



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



In the matter of: )  
 )  
----- ) ISCR Case No. 08-09338  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O'Connell, Esq., Department Counsel

For Applicant: *Pro Se*

September 8, 2009

**Decision**

LEONARD, Michael H., Administrative Judge:

This is a security clearance case in which Applicant contests the Defense Department's intent to deny his eligibility for an industrial security clearance. The action is based on foreign influence security concerns raised by Applicant's ties or connections to China. The record contains substantial evidence of Applicant's family ties to China, and those ties create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. The record contains insufficient evidence to explain, extenuate, or mitigate the security concerns. Accordingly, as explained in more detail below, this case is decided against Applicant.

## Statement of the Case

Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> the Defense Office of Hearings and Appeals (the Agency) issued a statement of reasons (SOR) to Applicant on February 10, 2009. The SOR is equivalent to a complaint and it details the factual basis for the action. The SOR alleged security concerns under Guideline B for foreign influence. The SOR also recommended submitting the case to an administrative judge for a determination to deny or revoke Applicant's security-clearance eligibility.

Applicant answered the SOR on March 8, 2009, and he requested a hearing. The case was assigned to me on May 4, 2009. The hearing took place as scheduled on June 15, 2009. The testimony of Applicant was taken, Government Exhibits 1 through 3 were admitted, and Applicant Exhibits 1 through 38 were admitted. The record was kept open to allow Applicant to submit a copy of his wife's U.S. passport. He did so in a timely manner, and that document is admitted without objections as Applicant Exhibit 39. The hearing transcript (Tr.) was received June 23, 2009.

## Procedural Matters

Administrative or official notice was taken of certain facts concerning the People's Republic of China (China) as set forth in Department Counsel's written request.<sup>2</sup> In summary, the most pertinent of those facts are as follows: (1) China is ruled by an authoritarian government dominated and controlled by the Chinese Communist Party; (2) China is actively engaged in intelligence gathering (industrial and military) that targets U.S. information and technology; and (3) China has a poor record of human rights. To cite but one example, according to the U.S. Department of State 2008 Human Rights Report, Chinese authorities continue to commit serious human rights abuses in Tibet.<sup>3</sup>

## Findings of Fact

Applicant admitted, with explanations, the SOR allegations except for the allegation in SOR ¶ 1.d asserting his wife is a dual citizen of the U.S. and China. Based on the record as a whole, the following facts are established by substantial evidence.

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<sup>1</sup> This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, dated February 20, 1960, as amended, and DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, because the SOR was issued after September 1, 2006, the revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (Revised Guidelines) approved by the President on December 29, 2005, then made effective within the Defense Department on September 1, 2006, apply to this case. They supersede or replace the guidelines published in Enclosure 2 to the Directive.

<sup>2</sup> Exhibit 3; Tr. 26–32.

<sup>3</sup> Exhibit 3, Attachment 3, pp. 43–53.

Applicant is a 48-year-old principal systems engineer who is employed by a federal contractor. He is married and has two children, ages 17 and 7. His children are native-born citizens of the U.S.,<sup>4</sup> and Applicant describes his wife and children as fully integrated into American society, to include his daughter's participation in Girl Scouts.<sup>5</sup> This is the first time he has applied for a security clearance.

Applicant was born, raised, and educated in China. His educational background in China includes a bachelor's degree and master's degree in electrical engineering. He then spent the next three to four years in the 1980s working as an assistant professor for a Chinese university. He entered the U.S. on a student visa in the late 1980s, and he enrolled as a graduate student at a U.S. state university. Also, he worked as a teaching assistant at the same university. He earned a Ph.D. in physics in 1997. Since then, he has worked as an engineer except for two brief periods of unemployment. He has worked for his current employer, the federal contractor, since 2007, and he completed a security-clearance application in October 2007.

He obtained U.S. citizenship in 2001. This means that he is no longer a Chinese citizen by operation of Chinese nationality law.<sup>6</sup> He obtained his first U.S. passport in 2002, and he used it for all foreign travel. His Chinese passport expired in 2004, and he did not renew it.

Concerning the allegations in SOR ¶¶ 1.a through 1.f, the record establishes the following:

1. Applicant's mother and father are citizens of and residents in China. Applicant has regular contact with them via telephone calls. Both parents are former professors at a Chinese university. Both retired in the 1990s after more than 30 years of work. And both receive a pension based on their decades-long employment.
2. Applicant's sister is a citizen of and a resident in China. Applicant has less contact with his sister, perhaps once a year, via telephone calls. His sister is employed as a sales representative for a company that is headquartered in the U.S.
3. Applicant's brother-in-law is a citizen of and a resident in China. He is a medical doctor who works as a surgeon in several hospitals. Applicant's contact with his brother-in-law is limited.

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<sup>4</sup> Applicant Exhibits 33 and 34.

