



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-03867
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric H. Borgstrom, Esquire, Department Counsel
For Applicant: *Pro Se*

April 20, 2009

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant and his spouse were granted political asylum in the United States in 1995 because they had been active in student demonstrations in the People’s Republic of China (PRC). Foreign influence concerns persist because close family members remain resident citizens of the PRC. Clearance is denied.

Statement of the Case

Applicant submitted a Security Clearance Application (SF 86) in late May 2005.¹ On September 19, 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 him a security clearance and to refer the matter to an administrative judge. The action was taken under Executive Order

¹The government submitted as Exhibit 1 a SF 86 bearing no signature but indicating on the first page that Applicant signed the form on May 31, 2005. Also included in Exhibit 1 was the signature page for a SF 86 signed by Applicant and dated May 26, 2005.

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 as of September 1, 2006.

Applicant acknowledged receipt of the SOR on September 25, 2008. He answered the SOR in writing on October 11, 2008, and requested a hearing before an administrative judge. The case was assigned to me on November 17, 2008. On December 8, 2008, I scheduled a hearing for January 8, 2009.

I convened the hearing as scheduled. Two government exhibits (Ex. 1-2) and four Applicant exhibits (A-D) were admitted and Applicant testified on his behalf, as reflected in a transcript (Tr.) received on January 28, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied at this time.

Procedural and Evidentiary Rulings

At the hearing, Department Counsel submitted a request for administrative notice dated January 5, 2009, asking that 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,² the Interagency OPSEC Support Staff,³ the U.S. China Economic and Security Review Commission,⁴ and the Office of the National Counterintelligence Executive,⁵ as well as on press releases from the U.S. Department of Justice.⁶ The government's formal request and

²*Country Reports on Human Rights Practices-2007, China (includes Tibet, Hong Kong, and Macau)*, dated March 11, 2008 (Admin. Notice 5), *China-Country Specific Information*, dated November 26, 2008 (Admin. Notice 6), and *Background Note: China*, dated October 2008 (Admin. Notice 12).

³Excerpts from the *Intelligence Threat Handbook*, published in 2004, and information from the Interagency OPSEC Support Staff's website (Admin. Notice 2).

⁴*2007 Report to Congress of the U.S.-China Economic and Security Review Commission*, extracts, dated November 2007 (Admin. Notice 3).

⁵*Annual Report to Congress on Foreign Economic Collection and Industrial Espionage-2005*, dated August 2006 (Admin. Notice 4).

⁶*Press Release—Chinese Resident Pleads Guilty to Having Export Controlled Thermal-Imaging Cameras Sent to China*, dated July 16, 2008 (Admin. Notice 7), *Press Release—Chinese National Sentenced For Committing Economic Espionage to Benefit China Navy Research Center*, dated June 18, 2008 (Admin. Notice 8), *Press Release—Third Defendant Pleads Guilty in China Espionage Case*, dated May 28, 2008 (Admin. Notice 9), *Press Release—Chinese Agent Sentenced to Over 24 Years in Prison for Exporting United States Defense Articles to China*, dated March 24, 2008 (Admin. Notice 10), and *Press Release—Former Chinese National Convicted of Economic Espionage to Benefit China Navy Research Center*, dated August 2, 2007 (Admin. Notice 11). None of the press releases pertained specifically to Applicant.

the attached documents were marked as administrative notice documents 1-12 at the hearing.

Since Applicant was not provided those documents for administrative notice until the hearing, I held the record open until January 23, 2009, for Applicant to file any objections to the specific facts proposed for administrative notice by the government and/or the source documents relied on by the government.

On January 22, 2009, Applicant indicated he had no objection to the government's request for administrative notice. Accordingly, administrative notice was taken of particular facts pertaining to the PRC, as set forth in the Findings of Fact. Applicant also submitted four additional documents for inclusion in the record (Exhibits E-H). On January 23, 2009, I forwarded copies of those documents for government review and comment by January 30, 2009.

Pending receipt of the government's response, Applicant proposed a correction to the transcript to indicate that his mother-in-law stayed in Mainland China when her father went to Taiwan. That correction was accepted given Applicant's testimony that his mother-in-law had no contact with her father, who left for Taiwan when she was two or three years old.

On February 11, 2009, Department Counsel confirmed he had received proposed Applicant exhibits E through H and that he had no objections. The documents were accepted into the record.

