



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



In the matter of:)
)
-----) ISCR Case No. 08-06023
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Emilo Jaksetic, Department Counsel
For Applicant: *Pro Se*

June 30, 2009

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant was born in the Peoples Republic of China (PRC) and is a naturalized U.S. citizen who has lived in the United States since 1988. Her parents are citizens and residents of PRC. Her brother is a citizen and resident of the PRC. In 2006, she purchased a condominium for her parents for \$60,000. She visited the PRC in 2009, 2007, 2004 and 1994 for two weeks. Applicant has not mitigated the government's security concerns under Guideline B, foreign influence. Clearance is denied.

Statement of Case

Applicant contests the Defense Department's intent to deny or revoke her eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued to

¹ 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

Applicant a Statement of Reasons (SOR) on February 3, 2009, detailing security concerns under foreign influence.

On February 25, 2009, Applicant answered the SOR, and requested a hearing. On April 30, 2009, I was assigned the case. On May 7, 2009, DOHA issued a notice of hearing scheduling the hearing, which was held on June 4, 2009. The government offered Exhibits (Ex.) 1 and 2, which were admitted into evidence. Applicant testified on her own behalf and submitted Exhibits A through E, which were admitted into evidence. One witness also testified on her behalf. On June 12, 2009, the transcript (Tr.) was received.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to the PRC. The attached documents were not admitted into evidence but were included in the record as Hearing Exhibits (HEx) I–XV. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In her Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a-f of the SOR. She also provided additional information to support her request for a security clearance.

Applicant is a 46-year-old senior information technology consultant who has worked for a defense contractor since May 2000, and is seeking to maintain a security clearance. Her second line supervisor has daily contact with Applicant and has been impressed by Applicant's exemplary work and her integrity. She produces quality work without missing a deadline (AE E). Her dedication to her job and her loyalty over the years is without question. She delayed a trip to China on one occasion so that she could complete a work project. She is the best person that he has ever worked with in support of the client (Tr. 74). Applicant is a kind, intelligent person who is always willing to put forth extra efforts to ensure tasks are completed on time, as well as, help others with tasks when needed. Applicant is a team player. She greatly contributes to the success of the company by sharing technical knowledge (AE B). She is highly respected by her peers. Applicant is described as a reliable, skilled and honest person. Her supervisor is confident that she is qualified to maintain a secret level security clearance. He also believes that her loyalty is to the U.S. (Tr. 78).

Applicant was born and raised in the PRC and came to the U.S. in 1988. She attended a Chinese university and received a degree in electronics. After obtaining her degree, she worked for a university in China from April 1984 until December 1988 (Tr.

guidelines (AG) approved by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

49). In June 1988, she married her husband in China. She entered the U.S. on a visa (spouse) in 1988. She and her husband have a daughter who was born in May 1991. From 1995 to 1998, she studied at an American University obtaining a degree in computer science (GE 1). In June 2001, Applicant became a U.S. citizen (Tr. 53).

Applicant's husband was born in the PRC. In 1986, he came to the U.S. on a student visa to study mathematics (Tr. 50). He became a naturalized citizen of the U.S. in 2000. Her husband works for a large American company (GE 2). Applicant and her husband live together with their daughter in their U.S. home. Her husband's parents are deceased (Tr. 54). Applicant's husband visited his family in China when his parents were alive (Tr. 68). He has also gone to the PRC for an educational conference as part of his work (Tr. 69).

Applicant's parents were born in China and live in the PRC. Her father, age 76, is a retired member of a Chinese Opera company and her mother, age 71, is also retired from the Chinese Opera (Tr. 56). Her father is ill and has been hospitalized several times over the past year. Applicant usually maintains contact with her parents by telephone twice a month but it could be more frequent if her father is not well. Her parents currently live in a small apartment.

Applicant's brother is a citizen and resident of the PRC. He is 39 years old. He works for a film company. Applicant does not know the name of the company. She contacts her brother by telephone approximately five to six times a year. She does visit with him when she is in China visiting her parents. She also corresponds by email with him on occasion (Tr. 58).

Since coming to the U.S. Applicant traveled to the PRC to visit her parents in April 1994, June 2004, March 2007, and March 2009. She always reports her trips to her employer (AE A). Applicant's visits are usually two or three weeks in length. She stays with her parents in their apartment. When she visits with them she has sometimes visited with former colleagues from the university (Tr. 60).

In August 2006, Applicant purchased a condominium for her parents but she did not travel to PRC to do so. She sent her mother the money (\$60,000) and her mother represented her. Applicant is the listed owner of the condominium. She pays all expenses. She does not have a Chinese bank account. She sends money through her U.S. account to her mother who handles the bills. Her parents have not moved into the condominium due to her father's need to be closer to the hospital. The condominium is currently empty (Tr. 62). Applicant's mother hopes to move into the condominium at some time in the future.

