



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-00423
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: *Pro Se*

August 1, 2008

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on April 19, 2007. On April 11, 2008, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline B that provided the basis for its action to deny her a security clearance and to refer the matter to an administrative judge. 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 April 16, 2008. She answered the SOR in writing on May 5, 2008, and requested a hearing before an administrative judge. The case was assigned to me, and on May 29, 2008, I scheduled a hearing for June 27, 2008.

The parties appeared as scheduled. Two government exhibits (Ex. 1-2) were admitted and Applicant testified, as reflected in a transcript (Tr.) received on July 8, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Procedural and Evidentiary Rulings

Request for Administrative Notice

On May 28, 2008, Department Counsel requested administrative notice be taken of certain facts relating to the People's Republic of China (PRC) and its foreign relations, including with the U.S. The request was based on publications from the Department of State,¹ the Centre for Counterintelligence and Security Studies,² the U.S. China Economic and Security Review Commission,³ and the Office of the National Counterintelligence Executive.⁴ The government's formal request and the attached documents were not admitted into evidence but were included in the record.

On June 4, 2008, I notified the parties of my intention to take administrative notice of specific facts, subject to revision based on the evidence admitted at the hearing and any valid objections. The parties were informed that any objections would be taken up at the hearing scheduled for June 27, 2008. At the hearing, Applicant did not object to any specific fact, but questioned their relevance to her case. I agreed to take administrative notice of particular facts pertaining to the PRC, as set forth in the Findings of Fact.

Findings of Fact

DOHA alleged under Guideline B, foreign influence, that Applicant's mother is a citizen of the PRC who resides with her in the U.S. part of the time and spends the remainder in the PRC (SOR ¶ 1.a); that Applicant supports her mother financially when her mother is in the U.S. (SOR ¶ 1.b); that Applicant's stepfather (SOR ¶ 1.c), aunt (SOR ¶ 1.f), and two brothers-in-law and one sister-in-law (SOR ¶ 1.d) are resident citizens of the PRC; that Applicant has provided financial support for a brother-in-law (SOR ¶ 1.e); and that Applicant traveled to the PRC in August 2004 to visit her family

¹*Background Note: China*, dated April 2008 (I), *Country Reports on Human Rights Practices-2007, China (includes Tibet, Hong Kong, and Macau)*, dated March 11, 2008 (V), and *Country Specific Information-China*, dated December 10, 2007 (VI).

²*Intelligence Threat Handbook*, excerpts, dated June 2004 (II). The document was prepared for the Interagency OPSEC Support Staff by the Centre for Counterintelligence and Security Studies, a private contractor.

³*2007 Report to Congress of the U.S.-China Economic and Security Review Commission*, extracts, dated November 2007 (III).

⁴*Annual Report to Congress on Foreign Economic Collection and Industrial Espionage-2005*, dated August 2006 (IV).

and her spouse's family (SOR ¶ 1.g). In her answer of May 5, 2008, Applicant admitted the allegations, adding in explanation that her mother came to the U.S. in November 2004 on an immigrant visa and went back to the PRC once, from October 2005 to March 2006. She indicated that the Internal Revenue Service requires that she support her mother while she is in the U.S. on an immigrant visa. Applicant averred that she had provided financial aid to her brother-in-law a few years ago when he needed it to raise his children, and that she cannot change the PRC citizenship and residency of her family members and her spouse's family members. After considering the evidence of record, I make the following findings of fact.

Applicant is a 39-year-old senior engineer ("programmer") who has been employed by a U.S. defense contractor since August 2005. (Ex. 1, Tr. 38). She seeks a secret clearance, never having held a security clearance in the past (Tr. 30).

Applicant was born in the PRC in October 1968 to native citizens (Ex. 1). Her mother was employed in a textile factory that Applicant believes was government-owned (Tr. 72-73). When Applicant was in her late teens, her mother remarried (Tr. 59).

An only child, Applicant was educated in the PRC through undergraduate school. She lived at home part of the time while in college (Tr. 59). In 1991, she earned her bachelor of science degree in computer science from a PRC university (Tr. 37). She worked as a cashier at a hotel from July 1991 to February 1992. From June 1992 to October 1993, she was an employee of a real estate management company (Ex. 1, Ex. 2). In August 1993, she married a PRC native citizen in her hometown (Ex. 1, Tr. 35).

