



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



In the matter of: )  
)  
) ISCR Case No. 07-16402  
)  
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Applicant for Security Clearance )

**Appearances**

For Government: Candace L. Le'i, Esquire, Department Counsel

For Applicant: Kristen E. Ittig, Esquire

September 12, 2008

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**Decision**

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ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the case file, pleadings, and exhibits, I conclude that Applicant failed to mitigate the Government's security concerns under the Foreign Influence adjudicative guideline. His eligibility for a security clearance is denied.

On April 25, 2006, Applicant signed and certified an Electronic Questionnaires for Investigations Processing (e-Qip). On March 5, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline B, Foreign Influence. 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.

On April 14, 2008, Applicant answered the SOR in writing and elected to have a hearing before an administrative judge. The case was assigned to me on July 18, 2008. I convened a hearing on August 25, 2008, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses, introduced two exhibits (Ex. 1 and 2), and offered facts found in six official documents of the U.S. Government for administrative notice. (Hearing Exhibit (HE) 1.) Ex. 1 and Ex. 2 were admitted without objection. I took notice of HE 1.

Applicant testified on this own behalf and called no witnesses. At the hearing, he introduced six exhibits, which were identified as Ex. A, B, C, D, E, and F and admitted without objection. At the conclusion of the hearing, at Applicant's request, I held the record open until close of business September 2, 2008 so that Applicant could provide supplemental information in response to the amended SOR and additional facts for administrative notice. Applicant timely filed a response to the amended SOR, which I marked as Ex. G and admitted to the record without objection. He also filed a document containing facts about the People's Republic of China (China) which were drawn from HE 1. Applicant's facts for administrative notice were marked HE 2 and included in the record without objection. DOHA received the transcript (TR) of the hearing on September 8, 2008.

### **Evidentiary Ruling**

At the conclusion of the evidence, Department Counsel moved, pursuant to DoD Directive, Enclosure 3, E3.1.17, to amend the SOR to conform with facts elucidated at the hearing. Specifically, Department Counsel moved to amend the SOR by adding the following allegations:

- 1.d. Your spouse is a citizen of China residing with you in the United States.
- 1.e. Your father-in-law, mother-in-law, and sister-in-law are citizens and residents of China.

Applicant did not object to amending the SOR to include the new allegations 1.d. and 1.e. He requested additional time to provide supplementary information in response to the new allegations. Applicant's request was approved, and Department Counsel's motion to amend the SOR was granted.

### **Findings of Fact**

The amended SOR contains five allegations of disqualifying conduct under AG B, Foreign Influence (SOR ¶¶ 1.a. through 1.e.). In his Answer to the SOR and in his testimony, Applicant admitted all five allegations in the amended SOR and provided additional information. Applicant's admissions are admitted as findings of fact.

After a thorough review of the record in the case, including witness testimony, exhibits, relevant policies, and the applicable adjudicative guideline, I make the following findings of fact:

Applicant is 50 years old and employed as a computer programmer by a government contractor. Applicant was born in China and received a bachelor of science degree in telecommunications from a university in China. In 1987, he came to the U.S. on a student visa. He brought with him US \$3,000, which his parents and brother had given him to help with his expenses. He studied at a university for one semester. He left and attended English classes at a second university for one year. He studied at a third university and pursued a master's degree in computer science. After he found a job, he left the university and did not continue his studies. (Ex. 1; Tr. 56-58, 67, 71, 76, 78.)

In 1996, Applicant married a woman who was a citizen of China and residing in the U.S. The couple was divorced in April 2001. Later, at a Chinese New Year's party he attended in the U.S., Applicant met another woman who was a Chinese citizen and residing in the U.S. as a student. Applicant and the woman were married in June 2006, and they are the parents of a child born in October 2007.<sup>1</sup> Applicant's wife is employed as an administrative assistant and accountant. She intends to apply for U.S. citizenship when she is eligible to do so. (Ex. 1; Ex. G; Tr. 43-45, 65, 68-69.)

In 2000, when he became a naturalized U.S. citizen, Applicant changed his first name and his surname. He elected to use an English language first name and an English language noun in place of his Chinese surname. (Ex. 1; Tr. 59-60.)

Applicant's father, mother, and brother are citizens and residents of China. His parents are 82 and 78 years old. Applicant's father is retired from a Chinese government agency and receives retirement benefits based on his service to that agency. Applicant's brother owns a computer support business. Applicant's brother's wife teaches at a college in China. Applicant speaks with his parents by telephone once a month. He also speaks with his brother by telephone about once a month. Applicant's parents came to the U.S. to visit him in 1999, 2001, and 2003. (Tr. 37-39, 52-55, 61.)

Applicant was unemployed from June 2001 to August 2002. His unemployed status caused him to feel frustrated and hopeless. In January 2002, he traveled to China to visit his parents. He remained in China with his parents until May 2002. In 2003, Applicant used his one-month vacation to travel back to China with his parents, who had been visiting him in the U.S. In 2005, Applicant traveled again to China to visit his parents. (Answer to SOR; Tr. 40-41.)