Applicant and her husband own a home in the U.S. The current real estate value of the property is \$659,520. She and her husband have a retirement portfolio. As of May 2009, the value was approximately \$320,000 (AE C). They also have \$140,000 in savings. They have approximately \$430,000 in equity in their house in the U.S., which is

their residence. They own no property outside the U.S. except for the condominium purchased for her parents (Tr.71)

China

The Peoples Republic of China (the PRC) is a repressive, totalitarian government with foreign policy goals antithetical to the U.S. However, the PRC has cooperated with the U.S. in the global war on terrorism in recent years. Its authoritarian government is dominated by the Chinese Communist Party.² The PRC possesses large and increasingly sophisticated military forces, which include strategic nuclear weapons and missiles.³ In foreign relations, the PRC and the U.S. have been rivals since the Cold War, with particular disagreement on the status of Taiwan. The PRC continues to resist what it considers U.S. superpower dominance, despite improving economic relations.⁴

The PRC has an active, effective intelligence service that targets U.S. intelligence and economic information, and operates against its citizens in the U.S.⁵ The PRC obtains access to restricted technology through industrial espionage and the PRC operates an aggressive clandestine effort to acquire additional technologies. This is such a problem that the U.S. Immigration and Customs Enforcement officials have rated the PRC's espionage and industrial theft activities as the leading threat to the security of U.S. technology.⁶

The PRC has a poor record with respect to human rights, suppresses political dissent, and its practices include arbitrary arrest and detention, forced confessions, torture, and mistreatment of prisoners.⁷ PRC authorities monitor telephone conversations, e-mail, text messaging, and Internet communication, open and censor mail, monitor and enter residences and offices to gain access to computers, telephones, and fax machines. All hotels have a sizable internal security presence and hotel guestrooms are sometimes bugged and searched for sensitive or proprietary material.⁸

² U.S. Department of State, *Background Note: China*, dated January 2009 (Background Note on China), at 1-2.

³ *Id.*, p. 13-14.

⁴ *Id.*, p. 14 -17.

⁵ Interagency OPSEC Support Staff, *Intelligence Threat Handbook* [Unclassified/For Official Use Only] (Intelligence Threat Handbook), dated June 2004, at 17.

⁶ U.S. – China Economic and Security Review Commission, *2007 Report to Congress of the U.S. – China Economic and Security Review Commission*, dated November 2007, at 104.

⁷ Background Note on China, at 7-8. See U.S. Department of State, *Country Reports on Human Rights Practices – 2007, China (includes Tibet, Hong Kong, and Macau)*, dated March 11, 2008, at 1-6.

⁸ *Id.*, at 8.

Under PRC law, citizens who become naturalized citizens of other countries lose their PRC citizenship.

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 over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the

applicant concerned.” See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Foreign Influence

AG ¶ 6 expresses the security concerns regarding foreign influence:

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.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying:

(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;

(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;

(c) counterintelligence information, that may be classified, indicates that the individual’s access to protected information may involve unacceptable risk to national security;

(d) sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists;

(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 heightened risk of foreign influence or exploitation;

- (f) failure to report, when required, association with foreign national;
- (g) unauthorized association with a suspected or known agent, associate, or employee of a foreign intelligence service;
- (h) indications that representatives or nations from a foreign country are acting to increase the vulnerability of the individual to possible future exploitation, inducement, manipulation, pressure, or coercion; [and]
- (i) conduct, especially while traveling outside the U.S., which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country.

Applicant's parents are citizens and residents of the PRC. Her brother is a citizen and resident of the PRC. Applicant maintains contact with her parents by telephone usually twice a month. Although, she acknowledged that it could be more frequent if her father is ill. She also maintains contact with her brother by phone perhaps six times a year. She sometimes corresponds with him by email. She stayed with her parents when she visited the PRC in 1994, 2004, 2007, and March 2009. She also sees her brother when she visits the PRC.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an Applicant has frequent, non-casual contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an Applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government or the country is known to conduct intelligence operations against the United States.

However, the complicated, competitive relationship of the PRC with the United States places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that her relationship with her relatives living in the PRC and her relatives in the U.S. with close relationships to family members living in the PRC does not pose a security risk and she is not in a position to be forced to choose between loyalty to the United States and her family living in the PRC.⁹ With its mixed human rights record, and

⁹ The 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 United States 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

political, economic and military rivalry with the United States, it is conceivable that the PRC would target any PRC citizen or former citizen living in the United States in an attempt to gather valuable information from the United States.

China is a country whose human rights record is dismal and the potential for abuse is high. Applicant's familial relationship with citizens and residents of China creates a heightened risk of potential exploitation, inducement, manipulation, pressure or coercion. There is evidence that the PRC intelligence operatives seek classified or economic information from U.S. businesses and/or government agencies. Applicant's connections to her family members create a potential conflict of interest because these relationships are sufficiently close to raise a possible security concern about her desire to help these relatives living in the PRC by providing classified information.

Applicant has travelled to the PRC on various occasions to visit her family. Her last visit was in March 2009. She has also seen former colleagues on several occasions.