Findings of Fact

DOHA alleged under Guideline B, foreign influence, that Applicant's parents and brother are resident citizens of the People's Republic of China (PRC) (SOR ¶ 1.a) and he contacts them by telephone about once a week (SOR ¶ 1.b). Also, Applicant's parents-in-law are PRC citizens who have resided with him each summer since 2003 but have spent the cold weather months in the PRC (SOR ¶ 1.c), and that he has telephone contact with them when they are in the PRC about once a week (SOR ¶ 1.d). Furthermore, Applicant was alleged to have traveled to the PRC on various occasions, in at least November 2003, January 2004, June 2004, February 2005, and October 2005 (SOR ¶ 1.e), and to have visited relatives and some childhood friends and schoolmates when in the PRC (SOR ¶ 1.f). In addition, Applicant helped secure work in the U.S. for an architectural drafting company in the PRC owned by a relative (SOR ¶ 1.g). Finally, DOHA alleged that Applicant believed his parents had listed a home in the PRC under his name (SOR ¶ 1.h). Applicant admitted the allegations without explanation. After considering the evidence of record, I make the following findings of fact.

Applicant is a 40-year-old computer software engineer who has been employed by a U.S. consulting company since May 2005 (Ex. 1). He requires a security clearance

for duties at a university-affiliated research and development laboratory engaged in defense-related work (Tr. 45). He has an interim clearance (Tr. 86).

Applicant was born and raised in a southern province of the PRC with his only sibling, an older brother.⁷ Their mother worked as a physician and their father as an architect before they retired (Ex. 2, Tr. 58-59).

Applicant and his future spouse, who is from the same hometown, were active in pro-democracy activities in the PRC while Applicant was a university student studying mechanics (Tr. 88). Together, after he learned that local authorities had him under surveillance, they fled the PRC for Hong Kong in July 1989 after the Tiananmen Square crackdown. In 1990, they came to the U.S. with a student visa (Tr. 68-69, 71-72, 88). There were consequences to the family members they left behind in the PRC. His mother lost her position as a hospital administrator and had to resume staff medical duties, and she was also ejected as a member of the Chinese Communist Party (Tr. 69-70). Her mother was questioned by Chinese authorities on a daily basis for more than a month about her daughter's activities (Tr. 72).

In December 1992, Applicant and his spouse married in the U.S., and in January 1995, both were granted political asylum in the U.S.⁸ One year later, they were eligible to apply for lawful permanent residence in the U.S. (Ex. H). After completing his bachelor's degree in electrical engineering, Applicant continued his academic studies at the same university for his master's degree in computer science (Ex. 89).

In May 1996, Applicant was awarded his master of science degree from a public university in the U.S. (Ex. 1). In 1998, Applicant's father visited him in the U.S., staying about two months (Ex. 2).

Applicant was a research assistant in the university's computer science department before he entered the private sector to work as a computer programmer in April 2000 (Tr. 91), following the birth of his and his spouse's first daughter in March 2000. Their second daughter was born in April 2001. His parents visited them in the U.S. in 2001, staying two months (Ex. 2).

In July 2001, Applicant and his spouse became naturalized U.S. citizens, and the following month, he obtained his U.S. passport. (Ex. 1). It is unclear when his spouse obtained her U.S. passport.

Applicant became unemployed in late July 2003. In October 2003, he began to assist a PRC drafting and architectural design company owned by his brother's father-

⁷Applicant's brother was born in February 1966 (Ex. 2) and not in February 1969 as reported on the SF 86 (Ex. 1).

⁸The letter from the U.S. Immigration and Naturalization Service granting political asylum (Ex. H) is addressed only to Applicant, but Applicant testified that his spouse "kind of attached to [his] application." (Tr. 71).

in-law. He secured drafting work for the PRC firm in the U.S. involving house drawings and floor plans (Ex. A, Tr. 45, 47) and he dealt with the projects in the U.S. on the foreign firm's behalf. Applicant was not paid for his services other than being treated to a meal when he went to the PRC (Ex. 2, Tr. 75-76). Applicant traveled to the PRC primarily to see his parents in November 2003, January 2004, June 2004, and February 2005 (Ex. 1), but he also discussed business with his sister-in-law on occasion (Tr. 90). On one or more of those trips, he also visited with some childhood friends (Ex. 2, Tr. 54).

In March 2004, Applicant was rehired by the U.S. company that had employed him from April 2000 to July 2002 (Ex. 1). He continued his unpaid activities for the PRC firm while working for the U.S. company, and even after commencing his present employment and being placed at the university-affiliated laboratory in May 2005 (Ex. 1, Tr. 76). In late May 2005, Applicant executed a SF 86. He disclosed the PRC citizenship and residency of his parents and brother. He provided his address for his parents-in-law, who are PRC citizens but since 2003 have had U.S. green cards (Ex. 2). In response to question 12, "Do you have any foreign property, business connections, or financial interests?," he indicated that he had provided drafting services with U.S. architects and factories for the PRC design firm from October 1, 2003, to present. He listed business travel to the PRC in November 2003, January 2004, June 2004, and February 2005, under question 16 concerning foreign travel in the last 7 years.⁹ (Ex. 1).

