



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



In the matter of: )  
)  
) ISCR Case No. 07-13696  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Emilo Jaksetic, Department Counsel  
For Applicant:

October 16, 2008

---

**Decision**

---

HEINY, Claude R., Administrative Judge:

Applicant was born in the Peoples Republic of China (PRC) and is a naturalized U.S. citizen who has lived in the United States since 1993. Her in-laws are citizens and residents of Germany. Her parents are citizens of the PRC living with her in the U.S. Her brother and sister-in-law are citizens and residents of the PRC. In 2006, she visited the PRC for two weeks. She has substantially more connections to the United States than to the PRC. Applicant has rebutted or mitigated the government’s security concerns under Guideline B, foreign influence. Clearance is granted.

**Statement of Case**

Applicant contests the Defense Department’s intent to deny or revoke her eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> the Defense Office of Hearings and Appeals (DOHA) issued to

---

<sup>1</sup> Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security*

Applicant a Statement of Reasons (SOR) on April 3, 2008, detailing security concerns under foreign influence.

On April 25, 2008, Applicant answered the SOR, and requested a hearing. On June 10, 2008, I was assigned the case. On July 28, 2008, DOHA issued a notice of hearing scheduling the hearing held on September 10, 2008. The government offered Exhibits (Ex.) 1 and 2, which were admitted into evidence. Applicant testified on her own behalf and submitted Exhibits A through I, which were admitted into evidence. Three additional witnesses also testified on her behalf. On September 18, 2008, the transcript (Tr.) was received.

## **Procedural and Evidentiary Rulings**

### **Request for Administrative Notice**

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to the PRC. The attached documents were not admitted into evidence but were included in the record as Hearing Exhibits (HEX) I–VI. The facts administratively noticed are set out in the Findings of Fact, below.

### **Findings of Fact**

In her Answer to the SOR, Applicant denied the factual allegations in ¶ 1.a of the SOR. She admitted the remaining factual allegations, with explanations, of the SOR.

Applicant is a 39-year-old data base engineer/analyst/software designer who has worked for a defense contractor since November 2007, and is seeking to maintain a security clearance. Her project manager has daily contact with Applicant and has been impressed by Applicant's mission focus and professionalism; dedication to her job; support of the client; and her support of the deployed U.S. military forces worldwide has been exemplary. (Ex. F) Applicant is one of the best performers. (Tr. 51) Applicant's next door neighbor stated he thinks highly of Applicant and admires her hard work. (Tr. 56) Applicant is a responsible, wonderful mother. In 2001, Applicant's parents came to live with her. The neighbor reports Applicant's parents are very nice, and very attentive to the grandchildren. (Tr. 58 – 60)

Applicant was born and raised in the PRC and came to the U.S. in 1993 at age 24. Her parents encouraged her to study in the U.S. (Tr. 115) In March 2003, she obtained her "green card" representing her status as a permanent resident. In 1991, she had obtained a bachelors of science degree in electrical engineering from a Chinese university. (Tr. 114) From 1993 to 1995, she studied at an American University obtaining her master's degree in computer science in May 1995. (Tr. 115) In December 1998, she married and has two children, a son born in 1999 and a daughter born in

---

*Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) approved by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

2004. (Tr. 120, Ex. F) In May 2006, Applicant became a U.S. citizen. (Tr. 101) Applicant definitely does not wish to return to living in China. (Tr. 146)

Applicant was previously married to a citizen and resident of the PRC. They were married from May 1993 to April 2005. (Tr. 119) She has had no contact with her ex-husband since the divorce and there are no children from this marriage. (Tr. 119)

Applicant's husband is a citizen of Germany and a permanent resident of the United States. He came to the U.S. in 1990 and obtained his permanent residency status in July 1995. He came to the U.S. to pursue his studies and obtained a PhD in 1995. (Tr. 69) He is a full professor at a German university and has been a faculty member in German, since 2003. As a faculty member, he is considered a German civil servant. (Tr. 74) He is a civil servant employed by the individual state government and not by the federal German government. (Tr. 74)

