



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-03648
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: James B. Norman, Esquire, Chief Department Counsel
For Applicant: Josiah M. Black, Esquire

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on May 29, 2007. On July 12, 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 July 17, 2008. Acting *pro se*, she answered the SOR on August 19, 2008, and requested a hearing before an administrative judge. On September 22, 2008, counsel for Applicant entered his appearance. The case was assigned to me on September 23, 2008, with a request for

administrative notice pending from the government, *infra*. On October 14, 2008, I scheduled a hearing for November 20, 2008.

At the hearing held as scheduled, three government exhibits (Ex. 1-3) and seven Applicant exhibits (Ex. A-F) were admitted and Applicant and a maternal uncle testified, as reflected in a transcript (Tr.) received on November 28, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Procedural and Evidentiary Rulings

Request for Administrative Notice

On September 5, 2008, then assigned Department Counsel Gina Marine 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 as well as on press releases from the U.S. Department of Justice.⁵ The government's formal request and the attached documents were not admitted into evidence but were included in the record.

¹*Country Reports on Human Rights Practices-2007, China (includes Tibet, Hong Kong, and Macau)*, dated March 11, 2008 (IV), *Country Specific Information-China*, dated December 10, 2007 (V), and *Background Note: China*, dated April 2008. The *Background Note* was not included in the list of source documents but it was referenced in several footnotes in the government's Administrative Notice request and a copy of the document was provided for review.

²*Intelligence Threat Handbook*, excerpts, dated June 2004 (I). 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 (II).

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

⁵*Press Release—Chinese Resident Pleads Guilty to Having Export Controlled Thermal-Imaging Cameras Sent to China*, dated July 16, 2008 (VI), *Press Release—Chinese National Sentenced For Committing Economic Espionage to Benefit China Navy Research Center*, dated June 18, 2008 (VII), *Press Release—Third Defendant Pleads Guilty in China Espionage Case*, dated May 28, 2008 (VIII), *Press Release—Chinese Agent Sentenced to Over 24 Years in Prison for Exporting United States Defense Articles to China*, dated March 24, 2008 (IX), and *Press Release—Former Chinese National Convicted of Economic Espionage to Benefit China Navy Research Center*, dated August 2, 2007 (X). None of the press releases pertained specifically to Applicant.

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 granted until October 22, 2008, to file any objections to my taking notice of the facts set forth in the Order, and for Applicant to propose facts for administrative notice.

The government filed a timely request to extend the deadline to October 31, 2008, which was granted without any objections. On October 31, 2008, the government requested that administrative notice be taken of additional facts not explicitly included in the October 2, 2008, Order. Applicant filed no response, but indicated at the hearing that she did not object to administrative notice being taken of the facts set forth in the Order as supplemented by the government on October 31, 2008. 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 sister is a citizen and resident of the PRC (SOR ¶ 1.a), and that Applicant traveled to the PRC to visit her in at least 2001, 2004, and 2005 (SOR ¶ 1.b). In her answer of August 19, 2008, Applicant admitted the allegations, adding in explanation that her sister at age 25 exceeded the age limit when the rest of their family immigrated to the United States (U.S.). Applicant indicated that her sister is employed as an accountant for a private company in the PRC and is awaiting a visa to immigrate to the U.S. After considering the evidence of record, I make the following findings of fact.

Applicant is a 28-year-old computer software engineer who has been employed by a U.S. defense contractor since April 2007 (Exs. 1, F). She seeks a secret clearance, never having held a security clearance in the past (Ex. 1).

Applicant was born in a southern province of the PRC in January 1980 to native citizens (Ex. 1, Tr. 23-24). She was raised with an older sister, who was born in December 1973 (Ex. 1). Her mother was employed as an assembly worker in a balloon factory and her father worked for a construction company. Neither were ever members of the Chinese Communist Party (Tr. 25).

