



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



In the matter of:

SSN: -----

Applicant for Security Clearance

)
)
)
)
)
)

ISCR Case No. 07-08769

Appearances

For Government: Francisco Mendez, Esquire, Department Counsel
Thomas Coale, Esquire, Department Counsel

For Applicant: Kathleen E. Voelker, Esquire

April 7, 2008

Decision

CREAN, Thomas M., Administrative Judge:

Applicant submitted her Security Clearance Application (e-QIP), on January 5, 2007. On September 26, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns for Applicant under Guidelines B (Foreign Influence), and Guideline C (Foreign Preference). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on October 9, 2007. She answered the SOR in writing through counsel on November 14, 2007, and requested a hearing before an Administrative Judge. DOHA received the request on November 19, 2007.

Department counsel was prepared to proceed with the case on January 8, 2008, and I received the case assignment on February 5, 2008. DOHA issued a notice of hearing on February 7, 2008, and I convened the hearing as scheduled on March 4, 2008. The government submitted four exhibits, marked Government Exhibits (GE) 1 through 4, which were admitted in to the record without objection. Applicant and four witnesses testified on her behalf. Applicant submitted 26 Exhibits, marked Applicant Exhibits (AE) A through Y, which were admitted in to the record without objection. DOHA received the transcript of the hearing (Tr.) on March 14, 2008. Based on a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Procedural and Evidentiary Rulings

Administrative Notice

Department counsel requested I take administrative notice of certain facts pertaining to the People Republic of China (PRC).¹ The facts administratively noticed must be limited to matters of general knowledge and matters not subject to reasonable dispute. Attached to that request are six State Department or Intelligence documents department counsel presented to establish the facts requested to be administratively notice. Applicant's counsel objected to the use of one of the documents, "The Intelligence Threat Handbook".² Applicant's counsel objected that the document was old having been authored in 2003, written by a contractor to the intelligence community, and only based on a series of articles or scholarly papers. The request and the attached documents were not admitted into evidence but were included in the record as Government Exhibit 1. The documents will be used to assist me in determining the facts appropriate for administrative notice.³ As noted in the Findings of Fact, I gave some weight to the information contained in "The Intelligence Threat Handbook".

Motion to Amend SOR:

Department counsel withdrew the allegation under Guideline C, Foreign Preference. The security concern and allegations were based on Applicant's possession of a Peoples Republic of China (PRC) issued passport. Applicant destroyed her PRC passport.⁴ The lack of a current foreign passport negates the security concern. I granted department counsel's request to withdraw the allegation under Guideline C and the allegations will not be discussed further in this decision.⁵

¹ Tr.8-10; Government Exhibit 1 (Request for Administrative Notice, dated January 10, 2008).

² Tr. 10-13; Applicant Exhibit A (Objection to Administrative Notice, dated February 4, 2008).

³ Tr. 14-15.

⁴ Applicant Exhibit B (Facility Security Officer Letter, dated November 14, 2007).

⁵ Tr. 16-17.

Findings of Fact

In her Answer to the SOR, dated June 25, 2007, Applicant admitted the SOR factual allegations in ¶¶ 1.a - 1.d. She provided additional information to support her request for eligibility for a security clearance.

Applicant is a 50-year-old software developer for a defense contractor working on military medical information programs. She was born in the PRC and has been married for over 20 years to a man also born in the PRC. Applicant earned a bachelor's degree in history in the PRC, and then taught history at the college level. When she came to the United States, her spoken English was not sufficient for her to teach. She went to a United States university and earned a master's degree in computer science which enabled her to be employed by her present employer. Her husband had a master's degree in international trade from a PRC university. Her husband came to the United States in 1991 for school. He received a master's degree in computer science from a United States university. He works in this field but not in the defense industry. He never submitted an application for a security clearance.⁶ She and her husband have a 19-year-old son born in the PRC and now a college student. Applicant's husband and son are citizens and residents of the United States.⁷

Applicant lived with her mother in the PRC until she married in 1987. She and her husband lived together in the PRC until he left for schooling in the United States in 1991. Applicant followed her husband as a student to the United States in 1992. Their son stayed in the PRC with his paternal grandparents until 1996 when he joined his parents in the United States. Applicant and her husband were able to stay in the United States after school and apply for permanent residency. They received their green cards in February 2001.⁸ Applicant and her husband applied for United States citizenship together. Applicant received her United States citizenship on June 29, 2006. Her husband had to wait another year for a quota to open and became a United States citizen in February 2007.⁹ Both were issued United States passports in May 2007.¹⁰ She used her passport to travel to the PRC later that year.¹¹

Applicant's father was a university finance professor, and her mother an English teacher at the middle school level. She had two older brothers. Her mother came from a wealthy family, but contracted meningitis as a teen-ager. Applicant, as an infant, was

⁶ Tr. 109-110.

