DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No.07-11254
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Philip Katauskas, Esq., Department Counsel
For Applicant: Jonathan Baker, Esq., and Alan Gourley, Esq.

03/26/2013

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Decision

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O'BRIEN, Rita C., Administrative Judge*:*

Based on a review of the pleadings, exhibits, and testimony, I conclude that Applicant has not mitigated the concerns raised under the guidelines for personal conduct and foreign influence. Accordingly, his request for a security clearance is denied.

Statement of the Case

On August 17, 2012, the Department of Defense (DoD) issued to Applicant a Statement of Reasons (SOR) setting forth security concerns under Guideline E (Personal Conduct) of the Adjudicative Guidelines (AG).[1] In his notarized Answer of September 8, 2012, Applicant denied the allegations. He also requested a hearing before an administrative judge.

DOHA issued a Notice of Hearing on November 19, 2012, and I convened the hearing as scheduled on December 11, 2012. Department Counsel offered six exhibits, which I admitted as Government Exhibits (GE) 1 through 6. Applicant testified and offered the testimony of one additional witness. He also submitted 11 exhibits, which I

[1] Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended. Adjudication of this case is controlled by the Adjudicative Guidelines implemented by the Department of Defense on September 1, 2006.

admitted as Applicant Exhibit (AE) A through K. DOHA received the transcript (Tr.) on December 21, 2012.

Procedural Rulings

I granted the Government's request that I take administrative notice of facts about the People's Republic of China (PRC; China), contained in 12 government documents. (Hearing Exhibit [HE] I)

To conform to the evidence presented, I amended the SOR at the hearing to insert paragraph 2, Guideline B: Foreign Influence, and added the following allegation:

> 2.a. That information set forth in paragraph 1, above.

Applicant did not object. I held the record open to allow both parties to submit briefs regarding Guideline B. On January 15, 2013, I received Applicant's brief (HE II), with three additional exhibits attached. Department Counsel raised no objection. I admitted them as AE L through N.[2] Department Counsel submitted a brief dated January 31, 2013. (HE III) The record closed on February 4, 2013.

Findings of Fact

After reviewing the pleadings and the record evidence, I make the following findings of fact.

Applicant is 66 years old and single. He married in 1967, divorced in 1984, and has three adult children. Applicant and his family are native-born U.S. citizens. He completed a bachelor's degree in 1969 and a doctorate in computer science in 1987. Between 1969 and 1987, he held a secret security clearance while employed as a DoD contractor. After receiving his doctorate in 1987, Applicant worked as an assistant college professor for 10 years. In about 1998, he started working on defense contracts involving military health care management. He currently works as a systems engineer and architect specializing in healthcare information technology management. The two co-founders of his current company submitted references stating they have known him for approximately ten years. They describe him as an expert in his field, who is trustworthy, open, and careful about protecting proprietary and sensitive information. A DoD employee whose contract Applicant supports, stated that she has known Applicant for about 12 years. She respects his professional opinions and considers him an important member of her team. (GE 1; AE G, H, I, K; Tr. 31-44, 142-143)

In about 1999, Applicant met Dr. A., a Chinese citizen. A few months after they met, they became roommates and sexual partners. On his January 2006 security clearance application, Applicant listed his own street address, apartment number, and city for Dr. A. He testified that providing the same address as his own indicated Dr. A.

[2] AE L through N are cited in Applicant's brief (HE II) as Attachment A through C, respectively.

was his roommate. However, he listed a different state for Dr. A.'s address. He testified that he mistakenly listed the incorrect state. He also testified he "felt an obligation to indicate that I did live with him so that there would be no doubt." During his May 2007 security interview, Applicant stated that Dr. A. resided with him. (GE 1, 2, 4, 6; AE K; Tr. 69-77)

Under Section 14/15 of the security clearance application, "Your Relatives and Associates," the choices include "Guardian," "Associate" and "Adult Currently Living With You." Applicant did not list Dr. A. as an "Adult Currently Living With You." He believed that because neither "roommate" nor "housemate" was among the options, the word "associate" best described his relationship with Dr. A. The instructions for that category state, "Include only foreign national associates with whom you or your spouse are bound by affection, obligation, or close and continuing contact." He chose this description because he and Dr. A. had close and continuing contact, although Applicant did not feel that they were "bound by affection or obligation." He also stated on his security clearance application that Dr. A. was a Chinese citizen, and that he, "has been a resident alien since 03/08/99 . . . I am his business partner in the [company name] listed in foreign companies." (GE 1, 6; AE K; Tr. 69-77)

Applicant did not describe Dr. A. in the 2006 security clearance application as a cohabitant. At the hearing, he said the word "cohabitant" was not accurate, because they were not in a spouse-like relationship. In his October 2007 response to DOHA foreign influence interrogatories, Applicant described Dr. A. as a "cohabitant, business associate." However, in his 2008 interview,[3] he stated that when he used the word "cohabitant" in 2007, he "misspoke, and didn't mean we were life partners or in a spouse-like relationship. We were just housemates/roommates then, and we are just housemates/roommates now." Later in that interview, Applicant clarified this statement by stating that he and Dr. A. had a sexual relationship which started in 1999 and ended in 2006. He added that he could not be blackmailed based on this relationship. Dr. A. became a U.S. citizen in September 2008.[4] They remain roommates, and Applicant described their current relationship as "best of friends." Applicant pays for the household expenses, and Dr. A. takes care of household duties. (GE 1, 2, 4, 6; AE K; Tr. 69-77, 91)

Dr. A., 57 years old**,** was an orthopedic surgeon in china before immigrating to the United States. In 1986, he came to the United States to pursue a graduate degree in

[3] Applicant was interviewed by an agent of the Office of Personnel Management (OPM) in May 2007. In May 2012, Applicant reviewed the summary of the interview, made minor changes, and adopted the reviewed version as accurate (GE 4) He completed DOHA Foreign Influence Interrogatories in October 2007. (GE 6) In November 2008, Applicant was also interviewed by an OPM agent over a two-day period. He reviewed the resulting affidavit, made minor changes, and signed a statement that it was true to the best of his knowledge and belief. (GE 2)