On February 23, 2006, Applicant was interviewed by a government investigator about his foreign relatives. He indicated that his parents and brother were still resident citizens of the PRC, where his mother was a retired gynecologist, his father a retired architect, and his brother a practicing physician. In addition to visiting with them during his trips to the PRC, including a recent trip taken with his family in October 2005, Applicant related he had ongoing telephone contact with them on a weekly basis. As for his parents-in-law, Applicant explained that since they had obtained their U.S. lawful permanent residence status in 2003, they have stayed with him and his spouse in the U.S. each summer while spending the colder months in the PRC. When they are in the PRC, Applicant has weekly telephone contact with them. Applicant explained his foreign business interests consisted of uncompensated assistance for a PRC design firm owned by his brother's father-in-law. Applicant expressed his belief, although he was not certain, that his parents may have put a house in his name in the PRC. Applicant denied it was important to his overall financial situation. Applicant denied any other contacts with foreign nationals apart from in-person visits with his childhood and school friends when he went to the PRC. (Ex. 2)

Applicant last traveled to the PRC to see his family in summer 2007. He does not feel he is at risk when he is in the PRC because of the protections afforded him as a U.S. citizen with a U.S. passport (Tr. 70). Before he acquired his U.S. citizenship, he

⁹Applicant's primary purpose was to visit his family in the PRC and he thought if he listed it as business travel, some of it might be deductible as a business expense. On occasion, he discussed business with his sister-in-law (Tr. 90).

“didn’t even dare go across to there” but he believes the PRC does not view the student demonstrations as severely as in the past (Tr. 71). Applicant does not intend to engage in any business activities involving a PRC national or firm as long as he holds a security clearance now that he is aware of the potential security issues (Tr. 94).

Applicant intends to continue to have weekly contact with his parents in the PRC, and to visit them on occasion, as it is the right thing to do (Tr. 53). His parents do not speak English and do not want to live in the U.S. (Tr. 52). They reside in an apartment that they own in the PRC (Tr. 59). The property on which the apartment is situated is leased from the PRC government for 70 years (Tr. 60). Applicant’s parents live on their retirement funds (pensions) and income from several rental properties (Tr. 60-61, 78). They mentioned to Applicant in the past that they might list one of their rental properties (an apartment) worth about \$50,000 to \$80,000 USD in Applicant’s name (Tr. 78). Applicant sends his parents financial gifts totaling between \$5,000 and \$10,000 a year (Tr. 79). He has told his parents where he works but they are not aware that he holds an interim security clearance. He has mentioned to them that the work he does requires a government clearance (Tr. 86-87).

Applicant’s brother is a practicing physician on staff of a quasi-public hospital in the PRC. He is married to an engineer, who is currently not working outside of the home. They have a seven-year-old son. Applicant’s brother’s family lives with his parents and they cover some of the household expenses (Tr. 61-63). Applicant speaks with his brother if he is around during telephone calls with his parents (Tr. 78).

Applicant’s parents-in-law own their home in the PRC in which they reside when they are not with Applicant and his spouse in the U.S. They have their own business involving metal-plating for electronic/electrical components (Tr. 64). Applicant and his spouse do not send them money (Tr. 78). Applicant’s spouse has a younger brother who did not finish high school. He is divorced with two children. He lives with his parents and works in the family business (Tr. 65).

Applicant does not have any ongoing contact with his childhood friends from his hometown, although he has had dinner with them during trips to the PRC (Tr. 86).

As of January 2009, Applicant had not assisted the PRC architectural design company in more than one year (Tr. 76). As of October 1, 2008, the company had discontinued all design activities. As of December 1, 2008, it was no longer registered as a viable business in the PRC (Ex. B). Applicant does not intend to engage in similar conduct in the future as long as he works for the government (“basically I believe I should be more conscious about these situations when I need to earn the trust of the government because before I applied for this security clearance and I didn’t know any of these requirements.” Tr. 93).