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<sup>1</sup> Applicant was interviewed by an authorized investigator in January 2007. The investigator sought information about Applicant's foreign relatives. In that interview, Applicant discussed his relationship with his former spouse, his parents, and his brother. However, the subject interview does not mention Applicant's second wife or the fact that Applicant married her approximately six months before the interview took place. (Ex. 2.)

Applicant's father-in-law, mother-in-law, and sister-in-law are citizens and residents of China. Applicant's father-in-law is 65 years old and retired from work in real estate. His mother-in-law is 60 years old and a retired accountant. Neither of Applicant's parents-in-law worked for businesses owned by the Chinese government. Applicant's wife speaks with her parents in China by telephone about once a month. (Ex. G at 2.)

Applicant's wife's sister is 36 years old and employed as an accountant by a water processing company. Her husband works as an accountant for a utility company. Neither company is owned by the Chinese government. (Ex. G at 2.)

In April 2008, Applicant and his wife traveled to China to visit their parents and siblings. Applicant's wife traveled on her Chinese passport. Applicant, his wife, and child stayed in the home of his parents-in-law when they were in China. Because his parents are growing too old to travel to the U.S., Applicant plans to visit them in China in the future. (Tr. 45-47, 80.)

Applicant has no investments in China and owns no property there. He owns two condominiums in the U.S. He estimated the value of one condominium at \$220,000, and he estimated the value of the second condominium at \$335,000. He has two 401(k) plans, with assets totaling \$70,000. (Tr. 64.)

Applicant's employer, chief executive officer, and several senior managers provided letters of character reference for Applicant. They attested to Applicant's good character, dedication to his duties, professionalism, and trustworthiness. (Ex. A; Ex. B; Ex. C; Ex. D; Ex. E.)

I take administrative notice of the following facts about China which appear in official U.S. government publications:

China has a population of over a billion people and is a large and economically powerful country. The United States is China's second-largest trading partner, and China is the United States' third-largest trading partner. The Chinese Communist Party dominates the country's authoritarian government. China possesses a sophisticated military apparatus and strategic nuclear weapons and missiles. (HR 1; HR 2.)

State Department documents chronicle China's poor human rights practices: suppression of dissent, arbitrary arrest and detention, torture, forced confessions, and the mistreatment of prisoners. According to the Department of State publication *Country Reports on Human Rights Practices – 2007 China (includes Tibet, Hong Kong, and Macau)*, “[Chinese] authorities monitored telephone conversations, facsimile transmissions, e-mail, text messaging, and Internet communications. Authorities also opened and censored domestic and international mail. The security services routinely monitored and entered residences and offices to gain access to computers, telephones, and fax machines.” (HR 1.)

The U.S. and China have been rivals since the Cold War and disagree on the status of Taiwan. China resists what it considers to be the superpower dominance of the U.S. The Intelligence Threat Handbook states: “The United States is a primary intelligence target of [China] because of the U.S. role as a global superpower, its substantial military, political, and economic presence in the Pacific Rim and Asia; its role as a developer of advanced technology that China requires for economic growth; and the large number of Americans of Chinese ancestry, who are considered prime intelligence targets by [China].” (HR 1: Interagency Operations Security Information Series (OPSEC) Support Staff, *Intelligence Threat Handbook* [Unclassified/For Official Use Only], dated June 2004 at 17.)

The *Intelligence Threat Handbook* provides the following additional assessments:

The primary operational focus of MSS [China’s Ministry of State Security] is “Taiwan work,” namely conducting intelligence activities against Taiwan in every intelligence and covert political action area. To accomplish its objectives, the MSS also is heavily involved in assessing, developing, and recruiting ethnic Chinese targets. This ethnic recruitment approach to solving intelligence challenges is so pronounced that the Chinese-American community, (which is no more than one percent of the total U.S. population) is the target of an estimated 98 percent of MSS agent recruitment efforts.

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[T]he selling point in a normal [Chinese] recruitment operation is not an appeal to ethnicity *per se*, but to whatever feelings of obligation the targeted individual may have towards China, family members in China, old friends in China, etc. The crux of [China’s] approach is not to try to exploit a perceived vulnerability but to appeal to an individual’s desire to help China out in some way. Whatever the reason, ethnic targeting to arouse feelings of obligation is the single most distinctive feature of [China’s] intelligence operations. [footnote omitted.]

(HR. 1: Intelligence Threat Handbook, Overview, 20-21.)

The U.S. State Department also reports that Chinese security agents “may at times place foreign visitors under surveillance. Hotel rooms, telephones, and fax machines may be monitored, and personal possessions in hotel rooms, including computers, may be searched without consent or knowledge of the traveler.” Additionally, “Americans in China, who are not staying at hotels, including Americans who are staying with friends or relatives, must register with local police as soon as they arrive.” (H.R. 1: U.S. Department of State, *Country Specific Information – China*, dated December 10, 2007, at 2, 9.)