[4] China does not recognize dual citizenship. A Chinese citizen who is naturalized as a foreign citizen loses his or her Chinese citizenship. (HE I)

public health. He is not licensed to practice medicine in the United States. After the 1989 protests in Tiananmen Square in China, Dr. A. agreed to testify before the U.S. Congress about conditions in China. Several years later, in 1999, Dr. A. met Applicant. In 2000, when Dr. A. worked at a university hospital, his employer was hosting a conference in China, and asked Dr. A. to accompany the participants. Dr. A. feared he might be on a "watch list," and be arrested if he returned to China because of his Congressional testimony. Therefore, he asked Applicant to join him on the trip. Applicant testified, "He had a fear that he -- he did not want to return to China by himself. He wanted to in essence have a witness." Dr. A. was not approached or detained during the trip. (GE 1, 2, 4; AE K, M; Tr. 78-80, 150-153)

For about six months between 2002 and 2003, Dr. A. and Applicant worked on setting up an exchange program through which American nursing students at a U.S. university would receive college credits and experience by working as nurses in China. Chinese hospitals would also benefit, because they had a severe shortage of nurses. During their 2002 trip to China, Applicant and Dr. A. visited a nursing school for three days and gave a presentation to school officials about the project. They also presented it to a local medical school. Both schools were interested but expressed the need for funding. Applicant and Dr. A. planned to submit a funding proposal to a U.S. federal agency. However, the war in Iraq prevented the agency from providing funds, and the project ended. (GE 2, 6)

When he was a teen, Dr. A. learned farming because his father, a university professor, was sent to a farm during the Chinese Cultural Revolution. On one of his trips to China in the early 2000s, Dr. A. learned that the Chinese government was offering land at a low price to those who would start businesses in an agricultural development zone. The Chinese government offered additional benefits if the Chinese business was structured as a joint venture with a foreign company. The benefits included tax-free operation for several years, a company car at 40 percent off retail price, and free housing. (GE 2; Tr. 81-83, 87, 101, 108, 135, 153-156)

Dr. A. decided to start a company focusing on herbs, fruits, and vegetables used in traditional Chinese medicine. Applicant described the business as a "bio-technology micro-propagation and agriculture company." Dr. A. and Applicant took several company-related trips to China. Dr. A. conducted business, and Applicant considered it a vacation. They usually stayed two to three weeks. Dr. A.'s Chinese company, MS,[5] had 40 acres of land, and five or six workers to grow the product. The local government's agriculture department provided a three-story building, comparable to a townhouse**,** for company use rent-free for several years. The Chinese employees of Company MS lived there. Applicant and Dr. A. also stayed there on visits to China between January 2004 and June 2006. In 2004 or 2005, Applicant attended two or three meetings with city officials when Dr. A. was establishing his farming business. Applicant

[5] Dr. A.'s U.S. and Chinese corporations used slightly different names. The U.S. corporation will be referred to in this decision as Corporation M, and the Chinese company as Company MS. (Tr. 115)

was not involved in the discussions because they were conducted in Chinese. In 2003 or 2004, Applicant also accompanied Dr. A. to a three-day business fair in China for new companies. Applicant did not interact with the local citizens or city officials who attended because of the language barrier. (GE 2; AE M; Tr. 81-83, 87, 101, 108, 135, 153-156)

Dr. A. asked Applicant to set up a U.S. company to partner with his Chinese company so that he could obtain the joint-venture benefits offered by the Chinese government.[6] In January 2004, Applicant agreed to help Dr. A. In his 2008 interview, Applicant stated, "If my financial help provided some cost-cutting for his business in the PRC, then I was more than happy to assist." He prepared an application to incorporate Corporation M, a U.S. limited liability corporation, in his home state, using his and Dr. A.'s address as the address of the corporation. Applicant, Dr. A., and four of Dr. A.'s friends comprised the board of directors. Applicant listed himself as the chief financial officer (CFO). Along with Applicant and Dr. A., three or four of the directors were Chinese citizens.[7] Applicant testified they did not establish corporation rules, file documents, or pay required fees, because it was created solely to enable them to establish Corporation M bank accounts. The state corporation commission terminated the corporation on June 3, 2005, when it failed to pay the annual registration fee. Applicant noted in his 2008 affidavit that "it would be fair to say" that he had an informal relationship with China based on his association with Dr. A. and Company MS. (GE 2, 6; AE B, L, M; Tr. 83-84, 87, 100, 102-103, 108, 146-147)

Applicant accompanied Dr. A. on six visits to China between November 2000 and June 2006.[8] He also took weekly Chinese language classes between 2004 and 2006 because of his frequent travel there related to the Chinese Company MS. He discontinued the classes in 2006, because Company MS went out of business, and "therefore, there wouldn't be any foreseeable trips to the PRC." Applicant visited the Chinese embassy in the United States 12 times between 2000 and 2005 for travel visas. In China, he sometimes stayed in hotels, and sometimes in the Company MS townhouse. Applicant and Dr. A. also visited Russia for three weeks in December 2001. They visited a medical school in one major Russian city and asked about its nursing program. They also spent three or four days visiting Dr. A.'s nephew, at the medical school he attends in another major Russian city. They spoke with "random students" about the nursing program there, talked with numerous professors about Russia's

[6] Applicant was not required to report foreign travel to his company, but informed his supervisors when he planned to be outside of the United States. (GE 2) He informed his employer of his connection with the Chinese Company MS. (GE 3)

[7] Applicant was uncertain if one of the directors, Dr. W., is currently a German citizen, or if he was a German citizen or a Chinese citizen when the company was incorporated. (Tr. 96)

[8] Applicant listed five visits to China between 2000 and 2006 in his January 2006 security clearance application, four visits during his May 2007 security interview, and six visits in his October 2007 response to DOHA interrogatories. (GE 1, 4, 6)

medical education system, and attended several classes given in English. On his security clearance application, Applicant listed the purpose of his trips to China and Russia as "pleasure." Dr. A. paid for Applicant's hotel, meals, and transportation on several of the trips to China, because Applicant paid for Dr. A.'s expenses when they were in the United States. (GE 1, 2, 4; AE K)

