



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



In the matter of: )  
 )  
 ) ISCR Case No. 07-12975  
 SSN: )  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government, John B. Glendon, Esquire, Department Counsel  
For Applicant: Eric A. Eisen, Esquire

August 26, 2008

**Decision**

MASON, Paul J., Administrative Judge:

Applicant submitted his Security Clearance Application (SCA) on December 1, 2006. On February 12, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under foreign influence (Guideline B). The action was taken pursuant to 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 made effective within the Department of Defense for SORs issued on or after September 1, 2006.

Applicant's answer to the SOR is dated March 1, 2008. His answer was notarized on March 5, 2008. DOHA issued a notice of hearing on April 28, 2008, and the hearing was held on May 27, 2008. Based on a careful evaluation of all the evidence in the record, Applicant's eligibility of security clearance access is denied.

At the hearing, the government submitted two exhibits (GE). The third exhibit (GE 3, administrative notice exhibit) contains publications from United States Government agencies that describe the Government of China, its human rights record internally, its practice collecting intelligence from other countries, and the various difficulties U.S. citizens face in travelling to the country. At Applicant's request, I have also taken administrative notice of the Adjudicative Desk Reference (ADR), Version 3.1, dated September 2007. The ADR is identified as AE F. At the hearing, testimony was taken from Applicant. He also submitted five exhibits (AE A-AE E). I have included AE F as his sixth exhibit. DOHA received the transcript on June 5, 2008.

### **Findings of Fact**

The SOR alleges in paragraph 1 that Applicant's ties in the Peoples Republic of China (PRC) raise foreign influence concerns. He admitted subparagraphs 1.a. through 1.e.

Applicant is 45 years old and married. He has been employed as a development, data base administrator for a defense contractor since August 2004. He seeks a secret security clearance. He has never held a security clearance.

On January 31, 1963, Applicant was born in the PRC. His parents, brother, and parents-in-law were born in and are resident citizens of the PRC. Applicant attended school in China and received his Bachelor's degree in Physics in 1984. After working in a copper rod factory for several years, he immigrated to the United States (U. S.) in 1990 for educational purposes; his uncle, an American citizen living in Hong Kong, sponsored Applicant's student visa, as everyone (foreigners) who studies in the U.S., according to Applicant, needs a financial sponsor, someone who will be financially responsible for the person they sponsor. (Tr. 31) Applicant spent a semester at a college in the middle of the U.S. He then transferred to another college in the northeastern part of the U.S., where he received his Master's degree in Electrical Engineering in May 1993. Applicant paid for his U.S. education from savings he accumulated while working in the PRC, and from full-time and/or part-time work at a hotel where he ultimately received his engineering degree.

After receiving his Engineering degree in May 1993, Applicant worked as a subcontractor for a U.S. federal agency. In 1994, he obtained his permanent resident card. In January 1996, he met his future wife, and married her in the U.S. in October 1996. Then, they moved to the local area. Since August 1997, Applicant has been employed in data base administration jobs. In November 1998, Applicant purchased his home in the local area. (AE A)

Applicant was naturalized in this country on March 18, 1999, and obtained his U.S. passport in July 1999. Applicant's wife gave birth to a child in July 2001. His wife, who immigrated to the U.S. in 1992, received her U.S. citizenship on January 19, 2006. She is currently employed as a special technician at a hospital.

Applicant has travelled back to the PRC on four occasions. The first occasion was in April 1994 for a family reunion. The second trip was in September 1999 when he and his wife travelled together to first Hong Kong, and then their home domiciles in the PRC. In April 2004, Applicant, his wife and son returned to China so their parents could see their child. In November 2006, Applicant travelled alone for vacation.

Applicant's mother (SOR 1.a.) was born in the PRC on November 16, 1938. She is currently retired from working in a wire manufacturing factory where Applicant's father was also employed. She worked in the maintenance workshop of the factory. Applicant's father (SOR 1.b) was born in the PRC on July 5, 1934, and retired from the wire manufacturing company in 1994. The Chinese government pays their pension. On May 9, 1964, Applicant's brother (SOR 1.c.) was born in the PRC. He currently is unemployed from a job with a wireless telecommunications company. Applicant believes that his brother is receiving income from some kind of investment, though Applicant did not appear to be certain of the source of the investment income. See, Tr. 94. Applicant's parents and brother are resident citizens of the PRC.