⁷ Government Exhibit 2 (Electronic Questionnaire for Investigations Processing (e-QIP, dated January 5, 2007).

⁸ Tr. 60-67, 121-122; Applicant Exhibit B (Naturalization Certificate, dated July 2, 1999).

⁹ Applicant Exhibit D (Naturalization Certificate, dated February 6, 2007).

¹⁰ Government Exhibit 3 (Interrogatory with passports, dated August 27, 2007).

¹¹ Tr. 66-67, 121.

cared for every day by nannies. From the age of 3 to 7 years old, she was cared for in a boarding style school during the week and returned to her family on the weekends. Her father and the family were sent to the countryside under Chinese communist government policy. Her father worked as a farmer as required by the PRC communist government. While in the countryside, her mother could not work because of her meningitis. Her father took care of the family and Applicant was required to assist him. Her parents fought all of the time and the family situation was not happy. Her father died in 1972 when he became sick and there was inadequate medical care at their countryside location.¹²

Applicant, her mother, and one of her brothers were moved back to the city by her father's former university after he died. Her other brother was a teenager and required by the communist policy to remain in the countryside for three more years to work as a farmer. He was eventually able to attend school and later opened his own business. In the city, Applicant, her mother, and brother lived in the basement of an apartment building housing university personnel. The area assigned to them by the university was originally the public bath area but was now used to house six or seven families in a communal small area. There was a shared toilet but no cooking facilities. Applicant had to take care of the domestic chores because her mother was working or too sick or working to do them. Her mother was able to find work teaching in a middle school. Applicant had to request permission from other families in the building to use their kitchen facilities to prepare food for her mother and brother. It was not a happy time because of her chores and the requirement to use common facilities from other families. She did not have a good relationship with her mother.¹³ Typical Chinese culture is for the son to take care of parents. In her case, she took care of her mother.¹⁴

Applicant lived there for three years until she completed middle school at age 17 or 18, and then was required to go to the countryside per the PRC policy. She lived with other girls in a dormitory setting for over three years. During that time, she had no contact with her mother. She wanted to attend college, so she studied, received a high score on the college admission tests, and was permitted to attend college. Her mother's housing improved and the mother moved to a one bedroom apartment. Applicant lived with her mother for a few months until college started. In college, she lived in the dormitory but went home to help her mother on weekends. Her relationship with her mother did not improve. She started college in September 1979 and worked in the school cafeteria to pay for college. She received a degree in history in 1983 and went to work as a university history professor. She continued to live with and care for her mother. She did not encounter any problems as a university professor during the issues raised by the rebellion in the PRC in 1989.¹⁵

¹² Tr. 68-72.

¹³ Tr. 72-77.

¹⁴ Tr. 118-119.

¹⁵ Tr. 77-81; 116-124.

Since she came to the United States, she has returned to PRC twice to visit her mother, in 2001 and 2007. She usually calls her mother about every two months. Her mother is hard of hearing so the conversations are usually one way with her mother doing the talking. However, she has not talked to her in some time. She did not call her for the Chinese New Year this year. Her mother broke both hips at different times but she did not go to the PRC to visit her on either occasion. She also sent her mother \$200 one time to assist with some of her medical costs when she broke her hip the first time.¹⁶

One of Applicant's brothers and his wife now live with her mother. He was an accountant with a chemical factory. The factory was controlled by another company that was affiliated with the communist government. He is retired because he has kidney disease. Applicant talks to this brother a few times a years. She did not call him this Chinese New Year because she knew her sister-in-law would pressure her to bring her mother to the United States so Applicant could care for her. Applicant does not want her mother to live with her. She feels no obligation to care for her mother because she cared for her when she was young and she is in the United States and not in the PRC. Since her brothers are in the PRC she believes they should care for their mother. Her brother got a computer in 2003, and they experimented communicating by e-mail. After a few attempts at communication, they did not use the e-mail any longer. At present, Applicant believes her brother no longer has e-mail capability. Her brother has a daughter who is a nursing student in the United States. She has no contact with her niece. She believes the niece does not intend to return to the PRC when she completes her nursing degree this year.¹⁷