During their trips to China in 2000, 2002, and 2006, Applicant and Dr. A. met with Dr. A.'s sisters and their families. One of Dr. A.'s sisters, a Chinese citizen and resident, is a retired 57-year-old doctor. Her husband is a retired engineer, and their adult son is unemployed. Dr. A. last spoke to his sister about three years ago. They usually exchange Christmas emails, but did not do so in 2012. His other sister is a 65-year-old citizen and resident of China. She is a retired high school teacher. Her husband is 65, retired, and has Alzheimer's disease. Dr. A. speaks with her monthly by telephone. Their son is a medical doctor at a Chinese hospital. Dr. A. and his nephew speak by telephone once per month, and exchange occasional emails. Dr. A. last visited his sisters in 2009. As of 2008, Applicant had no plans to visit China in the future, but stated he would likely go if Dr. A. wished to go for a vacation. In 2013, Applicant and Dr. A. stated they have no plans to travel to China. (GE 1, 2, 4; AE K, L, M; Tr. 80, 92)

On his trips to China, Applicant met numerous farmers and peasants who were old friends of Dr. A. Applicant and Dr. A. also met with his former medical school classmates. Applicant noted that some of them had become mid-level Chinese government workers.[9] The following friends, and one family member, became involved in the U.S. and Chinese companies. (GE 1, 2, 4; AE K, L, M; Tr. 80, 92)

- **Dr. W.** – resides in Germany. He is or was a Chinese citizen; Applicant is unsure if he is now a German citizen. Dr. A. believes he is a German citizen. Dr. A. was a medical school classmate of Dr. W. and has known him since 1980. Dr. W. was on the board of directors of Corporation M. He agreed to invest approximately $15,000 in Dr. A.'s business. Applicant met Dr. W. once in about 2004 when they were visiting the Company MS business quarters in China. Applicant and Dr. A. had dinner with Dr. W. and his mother. When Dr. A. was in the United States, he talked about monthly with Dr. W. by telephone. Until about 2009 or 2010, Applicant had brief contacts with Dr. W. if he answered the phone when Dr. W. called Dr. A. at home. Dr. W. spoke little English. As of 2008, Applicant stated Dr. A. and Dr. W. were close friends and remained in touch. In 2013, Dr. A. stated he has not seen Dr. W. since 2004 or 2005, talks to him by telephone every few months, and exchanges emails every three months. Applicant did not list Dr. W. on security documents or in his security interviews because he did not believe he had "close and continuing contact" with Dr. W. (GE 2; AE B, M; Tr. 87-92, 96)

- **Dr. Z.** – is a university professor and a resident of China. Applicant believes Dr. Z. is a Chinese citizen, but is not certain. Dr. Z. agreed to invest in the Chinese

[9] A May 2012 DOHA interrogatory asked Applicant for an updated list of foreign contacts. He replied that his DoD employment involved professional—but not personal—contact with foreign citizens from "countries such as Canada, Australia, New Zealand, Japan." (GE 3)

company. He was a member of the board of directors of the U.S. corporation. In his 2008 interview, Applicant said he met Dr. Z. in 2000 or 2002 in China, when he and Dr. A. stopped by Dr. Z.'s home, and that they had in-person contact two or three times in China. At his hearing, Applicant said he met Dr. Z. one time in about 2003 or 2004 at a tea house in China, when Dr. A. was setting up Company MS. Dr. Z. does not speak English and Applicant does not speak Chinese, so they did not converse. Dr. A. referred to Dr. Z. in conversations with Applicant as his "pharmaceutical company friend" because he operated a Tibetan pharmaceutical company. Dr. A. has not been in touch with Dr. Z. since 2006. At the hearing, Applicant stated he did not list Dr. Z. on his security application or disclose him during his 2007 security interview because he had no recollection of their brief meeting. (GE 2; AE B, M; Tr. 92-96, 154)

- **Dr. R** – was a medical school classmate of Dr. A. in China. He resides in the United States and works for a U.S. government agency. Applicant met him in approximately 2002. Applicant and Dr. A. believe Dr. R. is currently a U.S. citizen, but they are not certain. He was on the board of directors of the U.S. Corporation M. He agreed to invest approximately $7,500 in Dr. A.'s business. As of 2008, Applicant and Dr. A. had been visiting Dr. R. and his family once or twice per year for holiday dinners. Applicant has also assisted Dr. R. by editing some of Dr. R.'s professional papers. In his 2008 interview, Applicant said he was in contact with Dr. R. via email about every three months. Their last contact was in approximately 2008. As of 2013, Dr. A. stated he is in touch with Dr. R. once or twice per year at holidays, and had last spoken with him in January 2013. They do not exchange emails. Applicant did not list Dr. R. on his 2006 security clearance application because he did not consider this contact to be "close and continuing contact," and also because he thought Dr. R. was a U.S. citizen. (GE 2; AE B, L, M; Tr. 97-99)

- **Mr. L.** – is Dr. A.'s cousin. Applicant met him in China in 2002. When the Chinese company was being set up, Mr. L. resided in China. He is a member of the board of directors of the U.S. Corporation M. From 2004 to 2006, Mr. L. worked for Dr. A. as the onsite manager of Company MS in China. Applicant saw him during each trip to China in 2002, 2004, 2005, and 2006. Mr. L. lived in the townhouse that the Chinese government provided as one of the incentives for the joint venture. After January 2004, whenever Applicant and Dr. A. traveled to China, they stayed in the government townhouse as well. Each time he visited China, Applicant saw Mr. L. on a daily basis during ". . . meals and social activities of visiting [Dr. A.'s] friends and family." Applicant said he and Mr. L. did not have much interaction, because Mr. L.'s English-speaking skills are limited. Applicant last saw Mr. L. during his June 2006 trip to China, a few months after he completed his security clearance application. Applicant did not list Mr. L. in his security clearance application, 2007 security interview, or interrogatory because, although he saw him every day while he was in China, it was "in passing." He did not consider his interactions with Mr. L. to be "close and continuing" contact. Dr. A. last spoke to Mr. L. in about October 2012. They exchange emails about every three months. (GE 2; AE B, M; Tr. 99-102)

