the plan; there were total expenses of \$7,106 for the plan; \$39,756 was paid to a mortgage lender for the mortgage arrearage; and no other creditors were paid.<sup>30</sup>

Applicant filed a second Chapter 13 bankruptcy case in May 2013 to prevent a foreclosure sale of the home. Bankruptcy court records show a payment plan was never confirmed, no payments were made, and the case was dismissed in July 2013.<sup>31</sup> The scheduled creditors consisted of \$83,630 in unsecured claims or debts.<sup>32</sup> After dismissal of the bankruptcy case, Applicant was able to avoid foreclosure by a short sale of the home in 2014.<sup>33</sup>

Applicant and his family rent a home and will continue to do so for the foreseeable future. He is working with a mortgage counselor to improve his credit worthiness. To that end, he presented two credit reports, from July 2015 and November 2015. The July 2015 credit report, obtained by his mortgage counselor, shows eight collection accounts for a total of \$51,354 and the two unpaid judgments mentioned above.<sup>34</sup> The December 2015 credit report, obtained from a different source, shows two medical collection accounts for \$120 and \$177 and the two unpaid judgments mentioned above.<sup>35</sup>

In addition to the delinquent debts discussed above, the credit reports reflect that Applicant has paid and settled other accounts, to include a \$15,000 judgment.<sup>36</sup> He also sold a 1972 Corvette for \$27,000 and used the proceeds to pay down the mortgage

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<sup>29</sup> Exhibit 6.

<sup>30</sup> Exhibit 7.

<sup>31</sup> Exhibit 9.

<sup>32</sup> Exhibit 9.

<sup>33</sup> Tr. 117–118.

<sup>34</sup> Exhibit E.

<sup>35</sup> Exhibit D.

<sup>36</sup> Exhibits 4, 5, D, and E.

arrearage, repay personal loans, and cover living expenses.<sup>37</sup> He has not sold two old airplanes that he owns. In the first Chapter 13 bankruptcy case, the airplanes were valued at \$15,000 and \$25,000, although they are probably worth less today.<sup>38</sup> About a year ago, he borrowed \$5,000 from a 401(k) account to pay for aircraft storage.<sup>39</sup>

## Law and Policies

It is well-established law that no one has a right to a security clearance.<sup>40</sup> As noted by the Supreme Court in *Department of Navy v. Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>41</sup> Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.<sup>42</sup> An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.<sup>43</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>44</sup> The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>45</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>46</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>47</sup> In *Egan*, the Supreme

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<sup>37</sup> Tr. 104–107.

<sup>38</sup> Exhibit 6; Tr. 94–104.

<sup>39</sup> Tr. 127–128.

<sup>40</sup> *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10<sup>th</sup> Cir. 2002) (no right to a security clearance).

<sup>41</sup> 484 U.S. at 531.

<sup>42</sup> Directive, ¶ 3.2.

<sup>43</sup> Directive, ¶ 3.2.

<sup>44</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>45</sup> Directive, Enclosure 3, ¶ E3.1.14.

<sup>46</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>47</sup> Directive, Enclosure 3, ¶ E3.1.15.

Court stated that the burden of proof is less than a preponderance of the evidence.<sup>48</sup> The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.<sup>49</sup>

The AG set forth the relevant standards to consider when evaluating a person's security clearance eligibility, including disqualifying conditions and mitigating conditions for each guideline. In addition, each clearance decision must be a commonsense decision based upon consideration of the relevant and material information, the pertinent criteria and adjudication factors, and the whole-person concept.

The Government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty.<sup>50</sup> Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

### **Discussion**

The gravamen of the SOR under Guideline B is whether Applicant's family ties to China should disqualify him from eligibility for access to classified information. Under Guideline B for foreign influence,<sup>51</sup> the suitability of an applicant may be questioned or put into doubt due to foreign connections and interests. The overall concern is:

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.<sup>52</sup>

The guideline contains several disqualifying conditions. Given the evidence of Applicant's family ties to China, I have considered the following disqualifying conditions:

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<sup>48</sup> *Egan*, 484 U.S. at 531.

<sup>49</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

<sup>50</sup> Executive Order 10865, § 7.

<sup>51</sup> AG ¶¶ 6, 7, and 8 (setting forth the concern and the disqualifying and mitigating conditions).

<sup>52</sup> AG ¶ 6.