When not in school, her husband lives with her in the U.S. Normally, he spends four or five months of the year in the U.S. (Tr. 71) His desire has always been to return to the U.S. and to have his home in the U.S. Her husband was previously an assistant professor at a state university in the U.S. It has always been Applicant's and her husband's intention to make the U.S. their home and to raise their family in the U.S. (Tr. 76, 99) Applicant and her husband intend their children to be only U.S. citizens and not dual citizens. (Tr. 100)

Applicant's father-in-law is 79 years old and her mother-in-law is 75 years old. They are both retired high school teachers. Her father-in-law taught high school Greek and Latin. (Tr. 79) Her mother-in-law taught home economics and physical education. (Tr. 79) They are both citizens and residents of Germany. They separated in 1995. (Tr. 78) Since the separation, Applicant's husband has had no contact with his father. Applicant has never had contact with her father-in-law. Her mother-in-law has visited the U.S. with her longest visit being six weeks. Applicant's sister-in-law, age 45, is a nurse at a children's hospital and is a citizen and resident of Germany. (Tr. 80) Her sister-in-law maintains close ties with Applicant's mother-in-law. They live approximately 50 miles apart. (Tr. 97) Applicant has infrequent contact with her sister-in-law. Applicant exchanges e-mails with her mother-in-law and sister-in-law on birthdays. (Tr. 159)

Applicant's parents were born in China and lived in the PRC. Her father, age 68, is a retired university biology professor and her mother, age 67, is a retired middle school biology teacher. (Tr. 109) They receive monthly retirement checks from the PRC of \$500 each. (Tr. 124, 147) In 2001, Applicant's mother came to the live with Applicant in the U.S. (Tr. 120) Her mother has returned to China two or three times with her last visit in April 2008. (Tr. 121) Before obtaining their permanent resident status, they were required to leave the country every six month, although they requested and received extensions on that requirement. (Tr. 149 - 150) Her mother's most recent visit was to obtain a medical physical. (Tr. 122) In 2003, Applicant's father came to live with her full time in the U.S. (Tr. 125) In oriental culture, it is natural for parents to live with a daughter as they get older. (Tr. 109, 141) Her father has returned to China twice, once

to visit his sick mother. (Tr. 126) In 2006, her parents obtained permanent resident status in the U.S. They could not apply for a green card until Applicant had become a U.S. citizen. (Tr. 140) In 2011, her parents first become eligible for U.S. citizenship.

Applicant's brother is a citizen and resident of the PRC. He is 42 years old and is the editor of an internal newsletter/magazine/publication (Tr. 111, Ex. G) that serves the local government agencies in his province. (Tr. 129) The publication is state owned. In 2006, Applicant visited the PRC for two-weeks. She stayed with her brother during her visit and contacts him twice a year by telephone or email. (Ex 2, 9, the first page of a June 2007, Personal Subject Interview (PSI)) During the Cultural Revolution the schools were closed and the teachers, which included her parents, were sent to the country for re-education. (Tr. 143) Applicant's grandmother, her mother's mother, raised Applicant and Applicant's brother was raised by her other grandmother, her father's mother. (Tr. 143) From the time she was born until age six, she lived with her grandmother. (Tr. 144)

Applicant's brother and sister-in-law have applied for permanent residence in the U.S. and intend to immigrate to the U.S. (Exs. B, C, and D) They are excited about becoming U.S. citizens. (Tr. 108) It is estimated, it will take approximately 10 years before they are eligible to come to the U.S. Her brother received his education as a librarian before obtaining his job as a reporter and then editor for a government publication about population control. Applicant's sister-in-law is a university librarian. (Tr. 135)

In October 2006, Applicant traveled to the PRC for two weeks. (Ex. 2, PSI page 2) This was the first time since coming to the U.S. in 1993 that she visited the PRC. (Tr. 112) The primary purpose of the trip was to see her severely ill 90-year-old grandmother, who had suffered a heart attack, and to let her grandmother meet Applicant's son. While in the PRC, she met some high school friends. (Tr. 131) She exchanged a couple of emails with one friend shortly before her return to the PRC to set up a get together with high school friends. The PRC had changed greatly during the 13 years she has been gone. Her trip reinforced her belief that she made the right decision to come to the U.S. and how lucky she is to have the life she has. (Tr. 146)

Applicant's father has a sister living in the PRC and her mother has three siblings living in the PRC. (Tr. 144) Applicant talks with her mother's sister a couple of times a year. (Tr. 145) They usually talk about how their children are doing.