### **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, the administrative judge applies these guidelines 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**

Under Guideline B, Foreign Influence, "[f]oreign 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.” AG ¶6.

Additionally, adjudications under Guideline B “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 U.S. citizens to obtain protected information and/or is associated with the risk of terrorism.” AG ¶6.

I have considered all of the disqualifying conditions under the Foreign Influence guideline. The facts of Applicant’s case raise security concerns under disqualifying conditions AG ¶ 7(a), AG ¶ 7(b), and AG ¶7(d).<sup>2</sup>

The United States is a primary intelligence target of China, and China seeks to recruit U.S. citizens of Chinese origin in its efforts to obtain classified information, a situation that threatens U.S. security interests. American citizens with immediate family members who are citizens or residents of China could be vulnerable to coercion, exploitation, or pressure.

Applicant’s father, mother, and brother are citizens and residents of China. Applicant’s mother-in-law, father-in-law, and sister-in-law are citizens and residents of China. Applicant has a close familial relationship with his parents and brother. He speaks with his parents on the telephone once a month. He traveled to China to visit his parents and brother in 2002, 2003, 2005, and 2008. He will likely travel again to China to visit his parents, since they believe they are too old to travel to the U.S. to visit him and his family. These facts raise a security concern under AG ¶ 7(a).

Applicant’s father is retired from an agency of the Chinese government. Applicant’s familial connection with his father and his father’s former employment by the Chinese government could create a conflict of interest between Applicant’s obligation to protect sensitive information or technology and his desire to help a foreign person or group in China by providing that information. Additionally, the potential for a conflict of interest could arise from Applicant’s contacts with other family members who are citizens and residents of China. This raises a security concern under AG ¶ 7(b).

Applicant’s wife, a citizen of China, shares his home. She too has a close relationship with her parents and sister, who are residents and citizens of China. She

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<sup>2</sup> AG ¶ 7(a) reads: “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.” AG ¶ 7(b) reads: “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.” AG ¶7(d) reads: “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.”

speaks with them regularly by telephone, and, in April 2008, she traveled with Applicant to visit her parents and his parents in China. These facts also raise security concerns under AG 7(d).

Several mitigating conditions under AG ¶ 8 might be applicable to Applicant's case. If "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.," then AG ¶ 8(a) might apply. 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. interest," then AG ¶ 8(b) might apply. If "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," then AG ¶ 8(c) might apply.

Applicant's relationships with his wife, parents, brother, father-in-law, mother-in-law, and sister-in-law are not casual, and his contacts with them are frequent. His relationships are based on long-standing family ties of affection and obligation. Applicant is a devoted husband and dutiful son and son-in-law. These close relationships raise a heightened risk that Applicant could be targeted for exploitation, pressure, or coercion by the government of China in ways that might also threaten U.S. security interests.

Applicant offered no evidence to rebut the Government's assertion that his contacts with his wife, a citizen of China, and his family members and in-laws who are citizens and residents of China created a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. Applicant's relationships with his family members who are citizens of China could force him to choose between loyalty to members of his family and the security interests of the United States. (ISCR Case No. 03-15485, at 4-6 (App. Bd. June 2, 2005) I conclude that the mitigating conditions under AG ¶¶ 8(a), 8(b), and 8(c) do not apply to the facts of Applicant's case.

Nothing in Applicant's answers to the Guideline B allegations in the SOR suggested he was not a loyal U.S. citizen. Section 7 of Executive Order 10865 specifically provides that industrial security clearance 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."

### **Whole Person Concept**

Under the whole person concept, the Administrative Judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's



conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall 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 the whole person concept and all the facts and circumstances surrounding this case. Applicant is a mature adult of 50 years of age. He is a college graduate. Over the course of his adult life, he has been a solicitous and devoted son. He is also a devoted husband, son-in-law, and father.

Applicant was born, raised, and educated in China. He has numerous immediate family contacts with China. His wife, with whom he lives and shares a household, is a citizen of China. His parents and brother are citizens and residents of China. His father is retired from a position in a Chinese government agency. Applicant's father-in-law, mother-in-law and sister-in-law are citizens and residents of China.

Americans of Chinese ancestry are considered prime intelligence targets by the Chinese government. Applicant has traveled to China four times in the past six years, thereby exposing himself to the possibility of exploitation, pressure, or exploitation by the Chinese government. Because he is a dutiful son, and because his parents are growing too old to travel to the U.S. to visit him, Applicant anticipates that he will travel to China in the future to visit his parents.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising under AG B.

## Formal Findings

Formal findings for or against Applicant on the allegations set forth in the amended 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
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 national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Joan Caton Anthony  
Administrative Judge