



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 08-04471  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: John Bayard Glendon, Department Counsel  
For Applicant: *Pro Se*

October 28, 2008

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**Decision**

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TESTAN, Joseph, Administrative Judge:

On May 20, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to applicant detailing the security concerns under Guideline B. 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 answered the SOR in writing on June 16, 2008, and requested an Administrative Determination by an Administrative Judge (AJ). Department Counsel issued a File of Relevant Material (FORM) on July 21, 2008. Applicant did not file a response to the FORM. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

## Findings of Fact

Applicant is a 51 year old employee of a defense contractor. She was born and raised in the People's Republic of China (PRC). She emigrated to Australia in the late 1980s and lived there until the late 1990s. She moved to the United States in the late 1990s and has lived here since then. She became a U.S. citizen in 2004.

Applicant's mother is a PRC citizen who lives in the United States. Applicant's brother is a citizen and resident of the PRC. According to applicant, her brother has applied to immigrate to the United States. She communicates by telephone with this brother approximately once every three months.

Applicant traveled to the PRC in 2001, 2003, 2004, 2006, and 2008. She visited her brother, at minimum, during her last two trips to the PRC.

In her response to the SOR, applicant stated she is "a good American citizen" who has "made a lot of contributions to my country-United States and will continue to do my best to make contributions to my country-United States."

The Government provided six official United States publications with the FORM that describe the economic, political and intelligence activities of the PRC. The Government requested that these documents be admitted into evidence. I have admitted the documents into evidence, and I take administrative notice of the following facts found therein:

The PRC, which has a population of over 1.3 billion people, is ruled by an authoritarian government dominated by the Chinese Communist Party. The PRC continues to have a poor human rights record. Reported abuses have included arbitrary and lengthy incommunicado detention, forced confessions, torture, and mistreatment of prisoners.

PRC authorities monitor telephone communications, facsimile transmissions, email, text messaging, and Internet communications.

The Intelligence Threat Handbook identifies PRC intelligence activities toward the United States as follows: "The United States is a primary intelligence target of China because of the United States role as a global superpower; its substantial military, political, and economic presence in the Pacific Rim and Asia; its role as a developer of advanced technology that China requires for economic growth; and the large number of Americans of Chinese ancestry, who are considered prime intelligence targets by the PRC."<sup>1</sup>

Out of all the foreign intelligence agencies that continuously attempt to penetrate United States agencies, the PRC's is the most aggressive. Officials from United States

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<sup>1</sup> Interagency OPSEC Support Staff, *Intelligence Threat Handbook*.

consider the PRC's espionage and industrial theft activities as the leading threat to the security of United States technology.

## **Policies**

The President has “the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position that will give that person access to such information.” (*Department of the Navy v. Egan*, 484 U.S. 518,527 (1988).) In Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch. The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” (Exec. Ord. 10865, Section 2.)

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. (Directive, Paragraph E3.1.14.) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. (Directive, Paragraph E3. 1.15.) An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” (ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).) “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.” (Directive, Paragraph E2.2.2.)

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information.

## **Analysis**

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

The security concern relating to the Foreign Influence guideline is set forth in Paragraph 6 of the AG, and is as follows:

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.

Paragraph 7 describes conditions that could raise a security concern and may be disqualifying. Under Paragraph 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” may be disqualifying. Under Paragraph 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” may be disqualifying. Lastly, under Paragraph l., “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” may be disqualifying.

Applicant’s brother is a citizen and resident of the PRC. There is a presumption that an applicant has ties of affection for, or obligation to, immediate family members such as a brother. Applicant failed to rebut this presumption. This relationship raises concerns under the first two disqualifying conditions. In addition, since moving to the United States, applicant has visited the PRC at least five times, the last time earlier this year. Applicant’s presence in the PRC made her and her brother potentially vulnerable to exploitation, pressure, or coercion by the PRC government, which actively seeks to obtain classified and proprietary information from United States citizens of Chinese ancestry who work for United States government contractors. These facts raise concerns under the third disqualifying condition.

Paragraph 8 sets forth conditions that could mitigate security concerns. Under Paragraph a., it is potentially mitigating if an applicant can demonstrate that “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.” Under Paragraph b., it is potentially mitigating if an applicant can demonstrate “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.” Lastly, under Paragraph c., it is potentially mitigating if an applicant can demonstrate that the “contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.”

None of the foregoing mitigating conditions is applicable. Applicant's relationship with her brother is one of obligation and affection, raising the concern that it creates a risk for foreign influence or exploitation. Applicant failed to provide sufficient credible evidence that it is unlikely she would be placed in a position of having to choose between the interests of the PRC and the interests of the United States, or that she is not vulnerable to a conflict of interest.

### **“Whole Person” Analysis**

Under the whole person concept, the AJ must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the circumstances. An AJ should consider the nine adjudicative process factors listed at AG Paragraph 2(a): “(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.” Under AG Paragraph 2c, the ultimate determination of whether to grant a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant was born and raised in the PRC. She has resided in the United States for approximately 20 years. Her brother, to whom she has ties of affection and obligation, is a citizen and resident of the PRC. She has voluntarily traveled to the PRC at least five times since she moved to the United States. By maintaining a close relationship with her brother, and by choosing to travel to the PRC, she has increased her vulnerability to pressure, coercion, exploitation, or duress, which could lead to the future compromise of classified information. I have carefully reviewed the administrative record, applicant's submissions, and the allegations in the SOR. I have weighed the disqualifying and mitigating conditions of Guideline B, and I have evaluated applicant's conduct in light of the whole person concept identified at Paragraph E2.2. of Enclosure 2 of the Directive. After doing so, I conclude that applicant failed to rebut the Government's case under Guideline B.

There is nothing in the record that suggests applicant is anything but a loyal American citizen. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Therefore, nothing in this decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied concern as to applicant's allegiance, loyalty, or patriotism.

### **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

Subparagraphs 1.a through 1.c:           Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

JOSEPH TESTAN  
Administrative Judge