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; and

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

Based on U.S. concerns about China as noted above, China easily meets the heightened-risk standard in AG ¶ 7(a). This conclusion is based on the facts set forth in Department Counsel's administrative notice request.<sup>53</sup>

Applicant's family ties to China are sufficient to raise a concern. However, his family ties to China are largely nominal or *pro forma*. His wife and stepson, both of whom were born in China, are now U.S. citizens residing in the United States and are assimilating into their surroundings. Applicant has no relationship with his spouse's parents. Further, the nature and frequency of the contact his spouse has with her parents in China are not unusual or concerning. Considering the totality of facts and circumstances, I am persuaded that Applicant's longstanding ties to the United States are far stronger than his family ties, through his marriage, to China. Accordingly, the foreign influence concern is mitigated under the following conditions:

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 United States; and

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 United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.

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<sup>53</sup> Exhibit 10.

Under Guideline F for financial considerations,<sup>54</sup> the suitability of an applicant may be questioned or put into doubt when that applicant has a history of excessive indebtedness or financial problems or difficulties.<sup>55</sup> The overall concern is:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information.<sup>56</sup>

The concern is broader than the possibility that a person might knowingly compromise classified information to obtain money or something else of value. It encompasses concerns about a person's self-control, judgment, and other important qualities. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

In analyzing the facts and circumstances of Applicant's case, I have considered the following disqualifying conditions (AG ¶ 19) and mitigating conditions (AG ¶ 20):

AG ¶ 19(a) inability or unwillingness to satisfy debts;

AG ¶ 19(c) a history of not meeting financial obligations;

AG ¶ 20(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that is unlikely to recur and does not cast doubt on the [person's] reliability, trustworthiness, or good judgment;

AG ¶ 20(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation), and the [person] acted responsibly under the circumstances;

AG ¶ 20(c) [t]here are clear indications that the problem is being resolved or is under control; and

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<sup>54</sup> AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

<sup>55</sup> ISCR Case No. 95-0611 (App. Bd. May 2, 1996) (It is well settled that "the security suitability of an applicant is placed into question when that applicant is shown to have a history of excessive indebtedness or recurring financial difficulties.") (citation omitted); and see ISCR Case No. 07-09966 (App. Bd. Jun. 25, 2008) (In security clearance cases, "the federal government is entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring and failing to satisfy the debt in a timely manner.") (citation omitted).

<sup>56</sup> AG ¶ 18.

AG ¶ 20(d) the [person] initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Given the substantial-evidence standard, there is sufficient evidence to raise a concern under Guideline F as well as the disqualifying conditions mentioned above. Applicant's history of financial difficulties goes back to at least 2010, when he filed the first Chapter 13 bankruptcy case. Concerning the delinquent debts in the SOR, as noted in the findings of fact, I found all those debts, which total about \$95,000, are unresolved. That is consistent with Applicant's July 2015 credit report, which shows \$51,327 for eight collection accounts and \$33,280 for two unpaid judgments for a total of \$84,607. That's a sizable mountain of delinquent debt, all of which is ongoing and unresolved.

I have considered the mitigating conditions mentioned above, and none, individually or taken together, is sufficient to mitigate the security concern. Applicant's recent financial history is telling. It includes two Chapter 13 bankruptcy cases during 2010–2013, a short sale of a home to avoid foreclosure in 2014, and about \$80,000 to \$90,000 in delinquent debt, including two unpaid judgments. These facts and circumstances are obvious warning signs of financial distress and instability. With that said, his marital difficulties with his third wife, his period of unemployment, and his decreased salary are recognized as circumstances largely beyond his control that contributed to his financial difficulties. Still, he has made little progress in repaying a number of overdue creditors, and he does not have a realistic payment plan in place to do so. Viewing the evidence as a whole, there are not clear indications that Applicant's financial problems are being resolved and under control. The evidence does not support a conclusion that Applicant's financial situation is on a favorable upward trend.

The concerns over Applicant's problematic financial history create doubt about his current reliability, trustworthiness, good judgment, and ability to protect classified information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also gave due consideration to the whole-person concept.<sup>57</sup> Accordingly, I conclude that he did not meet his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant his eligibility for access to classified information.

### **Formal Findings**

The formal findings on the SOR allegations are:

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|---------------------------|---------------|
| Paragraph 1, Guideline B: | For Applicant |
| Subparagraphs 1.a–1.d:    | For Applicant |

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<sup>57</sup> AG ¶ 2(a)(1)–(9).

Paragraph 2, Guideline F:                      Against Applicant

Subparagraphs 2.a–2.o:                      Against Applicant

**Conclusion**

In light of the record as a whole, it is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information.

Michael H. Leonard  
Administrative Judge