In November 1993, Applicant joined her spouse in the U.S. where he was furthering his education (Ex. 2, Tr. 36). He was in the U.S. initially on a student visa but obtained a work visa and they made their home here (Ex. 2). The first of their two children, a daughter, was born in January 1995. Applicant stayed at home to care for her (Tr. 64). In October 1997, they had a son. Both children have been citizens solely of the U.S. since their births here (Ex. 1). When her son was nine months old, Applicant took him to the PRC. She stayed at her parents' residence and did not go to her spouse's hometown (Tr. 62). Her mother and an aunt cared for her son in the PRC for the next three years while Applicant took classes toward her master's degree in the U.S. (Tr. 56). In June 2003, she was awarded her M.S. in computer science (Ex. 1, Tr. 36).

Applicant worked while pursuing her graduate degree. From May 2000 to April 2001, she was employed as a consultant. Sometime in 2000, Applicant and her spouse went to the PRC to pick up her son. They returned to the U.S. without him because he did not recognize them (Tr. 62-63). In May 2001, she took a position as an "application architect" with a publishing company (Ex. 1). Also, in 2001, her spouse returned to the PRC to bring their son home. Applicant did not accompany him because of her studies (Tr. 56).

In early July 2002, Applicant became a naturalized citizen, taking an oath to renounce all foreign allegiances, to support and defend the U.S. Constitution and its

laws, and to bear arms or perform noncombatant service or civilian service on behalf of the U.S. if required. She was issued her U.S. passport in August 2002 (Ex. 1, Ex. 2). Her spouse applied for his U.S. citizenship when she did, and they had their interviews on the same day (Tr. 66). He became a naturalized U.S. citizen in May 2004 (Ex. 1). No explanation was given to them for the delay in processing his citizenship application (Tr. 66).

In November 2002, Applicant traveled to India for her stepsister's wedding (Ex. 1, Ex. 2, Tr. 61). Her stepsister, a native of the PRC, married an Indian national (Ex. 2).

In August 2004, Applicant and her immediate family (spouse and children) took a two-week vacation in the PRC to visit relatives. They stayed with her mother and stepfather and also visited with her spouse's siblings (Ex. 2). His parents were already deceased (Ex. 1). Applicant and her family traveled on their U.S. passports. When she and her spouse applied for their visas, they had to submit their PRC passports to the Chinese consulate, which were then invalidated and returned to them (Ex. 2).

Shortly after she acquired her U.S. citizenship, Applicant filed an immigrant petition for her mother in about September 2002 (Tr. 66). Applicant's mother was granted U.S. permanent residency, and she moved in with Applicant and her family in the U.S. in mid-November 2004 (Ex. 1, Tr. 32-34). Applicant's mother went back to the PRC once, from October 2006 to March 2007 (Ex. 2, Tr. 38-40). Applicant assumes she returned to spend time with her husband, although she is not certain (Tr. 41). Applicant spoke with her mother by telephone more frequently than once monthly when her mother was in the PRC (Tr. 41).

Applicant was unemployed from December 2004 to August 2005, when she started her present job (Ex. 1). In April 2007 Applicant complied with repeated requests from her employer to apply for a security clearance ("I don't like the trouble too much, you know, and so I didn't do it for a while. Then, you know, since they just keep asking, so I said I think, I said okay, I'll do it, so I applied for the clearance. . . ." Tr. 31). On her e-QIP completed on April 19, 2007, Applicant indicated that her mother, a PRC citizen with U.S. permanent residency, was living at her address in the U.S., but that her stepfather was a PRC resident citizen. Her father had died before she executed the e-QIP. She disclosed that her stepsister is a resident citizen of the U.S. Applicant indicated she had other relatives who are PRC resident citizens: a maternal aunt, two brothers-in-law, and a sister-in-law. Her parents-in-law were no longer living. Applicant responded "Yes" to question 17.b, "Are you now or have you ever been employed by or acted as a consultant for a foreign government, firm or agency?", and she listed her former employment with the housing company and at the ocean hotel in the PRC. In response to any foreign travel, she listed three trips to Canada, a trip in November 2002 when she went to India, and the August 2004 trip to the PRC (Ex. 1).

During a subject interview with a government investigator on July 13, 2007, Applicant provided details of her foreign relatives' occupations and her contacts with them. She also indicated that her mother travels to China for up to six months periods

on a regular basis to stay her husband (Ex. 2). At her hearing, Applicant explained that her mother had been to China only once since November 2004, and what she had meant was that her mother could travel on a regular basis to the PRC provided her stay there did not exceed six months (Tr. 40). Applicant also corrected the record to indicate that her former employers in the PRC were hotel and real estate management firms and not the Chinese government. She maintained she misunderstood the foreign employment question on her security clearance application (Ex. 2).