Applicant's other brother is an interior decorator with his own business in the PRC. She also only talks to him occasionally on holidays. He is married with one son in the PRC. She last talked to this brother in 2007 when she needed his address to complete her security clearance application.¹⁸

Applicant states her relationship with her mother and brothers in the PRC are not close. She describes them as

“ . . . not close, not communicate a lot. . . . They have very tight relationship, knows each other very well, but I didn't know what's going on. Very slow, the reaction between me and my mother or brothers, the information no.”

Her family in the PRC share information between themselves but they do not share information with her.¹⁹

¹⁶ Tr. 81-85, 124-125.

¹⁷ Tr. 85-91, 122-126.

¹⁸ Tr. 91-94; *See also*, Government Exhibit 4 (Response to Interrogatories, dated August 27, 2007).

¹⁹ Tr. 130-131.

Applicant has friends in the United States who question why she makes so few trips to the PRC to see her mother.²⁰ Applicant's first trip back to the PRC since leaving in 1992 was in 2001 for 18 days. Applicant was not a United States citizen at the time. She only had a PRC passport which she used on the trip. Applicant was accompanied by her son. They stayed with her mother for part of the trip because Applicant became sick. Her son went on a tour so he was not with them for the entire trip. She saw her one brother who stayed with her mother but not her other brother. She did not see any of her friends from the PRC or have any contact with PRC officials.²¹

Her next trip was in 2007. Applicant made the trip because she wanted to see her mother who she had not seen in six years, she wanted to motivate her son since he was not acclimating to college by letting him travel in China, and a direct inexpensive flight was available. She was a United States citizen so she traveled on her United States passport. She stayed for 22 days, and went sightseeing with her son. She also visited her mother and brother but stayed in a local hotel. She also visited her other brother and his family. She has no intention of returning to the PRC except to attend her mother's funeral when she passes away.²²

Applicant owns no property in the PRC. She and her husband own the house in the United States that the family lives in.²³ Applicant and her husband also own rental property.²⁴ Applicant and her husband have their assets in United States banks and in retirement accounts.²⁵ Her activities, other than work, are with her church and swimming at the local swim club. She does not like the PRC communist government. If she were approached by them about revealing information, she would notify her security officer.²⁶

Applicant's husband's father died in 1997. Only her husband returned to the PRC for the funeral. His mother passed away in 2002 and again only he returned to the PRC for the funeral. Applicant's husband has two brothers who are residents and citizens of the PRC. One is a doctor and the other an emergency medical technician. Neither works for the PRC government. She does not know her brothers-in-law and does not talk to them. Her husband talks to his brothers by telephone about twice a year.²⁷

²⁰ Tr. 94-96.

²¹ Tr. 96-99.

²² Tr. 99-105.

²³ Applicant Exhibit O (Tax bill, 2007-2008).

²⁴ Applicant Exhibit P (Tax bill, 2007-2008); Applicant Exhibit Q (Lease, dated July 1, 2007).

²⁵ See, Applicant Exhibits R-W (Financial account statements).

²⁶ Tr. 105-111.

²⁷ Tr. 113-116.

A witness who is a naturalized United States citizen since at least 1963 testified he has known Applicant socially for over seven years. He has held a security clearance for over 35 years and has worked for government agencies. He sees Applicant often and has attended social functions with her. She does not talk often about her mother in the PRC. He knows she respects her mother but they have a distant relationship. He knows Applicant to be reliable, honest, and trustworthy. He recommends she be granted a security clearance.²⁸

Another witness testified he retired from the Army after serving on active duty for over 24 years. He now works with Applicant in a government agency as an information technology specialist. He has held a security clearance since he served on active duty. He has known Applicant for over 5 years and sees her on a daily basis. They occasionally have lunch together. He believes she is trustworthy, reliable, and should be granted a security clearance.²⁹