Regarding contacts with his parents and brother, Applicant stated in his interview in May 2007 (affirmed by him on November 10, 2007 in GE 2) that he had weekly telephone contact with his parents, and monthly contact with his brother. At the hearing, Applicant believed the telephone contact to be once every two or three weeks with his parents, and approximately every two months with his brother. Applicant has affection for his parents and brother, but he does not think he would disclose any information to them. (Tr. 58-60)

Applicant's mother-in-law (SOR 1.d.) was born in China on April 7, 1945. She is a retired professor. She was a doctor (Tr. 69), then a pharmacist (Tr. 71), before she retired. Applicant's father-in-law (SOR 1.e.) was born in the PRC on August 23, 1944. He received his education in China. He is a retired heart surgeon and also president of a hospital in the PRC. Applicant's father-in-law made a business-related trip to the U.S. for three days in May 1997. He also came in August 2001 when Applicant's son was born. His father-in-law's most recent business-related trip to the U.S. was for two or three days in 2003. Applicant does not have any direct contact with his father-in-law or mother-in-law, but noted in GE 2 that his wife talked to them weekly by telephone. See, Tr. 72. Applicant also has a sister-in-law (wife's sister) who is a resident citizen of China not mentioned in the SOR. She is married and works for a German company that imports and exports goods. Applicant seldom talks with her. (Tr. 106-107)

Applicant testified he provides no support to his parents, brother or in-laws. He has sent his parents money on a couple of occasions out of pleasure and/or a sign of respect. (Tr. 55) Applicant disagreed with the first sentence of the first paragraph of page 2 of GE 2, regarding the sending of \$2,500.00 to his parents as a holiday present. In his effort to clarify the sentence, Applicant stated he told the investigator that he sent \$2,500.00 in 2006 (Tr. 111-112) to his parents. Then, Applicant stated he actually gave his parents a \$2,500.00 gift in 2006, and a \$2,500.00 gift in 2007. (Tr. 122) Regarding the second sentence of the first paragraph of GE 2, referring to the \$300.00 to \$500.00

gifts he sends to his parents as birthday gifts, Applicant testified he terminated that practice in 2005. (*Id.*) The third sentence in the first paragraph of the second page of GE 2 refers to money to pay for medications and occasional stock investments for Applicant's father. During his testimony, Applicant provided testimony directed at clarifying the statement, however, his testimony was somewhat ambiguous. See, Tr. 115- 120. My factual finding is that Applicant sent his father \$2,500.00 for medication in 2005 and 2006. The money his father did not use to purchase his medication, was used to pay for stock investments.

Applicant came to the U.S. in 1990 because he was disappointed with the PRC following the government reaction to the regional protest in 1989. (Tr. 61) He has no plans to return to his country of birth, even for retirement. He will retire in the U.S.

Applicant has no property, investments, or any other financial interests in China. (Tr. 39, GE 1) He has never consulted or had any official contact with a foreign country. He has never belonged to any political organization supporting the PRC. Applicant's loyalty is with the U.S. where he considers the policies are fair. Applicant does not believe the Chinese government would pressure his parents because his work is not valuable to the PRC. His work involves sensitive personal identity information, not classified information. Applicant and his coworker believe the necessary controls are in place to prevent identity theft or compromise. (Tr. 46-48, AE C)

The cousin of Applicant's mother lives in the U.S. She, her husband and three children are U.S. citizens.

### **Character Evidence**

Applicant's operational manager has worked with him for a year and believes he is professional, efficient and trustworthy. His coworker of a year thinks Applicant has become an integral part of the data base team. Applicant's minister for six years complimented his work as head usher for several years. In the 10 months his direct supervisor has observed him, Applicant has repeatedly demonstrated his dedication to projects while improving the overall efficiency of the project objective.