Applicant and his spouse had another daughter in 2006 (Ex. C, Tr. 79). Applicant’s spouse is a software programmer by profession. She does not currently work outside of the home (Tr. 76, 79). She accompanied Applicant to the PRC on the

trips in October 2005 and in summer 2007 (Tr. 77). They own their home in the U.S., which they bought in 2004. Its current assessed value is about \$600,000, and the principal owed on the mortgage is "\$300,000 something." (Tr. 83). Including the equity in his home and retirement accounts, Applicant estimated his family's net worth in the U.S. to be between \$500,000 and \$800,000 (Tr. 84). Applicant has no intention to return to the PRC to live. He has no present travel plans that include the PRC (Tr. 85).

Applicant's spouse is a formal member of a church for about the past ten years. Although not a formal member, Applicant attends Bible study and worship services there on a regular basis for over the past five years (Ex. G, Tr. 82-83). Applicant is also a dedicated member of two Toastmasters' clubs (Ex. F). He is a founding member of the club's chapter at the laboratory and has served as a chapter officer in various capacities (treasurer, vice president for membership, vice president for education) since its inception in 2006 (Exs. E, F, Tr. 80).

The software team leader who has directly supervised Applicant's work at the laboratory for the past year attests to the valuable expertise Applicant possesses in a certain operating system and in network communications systems. He has made significant contributions to a number of projects during his time at the laboratory, and has never given the team leader reason to doubt Applicant's allegiance to the U.S. (Ex. E).

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 over 1.3 billion people. Its economy grew at 11.4% in 2007. 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. Authorities monitored telephone conversations, facsimile transmissions, e-mail, text messaging, and Internet communications. 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. 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. 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 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. 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 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.¹⁰

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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

¹⁰There 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.

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 about 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 his spouse entered the U.S. from Hong Kong in 1990 after fleeing the PRC because of their involvement in pro-democracy student demonstrations. They were granted political refugee status in 1991, and became naturalized U.S. citizens in July 2001. They left behind their parents and only siblings in the PRC. Applicant remains close to his parents, with whom he has telephone contact once weekly. He sends them between \$5,000 and \$10,000 per year. His father visited him in the U.S. in 1998 and both parents visited in 2001. Applicant has traveled to the PRC five times since November 2003 to see them, most recently in summer 2007. Applicant also has bonds of affection and/or obligation for his brother and brother’s family members in the PRC. Applicant converses with his brother on occasion by telephone. Between October 2003 and 2007, Applicant aided the business interests of his brother’s father-in-law by helping secure some architectural draft and design work in the U.S. for his firm in the PRC. 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 PRC is known to aggressively target U.S. sensitive technology. Although Applicant feels safe traveling in the PRC because of the protections afforded him as a

U.S. citizen, the risk of foreign influence is heightened in light of his past student activism. Local government surveillance of his activities led him and his spouse to flee their homeland, with adverse consequences for their family members in the PRC. His mother was demoted from her position as a physician administrator and expelled from the Chinese Communist Party. His mother-in-law was questioned repeatedly about his spouse's activities, although there is no evidence of any recent inquiries. 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.

The bonds that Applicant shares with his parents-in-law, personally as well as through his spouse, 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"). His parents-in-law have enjoyed U.S. lawful permanent residence status since about 2003. They have spent the warmer months in the U.S. since then, staying with Applicant and his spouse in their home. When his parents-in-law are living in the PRC, Applicant and/or his spouse have weekly telephone contact with them. AG ¶ 7(d) applies as well. Little is known about the nature of the personal relationship Applicant or his spouse has with her brother. The risk of undue foreign influence as to her brother is established primarily through her parents, who provide shelter and employment for her brother in the PRC. Conceivably, the PRC authorities could exploit the bonds his in-laws share with their son, and in turn Applicant and his spouse with his in-laws, in an attempt to gain improper influence.

Applicant does not have any current plans to travel to the PRC. No evidence was presented as to the extent of his or his spouse's family members' travel plans. Future travel to the PRC cannot be ruled out by Applicant or his spouse as long as their family members are resident citizens of the PRC. There is no indication that his parents-in-law plan to discontinue what has been their pattern of spending the warmer months in the U.S. and the cooler months in the PRC. The risk of Applicant and his spouse's vulnerability is heightened in the event of any such travel to the PRC, 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, his spouse, or their family members have engaged in any conduct or been targeted while in the PRC (SOR ¶ 1.f) 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's relationships with his childhood friends and schoolmates (SOR ¶ 1.f) appear to be sufficiently casual to raise little concern (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"). Applicant does not deny that during his trips to the PRC, his friends from his hometown would call and

they would share a meal together, but he has no ongoing, regular contact with them (Tr. 85-86).