Another witness testified that she is an information technology specialist for the government agency that Applicant's employer supports. She has held a security clearance for over five years, and has known Applicant for those five years. She and Applicant interact extensively at work on a daily basis. She has met Applicant's husband and son. Applicant does not talk frequently about her family in the PRC. She knows Applicant has a mother and siblings in the PRC. Applicant has commented to the witness that the witness is close to her mother but that she, Applicant, is not close to her mother. The witness knows Applicant travels less back to the PRC than other employees in the government agency who are also from the PRC. Applicant asks her about United States cultural issues to learn more about them. She knows Applicant had an interim security clearance and that she had no issues with classified information while holding the clearance. She believes Applicant is honest, trustworthy, and reliable, and should be granted access to classified information.³⁰

Another witness testified that she is Applicant's neighbor and knows the family very well. Their children swim together and the families socialize together. She considers Applicant to be her best friend. She knows Applicant has a mother and siblings in the PRC. Applicant only mentioned her mother to the witness once and told her that her mother stays in bed and is sick. She never talks about her brothers. Applicant is very interested in United States culture and food. She cooks Chinese food for her family since her husband is a vegetarian. She believes Applicant has established her ties to the United States by not selling but renting her former townhouse residence. Applicant has never expressed a desire to return to the PRC. She

²⁸ Tr. 28-35.

²⁹ Tr. 35-42.

³⁰ Tr. 43-52.

considers Applicant to be hard working, reliable, trustworthy, and should be granted a security clearance.³¹

Applicant's duty performance has been rated highly since she has worked for her defense contractor employer.³² Applicant's senior supervisor states that she is an outstanding employee whose work product shows a high degree of professionalism. She is considered an honest and competent employee with a high work ethic. He recommends her for a security clearance.³³ Her project manager states she is trustworthy, honest, steady and a reliable worker. She pays attention to detail and is enthusiastic about her work. She considers the United States to be her home and rarely talks about China. He is a Chinese American and knows most other Chinese Americans travel to China every year or two to see family. Applicant returns to China less than them and has only traveled to China twice. He recommends her for a security clearance.³⁴ Applicant was also commended for her work in establishing a computer system to assist with evaluation of student examinations performed by the government agency she supports.³⁵ Her pastor noted that she is active in church ministries. He finds her honest, responsible, and trustworthy.³⁶

China, also known as the People's Republic of China, is hostile to the United States, and has interests inimical to those of the U.S. China is ruled by a totalitarian government that depends on the suppression of its people. The government has a poor record of human rights that features, among other things, repression of political and religious dissenters. There have been some improvements in relations between the PRC and the United States. While the United States looks forward to a constructive and broad-based relationship with China, a message reiterated by President Bush when he met with PRC President Hu in April 2006, there are areas of potential disagreement. The PRC is not listed by the United States as a sponsor of terrorism.³⁷

China is known to engage in espionage against the United States, economically, militarily, and otherwise. The United States is a primary intelligence target of PRC because of the United States role as a global superpower; its substantial military, political, and economic presence in Asia and the Pacific Rim; its role as a developer of advanced technology that China requires for economic growth; and the large number of Americans of Chinese ancestry who are considered prime intelligence targets by the

³¹ Tr. 52-58.

³² See, Applicant Exhibits H-M (Performance Appraisals from 2002 until 2007).

³³ Applicant Exhibit E (Letter, dated February 22, 2008).

³⁴ Applicant Exhibit F (Letter, dated February 20, 2008).

³⁵ Applicant Exhibit G (Letter, dated September 29, 2004).

³⁶ Applicant Exhibit X (Letter, dated January 5, 2008).

³⁷ Applicant Exhibit Y (Department of State lists of countries sponsoring terrorism).

PRC. The intelligence practice of the PRC is different from the Soviet and western concept of the use of recruited agents. The western approach is to recruit agents for a specific intelligence target. The PRC intelligence philosophy is to try to recruit agents before there is a specific need, and recruit as many as possible. The crux of the PRC approach is not to try to exploit a perceived vulnerability, but to appeal to an individual's desire to help China out in some ways. A large portion of the PRC intelligence collection efforts against common targets is conducted directly by PRC students, delegations, and commercial enterprises. The PRC also believe if large numbers of Chinese leave China and settle permanently in the United States, some of them may some day find their way into positions of intelligence potential. When they are in position, these individuals will be approached on the basis of loyalty to their ancestral land, and some may be persuaded to cooperate, at least on a limited basis.³⁸