Should Applicant's husband retire in Germany at some future time, the state would be responsible to pay his pension benefits. However, if he resigns from his position as professor and leaves the European Union, he would forfeit his pension benefits. (Tr. 75) Applicant's husband's retirement portfolio, as of March 2008, was \$76,000. (Ex. I) They have approximately \$200,000 in equity in their \$850,000 house in the U.S. which is their residence and \$150,000 equity in a \$650,000 rental home. (Tr. 155, 160) They own no property outside the U.S. (Tr. 160) Applicant has approximately \$8,000 in her 401(k) retirement plan. (Tr. 156)

## China

The Peoples Republic of China (the PRC) is a repressive, totalitarian government with foreign policy goals antithetical to the U.S., although it has cooperated with the U.S. in the global war on terrorism in recent years. Its authoritarian government is dominated by the Chinese Communist Party.<sup>2</sup> The PRC possesses large and increasingly sophisticated military forces, which include strategic nuclear weapons and missiles.<sup>3</sup> In foreign relations, the PRC and the U.S. have been rivals since the Cold War, with particular disagreement on the status of Taiwan. The PRC continues to resist what it considers U.S. superpower dominance, despite improving economic relations.<sup>4</sup>

The PRC has an active, effective intelligence service that targets U.S. intelligence and economic information, and operates against its citizens in the U.S.<sup>5</sup> The PRC obtains access to restricted technology through industrial espionage and the PRC operates an aggressive clandestine effort to acquire additional technologies. This is such a problem that the U.S. Immigration and Customs Enforcement officials have rated the PRC's espionage and industrial theft activities as the leading threat to the security of U.S. technology.<sup>6</sup>

The PRC has a poor record with respect to human rights, suppresses political dissent, and its practices include arbitrary arrest and detention, forced confessions, torture, and mistreatment of prisoners.<sup>7</sup> PRC authorities monitor telephone conversations, e-mail, text messaging, and Internet communication, open and censor mail, monitor and enter residences and offices to gain access to computers, telephones, and fax machines. All hotels have a sizable internal security presence and hotel guestrooms are sometimes bugged and searched for sensitive or proprietary material.<sup>8</sup>

Under PRC law, citizens who become naturalized citizens of other countries lose their PRC citizenship.

---

<sup>2</sup> U.S. Department of State, *Background Note: China*, dated April 2008 (Background Note on China), at 16-7. (HEX. I)

<sup>3</sup> *Id.*, p. 13-14.

<sup>4</sup> *Id.*, p. 14 -17.

<sup>5</sup> Interagency OPSEC Support Staff, *Intelligence Threat Handbook* [Unclassified/For Official Use Only] (Intelligence Threat Handbook), dated June 2004, at 17. (HEX. II)

<sup>6</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. (HEX. III)

<sup>7</sup> Background Note on China, at 7-8. (HEX. I). See U.S. Department of State, *Country Reports on Human Rights Practices – 2007, China (includes Tibet, Hong Kong, and Macau)*, dated March 11, 2008, at 1-6. (HEX. V)

<sup>8</sup> *Id.*, at 8. (HEX. V)

## 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, 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

### Foreign Influence

AG ¶ 6 expresses the security concerns regarding foreign influence:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying:

- (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;
- (c) counterintelligence information, that may be classified, indicates that the individual's access to protected information may involve unacceptable risk to national security;
- (d) sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists;
- (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;
- (f) failure to report, when required, association with foreign national;

(g) unauthorized association with a suspected or known agent, associate, or employee of a foreign intelligence service;

(h) indications that representatives or nations from a foreign country are acting to increase the vulnerability of the individual to possible future exploitation, inducement, manipulation, pressure, or coercion; [and]

(i) conduct, especially while traveling outside the U.S., which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country.