In early February 1999, when Applicant was 19, she immigrated to the U.S. with her parents. They were sponsored by Applicant's paternal grandfather, who immigrated to the U.S. in 1989 (Tr. 26-27, 38). They joined many paternal relatives in the U.S. who had immigrated earlier (Ex. B, Tr. 42-49), including Applicant's great-aunt who has been in the U.S. more than 40 years (Tr. 45) and a great-uncle who arrived more than 30 years ago (Tr. 48).⁶ Because her sister was 25 years old at the time, she was ineligible to immigrate on her grandfather's petition so she remained behind in the PRC where

⁶Applicant testified she has about 60 relatives living in the U.S., about 90 percent of whom are U.S. citizens (Tr. 50). Her great-uncle testified that he has 37 relatives living in the U.S. (Tr. 98).

she was employed as an accountant (Exs. 1, 2, Tr. 25-27). Applicant entered the U.S. on a PRC passport valid from March 6, 1998, to March 5, 2003 (Exs. 3, A).

Applicant and her parents lived with a great-uncle from 1999 to 2004 (Tr. 49, 99). This uncle came to the U.S. under the sponsorship of his spouse's sister in March 1975 (Tr. 96), and he worked as a senior programmer for a defense contractor for 25 years (Tr. 99-100).

Applicant attended the local public high school from February 1999 to June 2001 (Tr. 21). After graduating from high school, she started her college studies that Fall at the state's university at a branch nearby. From late December 2001 to mid-January 2002, Applicant traveled to the PRC to visit her sister (Exs. 1, 2, 3, A, Tr. 72-73). In January 2003, she renewed her PRC passport for another five years (until March 5, 2008) (Exs. 3, A).

In January 2004, Applicant transferred to the university's main campus to continue her undergraduate studies in computer science (Ex. 1, Tr. 21). She had work-study obligations during the school year. Unemployed that summer, she took the opportunity to return to the PRC for a couple of weeks in August to visit her sister. As she had in 2002, she traveled on her PRC passport (Exs. 1, 2, 3, A, Tr. 73).

In November 2004, Applicant and her mother became naturalized U.S. citizens (Ex. 1). Unbeknownst to Applicant at the time (Tr. 28), the acquisition of U.S. citizenship served automatically to revoke their PRC citizenship (Ex. 2). Applicant's father remained a legal permanent resident of the U.S. with PRC citizenship due to his limited facility with the English language (Tr. 107). On January 18, 2005, Applicant obtained a U.S. passport which is valid to January 17, 2015 (Exs. 1, 3). In March 2005, Applicant's mother applied for Applicant's sister to emigrate from the PRC to the U.S. and her petition was approved in August 2005 (Ex. D, Tr. 27).

From May to July 2005, Applicant was a summer intern in an undergraduate summer program at another university. Unemployed on her return to the area, she traveled to the PRC from August 4, 2005, to September 3, 2005, to spend time with her sister. Needing a visa for the trip, she sent both her PRC and U.S. passports to the Chinese Embassy in June 2005. Her Chinese passport was invalidated (stamped cancelled and cut in the upper right hand corner) and then returned to her (Ex. A, Tr. 28-35). She entered and exited the PRC on her U.S. passport (Exs. 1, 2, 3, Tr. 74). On this and previous trips to the PRC, she stayed with her sister (Tr. 92).

In January 2006, she began a co-op position as a quality assurance tester with a computer technology company. She finished her academic studies in December 2006, and was awarded her bachelor of science degree in February 2007 (Ex. 1). In about April 2007, she left the job with the technology company for her present employment because it would allow her to write computer code (Tr. 21-22).

At the request of her supervisor (Tr. 23), Applicant executed an e-QIP on May 29, 2007. She disclosed her birth in the PRC, her U.S. naturalization in November 2004, and her possession of a valid U.S. passport issued in January 2005. She also disclosed that she had held a PRC passport from about June 1998 to October 2004, which she indicated was invalid after she became a U.S. citizen. Applicant reported her sister's PRC residency and citizenship. She also listed her travels to the PRC from December 2001 to January 2002, in August 2004, and from August 2005 to September 2005, indicating the purpose of each trip as "other." (Ex. 1).