- **Dr. DW –** was a citizen and resident of China at the time Dr. A. was setting up the Chinese company. He and Dr. A. completed their medical residency together. In his 2008 affidavit, Applicant noted that Dr. DW invested in the Chinese company. Dr. DW is a hospital administrator in China. Applicant stated that he speaks "halting English." Applicant met him "a few times" during his visits to China. Applicant and Dr. A. last saw Dr. DW in 2006. Dr. A. does not maintain contact with him. (GE 2; AE L, M; Tr. 103-104)

- **Mr. Y –** was a resident of China at the time Dr. A. was setting up his business in China. He was a classmate of Dr. A. in medical school in China. He invested in the company, helped him to set up the land purchase in China, and to qualify for the benefits from the Chinese government. He holds a government position as a city administrator in China. Applicant first met him in 2000, and about three other times during visits to China. Applicant and Dr. A. had dinner at Mr. Y.'s home with his family. Mr. Y speaks basic English. Applicant and Dr. A. last had contact with him in 2006. (GE 2; AE L, M; Tr. 104-106)

Other than Dr. A. and another Chinese citizen with whom he had a relationship,[10] Applicant did not list any of the above foreign contacts in his security clearance

[10] Applicant had a relationship with a Chinese citizen, Mr. QL, who is not alleged in the SOR. In his 2007 interrogatory response, Applicant described him as a "professional associate," but in his 2008 affidavit, he said he considered Mr. QL a friend.. Applicant met Mr. QL, a Chinese nurse, in 2002 at a U.S. university. In 2003, Mr. QL stayed in Applicant's home for two to four weeks. Mr. QL then became a live-in nurse for Applicant's ill mother in another state. Applicant paid for his moving expenses, provided rent-free board in his mother's home, and paid him $1,500 per month. While Mr. QL cared for Applicant's mother for six to eight months, he and Applicant had daily email and telephone contact. They had in-person contact and dinners about every two weeks when Applicant visited his mother. Mr. QL also resided at Applicant's home rent-free for several weeks in 2004, after Applicant's mother passed away. He had a key to Applicant's home, and he used Applicant's telephone to call family in China. Applicant listed Mr. QL as a foreign citizen in his 2007 interrogatory response, and described their friendship. (GE 2, 6)

Mr. QL returned to China in 2004. As of 2008, he was teaching nursing at a Chinese college. When Applicant traveled to China with Dr. A. in June 2006, he left Dr. A. and traveled to another city to stay with Mr. QL's family for 7 days. As of 2008, Applicant exchanged emails with Mr. QL once or twice per month. Applicant has also sent Mr. QL "publicly available medical and educational materials." They discuss standardization of medical information in the United States. Applicant has encouraged Mr. QL to tell his Chinese colleagues about standardization of medical information in the United States. Applicant does not know if Mr. QL's position in China was affiliated with the Chinese government. Applicant did not discuss his DoD employment with Mr. QL, other than describing his job function. Mr. QL is unaware that Applicant is applying for a security clearance. Applicant also had brief email contact with Mr. QL's teenage son until 2007. That year, Mr. QL's son wished to visit the United States. Applicant voluntarily sent a letter offering his home for Mr. QL's son during the visit so that Mr. QL could include it in the visa request package. He wrote it as a friend, to help Mr. QL's son enter the United States. The son's visa request was denied without explanation. As of 2013, Applicant has twice yearly email contact with Mr. QL. (GE 2, 6; AE L)

Although Applicant's relationship with Mr. QL is not alleged in the SOR, the Appeal Board has held that,

application, May 2007 security interview, or October 2007 interrogatory response.[11] During his 2007 security interview, Applicant stated that, other than Dr. A., none of the foreign nationals were aware that he was applying for a security clearance. He noted in his 2007 interrogatory response that Dr. A. "calls his family and business associates in China and e-mails them from my home." He also stated that the only information he has given Dr. A. about his work is that he develops ways for medical professionals to share individuals' medical information more efficiently. (GE 4, 6)

Dr. A. established an account at the Bank of China for the Chinese company. Applicant did not have access to the Chinese account. Dr. A. asked Applicant and the Chinese board members to invest $15,000 each in the Chinese company. All but one (Mr. L.) agreed to invest in Company MS, but only Applicant and two others (Dr. W. and Dr. R) actually provided funds. In his 2007 interrogatory response, Applicant noted that "[Dr. A.] told me that I was listed as a co-owner with five other individuals." Applicant testified that he "did not want to be an owner or participant in a foreign company" because of his DoD employment, and because he might need a security clearance in the future. He also stated, "[O]n the flip side, I felt that I was willing to help my friend, and I felt it was important to flag on the SF-86 that I did have this relationship, which obviously could be perceived as ownership or whatever. . . ." He insisted on having two separate bank accounts for Corporation M, so that there would be "a simple way for the bank account to document anything that I did if there was any question of my relationship with the Chinese company." Applicant stated in his 2007 interrogatory response that he loaned Dr. A. approximately $15,000. In his 2008 affidavit, he corrected this amount to indicate he had given Dr. A. "two approximately $15,000 loans" in 2004. He viewed these loans as "a friend helping another friend out" and was not concerned with being repaid. (GE 2, 6; AE M; Tr. 110-111, 130, 143-144)

> Conduct not alleged in an SOR may be considered: (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3. ISCR Case No. 03-20327 at 4 (Oct. 26, 2006)

[11] Applicant's 2007 foreign influence interrogatories asked about his business associations. It did not require listing only those with whom he had close and continuing contact. Question 7 of the interrogatory asked if Applicant had any business or professional associate who was employed by, *inter alia*, a foreign government; he did not list Dr. Y. Question 9 asked if he had any business or professional associate who is a citizen or resident of a foreign country; he listed Dr. A. and Mr. QL, but not the other foreign associates listed above. Question 11 asked if he had a business or professional associate who lived in a foreign country; he listed Mr. QL, but not the others listed above. Question 13 asked if he had foreign contacts that were not the result of official U.S. government business. Applicant answered "No," but then added two qualifications: his contacts with Mr. QL, and the following: "During my foreign trips, I had normal social 'contact' with various citizens of those countries. None of those contacts resulted in my having any subsequent contact." (GE 6)