Applicant's husband is a permanent U.S. resident who is a professor at a German university. As such he is a German civil servant. Applicant's mother-in-law and sister-in-law are citizens and residents of Germany. Applicant exchanges emails with them twice a year, on birthdays. Applicant's parents are citizens of the PRC, but are permanent U.S. residents, living with her in the U.S. Her brother and sister-in-law are citizens and residents of the PRC. She stayed with her brother in 2006, when she returned to China for two weeks. This was the only time in since 1993 that she visited the PRC. She has contact with her brother twice a year by email. She also emails her aunt who lives in the PRC twice a year.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an Applicant has frequent, non-casual contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

The nature of a nation's government, its relationship with the United States, and its human rights record 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 associated with or dependent upon the government or the country is known to conduct intelligence operations against the United States.

There is no concern with Germany. However, the complicated, competitive relationship of the PRC with the United States places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that her relationship with her relatives living in the PRC and her relatives in the U.S. with close relationships to family members living in the PRC does not pose a security risk and she is not in a position to be forced to choose between loyalty to the United States and these two people.<sup>9</sup> With its mixed human rights record, and political, economic and military rivalry

---

<sup>9</sup> The Appeal Board has articulated a "heightened risk" or "very heavy burden" in People's Republic of China (PRC) cases because of that country's hostility to the United States and aggressive intelligence collection efforts. See ISCR Case No. 06-24575 at 4 (App. Bd. Nov. 7, 2007) (articulating "very heavy burden" standard and reversing grant of clearance in case involving family members living in



with the United States, it is conceivable that the PRC would target any PRC citizen or former citizen living in the United States in an attempt to gather valuable information from the United States.

There is evidence that the PRC intelligence operatives seek classified or economic information from U.S. businesses and/or government agencies. Applicant's connections to her brother and sister-in-law create a potential conflict of interest because these relationships are sufficiently close to raise a possible security concern about her desire to help these relatives living in the PRC by providing classified information.

Having considered all of the Foreign Influence disqualifying conditions, applicable conditions that could possibly raise a security concern, AG ¶ 7(a), AG ¶ 7(b), and AG ¶ 7(d) apply. AG ¶ 7(d) applies to her husband and parents even though her parents were born in China, because they live with her in the U.S., which negates any potential for adverse foreign influence or duress.

AG ¶ 8 provides conditions that could mitigate security concerns:

- (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 obligations 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;
- (d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;
- (e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; [and]

---

the PRC); ISCR Case No. 07-02485 at 4-5 (App. Bd. May 9, 2008); ISCR Case No. 07-02485 at 4-5 (App. Bd. May 9, 2008).

(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.

AG ¶ 8(a) applies to Applicant's husband. He is a permanent U.S. resident, who spends part of the year teaching at a German university. As all university professors in Germany, he is a German civil servant. There is nothing about the country of Germany, her husband's position there, or his activities in Germany that will place Applicant in a position of having to choose between the interests of her husband, the interests of Germany, and the interests of the U.S. Ever since the end of World War II, Germany and the U.S. have been close allies. The U.S. and Germany are members of NATO. The U.S. and Germany routinely share classified NATO information. Germany would not coerce Applicant through her husband.

In 1993, Applicant left the PRC, and returned just once in 1996. She and her in-laws in Germany and relatives in the PRC usually exchange greetings on birthdays. Her relationship with these individuals is not a security concern. AG ¶¶ 8(a), 8(b) and 8(c) partly apply with respect to Applicant's former classmates, her mother-in-law, and sister-in-law in Germany, her brother, sister-in-law, aunt and grandmother in the PRC because of her limited contacts with them. Because of her limited contact, "it is unlikely [she] will be placed in a position of having to choose between the interest of [her relatives and in-laws] and the interest of the U.S." Her infrequent contacts (once or twice a year) and not particularly close relationship with her in-laws in Germany have a very low potential for forcing her to choose between the United States and Germany. She has infrequent contacts with her grandmother, aunt, brother, and sister-in-law in the PRC.