### **Administrative Notice**

I have taken administrative notice of the PRC. China has an authoritarian government.<sup>1</sup> Even though there are ostensibly three branches of government, real government control rests in the Chinese Communist Party. On January 1, 1979, the U.S. officially transferred diplomatic recognition from Taipei, Taiwan to Beijing, China, and restated the Chinese position that there is only one China. Over the next several years, U.S. contacts with the PRC broadened to cover more and more issues involving

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<sup>1</sup> U.S. Department of State, *Background Note: China*, dated October 2007 (Background Note on China) at 7-8.

regional and global problems, political-military matters, as well as cultural/artistic and educational exchange activities.<sup>2</sup>

The Tiananmen Square quelling of demonstrators in June 1989 triggered a suspension of high-level exchanges and weapon exports by the U.S., together with a call by western nations for political and economic reform in areas related to human rights. The relationship between the two countries has been tested over the years by (1) the continuing sale of military weapons by the U.S. to Taiwan, (2) by the accidental bombing of the Chinese Embassy in Belgrade in May 1999, and (3) by the collision of a PRC plane and a U.S. plane in April 2001.<sup>3</sup>

Because of its global position of prominence in the Pacific and Asian regions, and the large number of Chinese Americans in the U.S., the Chinese direct large intelligence collection activities at the U.S. These activities are conducted by a large professional intelligence system, PRC institutes and factories, and PRC students, delegations, and commercial enterprises. A weakness of PRC-intelligence-gathering is that the methodology used to gather intelligence is inefficient. However, the unlimited number of PRC intelligence collectors know exactly what kind of information they are searching for in the U.S. to meet their intelligence needs.

While the PRC has always asserted it is not involved in espionage operations or intelligence gathering against U.S. targets, a top U.S. counterintelligence official noted that China is the most aggressive collector of U.S. intelligence. In July 2007, the Director of the Federal Bureau of Investigations (FBI) increased counterintelligence operations because of China's increasing intelligence activities in the U.S.<sup>4</sup>

China's poor record on human rights is exemplified by its miserable handling of political dissent, and other critical issues related to due process of law, freedom to practice religion and freedom to travel. Internal monitoring of communication systems, e.g., telephones, facsimiles, electronic mail, inspection of domestic and international mail, and surveillance, including unannounced searches of residences, offices, and hotels are commonplace in the PRC. American tourists must register with the local police as soon as they arrive in the PRC.<sup>5</sup>

## **Policies**

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<sup>2</sup> Background Note on China at 15-16.

<sup>3</sup> *Id.* at 17-18.

<sup>4</sup> U.S.-China Economic and Security Review Commission, 2007 Report to Congress of the U.S.-China Economic and Security Review commission, dated November 2007, at 104.

<sup>5</sup> U.S. Department of State, *Country Reports on Human Rights Practices - 2007: China (includes Tibet, Hong Kong, and Macau)*, dated March 11, 2008, at 9.

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 flexible rules of law that recognize the complexities of human behavior, and are to be applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's ultimate adjudicative goal is a fair, impartial and common sense decision. According to the AG, the entire process is a careful, thorough evaluation of a number of variables known as the "whole person concept." The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2b. 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 is not restricted to normal duty hours. Rather, the relationship is an-around-the-clock responsibility between an applicant and the federal government. 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.

### **Foreign Influence (FI)**

The security issues connected to foreign influence are familial ties, contacts, and/or proprietary/financial interests that could be used to generate a heightened risk/conflict of interest of forcing an applicant into a position of having to choose between the foreign entity and the U.S.

### **Analysis**

6. *The Concern.* “Foreign contacts and interests result in security concerns where those contacts and interests create divided loyalties, or may be manipulated or induced by a foreign entity that is harmful to U.S., or is vulnerable to pressure or coercion by any foreign entity. Decisions under this guideline should include the foreign country where the contact or financial interest is located, including, but not limited to whether the foreign government targets U.S. citizens to obtain protected information and/or is associated with the risk of terrorism.”

The mere possession of family ties in a foreign country is not automatically disqualifying under the FI guideline. ISCR Case No. 98-0507 (App. Bd. Dec. and Rem. Ord., May 17, 1999) at 10. However, when the citizenship and resident status of Applicant’s parents, brother and in-laws in the PRC are weighed against the type authoritarian government of the PRC and its intense intelligence gathering apparatus directed at the U.S., security concerns are raised under Foreign Influence (FI) disqualifying condition (DC) 7.a. (*contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or a resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion*) Applicant has regular contact with his parents and brother on a weekly or monthly basis. Although not alleged in the SOR, Applicant has travelled to see his parents in the PRC on four occasions in the last nine years. Until 2005, Applicant provided yearly birthday gifts of \$300.00 to \$500.00 to his parents. Applicant also sent his father \$2,500.00 in 2006 and 2007 to pay for medication, and to use the remainder for investments. The regular contacts and travel to the PRC on four occasions, when considered with the authoritarian nature of the PRC government and its record of targeting U.S. citizens to obtain protected or intelligence information, constitute a heightened risk for foreign influence and pressure.