To qualify for the joint-venture benefits, Dr. A. was required to show the Chinese government that his U.S. partner had approximately $100,000 in a U.S. bank. (Tr. 83) Applicant and Dr. A. incorporated Corporation M so that they could open a saving and a checking account in its name. Both Applicant and Dr. A. could access each account, though they agreed that Applicant would use the savings account exclusively, and Dr. A. would use the checking account exclusively. In February and March 2004, Applicant made deposits of approximately $90,000 and $50,000 in the Corporation M savings account. (Tr. 129) He obtained the funds by withdrawing from his retirement account. Applicant testified that he took these actions to help his friend, and he did not consider himself an investor in the Chinese company. (Tr. 108-114) In describing the $140,000 he transferred to the Corporation M account, Applicant testified:

> In my mind that was never an investment. That was my money. I transferred it to the – to the [company M] bank account so that [Dr. A.] could get the letter – letter from the bank. It was my retirement money. It was collecting the same interest that it was collecting in my [retirement] account. I had exclusive control over it, and . . . it never left the [U.S.] bank. It never was a part of anything in China." (Tr. 129)

Applicant provided bank statements for his and Dr. A.'s U.S. Corporation M bank accounts, covering the period January 2004 to August 2005. Applicant's Corporation M savings account shows the following transactions:

1.	Initial deposit	$90,046	February 5, 2004
2.	Deposit	50,181	March 12, 2004
3.	Wire transfer to Bank of China Company MS account	16,045	July 26, 2004
4.	Wire transfer to Bank of China Company MS account	14,270	August 10, 2004

In 2004, Dr. A. made the following transactions from his U.S. Company M checking account:

5.	Initial deposit	$10,000	January 30, 2004
6.	Checks to retail vendors	938	April 2004
7.	Deposit	6,000	June 4, 2004
8.	Wire transfer to Bank of China Company MS account	6,000	June 4, 2004
9.	Deposit wired from German bank account	14,251	August 26, 2004
10.	Withdrawal; funds transferred to Applicant's personal checking account (#9030)	23,677	December 30, 2004

(AE C; Tr. 114, 129-136)

The two wire transfers to a Chinese bank in July and August 2004 (line items 3, 4) represent Applicant's own investment of about $15,000, and a loan to cover the promised investment of approximately $15,000 by Dr. W. In his 2008 affidavit, Applicant discussed these funds:

> I didn't think of my $30,000 loan as an investment because it was always understood that I didn't expect or hope for making a profit. My only interest was helping [Dr. A.] and hopefully getting my money back, but if I didn't, then it wouldn't be a big deal. (GE 6)

In August 2004, Dr. W. wired his investment from a German account to Dr. A.'s checking account (line item 9). Dr. A. partially repaid the approximately $30,000 loan from Applicant by transferring $23,677 to Applicant's personal checking account in December 2004 (line item 10). Applicant testified that on his security clearance application and in his 2007 interview, he listed only a $15,000 loan, because he did not remember that he had actually provided approximately $30,000 to Dr. A. (GE 4; AE C, D, E; Tr. 108-122, 129-130, 139-141)

In late 2006 or early 2007, Dr. A. closed the Chinese company because of lack of profit and inability to run the business while residing in the United States for eight months of the year. After Company MS closed, Applicant did not close his Corporation M U.S. savings account, or move funds from that account. When he was interviewed in 2008, he remembered that the funds were still in the Corporation M account. The account had earned interest since 2004, and in October 2008, he closed the account and transferred $120,867 to his personal account. The Corporation M checking account had $5,000 as of September 2005. In October 2008, Applicant realized that the Corporation M checking account still had funds, and he transferred the $5,000 into his personal account. He testified that this $5,000 was a partial repayment of the $30,000 he had loaned to Dr. A. Both Corporation M accounts are now closed. Applicant has no financial assets in China. (GE 6; AE D, E, F, J, L, N; Tr. 121-126, 141-142)

Applicant has also provided Dr. A. with other funds. In 2001, Dr. A.'s nephew could not pay his tuition at medical school, and Dr. A. asked Applicant for help. Applicant's nephew was attending school in Russia. Applicant wired $2,000 from his personal bank account to a Russian Foreign Students Department. Applicant did not note in his 2008 interview whether Dr. A. repaid this loan. Applicant also paid the rent for a photography business that Dr. A. operates in their local area. Applicant paid $4,000 per month for about 16 months in 2006 and 2007, for a total of about $64,000. In describing the money he has given to Dr. A. over the years, Applicant listed a $100,000 line of credit for Company MS, and an additional $100,000 for Dr. A.'s "personal and business needs." Dr. A. has repaid about $20,000 to $30,000. Applicant does not require Dr. A. to repay these funds, because Applicant is financially comfortable. He earned $160,000 per year as of 2008, and he provided documentation showing that his net worth at the time was approximately $1,200,000. He stated in 2008 that if Dr. A.