With her infrequent contacts and not particularly close relationships there is a low potential of forcing her to choose between the United States and the PRC. Applicant met her burden of showing there is "little likelihood that [her relationship with her relatives and in-laws] could create a risk for foreign influence or exploitation." See *generally* ISCR Case No. 03-04300 at 5 (App. Bd. Feb. 16, 2006) (citing ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002)). Her contacts and communications with her in-laws and relatives in the PRC are sufficiently casual and infrequent as to not create a risk of foreign influence or exploitation.

Applicant has an emotional bond with her brother. Her brother hopes to immigrate to the U.S. as soon as possible and the paperwork has been submitted, but it is likely to be another 10 years before he is able to come to the U.S. Applicant communicates with her brother infrequently. Applicant's relationship with her brother and sister-in-law requires a closer examination than her relationship with her German in-laws and other relatives in the PRC.

There is no evidence that her brother or sister-in-law have been political activists, challenging the policies of the PRC Government. Both currently work for the PRC Government. Her sister-in-law works as a librarian for a university and all PRC universities are state run. Her brother was a librarian before he became a reporter and then the editor of a population control publication which is a PRC publication. There is

no evidence that terrorists or the PRC Government have approached or threatened Applicant, her brother, or sister-in-law for any reason. There is no evidence that these relatives living in the PRC currently engage in activities which would bring attention to them or that they or other PRC elements are even aware that Applicant works for a government contractor or might have access to classified information. As such, there is a reduced possibility that her brother and sister-in-law would be targets for coercion or exploitation. *But see* n. 10, *infra* (discussing limited weight that can be given to the absence of such information).

Applicant's relationship with her brother and the nature of the PRC Government and its complicated and sometimes contentious relationship to the United States, all weigh against mitigating security concerns. See ADP Case No. 05-17812 at 2, 3 n.2 (App. Bd. Jun. 11, 2007) (finding contacts with siblings in PRC "once every two or three months" not to be casual and infrequent); ISCR Case No. 04-12500 at 2, 4 (App. Bd. Oct. 26, 2006) (finding contacts with applicant's parents and sisters a total of about 20 times per year not casual and infrequent); ISCR Case No. 04-09541 at 2-3 (App. Bd. Sep. 26, 2006) (finding contacts with applicant's siblings once every four or five months not casual and infrequent).<sup>10</sup> Here, Applicant's contact with her brother is twice a year and, as such, is considered infrequent. Her communications are not casual because she has a warm regard for her brother.

Applicant's deep relationship with her children and her strong connections to the United States mitigates foreign interest security concerns. Applicant has "such deep and