On January 25, 2008, Applicant was interviewed by a government investigator about her foreign ties. She mistakenly indicated that her Chinese passport did not expire until 2009, but she also denied any use of that passport after she acquired her U.S. passport in January 2005 and any intent to renew her foreign passport. Applicant expressed her ultimate loyalty to the U.S., which she considered her home. According to the investigator's report, Applicant also expressed her intent to renounce her citizenship with China if it meant she had to in order to remain a U.S. citizen, although she was unsure of the procedure or whether it was in fact possible. Applicant disclosed that her sister worked as an accountant for an Internet service provider in the PRC, and that she visited her in the PRC in late 2001 into 2002, in 2004, and in 2005. Applicant denied any untoward contact or activities. On February 12, 2008, Applicant was re-contacted by the investigator to discuss her contacts with her sister, which she indicated were by electronic mail once weekly. Applicant added that her sibling was unaware that she had applied for a "national security position." (Ex. 2).

In March 2008, Applicant asked her employer to destroy her invalidated PRC passport. They refused to do so, so Applicant retained possession of the passport (Tr. 34).

DOHA requested Applicant verify the investigator's reports of her January 2008 interview and February 2008 contact. On May 19, 2008, Applicant indicated that the reports were inaccurate in that she had mistakenly indicated that her PRC passport was valid through 2009 when it had expired in March 2008, and that she did not consider herself a dual citizen as when she applied for her U.S. citizenship, she "effectively renounced" her PRC citizenship. She added that she had not used her Chinese citizenship after the trip in August 2004. During her stay in the PRC in September 2005, she visited her sister and old classmates and friends. Apart from routine border contact, she denied any interaction with Chinese government officials. Applicant reiterated that her loyalty lay with the U.S. government and that her contacts with her sister by telephone and email generally concerned dating, shopping, new movies (Ex. 2). At the request of DOHA, Applicant furnished copies of her expired PRC and current U.S. passports (Ex. 3).

Applicant's sister has worked for the privately-owned Chinese Internet company as an accountant since April 2004 (Ex. C, Tr. 52, 55, 108). Applicant speaks to her by telephone once a month. Applicant has not told her that she has applied for a security clearance (Tr. 52-53). Their conversations revolve around their parents, whom her sister

has not seen in almost three years, and everyday issues of mutual interest such as clothing and movies (Tr. 53). Her sister is awaiting a visa and intends to immigrate to the U.S. (Tr. 60). Applicant's sister has a stable job and owns her home in the PRC. Applicant does not provide any financial support for her sister (Tr. 61). To Applicant's knowledge, her sister is not politically active in the PRC (Tr. 62).

Applicant has four maternal uncles and some cousins who are resident citizens of the PRC (Ex. E, Tr. 66-68). Applicant visited with these relatives during her trips to the PRC (Tr. 70), but she has otherwise had only one contact with them since immigrating to the U.S. in February 1999. She spoke with an uncle on the occasion of her grandmother's funeral in 2007 (Tr. 69-70). To Applicant's knowledge, none of these relatives have ever worked for the Chinese government (Tr. 71).

Applicant has two female friends from elementary school who are resident citizens of the PRC. One works as an accountant for a private trading (import/export) company. The other is an assembly worker in a commercial steel factory (Tr. 74). Applicant sends birthday greetings but has not spoken to these friends in more than a year (Tr. 75).

Applicant's father is employed as a plumber and her mother as an assembly worker in a piano factory in the U.S. (Tr. 24-25). They travel to China on occasion to visit their daughter, most recently in about 2006 (Tr. 107).