"needed money for something in the future, then I would probably help him out." (GE 2; AE D, E, F, J. M)

In December 1986, Applicant inappropriately touched a six-year-old child. He testified that he was going through a stressful period related to child support and custody issues with his ex-wife. He was a federal employee and held a security clearance. He was arrested and charged with aggravated sexual assault. The court order of October 1991 lists the charge as sexual assault of a child. At court in about April 1987, he was given a choice of pleading guilty, and being held in jail each night for one year; or pleading "no contest" and receiving "shock probation," which required spending two continuous months incarcerated in the state penitentiary, followed by five years of supervised probation, during which he would report to his probation officer monthly. Applicant pled "no contest" and was sentenced to "shock probation," starting on August 13, 1987. Applicant was also required to attend counseling, which included weekly individual counseling for six months, and monthly group counseling for the remainder of his probation.[12] Applicant satisfied the court's order. (GE 1, 2, 4, 5; AE A, K; Tr. 61-68)

On October 18, 1991, the court ended Applicant's probation after he served slightly more than four years. The court order also set aside the conviction and dismissed the indictment. Applicant's attorney at the time told Applicant that he could, in good faith, say that he had never been convicted, been in jail, or on probation because these events were dismissed by the court. On his security clearance application, Applicant disclosed that he had been "charged with or convicted of" a felony offense In December 1986. He noted the charge as "aggrivated [sic] sexual assault," listed the name and address of the court, and stated that it was "dismissed 10-91." During his 2007 security interview, he provided a copy of the court documents showing the case disposition. He testified that he believed that providing the final disposition and the court information on his security clearance application would "flag" the arrest so that investigators could locate the court records for the details. His employer and family members are aware of these facts. (GE 1, 4; AE A, K; Tr. 61-68, 138-139)

Administrative Notice

People's Republic of China

The People's Republic of China is geographically vast, with a population of more than a billion people. Its authoritarian government, controlled by the Chinese Communist Party, has a poor human rights record. It suppresses political dissent, engages in arbitrary arrests and detention, as well as forced confessions and torture of prisoners. The government does not respect freedom of speech, assembly, press, religion, or academic or artistic freedom. Chinese authorities monitor communication devices such as telephones, faxes, emails, text messages, and internet servers; and

[12] Applicant's testimony that he attended counseling for the entire probation period conflicts with his affidavit, in which he stated that he attended counseling from June 1987 to June 1988. (GE 2 at p. 104)

open domestic and international mail. The U.S. Department of State warns that foreign visitors may be placed under surveillance; hotel rooms may be monitored onsite or remotely; and personal items in hotel rooms may be searched without the owner's consent or knowledge. Visitors are expected to register with the police within 24 hours of arrival in China.

In its 2012 Annual Report to Congress, the Office of the Secretary of Defense stated that the PRC is one of "the world's most active and persistent perpetrators of economic espionage. Chinese attempts to collect U.S. technological and economic information will continue at a high level and will represent a growing and persistent threat to U.S. economic security." Based on cases prosecuted in 2007 and 2008, the U.S. Department of Justice indicated that China ranked second only to Iran as the leading destination for illegal exports of restricted U.S. technology.

A 2011 DoD report on Chinese military and security developments found that China uses "economic espionage, supported by extensive open source research, computer network exploitation, and targeted intelligence operations to obtain technologies to supplement [its] indigenous military modernization efforts." In discussing China's acquisition of defense technology, the report noted that the network of government-affiliated companies in its military-industrial complex often

> enable[s] the PLA [People's Liberation Army] to access sensitive and dual-use technologies or knowledgeable experts under the guise of civilian research and development. The enterprises and institutes accomplish this through technology conferences and symposia; legitimate contracts and joint commercial ventures; partnerships with foreign firms; and joint development of specific technologies."

The same report stated that

> China continues to leverage foreign investments, commercial joint ventures, academic exchanges, the experience of repatriated PRC students and researchers, and state-sponsored industrial/technical espionage to increase the level of technologies and expertise available to support military research, development, and acquisition.

In its 2009 Annual Report to Congress, the U.S.-China Economic and Security Review Commission noted that

> Chinese intelligence personnel are more inclined than other foreign intelligence services to make use of sympathetic people willing to act as a "friend of China." While this most clearly has been seen in PRC-targeted recruitment of Chinese-Americans, PRC agents also have used U.S. citizens of other ethnic backgrounds as sources.

Policies

Each security clearance decision must be an impartial and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.[13] Decisions also reflect consideration of the "whole-person" factors listed in AG ¶ 2(a).

The presence or absence of disqualifying or mitigating conditions does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when a case can be so measured, as they represent policy guidance governing the grant or denial of access to classified information.

A security clearance decision is intended only to resolve the question of whether it is clearly consistent with the national interest[14] for an applicant to receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it falls to applicants to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, applicants bear a heavy burden of persuasion.[15] A person who has access to classified information enters a fiduciary relationship based on trust and confidence. The Government has a compelling interest in ensuring that applicants possess the requisite judgment, reliability, and trustworthiness to safeguard classified information. The "clearly consistent with the national interest" standard compels resolution of any doubt about an applicant's suitability for access to classified information in favor of the Government.[16]

Analysis

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern under Guideline B:

> 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

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[14] Directive § 6.3.

[15] *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).

[16] *See Egan,* 484 U.S. at 528, 531.

[17] *See Egan;* Adjudicative Guidelines, ¶ 2(b).

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.

I have considered the conditions under AG ¶ 7 that may be disqualifying, especially the following:

(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;

(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

(e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

AG ¶ 7(a) requires substantial evidence of a "heightened risk." The "heightened risk" required to raise this disqualifying condition is a relatively low standard. Applicant placed himself in a position of risk of foreign exploitation when he had close and continuing contact with his roommate, Dr. A., who was a foreign citizen until 2008. Applicant traveled to China six times with Dr. A., and with Dr. A.'s friends and professional associates, all of whom were Chinese citizens. They stayed several weeks at a time, and Applicant sometimes stayed at their homes, and socialized with them and their family members. He also met the Company MS Chinese on-site manager and employees. He participated in "new business" fairs that promoted Company MS. He sat in on business meetings with city officials about the company. The fact that the country at issue is China is an important factor in a heightened risk analysis. China is an aggressive perpetrator of economic espionage. Through such espionage, it obtains sensitive technologies to enhance its military modernization efforts. It targets both Chinese-Americans and those of other ethnic backgrounds to gain sensitive information.

Dr. A was a Chinese citizen during the years the foreign business, Company MS, was being developed. Applicant's name was listed as the CFO and a member of the board of directors of the U.S. company that partnered with Company MS. Therefore, Applicant's name was submitted to Chinese government officials in relation to supporting this business as a joint venture and obtaining the government's joint-venture benefits. Applicant's activities with Dr. A., his family, and his friends, and his association with the Chinese company, created a heightened risk of foreign influence or coercion. AG ¶ 7(a) applies.