---

<sup>10</sup>In ISCR Case No. 06-17838 at 4 (App. Bd. Jan. 28, 2008), the Appeal Board discussed the precedential value of the decisions predating the revision of the Adjudicative Guidelines indicated in n. 3, *supra*, and determined where the language of the Directive is unchanged or not substantively altered, the precedent remains valid. AG ¶ 8(c) apparently adopted the Appeal Board's interpretation of Foreign Influence Mitigating Condition 1 (FIMC 1) under the previous guidelines. The Appeal Board had determined that contacts with relatives living in a foreign country must be both casual and infrequent to apply FIMC 1. See ISCR Case No. 04-12500 at 4 (App. Bd. Oct. 26, 2006). Moreover, contacts with such family members are presumed to be "not casual." *Id.* In the analysis of countervailing evidence, it is legal error to give significant weight to any of the following facts or factors: applicant's ties to the United States (ISCR Case No. 02-13595 at 5 (App. Bd. May 10, 2005)); lack of prominence of relatives living in a foreign country (*Id.*); "family members' low-key and noncontroversial lifestyle, and the fact that the Iranian government has not contacted them about Applicant" (ISCR Case No. 04-12500 at 4 (App. Bd. Oct. 26, 2006)); one relative living in a foreign country may be sufficient to negate FIMC 1 (ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006)); a foreign relative's fragile health (ISCR Case No. 02-29403 at 4 (App. Bd. Dec. 14, 2004)), advanced age (ISCR Case No. 02-00305 at 7 (App. Bd. Feb. 12, 2003)), financial independence (ISCR Case No. 02-31154 at 6 (App. Bd. Sep. 22, 2005)), or lack of financial dependency upon applicant (ISCR Case No. 03-15205 at 4 (App. Bd. Jan 21, 2005)); foreign relatives spend part of each year in the U.S. (ISCR Case No. 02-31154 at 6 (App. Bd. Sep. 22, 2005)); the lack of any connection between the foreign relative and the foreign government in question (ISCR Case No. 02-31154 at 6 (App. Bd. Sep. 22, 2005)); the absence of any attempt at exploitation in the past (ISCR Case No. 03-15205 at 4 (App. Bd. Jan. 21, 2005)); a foreign country's friendly relationship with the U.S., its stable, democratic government, or its extensive foreign military agreements with the United States (ISCR Case No. 02-22461 at 5-6 (App. Bd. Oct. 27, 2005)) and an applicant's "refusal to travel to Iran" and "meticulous work habits and practice of strictly following the rules relating to his work" (ISCR Case No. 03-15205 at 3 (App. Bd. Jan. 21, 2005)). Notwithstanding the Appeal Board's position, I conclude that many of these attributes are pertinent to the analysis in this case under the whole person concept.

longstanding relationships and loyalties in the U.S., [she] can be expected to resolve any conflict of interest in favor of the U.S. interest.” Her children are U.S. citizens, and reside in the United States. Her husband and parents are U.S. permanent residents living in the United States since 1990, 2001, and 2003. Applicant has worked for her government contractor with dedication and distinction. She has substantial property and investments in the United States, and no property or investments in the PRC or other foreign location. She has many friends and colleagues in the United States. She has no desire to return to live in the PRC. She is a loyal, dedicated U.S. citizen. She has provided letters and witness statements to corroborate her loyalty and trustworthiness.

### **Whole Person Concept**

Protection of our national security is of paramount concern. Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the adjudicative process is the fair-minded, commonsense assessment of a person’s trustworthiness and fitness for access to classified information. In reaching this decision, I have considered the whole person concept in evaluating Applicant’s risk and vulnerability in protecting our national interests. I considered the totality of Applicant’s family ties to the PRC and the heavy burden an Applicant carries when she has family members in a foreign country.

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) 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.

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.

A Guideline B decision concerning the PRC must take into consideration the geopolitical situation in the PRC. The PRC has a mixed to poor human rights record. The PRC is one of the most aggressive nations in the collection of U.S. intelligence and sensitive economic information.

One element increasing the foreign influence security concern is Applicant’s contacts with her brother and her 2006 two week visit to the PRC. Her brother and

sister-in-law could be vulnerable to PRC coercion and non-coercive measures because of their PRC citizenship and where they live. They also work for the PRC government and the PRC government could exert pressure on them by threatening to stop or stopping their salary or firing them from their jobs.

There are significant factors supporting approval of Applicant's access to classified information. Applicant has lived in the United States since 1993 (except for her two-week visit to the PRC. She became a U.S. citizen in 2006. Her children and parents live with her in the United States. Her children are U.S. citizens and her parents U.S. permanent residents. She compellingly explained why her loyalty is to the United States, rather than to the PRC. She thoroughly developed the evidence showing her connections to the United States and the remote connections to the PRC. I found her statements to be honest, candid and credible. She provided corroborating statements concerning her loyalty and trustworthiness. She provided favorable recommendations of employers and friends going back to the time of her entry into the United States.