Chinese security personnel place foreign visitors under surveillance and subject them to search without their knowledge or consent. However, there is no information in intelligence documents that the PRC is targeting relatives of Chinese-Americans who live in China to gain access to classified, technical, or business information from their relatives in the United States. However in recent years, the PRC has been the subject of approximately half of the cases initiated by U.S. law enforcement agencies concerning the illegal diversion of technology from the United States. These cases involve people born and raised in the PRC who immigrated to the United States and became United States citizens. The PRC relies on recruitment and exploitation operations. The PRC attempts to recruit or at least "make friends with" as many Chinese-Americans as possible, apparently hoping that at least some will perceive an obligation to help China,³⁹

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's over-arching adjudicative goal is a fair, impartial and common sense 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,

³⁸ Government Exhibit 1 (Request for Administrative Notice, Intelligence Threat Handbook, at 17-24).

³⁹ Government Exhibit 1 (Request for Administrative Notice with Attached State Department and Intelligence documents). See also, Washington Post, (Chinese Spy 'Slept' in U.S. for two Decades, Joby Warrick and Carrie Johnson, April 3, 2008, at A 01. This article outlines the PRC approach to intelligence gathering and lists the recent cases in the United States against PRC for spying).

reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B Foreign Influence:

Foreign influence is a security concern because an individual with foreign contacts and interests may have divided loyalties or foreign financial interests, and thus may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in the U.S. interests, or is vulnerable to pressure or coercion by any foreign interests. 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 consideration 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.⁴⁰

Applicant has contact with her mother, brothers, and sisters-in-law who are all citizens and residents of the PRC. These contacts may be minimal or infrequent, but they raise security concerns under Foreign Influence Disqualifying Conditions 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 sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information).

Applicant's husband has two brothers that he talks to by telephone that are citizens and residents of the PRC. Applicant does not talk to her brothers-in-law and they are not alleged by the government to be a security concern. However, because she lives with her husband, I have also considered Foreign Influence Disqualifying Condition 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) and determine that it does not apply. She does not have contact with her brothers-in-law and her husband's contact with them is infrequent so there is minimal if any risk of inducement, manipulation or coercion from the presence of the brothers-in-law in the PRC.

I have considered Foreign Influence Mitigating 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 interest 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 or infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation) and determine all apply to Applicant's contact with her mother, her siblings, and their wives.

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." The DOHA Appeal Board consistently applied this mitigating condition narrowly, holding that its underlying premise was that an applicant should not be placed in a position where he or she is

⁴⁰ AG ¶ 6.

forced to make a choice between the interest of the family member and the interest of the United States.⁴¹ Thus, an administrative judge was not permitted to apply a balancing test to assess the extent of the security risk. Under the revised guidelines, however, the potentially conflicting loyalties may be weighed and balanced to determine if an applicant can be expected to resolve any conflict in favor of the United States interest.

The nature of the country in which persons are located is an issue. There are some indications that China and the United States are working towards more friendly relations. But there is no doubt the PRC targets the United States for scientific, intelligence, technical, and military information. Security concerns can be raised from countries both friendly and hostile to the United States. The United States has an interest in protecting its classified information whether the person, organization, or country seeking the information has interests inimical to the United States.⁴² Friendly countries can have disagreements with the United States over matters that are vital to the national security of the United States. Friendly countries have engaged in espionage against the United States while seeking economic, scientific, and technical information.⁴³ The nature of a nation's government, its relationship with the U.S., its human rights record, and its intelligence collection methods 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 dependent on or associated with the government, or the country is known to conduct intelligence operations against the U.S. Applicant has a heavy burden to establish that the nature of the PRC activities do not create a security concern.

Applicant's mother is elderly and in poor health. She worked as a school teacher, when she worked. She did not work for the government, but does have a small pension from her work as a teacher. Applicant's relationship with her mother has never been close since she was required to care for the family and her mother under adverse conditions. She does not want her mother to come to the United States. She believes it is sufficient for her brothers to care for their mother in the PRC. Applicant has only visited her mother twice in the over 16 years since she left the PRC. They talk by telephone only occasionally, and have not talked in about a year. Applicant did not call her mother this year for the Chinese New Year. Their contact is infrequent and one sided since her mother is hard of hearing. She sent money to help with her mother's medical costs only once and has not sent her funds in many years. She only communicates with her brothers about once a year and has not talked to them recently. Applicant's contacts with her mother and siblings in the PRC are infrequent and

⁴¹ See, ISCR Case No. 03-17620, (App. Bd. Apr. 17, 2006); ISCR Case No. 03-24933, (App. Bd. Jul. 28, 2005); ISCR Case No. 03-02382, (App. Bd. Feb. 15, 2005); and ISCR Case No. 03-15205, (App. Bd. Jan. 21, 2005).