As of November 2008, Applicant had no current plans to travel to the PRC (Tr. 75). All of her financial assets (car, checking and savings and retirement accounts) are in the U.S. She lives with her parents in an apartment (Ex. 1, Tr. 20). Applicant owns no real estate in the PRC or in the U.S. (Tr. 76). Registered to vote in the U.S., Applicant has performed jury service here twice (Tr. 77). She belongs to a couple of Asian-American organizations, one at work and one in the local community. The organizations' activities are social as well as professional (networking, career programs) (Tr. 88-90).

Applicant has proven to be an organized, hardworking, and competent employee for the defense contractor (Exs. F, G). Her direct supervisor is confident of her ability to handle situations "with thoughtfulness and maturity" (Ex. F). Applicant has abided by her employer's policies concerning the confidentiality of sensitive information (Tr. 85-86). Applicant recently started a master's degree program in systems engineering to improve her skills (Ex. F, Tr. 88).

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 has recently grown 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. The security services in China routinely monitored and entered residences and offices to gain access to computers, telephones, and fax machines. Foreign government officials, journalists, and business people with access to advanced proprietary technology are particularly likely to be under surveillance. Americans not staying in hotels in China, including those staying with friends or relatives, must register with local police as soon as they arrive.

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 Security Council 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 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. Americans of Chinese ancestry are considered prime intelligence targets.

A record number of countries (108) were involved in collection efforts against sensitive and protected U.S. technologies in fiscal year 2005 with a small number, including the PRC, among the most aggressive. As of 2007, as Chinese espionage against the U.S. military and American business continued to outpace the overwhelmed

U.S. counterintelligence community, critical American secrets and proprietary technologies were being transferred to China. Ethnic Chinese with U.S. citizenship and/or legal residency have been convicted of procuring and exporting or attempting to export sensitive U.S. technology to the PRC in violation of export controls. 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. The Federal Bureau of Investigation stepped up counterintelligence efforts against Chinese intelligence operations in the U.S. in July 2007 because of substantial concern about those operations. In March 2008, an engineer who conspired with family members to export sensitive naval technology to the PRC was sentenced to 293 months in federal prison. In May 2008, a U.S. naturalized citizen, who operated as an unregistered agent of the PRC government in the U.S., pleaded guilty to conspiracy to deliver national defense information to the PRC. A PRC citizen with U.S. permanent residency was convicted of aiding and abetting this unregistered agent between March 2007 and February 2008. In June 2008, a software engineer was sentenced under the Economic Espionage Act (18 U.S.C. § 1831) for misappropriating a trade secret from his former employer with the intent to benefit the PRC.⁷

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.

⁷There is no allegation that Applicant has engaged in any economic espionage or attempted to violate export controls for the benefit of the PRC. The criminal activity of others is relevant to the extent it reflects ongoing efforts by the PRC to target U.S. sensitive technologies.

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 and her parents, natives of the PRC, immigrated to the U.S. in February 1999. They joined many members of her father’s family, who had immigrated before them. They left behind Applicant’s sister, who at age 25 was ineligible for immigration as a minor under their grandfather’s sponsorship. 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. Applicant has ongoing contact, by email and/or telephone, once monthly with her sister,

who is a resident citizen of the PRC, a country known to aggressively target U.S. sensitive technology. Applicant traveled to the PRC in 2001, 2004, and 2005 to visit her sister. AG ¶ 7(b), “connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual’s obligation to protect sensitive information or technology and the individual’s desire to help a foreign person, group, or country by providing that information,” is also implicated.

Applicant is close to her parents, with whom she has resided since coming to the U.S., if not her entire life. The bonds that her parents share with their daughter in the PRC also must be taken into account in assessing the risk of undue 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”). While the extent of her parents’ ongoing contacts with their older daughter is unclear, they have traveled to the PRC on occasion to visit her, most recently in about 2006. Within a year of her U.S. naturalization, Applicant’s mother applied for her daughter to immigrate to the U.S. I conclude AG ¶ 7(d) applies as well.