AG ¶ 7(b) also applies. Applicant's conduct in the years between 1999 and 2008 demonstrates his close relationship with Dr. A., who was a Chinese citizen. They lived and traveled together and had a sexual relationship for seven years during that time period. In addition to the $170,000 related to the Chinese company, Applicant paid about $100,000 in rent and other expenses for Dr. A. Contrary to Applicant's assertion, these facts show that they had a close, spouse-like relationship. It is significant that Applicant chose to assist Dr. A. with his business, despite knowing that involvement with a foreign company would pose a security concern for him if he applied for a clearance. Applicant's conduct raises a potential conflict of interest between his desire to help Dr. A. and the need to protect sensitive information.

Applicant shared living quarters with a Chinese citizen from 1999 to 2008. At the time, Applicant did not hold a security clearance, but had access to proprietary and sensitive information. Applicant continued to share living quarters with Dr. A. after he became a United States citizen in 2008, and currently they remain roommates. Based on his conduct over the past 13 years, it is clear that Applicant has feelings of affection and obligation for Dr. A. The risk of coercion or manipulation is greater where an applicant has daily close contact with a person who represents a security concern. Although Dr. A. is now a U.S. citizen, he represents a security concern because he has family members who are citizens and residents of China with whom he maintains contact. He is in touch with one sister about yearly, but talks with his other sister monthly, exchanges emails with his nephew several times per year, and talks with him monthly. AG ¶ 7(d) applies.

AG ¶ 7(d) also applies because Applicant shared living quarters with numerous Chinese citizens during his six visits to China. He lived in the Company MS townhouse, provided by the Chinese government, on each visit between January 2004 and June 2006. For two to three weeks during these visits, he shared the residence with the Company MS operating manager, Dr. A., and five or six Chinese employees. Each visit presented a risk of foreign manipulation, pressure, or coercion.

Applicant provided approximately $140,000 as a line of credit for the Chinese Company MS. Applicant wired two additional loans from his Corporation M savings account to a Chinese bank: $15,000 of his own funds and another $15,000 to cover the prospective contribution from Dr. W. Applicant was willing to place a substantial portion of his assets at Dr. A.'s disposal to assist a foreign-owned and -operated business.

Applicant provided these funds at a time when Dr. A. was a Chinese citizen. Most of the $30,000 loan has been repaid, and the two companies no longer exist. Although Applicant has no current foreign investments, AG ¶ 7(e) applies to the period when Applicant provided substantial funds to enable a joint venture with a foreign business.

I have also considered the following mitigating conditions under AG ¶ 8:

> (a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;
>
> (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; 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 no longer has contact with Dr. A.'s friends and associates who joined him in the Chinese business venture. However, his conduct demonstrates that he has strong ties to Dr. A., who has family in China. Applicant met Dr. A.'s family during at least three of his trips to China. He has been willing to help Dr. A.'s family in the past. The nature of a country's government is relevant in assessing vulnerability to government coercion.[17] The risk of coercion is significantly greater if the foreign country has an authoritarian government, or conducts intelligence operations against the United States. China has an authoritarian government that seeks out both Chinese-Americans and other ethnic groups in its attempts to collect U.S. technological and economic information. Applicant could be placed in a position of having to choose between foreign and U.S. interests. AG¶ 8(a) does not apply.

Applicant has worked for the United States government for years, both as an employee and as a contractor. He has held a security clearance in the past. He

[17] ISCR Case No. 09-06831 at 4 (App. Bd. Mar. 8, 2011) ("the nature of the foreign government and its intelligence-gathering history are important considerations that must be brought to bear on a Judge's ultimate conclusions.")

testified that he enjoyed his work and wished to continue. However, Applicant's relationship with Dr. A. raises a potential conflict of interest. Applicant has shown that he was willing to acquiesce to requests from a foreign citizen to become involved in a joint venture with a foreign company, and provide access to significant sums of money as part of the venture. He became involved despite the fact that he knew his involvement with a foreign company could pose a security concern. Given his conduct over the past 13 years, resulting from his strong ties to Dr. A., I cannot confidently conclude that he would resolve a potential conflict of interest in favor or the United States. AG ¶ 8(b) does not apply.

Dr. A. has ongoing contact with his sister and nephew in China, speaking with them monthly, and exchanging emails with his nephew. Although there is no evidence that Applicant has contact with them, he has demonstrated his willingness to help Dr. A.'s foreign family. Applicant provided funds to Dr. A.'s nephew tuition at a Russian medical school as a favor to Dr. A., even though Applicant had met Dr. A.'s nephew only once before he wired the funds. AG ¶ 8(c) does not apply.

Corporation M and Company MS no longer exist. AG ¶ 8(f) applies because Applicant currently has no financial interests in a foreign business..

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern about personal conduct:

> Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The Guideline E allegations implicate the following disqualifying conditions under AG ¶ 16:

> (a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and
>
> (b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

When Applicant completed his security clearance application in January 2006, he and Dr. A. had been roommates and sexual partners for about seven years. But Applicant did not select the choice that would have accurately described his relationship with Dr. A. -- "Adult Currently Living with You." Instead, he indicated Dr. A. lived with him by listing the same address as his own; however, he listed it in another state. His claim that he wanted to disclose that Dr. A. lived with him is contradicted by his failure to list Dr. A. as "Adult Currently Living with You." During his investigation, Applicant also gave conflicting information about their relationship. He described them as "cohabitants" in 2007, but in 2008 he claimed his statement was inaccurate, because they were not in a spouse-like relationship. However, they had shared a home and had a sexual relationship for seven years, Applicant paid Dr. A.'s living expenses, he visited Dr. A.'s family in China, and placed large sums of money at Dr. A.'s disposal. The facts show that they did share a close, spouse-like relationship, and were bound by ties of affection and obligation, and Applicant deliberately failed to disclose it.