⁴² ISCR Case No. 02-11570, (App. Bd. May 19, 2004) at 5.

⁴³ ISCR Case No. 00-0317, (App. Bd. May 29, 2002).

minimal. Applicant has a sense of obligation to her mother since she plans to attend her funeral. This sense of obligation is balanced with her two visits to see her mother in over 20 years. However, since her mother and siblings are family members, their contact cannot be considered casual, even though the contacts are infrequent, minimal, and she has no desire to bring her mother to the United States to live with her.

Applicant's two trips to the PRC do not show an interest in the PRC but were taken to visit her mother and let her son visit and see the sights of China. She travels back to the PRC less than normal for immigrants from the PRC. She did not contact old friends and had no contact with government agents during her travels there. The trips were not made because of a desire to see the PRC or for government purposes, but for family purposes, both for her mother and her son. The trips do not create a conflict of interest.

The government documents used for administrative notice purposes show that the PRC approach to intelligence gathering is different than the western approach. The PRC does not target people, like her family members, to pressure or coerce to reveal information not in the U.S. interests. In balancing the nature of the contacts and visits with her family in the PRC, and the intelligence approach of the PRC against Applicant's loyalty to the United States, I determine that Applicant is not vulnerable to pressure or coercion by the PRC, and cannot be manipulated or induced to help PRC in a way that is against U.S. interest because some family members are in the PRC.

The PRC approach to intelligence gathering does seem to target individuals of Chinese ancestry who live in the United States. The administrative judge must again balance the nature of the loyalty of the individual to the United States against her loyalty to the PRC. In this case, Applicant has a strong sense of loyalty to the United States and little if any loyalty or love for the PRC. She and her family suffered under PRC rule. Her father was forced to move the family to the countryside and work as a farmer. Her mother was sick and could not assist the family, with the burden falling on Applicant's father and herself. Her father suffered in the countryside and died of inadequate medical care. After the death of her father, the family lived in substandard conditions in the city. Again, the burden fell on Applicant to maintain the family's elements of daily living. She was finally able to complete her education but still could not fulfill her career goals. She came to the United State and she and her family have made a life for themselves here. She has no financial interests in the PRC with all of her property and investments here. Her work performance is excellent and her co-workers and supervisors consider her honest, trustworthy and reliable. She became a United States citizen and travels on her United States passport. Applicant's life under the PRC is one of suffering and deprivations while her life in the United States is one of opportunity and prosperity. She sees the United States as offering her an opportunity to reach her potential, and has a deep sense of loyalty and admiration for the United States and its way of life. Applicant established herself and her family in the United States and became an integral member of United States culture and society. She has shown her lack of feeling for the PRC because of her life and experiences under PRC government policies, the infrequency of her trips back to her native country, and her lack of contacts

with anyone in the PRC. Applicant has little if any sense of loyalty or obligation to the PRC. A conflict of interest in this case is extremely unlikely. In balancing Applicant's interests, loyalty, obligations, and feeling for the PRC against her interests, loyalty, obligations, and feelings for the United States, I am satisfied Applicant's loyalty, obligations, feelings, and interests to the United States is such that she can be expected to resolve any conflict of interest in favor of the interest of the United States. Accordingly, Applicant has met her heavy burden to show that her contacts in the PRC do not cause a security concern, and that she cannot be pressured, coerced, or manipulated by the PRC to act against United States interests. I conclude AGs ¶¶ 8(a), (b), (c) are established and mitigate any security concerns.

Whole Person Concept

Under the whole person concept, the Administrative Judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a): "(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence." Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have considered the extent of Applicant's ties to the PRC and her family and balance them against her ties to the United States. I considered her work ethic and performance and the opinion of her co-workers and her supervisors. I considered the nature of the PRC, its intent to seek information from United States sources, and its methods of seeking protected or classified information. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from foreign influence.

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:

FOR APPLICANT

Subparagraph 1.a:

For Applicant

Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant

Paragraph 2, Guideline C:	WITHDRAWN
---------------------------	-----------

Subparagraph 2.a:	Withdrawn
-------------------	-----------

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

THOMAS M. CREAN
Administrative Judge