Applicant has a close relationship with her mother (Tr. 43) who continues to live with them (Tr. 34). She covers her mother's living expenses in the U.S. Applicant believes she is required by the IRS to support her mother financially because she sponsored her mother's immigration (Tr. 31, 42). During her mother's stay in the PRC, she did not provide her any funds. Her mother gets a small pension from her job in a textile factory that was likely owned by the government since there was little private ownership (Tr. 72). To Applicant's understanding, the PRC government pays the pension (Tr. 41-43, 72). None of Applicant's relatives have worked directly for the PRC government as her maternal grandfather would not have approved (Tr. 67).

Applicant's stepfather continues to reside in the PRC where he works in structural engineering. Applicant believes he works for a private company, although she is not aware of the particulars (Ex. 2, Tr. 45). He has spoken about immigrating to the U.S. but to Applicant's knowledge, a petition has not been filed on his behalf. He has not asked Applicant to sponsor him (Tr. 44). He has never visited the U.S. (Tr. 47). Applicant speaks with him by telephone a few times a year (Tr. 46). She knows her mother is in contact with him because she hears about her stepfather from her mother, but she is not sure of the frequency of her mother's contacts ("I would have to look at the bill, the telephone bill." Tr. 47). Applicant would not describe her relationship with her stepfather as close, but she thinks he is "pretty nice" (Tr. 60).

Applicant's aunt (mother's younger sister) was a cook in the PRC until she retired. Applicant maintains telephone contact with her two or three times a year, around the holidays (Chinese Mid-Autumn Festival and Chinese New Year) (Ex. 2, Tr. 53-54). Applicant's mother telephones her sister, and on occasion when she does call, Applicant's son will speak with his great-aunt (Tr. 57).

The elder of Applicant's two brothers-in-law is 67 years old and employed as a chef in the PRC (Ex. 1, Ex. 2, Tr. 47). He has five grown children, the eldest of whom is an engineer in the U.S. Applicant's other brother-in-law is an engineer in the PRC. To Applicant's knowledge, one of his children is a doctor, the other is an engineer. Applicant visited with them during trips to the PRC, but she otherwise has no ongoing contact with her brothers-in-law. Her spouse calls his brothers once every three to six months (Tr. 48-50). The elder of his brothers was in the U.S. visiting his daughter around Chinese New Year in February 2008. Applicant and her spouse saw his brother then. It was her brother-in-law's first time in the U.S. (Tr. 50).

Applicant's sister-in-law is a 63-year-old farmer in the PRC. Her spouse works in a factory. She has never visited the U.S. and Applicant believes her spouse's contact with his sister is even less frequent than his contact with his brothers (Tr. 51). They stayed with his sister during part of their two weeks in China in August 2004 (Tr. 54). Applicant had planned to return to the PRC to visit her family and her spouse's family members this year, but decided against it because of the expense (Tr. 58).

Up until his death in September 2005, Applicant's father-in-law lived with his eldest son and his family. Applicant's spouse sent about \$500 every three months to his brother for the care of their father. They also helped with the costs of educating his brother's five children, who have now all graduated. They sent his brother between \$500 and \$1,000 annually to help with tuition costs for his children (Ex. 2, Tr. 52-53, 72).

Applicant does not own any property or have any financial assets in the PRC (Ex. 2, Tr. 58). Neither she nor her spouse served in the PRC's military (Ex. 2). In the event of a conflict between the PRC and the U.S., Applicant maintains that she and her spouse would fully support the U.S. with no reservations. Applicant and her spouse bought their first home in the U.S. in about January 2000. They purchased their present residence in about May 2004 (Ex. 1, Tr. 64). Applicant's spouse is employed as a computer programmer for a Japanese company in the U.S. (Tr. 65-66).

Following review of official publications of the U.S. government that address the economic, political, and intelligence activities of the PRC, I take administrative notice of the following facts:

The PRC is a large and economically powerful country, with a population of just over 1.3 billion people. Its economy grows at about 10% per year. China has an authoritarian government dominated by the Chinese Communist Party. The National People's Congress, the PRC's legislative body, is the highest organ of state power. With China firmly committed to economic reform and greater openness, the influence of people and organizations outside the formal party structure has increased, but in all important government, economic, and cultural institutions in China, the Chinese Communist Party ensures that party and state policy guidance is followed. During 2007, the PRC government's human rights record remained poor, with a trend toward increased harassment, detention, and imprisonment by government and security authorities of those perceived as threatening to government authority. Foreign visitors in the PRC may be placed under surveillance by security personnel, their hotel rooms, telephones, and facsimile machines monitored, and their personal possessions, including computers, searched without their knowledge or consent. Foreign government officials, journalists, and business people with access to advanced proprietary technology are particularly likely to be under surveillance.