In his security clearance application and during his 2007 security interview, Applicant disclosed that he loaned Dr. A. $15,000 for the Chinese business. However, this amount is substantially less than the $140,000 he actually placed in the Corporation M account. Applicant was aware that involvement with a foreign company represented a security issue, and expressed that concern to Dr. A. in 2004. I find that Applicant deliberately minimized his financial involvement with a foreign company when he reported a substantially lower amount on his application and during the interview.

During his investigation, Applicant did not disclose that he had met and socialized with several foreign citizens associated with Company MS during his trips to China, and that he was a co-member with them on the Corporation M board of directors. He testified that he did not report them because he did not have close and continuing contact with them. The security clearance application does limit the "associate" category to those with close and continuing contact. I conclude Applicant was not required to list the foreign nationals on his security clearance application, because their interactions did not meet the "close and continuing contact" requirement.

However, the 2007 foreign influence interrogatories asked Applicant to list business or professional associates who were foreign citizens or residents, and did not limit that category to those with whom Applicant had close and continuing contact. Nevertheless, he failed to disclose his contacts with the Chinese citizens involved in Corporation M and Company MS. I conclude that Applicant deliberately failed to disclose the foreign nationals on his interrogatory response when he failed to list any foreign citizens or residents with whom he had a business or professional association.

Applicant also did not disclose his contacts with the foreign associates in his 2007 subject interview. He did disclose his contact with Dr. A., who was a foreign citizen at the time. I cannot determine if Applicant was asked at this security interview about contacts with other foreign citizens. He did discuss the foreign business

associates at his two-day interview in 2008. From the evidence presented, I cannot conclude that Applicant deliberately failed to disclose his foreign business associates during his 2007 security interview.

When Applicant completed his security clearance application, he disclosed his criminal history by answering "Yes" to the question that asked if he had ever been "charged or convicted of" a felony. He then provided the name and date of the charge and stated it was dismissed. He also provided the name and the location of the court that held the documentation about his court case. He could have been more precise by providing details about his conviction and probation. However, I conclude that Applicant provided the government with sufficient notice of his criminal conduct, and was not deliberately attempting to conceal his history.

Applicant deliberately failed to disclose his degree of financial involvement in Corporation M and Company MS; the extent of his relationship with Dr. A.; and his association with several foreign nationals on the board of directors of Corporation M. AG ¶¶ 16(a) and (b) apply.

Under AG ¶ 17, the following mitigating conditions are relevant:

> (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and
>
> (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

AG ¶ 17(a) does not apply. The record contains no evidence that Applicant sought to correct or supplement any of his documentation. In 2007, Applicant was sent detailed interrogatories specifically related to foreign influence. He did not list the foreign contacts he made related to Company MS and stated he loaned Dr. A. only $15,000 for the foreign company. In 2012, Applicant had an opportunity to review, correct, and supplement the report of his 2007 security interview. He made a few minor changes, but did not disclose his contacts with foreign citizens in China, or his financial involvement with the foreign company. AG ¶ 17(c) cannot be applied. Although most of the case documentation dates from 2006 through 2008, Applicant had a more recent chance to disclose the true facts when he reviewed his interrogatories in 2012. He again was not forthcoming. Falsification of information provided to the government cannot be considered minor misconduct because it undermines the security process, which depends on frank and candid answers. Applicant's failure to be forthcoming casts doubt on his reliability and good judgment.

Whole-Person Analysis

Under the whole-person concept, an administrative judge must evaluate the Applicant's security eligibility by considering the totality of the Applicant's conduct and all the relevant circumstances. An 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) the 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**.**

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the cited guidelines, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

In evaluating the whole person, I considered that Applicant has provided evidence of a strong work ethic and high-quality job performance. He is a U.S. citizen and has lived and been educated in the United States. He has been U.S. government employee, a DoD contractor, and has held a security clearance.

However, the facts presented raise serious security concerns. Applicant was a mature adult of more than 50 years when he developed a spouse-like relationship with Dr. A., a Chinese citizen. Because of that close relationship, he acquiesced to becoming involved with a foreign business that Applicant knew raised security concerns. He agreed to Dr. A.'s request to put up a substantial portion of his assets at the time – approximately $170,000 in total – to help Dr. A. qualify for joint-venture benefits from the Chinese government. He met with Dr. A.'s sisters and their families during at least three of his visits to China. He wired funds to a Russian school to help Dr. A.'s Chinese nephew with tuition. He visited the Chinese embassy 12 times in relation to his six trips to China, where he participated in foreign business fairs, sat in on foreign business meetings with Chinese officials, resided with Chinese workers, or resided in hotels – which are monitored and searched by the Chinese government.

Applicant also developed a close relationship with Mr. QL, a Chinese nurse. Between 2002 and 2004, Mr. QL lived in Applicant's home for several weeks on two different occasions. Applicant also paid him and provided him with other benefits while he cared for his mother, and they were in close contact during that period. Mr. QL had a key to Applicant's home, and he used Applicant's telephone to call family in China.

Applicant stayed with Mr. QL's family in China for one week. They discussed U.S. and Chinese medical standardization, and Applicant sent him materials about the topic. In 2007, Applicant offered his home as a residence for Mr. QL's son, who wished to come to the United States.

Currently, Applicant remains in a relationship with Dr. A., who is now a U.S. citizen, no longer involved with a foreign company, and operates a business in the United States. However, Dr. A. has family in China with whom he maintains contact. Applicant has helped Dr. A.'s family in the past, which raises questions as to future involvement. Doubts also remain about the poor judgment Applicant exercised by his willingness to engage in conduct that he knew to be a security concern because of his attachment to a foreign citizen. A fair and commonsense assessment of the available information shows Applicant has not eliminated the security concerns raised under the guidelines for personal conduct and foreign influence.

Formal Findings

Paragraph 1, Guideline E:	AGAINST APPLICANT
Subparagraph 1.a	Against Applicant
Subparagraph 1.b	For Applicant
Subparagraph 1.c	Against Applicant
Subparagraph 1.d	For Applicant
Subparagraphs 1.e, 1.f	Against Applicant
Subparagraph 1.g	For Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraph 2.a	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 access to classified information. Applicant's request for a security clearance is denied.

RITA C. O'BRIEN
Administrative Judge