



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
|                                  | ) | ISCR Case No. 07-15116 |
| SSN:                             | ) |                        |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: Gina Marine, Esquire, Department Counsel  
For Applicant: Pro Se

June 30, 2008

**Decision**

HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant's eligibility for access to classified information must be denied.

Applicant submitted her Security Clearance Application (SF 86), on March 13, 2007. On March 4, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on March 13, 2008. She answered the SOR in writing on March 18, 2008, and requested a hearing before an

administrative judge. DOHA received the request in March 2008. Department Counsel was prepared to proceed on April 11, 2008, and I received the case assignment on April 16, 2008. DOHA issued a notice of hearing on May 9, 2008, which Applicant acknowledged receiving more than 15 days before the hearing.<sup>1</sup> I convened the hearing as scheduled on June 5, 2008. The government offered two exhibits (GE) 1 and 2, which were received and admitted into evidence without objection. Applicant testified on her own behalf. She submitted 12 exhibits (AE) A through L, which were received and admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on June 16, 2008. The record closed on June 5, 2008.

## **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 People's Republic of China (the PRC). (Tr. 12-14) The request and the attached documents were not admitted into evidence but were included in the record as Administrative Exhibits I to VI. The facts administratively noticed are set out in the Findings of Fact, below.

### **Findings of Fact**

In her Answer to the SOR, dated March 18, 2008, Applicant admitted the factual allegations in ¶¶ 1.a through 1.d of the SOR, with explanations. She denied the security concern set forth in ¶ 1 of the SOR.

Applicant, who is 45 years old, works as an engineer and lead architect for a defense contractor. She began working for her current employer in 1997. At its request, she completed and submitted a security clearance application in March 2007.<sup>2</sup>

Applicant and her husband were born in the PRC. She received a bachelor's degree and a master's degree in science from major universities in the PRC. She met her husband while in graduate school. They married in 1987 in China. Her husband moved to the United States shortly thereafter to begin work on his doctorate degree. Applicant came to the U.S. in March 1989 to start work on her doctorate degree. Both received their doctorate degrees from an American university. An American university awarded Applicant a Masters in Business Administration in 2002. She and her husband became naturalized U.S. citizens in February 2000 and hold U.S. passports. Applicant's husband is a tenured professor at an American university. They have a 16-year-old son and a 9-year-old daughter, who were born in the U.S. and reside in the U.S.<sup>3</sup>

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<sup>1</sup>Tr. 8-9.

<sup>2</sup>GE 1 (Applicant's security clearance application, dated March 13, 2007) at 2, 28; Tr. 28.

<sup>3</sup>GE 1, *supra* note 2, at 2-4, 6, 10-12, 14-15; AE I (Copy of Applicant's passport); Tr. 27, 32-35.

Applicant and her husband own their home and several rental properties. She values these assets at approximately \$2.5 million. She and her husband also have retirement investment accounts valued at nearly \$800,000. Their combined yearly income is approximately \$250,000. Their children attend U.S. schools and are active in sports and other programs after school. They have no economic interests in the PRC.<sup>4</sup>

Applicant's 81-year-old mother lives in the PRC. She owns her own residence and lives alone. She worked in the local government owned-factory and receives a pension from the government. For the last three or four years, Applicant has sent her mother \$1,000 once a year as a gift. She does not provide regular financial support for her mother. Her mother has never visited the U.S. She talks with her mother by telephone about once a month.<sup>5</sup>

Applicant's two older brothers and older half-sister are citizens of and reside in the PRC. Her half-sister is about 19 years older than she. Her sister left home for college when Applicant was a baby. Her sister is married and has two grown daughters who are married. Her sister retired from her job as a site manager of a train station. Her sister's husband is also retired. She assumes they are getting a retirement benefit, but she has no information about this benefit. She may talk with her half-sister once a year. Her half-sister has not visited her in the U.S.<sup>6</sup>

One brother works at a local hospital where he is in charge of hospital supplies. Her other brother works in product distribution at the local steel company. Both brothers are married and their wives do not work outside of the home. One brother has two children and the other brother has one child. These children are adults. She talks by telephone with her brothers about twice a year, on holidays. Neither brother has visited her in the U.S.<sup>7</sup>

Applicant's mother-in-law and father-in-law are citizens of and reside in the PRC in a distant area from her family. They own a business. Her husband's four siblings own businesses. She has limited contact with her in-laws. Her husband talks with his parents by telephone every other month. Her husband's parents visited the U.S. after Applicant's son was born, but have not returned as they don't speak English. She has had little contact with his parents and siblings since her marriage more than 20 years ago. Her husband does not send any financial support to his parents or any of his siblings.<sup>8</sup>

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<sup>4</sup>AE K (Salary verification); AE L (Financial documents); Tr. 35-36.