Applicant does not have any current plans to travel to the PRC. No evidence was presented as to the extent of her parents’ travel plans. Future travel to the PRC cannot be ruled out by Applicant or her parents as long as Applicant’s sibling is in the PRC. Their vulnerability is heightened in the event of any such travel, as they would be within the reach of Chinese entities, including the PRC government, that might seek to exert influence to gain access to classified information. At the same time, there is no evidence showing that Applicant or her parents have engaged in any conduct or been targeted while in the PRC that would implicate AG ¶ 7(i), “conduct, especially while traveling outside the U.S., which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign group, government, or country.”

Applicant candidly disclosed at the hearing that she has several maternal uncles and cousins and two friends from elementary school who are PRC resident citizens. While she visited with at least some of them when she was in the PRC, her contact with them since 1999 has otherwise been limited. She has spoken to one uncle on the occasion of her grandmother’s death in 2007, and while she sends birthday greetings to her friends, she has not had contact with them for more than a year. Given the absence of any evidence of ongoing contact by Applicant or her parents with these foreign nationals, these relationships do not present a heightened risk (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”). However, AG ¶ 8(c) does not apply because of Applicant’s and her parents’ contacts with her sister in the PRC, which cannot reasonably be termed “so casual or infrequent.”⁸

⁸In 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, 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

Applicant's un rebutted testimony is that her sister is nonpolitical and has no connection with the PRC government. It must also be noted that the U.S. has approved her sister for immigration to the U.S. 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 her and her parents' close bonds with her sister in the PRC, and the PRC's aggressive pursuit of U.S. sensitive and classified information.⁹ Her sister's employment as an accountant for a private Internet provider does not fully mitigate the risk of her being exploited by the PRC government or by those in industry that might target U.S. classified data for competitive advantage. As reported by the U.S. State Department, the PRC government tightened restrictions on freedom of speech and the press in 2007, in part by increasing its efforts to control and censor the Internet.

The risk of foreign influence may yet 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 is a relatively recent emigree, having lived in the U.S. for less than 10 years. Yet, Applicant and parents chose to immigrate to the U.S., knowing that they would have to leave her sister behind. Applicant left the PRC when she was 19, before she had an opportunity to establish herself professionally or financially in the PRC. Since coming to the U.S. in 1999, she has developed significant ties to the U.S. that establish the expectation that she will act in the U.S. interest. She attended public high school when she would have been a few years older than her fellow students. After graduating in 2001, she went on to college, where she had work-study obligations in addition to academics. She held a co-op position as a quality assurance tester with a technology company while finishing her undergraduate studies. Shortly after she earned her B.S. degree, she began working for her current employer. She has performed her duties competently and in a trustworthy manner. All of her financial assets (savings, salary, and retirement) are in the U.S. Shortly after she became eligible, she applied for U.S. citizenship, and she took the oath of naturalization by choice in November 2004. In January 2005, she obtained her U.S. passport, and traveled on that passport to the PRC in late August 2005. Applicant's only significant tie to the PRC at this point is her sister, who intends to

(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.*

⁹The 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 U.S. 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 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).

immigrate to the U.S. once a visa becomes available. All of the other family members to whom she is close, including her parents and the great-uncle who provided them a home until 2004, are in the U.S. AG ¶ 8(b) fully applies to mitigate the foreign influence security concerns.

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. I have considered all the factors as previously discussed under the foreign influence guideline, *supra*, as part of the whole-person analysis. 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. 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. While Applicant's sister has been approved for U.S. immigration since August 2005, it is unclear at this point when she will be given the required visa. But what is known about Applicant, her parents, and her father's family, is that they have chosen to make their life in the U.S. There is no evidence showing that they have any connection to, or affinity for, the PRC government. Applicant has sufficient relationships with U.S. residents and loyalties to the U.S. to make me confident that she would resolve any conflict that should arise in favor of the U.S. interest (see AG ¶ 8(b)). After considering all the available information, I am

persuaded that Applicant can be counted on to fulfill the fiduciary obligations of a security clearance.

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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant

Conclusion

In light of all of the circumstances, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

ELIZABETH M. MATCHINSKI
Administrative Judge