<sup>5</sup> Applicant Exhibit 35.

<sup>6</sup> Applicant Exhibits 6 and 7.

4. Applicant's wife, like him, was born in China and lost her Chinese citizenship by operation of Chinese nationality law when she became a U.S. citizen in 2000. She obtained her first U.S. passport in July 2000,<sup>7</sup> and she has used it for all foreign travel, including travel to China. Also, like her husband, she worked as an assistant professor in China for several years in the 1980s. Her immediate family, to include her mother, lives in the U.S. Her father is deceased. Her mother is a U.S. citizen.<sup>8</sup> She is now employed as a software engineer for a large bank.
5. In the summer of 2008, Applicant and his wife and children traveled to China to visit his family and attend the Olympics. While there, Applicant attended a school reunion and had contact with 20 to 30 former classmates. Applicant described the event as a rare occasion because he has had little to no contact with them for many years. He has had no contact with his former classmates since returning from the trip. Applicant reported this trip to his company security office.
6. Applicant and his wife own two apartments in China, and the apartments have an approximate value of about \$175,000.<sup>9</sup> Applicant has not lived in the apartments, he does not intend to do so, and he does not plan to live in China. He bought the apartments for his parents to live in. He bought the first apartment in 2004. The apartment was on the sixth floor and the building lacked an elevator, which presented problems as his parents aged. So, in 2008, Applicant bought another apartment on the second floor with an elevator. His parents contributed money to the purchase of both apartments, and Applicant estimates that about one-fourth of the equity belongs to them. The first apartment is vacant, and Applicant is in the process of selling it. He may transfer ownership of the second apartment to his parents, but doing so will require a trip to China as the transaction must be done in person.

In addition to the 2008 trip, Applicant made three other trips to China during the period 2000–2006.<sup>10</sup> The main purpose of the trips was to visit his parents.

Applicant estimates the net worth of U.S. financial assets at about \$880,000.<sup>11</sup> The assets consist of a primary residence, two rental properties, and financial and retirement accounts.<sup>12</sup> He is in the process of buying a third rental property.<sup>13</sup> Together,

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<sup>7</sup> Applicant Exhibit 39.

<sup>8</sup> Applicant Exhibit 36.

<sup>9</sup> Applicant Exhibits 8–15 concern the Chinese real estate matters.

<sup>10</sup> Tr. 68–71.

<sup>11</sup> Tr. 90.

<sup>12</sup> Applicant Exhibits 16–31 concern the U.S. financial assets.

<sup>13</sup> Applicant Exhibit 32.

he and his wife have an annual gross income of about \$200,000. For example, their adjusted gross income for 2007 was \$229,086, which is more than the value of the two apartments in China.<sup>14</sup>

Applicant appears to be a law-abiding person of good character.<sup>15</sup> Three former or current coworkers submitted letters of recommendation on Applicant's behalf. These individuals vouch for Applicant's integrity, honesty, trustworthiness, work ethic, professional expertise, and willingness to follow rules. To that end, Applicant completed numerous training courses for his current employment. The courses included subjects such as conflicts of interest, disclosure of material information, information assurance, and security.<sup>16</sup>

## Policies

This section sets forth the general principles of law and policies that apply to an industrial security clearance case. To start, the only purpose of a clearance decision is to decide if an applicant is suitable for access to classified information.

It is well-established law that no one has a right to a security clearance.<sup>17</sup> As noted by the Supreme Court in the case of *Department of Navy v. Egan*, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>18</sup> Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.<sup>19</sup> An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.<sup>20</sup>

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<sup>14</sup> Applicant Exhibit 38.

<sup>15</sup> See Applicant Exhibits 1–5.

<sup>16</sup> Applicant Exhibit 37.

<sup>17</sup> *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance"); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10<sup>th</sup> Cir. 2002) (no right to a security clearance).

<sup>18</sup> 484 U.S. at 531.

<sup>19</sup> Directive, ¶ 3.2.

<sup>20</sup> Directive, ¶ 3.2.

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>21</sup> The government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>22</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>23</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>24</sup> In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.<sup>25</sup> The agency appellate authority has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.<sup>26</sup>

The Revised Guidelines set forth adjudicative guidelines to consider when evaluating a person's security clearance eligibility, including disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. In addition, each clearance decision must be a commonsense decision based upon consideration of all the relevant and material information, the pertinent criteria and adjudication factors, and the whole-person concept.

A person granted access to classified information enters into a special relationship with the government. The government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty.<sup>27</sup> Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

### **Analysis**

Under Guideline B for foreign influence,<sup>28</sup> the suitability of an applicant may be questioned or put into doubt due to an applicant's foreign connections and interests. The overall concern under the guideline is that:

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<sup>21</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>22</sup> Directive, Enclosure 3, ¶ E3.1.14.

<sup>23</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>24</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>25</sup> *Egan*, 484 U.S. at 531.