<sup>5</sup>AE A (Applicant's written statement, dated May 28, 2008) at 5-6; Tr. 42-44, 56-60.

<sup>6</sup>GE 1, *supra* note 2, at 15-17; AE A, *supra* note 5, at 6; Tr. 48-49, 69-70.

<sup>7</sup>AE A, *supra* note 5, at 6; Tr. 49-50, 60-66, 70-71.

<sup>8</sup>Tr. 52, 81-82, 86-91.

Since January 1, 2000, Applicant has traveled to the PRC three times. In December 2000, she traveled alone and on her U.S. passport to the PRC to visit her ailing father. She stayed with her parents for the entire two weeks of her visit. Her brothers visited her, but not her half-sister. Her father died in 2003.<sup>9</sup>

Applicant did not return to the PRC for her father's funeral. Rather, in 2004, she and her family traveled to the PRC. They stayed one week with her mother, then spent a week sightseeing in Beijing. Applicant returned to the U.S. while her husband and children visited with his parents for a week. During this trip, Applicant visited with her brothers when they came to their mother's home.<sup>10</sup>

Applicant's last trip to the PRC occurred in 2007. Before she made her reservations, she notified her employer of her intent to travel to the PRC and inquired if there would be a problem. Her employer told her there would be no problem with her taking this trip. She traveled alone to the PRC to celebrate her mother's 80<sup>th</sup> birthday. She visited with her brothers and her half-sister during this one week trip. Applicant always traveled on her U.S. passport. Her husband and children traveled on their U.S. passports. During her trips to the PRC, Applicant did not contact friends or others outside of her family. She has no future plans to travel to the PRC.<sup>11</sup>

Applicant states that following the Tiananmen Square occurrence, she began thinking about her new life in the U.S. She has embraced the freedoms of speech and religion. She realized she would be able to prosper economically and develop a career in the U.S. in a way she would not be able to do in the PRC. She made a decision to remain in this country. She explained the basis for her belief that the government of the PRC would not likely harm members of her family to force her to divulge classified information. She does not believe that her mother would tell her if the government of PRC was placing pressure on her. If the government of the PRC would try to pressure her mother, she would tell the world about the PRC's actions because she believes that by speaking out in public the PRC government would be very concerned about losing face and would free her family faster. She could not be pressured because of her family in the PRC.<sup>12</sup>

Four colleagues, two managers and a professor from her doctorate program wrote recommendations on behalf of Applicant. All uniformly agree that she is highly intelligent, hardworking, reliable, trustworthy, and excels at her job. In the performance of her duties, she works with intellectual property materials and appropriately handles this sensitive information. She is conscientious about the need to protect sensitive information of contractors and her employer. All praise her character and integrity, and

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<sup>9</sup>*Id.* at 37-39, 72-73.

<sup>10</sup>*Id.* at 39-40, 72-74, 78-79.

<sup>11</sup>AE H (2007 e-mails to employer about trip to the PRC); Tr. 40-41, 73, 75, 78.

<sup>12</sup>AE A at 2, 4-6; Tr. 29-31, 45-48, 94.

recommend her for a security clearance. Her most recent performance evaluation praises her skills and work contribution.<sup>13</sup>

I take administrative notice of the following facts. The PRC is an authoritarian, communist party-led state. Human rights violations continue to be problematic. Concerns regarding the PRC's weapons development, theft of classified technology information between 1979 and 1999, and industrial espionage activities remain. The PRC continues to have active intelligence operations in the U.S., which seek to obtain military and industrial secrets through Americans of Chinese ancestry. On the other hand, the PRC supports the U.S.'s anti-terrorism position and activities. The U.S. and the PRC have developed joint trade agreements, resulting in the sale of goods to each other, and work together on environmental issues. The PCR enjoys a most favored nation status in trading with the U.S. The PRC has opened its doors to outside investment.

### **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,

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<sup>13</sup>AE B (letter, dated May 23, 2008); AE C (Letter, undated); AE D (Letter, dated May 12, 2008); AE E (Letter, dated May 10, 2008); AE F (Letter, dated May 29, 2008); AE G(Letter, dated June 2, 2008); AE J (Performance evaluation 2007).

or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

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

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

## **Analysis**

### **Guideline B, Foreign Influence**

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

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.