Applicant owns property in the PRC. In August 2006, she purchased a condominium so that her parents would have a larger place to live. Although they are not living in the condominium at the present time, the hope is that her mother would live there in the future. The condominium purchase price was \$60,000. The condominium is to benefit her parents. This could provide another point of pressure that PRC officials might attempt to exploit.

Having considered all of the Foreign Influence disqualifying conditions, applicable conditions that could raise a security concern, AG ¶ 7(a), AG 7(b) and AG ¶ 7(e) apply.

AG ¶ 8 provides conditions that could mitigate security concerns:

(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.;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligations 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;

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).

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; [and]

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

AG ¶ 8(a) and (c) do not apply to Applicant's parents and brother. She has a close relationship with her family. She maintains phone contact with her parents at least twice a month and email and telephone contact with her brother about six times per year. She has travelled to China on four occasions since coming to the U.S. in 1988. Her last visit was only a few months ago in March 2009. Applicant has a husband and a daughter in the U.S. but has an emotional bond with her family in China. Applicant is a naturalized citizen; however, there is a heightened risk due to her family ties to China. Unfortunately, China is a country that causes concern in the area of potential exploitation and coercion which makes Applicant vulnerable. Her contact with her family cannot be construed as minimal. This creates a potential conflict of interest.

Applicant's relationship with her parents and brother and the nature of the PRC Government and its complicated and sometimes contentious relationship to the United States, all weigh against mitigating security concerns. See ADP Case No. 05-17812 at 2, 3 n.2 (App. Bd. Jun. 11, 2007) (finding contacts with siblings in PRC "once every two or three months" not to be casual and infrequent); ISCR Case No. 04-12500 at 2, 4 (App. Bd. Oct. 26, 2006) (finding contacts with applicant's parents and sisters a total of about 20 times per year not casual and infrequent); ISCR Case No. 04-09541 at 2-3 (App. Bd. Sep. 26, 2006) (finding contacts with applicant's siblings once every four or five months not casual and infrequent). Here, Applicant's contact with her family is not casual or infrequent.

Applicant's deep relationship with her daughter and her strong connections to the United States partially mitigate foreign interest security concerns under 8(b). Although Applicant has "such deep and longstanding relationships and loyalties in the U.S., [she] can be expected to resolve any conflict of interest in favor of the U.S. interest" the foreign influence concern related to PRC is too great under all the facts and circumstances. Her daughter is a U.S. citizen who resides in the U.S. Her husband is a naturalized U.S. citizen. She and her husband have lived in the U.S. since 1988. Applicant has worked for her government contractor with dedication and distinction. She has substantial property and investments in the United States, and has had a security

clearance for a number of years. She has no desire to return to live in the PRC. She is a loyal, dedicated U.S. citizen. She has provided letters and witness statements to corroborate her loyalty and trustworthiness.

Applicant has a condominium in the PRC valued at \$60,000. She intends for this condominium to be used by her parents. While Applicant has substantial property and investments in the U.S., the condominium could be used to pressure or manipulate her parents. AG 8(f) does not fully apply in this case.

Whole Person Concept

Protection of our national security is of paramount concern. Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the adjudicative process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. In reaching this decision, I have considered the whole person concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I considered the totality of Applicant's family ties to the PRC and the heavy burden an Applicant carries when she has family members in a foreign country.

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.

A Guideline B decision concerning the PRC must take into consideration the geopolitical situation in the PRC. The PRC has a mixed to poor human rights record. The PRC is one of the most aggressive nations in the collection of U.S. intelligence and sensitive economic information.

Applicant has lived in the United States since 1988. She became a U.S. citizen in 2001. Her husband and her daughter live with her in the U.S. She has worked for a defense contractor for a number of years. She is described as reliable and honest. She

performs her job in an exemplary manner. She has held a security clearance with no adverse results for a number of years. She has substantial property and connections to the U.S. She was candid and credible in describing a loyalty to the U.S. Her employer highly recommends the maintaining of her security clearance. She is a kind and caring daughter and sister.

Unfortunately, the totality of the circumstances in this case does not weigh in favor of Applicant. Given Applicant's family ties to her parents and her brother in the PRC, the frequency of her contact, her visits to the PRC and her property in the country, I cannot find that there is not a heightened risk with respect to the PRC. Applicant presents a difficult position given the fact that her family is in the PRC.

After carefully weighing the evidence of her connections to PRC, and to the United States, I conclude Applicant has not carried her burden of fully mitigating the foreign influence security concerns. I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my "careful consideration of the whole person factors"¹⁰ and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. For the reasons stated, I conclude she is not eligible for access to classified information.

I have carefully weighed the evidence in favor of Applicant against the government's concerns about Applicant's ability to protect classified information. I find that there is potential for Applicant to be pressured, coerced, or exploited because her parents and brother live in the PRC. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the foreign influence security concerns.

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, Foreign Influence: **AGAINST APPLICANT**

Subparagraphs 1.a – 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant

¹⁰See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).

Conclusion

In light of all of the circumstances presented by the record in this case, 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.

NOREEN A. LYNCH
Administrative Judge