Since the Tiananmen Square crackdown in June 1989, the PRC has become a key participant in the international community through its seat as a permanent member of the United Nations, and through diplomatic relations with other countries. The U.S. and PRC have a history of cooperation on scientific and environmental issues.

Recently, the two countries have cooperated with growing effectiveness on counterterrorism and on various aspects of law enforcement (computer crime, intellectual property rights, human smuggling, corruption). China, a member of the World Trade Organization since December 2001, is an important trading partner of the U.S. Its trade surplus with the U.S. was \$256.3 billion in 2007 while U.S. goods exports to China accounted for 5.7% of total U.S. goods exports. The U.S. is the sixth largest foreign investor in the PRC.

The PRC possesses large military forces (strategic nuclear forces, army, navy and air force), which are in the process of transformation into a smaller, more mobile, high tech military. In the last decade, the PRC's strategic posture has been one of selective modernization with an increasing focus on space-based assets. Civil-military integration has led to increased utilization of commercial systems in military applications. The PRC places enormous pressure on foreign companies, including U.S. firms, to transfer technology to Chinese companies as part of doing business in China. In furtherance of these efforts, the PRC has aggressively targeted sensitive and protected U.S. economic and militarily critical information subject to export control laws. The PRC blends intelligence and non-intelligence assets, relying on covert espionage activity by personnel from government ministries, commissions, institutes, and military industries independent of the PRC intelligence services, and by targeting ethnic Chinese who have access to sensitive information. U.S. Immigration and Customs Enforcement officials have rated China's espionage and industrial theft activities as the leading threat to the security of U.S. technology.

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 overarching 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

Guideline B, Foreign Influence

The security concern 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.

Applicant, her spouse, and their children are U.S. resident citizens. Her mother, a PRC citizen, lives with them. While her mother enjoys the protections of U.S. legal residency, she remains subject to the obligations of her PRC citizenship. Applicant’s stepfather, aunt, and her siblings-in-law are all resident citizens of the PRC. Applicant’s contacts with her stepfather and aunt are infrequent, about three times a year, and she

does not telephone her brothers-in-law or her sister-in-law. Yet, it is also evident that she feels some bonds of affection and/or obligation for them. She visited with them when in the PRC, and she and her spouse provided financial assistance to his elder brother for his children in college. Applicant intends to visit with her family members and her spouse's family members on any future trips to the PRC. The only reason she did not travel this year was because of the expense. AG ¶ 7(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") applies.

The bonds that her mother shares with her husband and sister (Applicant's stepfather and aunt) in the PRC, and that her spouse shares with his siblings in the PRC, must also be taken into account in assessing the risk of foreign influence (see AG ¶7(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 has traveled to the PRC only once since she emigrated in November 2004, but she stayed from October 2006 to March 2007. Applicant testified she is unsure of the frequency of her mother's telephone contacts with her stepfather, but she knows they are in contact as she hears about her stepfather from her mother. She also knows that her mother contacts her aunt because Applicant's son will speak with his great-aunt on occasion. As for any future travel by her mother to see her stepfather and her sister, Applicant likewise knows of no details. She expects her mother to spend more time in the U.S., but while her stepfather has talked about immigrating to the U.S., he has not started the process. As long as Applicant's stepfather is in the PRC, future travel by her mother to the PRC cannot be ruled out. The government argued persuasively that Applicant's vulnerability is heightened if her mother travels to the PRC where she would be not only subject to its laws, but also within the reach of any foreign entities that might seek to exert influence to gain access to classified information. I am less persuaded that the risk is heightened because of her mother's pension from the PRC. Applicant does not count on that pension to cover any of the costs of caring for her mother in the U.S. She has willingly assumed the full cost of her mother's living expenses in the U.S., which she understood she took on by sponsoring her mother's immigration. Should the pension become an issue, Applicant is likely to give her mother whatever money she needs.

As for his spouse's family, Applicant's spouse contacts his brothers in the PRC only about once every three to six months and his sister even less frequently. However, he and Applicant considered it a family duty to provide financial support on a regular basis for his father until he died and he gave his elder brother between \$500 and \$1,000 yearly to help cover educational costs for his brother's children. AG ¶ 7(d) applies. There is no evidence that Applicant engaged in any conduct while in the PRC in August 2004 that implicates security concerns under ¶ 7(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") other than establishing

the ties to her relatives and her spouse's relatives, which are more appropriately addressed in AG ¶¶ 7(a) and 7(d).