Under the potential disqualifying conditions described in AG ¶ 7, the following conditions could raise a security concern and may be disqualifying in this case:

(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; and

(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;

Applicant's mother, two brothers and half-sister are citizens of and reside in the PRC. She maintains a normal familial relationship with her mother and two brothers and some contact with her half-sister. Her husband maintains a normal familial relationship with his parents and siblings in the PRC. These relationships are not *per se* a reason to deny Applicant a security clearance. The government must establish that these family relationships create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion or would create a potential conflict of interest between her obligations to protect sensitive information and her desire to help her family members.

In determining if a heightened risk exists, I must look at Applicant's relationship and contacts with family members as well as the activities of the government of the PRC. See ISCR Case No. 07-05809 (App. Bd. May 27, 2008). Concerning the intelligence gathering activities of the PRC, in ISCR Case No. 07-02485 (App. Bd. May 9, 2008) the Appeal Board agreed with the government's argument, concluding that substantial evidence of a security risk exists and when an Applicant has family members living in the PRC because the PRC is an active collector of intelligence and sensitive proprietary information from U.S. defense contractors, considers U.S. citizens of Chinese ancestry to be "prime intelligence targets", and monitors its citizens' telephone, fax and e-mail communications. This risk that an Applicant could be targeted for manipulation or induced into compromising classified information is real, not theoretical. Applicant's relationship and her contacts with her family in the PRC raise a heightened risk that the government of the PRC will use her family members to pressure her into revealing classified information. The same risk exists in regards to Applicant's husband because he maintains contacts with his parents and siblings in the PRC. The government has established its case under AG ¶¶ 7(a) and (b).

In deciding if Applicant has submitted evidence of mitigation, under AG ¶ 8 (a), I must consider:

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.

and under AG ¶ 8(b), I must consider if

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. interests.

Applicant's normal relationship with her family members is not a basis to deny her a security clearance; however, her burden of proof on mitigation requires more than statements about the limited scope of her conversations and contacts with family members. See ISCR Case No. 07-02485 (App. Bd. May 9, 2008). Applicant's mother is retired and depends upon the government of the PRC to provide her retirement benefit. Applicant traveled to the PRC three times in the last eight years to visit her family members, in particular her parents. See continues to speak with her mother and brothers on a regular basis. In light of the intelligence activities of the PRC directed to the U.S. through Americans of Chinese ancestry, Applicant has not mitigated the government's security concerns under AG ¶¶ 8 (a) and (b).

Finally, under AG ¶ 8(c), I must consider if the "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." Applicant's contacts with her mother and two brothers are not infrequent and casual, nor are her husband's contacts with his family infrequent and casual. I, however, find that Applicant's relationship with her much older half-sister is casual and infrequent, given the almost 19 year difference in age and the minimal efforts she makes to communicate with her half-sister from the U.S. or when she was visiting the PRC.

None of the remaining mitigating conditions are applicable in this case. Applicant has not mitigated the government's security concerns under AG ¶ 6.

### **Whole Person Concept**

Under the whole person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) 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 common sense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant came to the U.S. 20 years ago as a student. Following the incident in Tiananmen Square in 1989, she considered what her life might be in the U.S. as opposed to her life in the PRC. She eventually decided to remain in the U.S. She has embraced the concepts associated with democracy and freedom. She and her husband became U.S. citizens. They are living the American dream. They have a good income, are saving for their retirement, and raising their children in the American way of life. They abide by the laws and manage their finances. They are highly respected individuals in their professions and careers. Applicant's managers and co-workers praise her worth ethic and character. She is reliable and trustworthy. The Appeal Board has held that all these highly admirable qualities are not enough to mitigate the government's security concerns when an Applicant has family in the PRC. See ISCR Case No. 07-02485 (App. Bd. May 9, 2008).

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising under the foreign influence guideline.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

|                           |                   |
|---------------------------|-------------------|
| Paragraph 1, Guideline B: | AGAINST APPLICANT |
| Subparagraph 1.a:         | Against Applicant |
| Subparagraph 1.b:         | Against Applicant |
| Subparagraph 1.c:         | Against Applicant |
| Subparagraph 1.d:         | 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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MARY E. HENRY  
Administrative Judge