The evidence falls short of establishing a substantial foreign interest that would implicate AG ¶ 7(e), “a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to a heightened risk of foreign influence or exploitation.” Since Applicant did not receive monetary compensation for his efforts in securing design work for the PRC firm, the security concerns that arise from his past foreign business activities, which ceased more than a year ago, are more appropriately covered under AG ¶¶ 7(a) and 7(b). The government’s case for ownership of a substantial foreign property interest rests on an assumption by Applicant that his parents might have put an apartment in his name in the PRC (SOR ¶ 1.h). During his February 2006 interview, Applicant told a government investigator that he believed his parents might have put a house under his name, but also that he was not positive and did not know where the house was located. He also denied it was important to his overall financial situation. At his hearing, Applicant testified about his parents’ rental properties as follows:

Because they mentioned to me before, because they have several rental properties, they might put one under my name because that’s what they do when they are parents, but I, I don’t know which one, but they just might put some property under my name, but what can I do? (Tr. 78)

In response to “how much this property might be worth,” Applicant stated, “I’d say about \$50,000 to \$80,000.” (Tr. 78). Even at the hearing, Applicant could not confirm that he held a foreign financial asset in his name. Based on the evidence before me, I conclude AG ¶ 7(e) does not apply.

Applicant admitted that he dared not travel to the PRC before he obtained his U.S. passport. Yet, it must also be acknowledged that he fled to Hong Kong and then the U.S. almost 20 years ago. Per his account, he faced no improper questioning at the border on the trips to the PRC since November 2003. What he heard from his parents led him to believe that the PRC government does not view the student demonstrations as seriously as it once did. Applicant’s un rebutted testimony is that his and his spouse’s family members are connected to the PRC government only to the extent that his parents receive retirement pensions from their previous employments (his mother from a hospital that was government-owned in the past) and his brother is a practicing physician at a hospital that has been privatized to some extent. Yet, I am unable to apply 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.,” because of the close familial bonds both he and his spouse have in the PRC and the PRC’s aggressive pursuit of

U.S. sensitive and classified information.¹¹ As recently as 2007, the PRC security services were known to monitor the communications and activities of some of its citizens and even of foreign visitors. There is no indication the PRC has ceased its surveillance activities. Applicant's and his spouse's past student activism brought unwanted governmental notice to both families in the past. Moreover, while Applicant has not discussed his work with his family, he has told his parents that he works for a university-affiliated laboratory.

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's involvement in pro-democracy student demonstrations makes him very unlikely to engage in actions intended to benefit the PRC government, the Chinese Communist Party, or any agents or instrumentalities acting on the PRC's behalf. He is not seen as susceptible to any solicitations based on ethnic heritage. He has demonstrated his commitment to the U.S., having acquired U.S. citizenship and made his life and career in the U.S. Applicant has given his supervisor at work no reason to doubt his truthfulness or his reason to doubt his allegiance to the U.S. By all accounts, he is a dedicated employee and a good father to his children, who are U.S. citizens from birth. He is an active member of two Toastmasters clubs. Although not a formal member of his spouse's church, he attends services weekly and Bible study as well.

The concern is not that Applicant would knowingly jeopardize U.S. interests. Rather, it is that he may be placed in a situation of potential conflict between the interests of his close family in the PRC and the interests of the U.S., and that he might not recognize the security risk presented by helping out a close family member in the PRC. Applicant continued to provide assistance to his brother's father-in-law's company in the PRC while working for his current employer and performing defense-related duties at a university-affiliated laboratory. The PRC firm for which he had provided unpaid assistance is no longer in operation, but it was not until recently that Applicant had any understanding that his duties for the company could create a security risk. Despite the circumstances under which he left the PRC in 1989, Applicant did not seem to be concerned about his travel to the PRC since November 2003 because he held a U.S. passport. He believes the PRC has changed its attitude toward the student demonstrations of the past, but the State Department reports ongoing human rights abuses. The foreign influence concerns are not fully mitigated.

¹¹The 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).

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. Applicant's parents intend to remain in the PRC, so while Applicant has no current plans to travel there, future travel cannot be completely ruled out. He sends them between \$5,000 and \$10,000 per year in monetary gifts. He provided assistance to a PRC drafting and design firm owned by a member of his brother's family from October 2003 to sometime in 2007. While his duties did not involve sensitive or classified matters, it shows a desire and willingness to help family members in the PRC. It is precisely the close familial bonds in the PRC, which are not a factor within his control, that present an unmitigated security risk. Under the totality of the facts and circumstances, I am unable to conclude that it is clearly consistent with the national interest to grant Applicant a security clearance at this time.

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:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	For 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