None of Applicant's relatives or her spouse's relatives in the PRC work directly for the PRC government. The only government connection is a pension benefit enjoyed by her mother that Applicant cares little about. However, mitigating condition AG ¶ 8(a) ("the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.") does not apply because of the close family ties to the PRC and the PRC's aggressive pursuit of U.S. sensitive and classified information. Applicant's stepfather and one brother-in-law work in the engineering field in the PRC. While both are employed in private industry, Applicant provided little to nothing about their associates and affiliations within the PRC. With so little known about their jobs, it is difficult to discount the risk of them being exploited by the PRC government or those in industry targeting U.S. classified data for competitive advantage, although there is no evidence that any of her relatives or her spouse's relatives have been targeted. Applicant testified that her stepfather did not try to immigrate to the U.S. with her mother because of his job (Tr. 45). It is not clear whether it is just the income or something else that keeps him in the PRC when his spouse, daughter, and stepdaughter all live in the U.S.

The risk of foreign influence may be mitigated by deep and longstanding relationships and loyalties in the U.S. (see AG ¶ 8(b) ("there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is 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")). Applicant credibly asserts a singular loyalty to the U.S. where she is invested financially and professionally. As soon as she was eligible to do so, she applied for her mother to immigrate to the U.S. While her sense of loyalty or obligation to her native country is minimal, I cannot conclude the same with respect to her family ties.

Over the past 14 years, Applicant has established significant ties to the U.S., most notably citizenship. She pursued her graduate degree while working part-time and caring for her oldest child. Both her children were born in the U.S. and are U.S. citizens. She has been a homeowner in the U.S. since January 2000 and has no financial assets in the PRC. Applicant has worked for her present employer since August 2005. However, Applicant has not been entirely focused on her life in the U.S. over the past 14 years. In 1998, she took her son to the PRC so that her mother and an aunt could care for him while she was in school in the U.S. When she and her spouse returned to the PRC to pick him up in 2000, they decided to leave him there. Her spouse eventually brought their son home in 2001. Certainly with her mother's immigration to the U.S. in November 2004, Applicant's bonds to the PRC have lessened considerably. But given

the facts presented, I am unable to conclude that her ties to the U.S. are sufficiently deep and longstanding to apply AG ¶ 8(b).

None of the other mitigating conditions under Guideline B are pertinent. Applicant's contacts with her stepfather and aunt in the PRC are infrequent and she has no ongoing telephone contact with her spouse's siblings (see AG ¶ 8(c) ("contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation)). Yet, these relationships are certainly not casual in nature, for the reasons noted in discussing the applicability of AG ¶ 7(a) and AG ¶ 7(d). She trusted her aunt to help care for her son when he was just an infant, and she visited her stepfather and her in-laws when in the PRC.

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 commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

The salient issue in the security clearance determination is not in terms of loyalty, but rather what is clearly consistent with the national interest. See Executive Order 10865, Section 7. An applicant may have the best of intentions and yet be in an untenable position of potentially having to choose between a dear family member and the interests of the U.S. Applicant's ties to the PRC are familial. While she does not have the same personal affection for persons living in the PRC that she does to her spouse, children, and her mother who are living in the U.S., she has not fully mitigated the foreign influence concerns that exist.

A Guideline B decision involving the PRC must take into consideration the geopolitical situation. With China firmly committed to economic reform and greater openness, the influence of people and organizations outside the formal party structure has increased, but in all important government, economic, and cultural institutions in

China, the Chinese Communist Party ensures that party and state policy guidance is followed. During 2007, the PRC government's human rights record remained poor, and the PRC is a known collector of U.S. intelligence and economic information. Applicant retains ties, primarily through her mother and spouse, to PRC resident citizens, so there is the possibility that she could be placed in a position of having to choose between the interests of a foreign person and the U.S.

While Applicant has lived in the U.S. since November 1993, she did not fully develop the evidence showing her ties to U.S. citizens and institutions from which I could conclude that she is not likely to succumb to any undue foreign influence. Applicant resisted filling out the security clearance application because she wanted to avoid any problems ("I don't like the trouble too much"). She appears to be an ethical person with the best interests of her family at heart, but it is precisely this regard for her family members, some of whom live in the PRC, that creates an unacceptable risk. Given perhaps a change in her family's situation such as her stepfather's immigration to the U.S., Applicant may in the future be in a position where she would no longer be at risk of foreign influence. But based on the facts before me for review, I am unable to conclude that it is clearly consistent with the national interest to grant her access to classified information.

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
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant

Conclusion

In light of all of the circumstances, 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.

ELIZABETH M. MATCHINSKI
Administrative Judge