Regarding Applicant’s in-laws, the Appeal Board has held that there is a rebuttable presumption that an applicant has close ties of affection, or at least obligation, to members of his wife’s family. ISCR Case No. 01-03120 at 8 (App. Bd. Feb. 20, 2002). Therefore, the heightened risk for foreign exploitation and influence extends to Applicant’s mother-in-law and father-in-law who are resident citizens of the PRC. Even though Applicant has no direct contact with his in-laws, his wife telephones them regularly.

Applicant’s close connection to his foreign family members who are resident citizens of China also creates a potential for a conflict of interest between his duties to protect classified information and his competing concerns to safeguard his relatives’ general welfare. These security concerns fall within FI DC 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*) apply. The fact that Applicant’s parents, brother, and in-laws are still resident citizens of the PRC constitute a potential for conflict that shifts the burden to Applicant to show why he believes the heightened risk is manageable and he will resolve the conflict in favor of the U.S. Applicant bears a heavy burden of showing his

family members do not pose a security risk. ISCR Case No. 01-26983 (October 16, 2002)

The disqualifying conditions under the FI guideline can be mitigated by: FC MC 8.a. (*the nature of the relationships with foreign persons, the country in which these persons are located, or the position 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.*); FI MC 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 minimal, or the individual has such deep and long lasting 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, FI MC 8.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*). Both Applicant's mother and father are retired from factory jobs. Considered with his brother, there is no indication the three have ever worked for or have been agents of the Chinese government. Though Applicant's mother-in-law is retired from professional medical positions, neither she nor her husband, now retired, were ever employed directly by or were agents of the PRC government. Given the close relationship Applicant has with his immediate family members, which cannot be considered casual or infrequent in nature,<sup>6</sup> and the poor human rights record of the Chinese government, together with its intelligence activities causing the U.S. government to increase its counterintelligence activities in 2007, the FI guideline is resolved against Applicant.

### **Whole Person Concept (WPC)**

I have examined the evidence with the disqualifying and mitigating conditions in my ultimate finding against Applicant under the FI guideline. I have also weighed the circumstances within the context of nine variables known as the whole person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors: (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 the participation was 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.

Applicant has five immediate family members who are resident citizens of PRC. I have noted that Applicant came to the U.S in 1990 on a student visa, and received additional academic degrees or certificates in this country. I have also considered he has no financial interests or financial obligations in the PRC, and that he has never voted or held foreign office. I have balanced the aforementioned information with

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<sup>6</sup> See, ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002)



Applicant's growing ties to the U.S., including his marriage to his wife in 1996, his ownership of his home since 1998, the birth of his son in this country in 2001, his family's involvement with the church, and his participation in the U.S. election process in recent years. Finally, I have carefully evaluated Applicant's earnest claim that he could not be a target for coercion or influence through his family because the Chinese government has determined that his data base, passport services are of no value to the Chinese government. Given the extensive intelligence gathering practices of the PRC, Applicant's claim is misplaced. Targets for intelligence/information can change as swiftly as the underlying information that is being sought. The presence of Applicant's relatives in the PRC, subject to the pressures of that country, place them in a position becoming a conduit for exploitation in a way that could force Applicant to have to chose between his relatives and the U.S. After weighing the disqualifying and mitigating conditions under the FI guideline, I conclude Applicant has not mitigated the security concerns of 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 (Foreign Influence, Guideline B):	AGAINST APPLICANT
Subparagraph 1.a.	Against Applicant
Subparagraph 1.b.	Against Applicant
Subparagraph 1.c.	Against Applicant
Subparagraph 1.d.	Against Applicant
Subparagraph 1.e.	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Paul J. Mason  
Administrative Judge