<sup>26</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

<sup>27</sup> Executive Order 10865, § 7.

<sup>28</sup> Revised Guidelines, ¶¶ 6, 7, and 8 (setting forth the security concern and the disqualifying and mitigating conditions).

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.<sup>29</sup>

Of course, 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. But if only one relative resides in a foreign country and an applicant has contact 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.<sup>30</sup>

Based on the record, there are two disqualifying conditions that could raise security concerns and may be disqualifying in Applicant's case:

Contact with a foreign family member, business, or professional associate, friend, or other person who is a citizen of or a resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion,<sup>31</sup> and

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.<sup>32</sup>

Here, the two disqualifying conditions apply based on (1) Applicant's family ties to his mother, father, and sister in China, and (2) his financial or property interests in China. Applicant has ties of affection, emotion, or obligation to his parents as demonstrated by the multiple trips to China to visit his parents. Those ties are further demonstrated by Applicant's actions in purchasing the apartments for his parents. These circumstances create the potential for a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. This is especially so given that the foreign country in question is China, which presents real-world concerns. It is not merely hypothetical to suggest that a brutal communist government such as China's would use

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<sup>29</sup> Revised Guidelines, ¶ 6.

<sup>30</sup> See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

<sup>31</sup> Revised Guidelines, ¶ 7(a).

<sup>32</sup> Revised Guidelines, ¶ 7(e).

Applicant's family ties to China as leverage in an attempt to pursue intelligence gathering. Given these circumstances, Applicant's relationships with his parents and sister are exploitable relationships in a foreign influence context.

The guideline also provides the certain facts and circumstances may mitigate foreign influence security concerns. The six mitigating conditions<sup>33</sup> under the guideline are:

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.;

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;

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;

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

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; or

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.

The first, third, and sixth mitigating conditions are most pertinent to the facts of this case and will be discussed below. The others do not apply in Applicant's favor.

The first mitigating condition<sup>34</sup> does not apply because Applicant's family ties to China are of sufficient magnitude or strength to negate it. As noted above, there is a possibility that elements within China could attempt to use his family ties as leverage in intelligence gathering. But Applicant's spouse is not a dual citizen with China, and so,

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<sup>33</sup> Revised Guidelines, ¶ 8(a) – (f).

<sup>34</sup> Revised Guidelines, ¶ 8(a).



Applicant's relationship with her does not create any undue foreign influence. Accordingly, SOR ¶ 1.d is decided for Applicant.

The third mitigating condition<sup>35</sup> applies to Applicant's brother-in-law in China due to the limited nature of the contacts or ties. It also applies to Applicant's casual and infrequent contacts with the 20 or 30 classmates he socialized with at a school reunion in 2008. This was an isolated event, and he has had no ongoing contacts with any of those individuals. Accordingly, SOR ¶¶ 1.c and 1.e are decided for Applicant.

The sixth mitigating condition<sup>36</sup> applies to Applicant's ownership of two apartments in China. He is now in the process of selling one and may transfer ownership of the other to his parents. Moreover, the value of the Chinese apartments—when compared with the value of the U.S. financial and property interests—is such that it is unlikely to result in a conflict or be used for foreign exploitation. Applicant could abandon his interests in the apartments and it would not have a substantial effect on his overall financial situation. Accordingly, SOR ¶ 1.f is decided for Applicant.

To sum up, this is not a case of “divided loyalties”<sup>37</sup> with an applicant who has one foot in the U.S. and one foot in his native country. The record shows Applicant has both feet firmly rooted in the U.S., and that he has significant contacts and ties to the U.S. Looking forward, it is highly unlikely that Applicant will change course. But Applicant is in the unfortunate situation where he has family ties to a foreign country that is ruled by a brutal communist government. Although Applicant appears to have strength of character and integrity, his family ties to China create a heightened risk of exploitation that cannot be ruled out. These circumstances are contrary to the clearly-consistent standard I am required to apply. Accordingly, Guideline B is decided against Applicant. In reaching this conclusion, I gave due consideration to the nine-factor whole-person concept.<sup>38</sup>

To conclude, Applicant did not present sufficient evidence to explain, extenuate, or mitigate the security concerns under Guideline B. Applicant did not meet his ultimate burden of persuasion to obtain a favorable clearance decision. This case is decided against Applicant.

### **Formal Findings**

The formal findings on the SOR allegations, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

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<sup>35</sup> Revised Guidelines, ¶ 8(c).

<sup>36</sup> Revised Guidelines, ¶ 8(f).

<sup>37</sup> Revised Guidelines, ¶ 6.

<sup>38</sup> Revised Guidelines, ¶ 2(a)(1) – (9).

Paragraph 1, Guideline B:	Against Applicant
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant

### **Conclusion**

In light of the record as a whole, 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.

Michael H. Leonard  
Administrative Judge