In a 2006 decision, the Appeal Board held the Judge properly determined under the "whole person" concept that an applicant with very significant connections to a foreign country had mitigated security concerns under Guideline B. In ISCR Case No. 03-04300, 2006 DOHA Lexis 264 at \*17-\*21 (App. Bd. Feb. 16, 2006),<sup>11</sup> the applicant had weekly contact with her mother (who lives in Russia), contact three times per year with her aunt (who lives in Russia); contact about four times per year with her father-in-law (who lives in Russia); and multiple annual contacts with other relatives living in Israel. She had visited her family in Russia and Israel, on more than one occasion, after immigrating to the United States. Moreover, she owned a half interest in her mother's apartment in Russia, and provided financial support to her mother and aunt. The Judge's whole person analysis (that the Appeal Board determined was sufficient to mitigate such significant foreign influence security concerns) provides:

Looking at all of [whole person] factors, I conclude Applicant has overcome foreign influence security concerns. Given her strong ties to the U.S. and her limited contact with Russia and Israel since she became a U.S. naturalized citizen, there is limited potential for coercion, exploitation or duress. (E.2.2.1.8. The potential for pressure, coercion, exploitation, or duress.) All of her immediate family are in the U.S., and the majority of her financial ties are in the U.S. Applicant has been a naturalized U.S. citizen for over fifteen years. She returned to Russia in April 2005 to abjure her Russian citizenship and has had limited visits with her mother, aunt and father-in-law in 1995 and 2002. She provides minimal support to her mother and aunt. She has only visited her sister and family in Israel in 1991, 1994, and 1997. While she has contact with her relatives in Russia and her relatives in Israel, that contact is limited. While her niece serves in

---

<sup>11</sup>The Appeal Board reversed the Judge's decision to grant a clearance because of the strict requirements of the Money Memorandum (Applicant in ISCR Case No. 03-04300 had not turned in her Russian passport to the Russian government by the close of evidence).

the Israeli military, she has limited contact with her. Clearly, she put her interests in the U.S. ahead of her loyalty to her elderly mother when she chose to renounce her Russian citizenship.

Given her long history with her employer since April 2000, it is unlikely that she could be exploited by coercive or non-coercive means by the government in Russia or in Israel in a way that could force Applicant to choose between loyalty to her mother, aunt, father-in-law, her sibling and family and her loyalty to the United States. She stated that should any such attempt be made she would immediately contact the appropriate U.S. authorities. Thus, any risk of either coercive or non-coercive foreign duress or influence on Applicant and/or her immediate family would appear to be slight and clearly manageable. Contacts with citizens of other countries are relevant to security determinations only if they make an individual potentially vulnerable to coercion, exploitation, or pressure through threats against those foreign relatives.

While clearance decisions are inherently based on numerous facts, and as such are made after a case-by-case analysis, it is beyond debate that the applicant in ISCR Case No. 03-04300 had more significant connections to Russia than the Applicant does to the PRC in this case. Whereas, the applicant's connections to the United States in ISCR Case No. 03-04300 and in this case are similar.<sup>12</sup>

After carefully weighing the evidence of her connections to PRC, and to the United States, I conclude Applicant has carried her burden of fully mitigating the foreign influence security concerns. I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my "careful consideration of the whole person factors"<sup>13</sup> and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. For the reasons stated, I conclude she is eligible for access to classified information.

I have carefully weighed the evidence in favor of Applicant against the government's concerns about Applicant's ability to protect classified information. I find that there is little potential for Applicant to be pressured, coerced, or exploited because her brother lives in the PRC. 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 foreign influence security concerns.

---

<sup>12</sup>In ISCR Case No. 03-04300 the applicant's connections to the U.S. are as follows: (1) the applicant's husband and son live in the United States, and they are both dual citizens of Russia and the U.S.; and (2) The applicant has lived in the U.S. since 1989. The applicant in ISCR Case No. 03-04300 is a professional with post-doctorate teaching employment.

<sup>13</sup>See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).

### **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: FOR APPLICANT

Subparagraph 1.a – 1.g: For Applicant

### **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.

---

CLAUDE R. HEINY II  
Administrative Judge