



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 08-10671  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Braden M. Murphy, Esquire, Department Counsel  
For Applicant: Ying Zhi Zhang, Personal Representative

August 31, 2009

**Decision**

CURRY, Marc E., Administrative Judge:

Applicant, a naturalized United States (U.S.) citizen originally from the People's Republic of China (PRC), failed to mitigate the foreign influence concerns generated by her close relationship with two family members who are PRC citizens and residents. Clearance is denied.

On March 17, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B, foreign influence. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; 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 on April 11, 2009, admitting all of the allegations and requesting a hearing. The case was assigned to me on May 27, 2009. On June 12,

2009, a notice of hearing was issued scheduling the case for July 8, 2009. It was held as scheduled. At the hearing, I received two government exhibits and the testimony of two Applicant witnesses. The transcript was received on July 16, 2009.

### **Ruling on Evidence**

Department Counsel requested I take administrative notice of the facts set forth in 15 exhibits that I marked and identified as Exhibits I through XV. I took administrative notice of the facts set forth in all of the administrative notice exhibits except Exhibits VII and IX. The following is a summary of the adjudicative facts:

1. The PRC is a totalitarian state with a large and diverse intelligence infrastructure in the United States (Exhibit III at 1; Exhibit VI at 8). It seeks to collect both military and industrial information, and represents a growing threat to national security (*see generally*, Exhibit IV at 33 - 40);
2. U.S. Immigration and Customs Enforcement officials rate the PRC's espionage and industrial theft activities as the leading threat to the security of U.S. technology (Exhibit V at 9);
3. The PRC continues to abuse human rights in violation of internationally recognized norms (*see generally*, Exhibit III). It routinely monitors its citizen's communications (Exhibit III at 10). PRC security personnel may sometimes place foreign visitors under surveillance (Exhibit II at 2).

### **Findings of Fact**

Applicant is a 59-year-old married woman with one adult child<sup>1</sup>. A prior marriage ended in divorce in 1995 (Exhibit 1 at 17). She was born and raised in the PRC. In 1987, she immigrated to the United States with her then-husband, a professor who had earned a scholarship at a U.S. university (Tr. 41). After the divorce, she enrolled in college, earning an associate's degree in computing, drafting, and design in 1997 (Tr. 36). She did not receive any education in the PRC past high school.

Applicant has been working either in the civil engineering or drafting field since earning her associate's degree. She became a naturalized U.S. citizen in 2002 (Tr. 42). Since 2007, she has been working for her current employer, a defense contractor (Tr. 38).

Applicant has no relationship with her first husband. In May 2007, she met her current husband (Tr.44). They married four months later (*Id.*). He is also a PRC native. He immigrated to the U.S. in 1998 on a tourist visa (Tr. 45). He remained in the U.S. after the visa expired (Answer at 3). In March 2008, he applied for permanent residence status (Exhibit 2 at 3). It was granted in September 2008 (Tr. 44; Exhibit A). He is a chef

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<sup>1</sup>Applicant's son served as her personal representative.

who works in a Chinese restaurant (Tr. 45). He and Applicant live in separate towns in the same state. They visit one another a few days per month (*Id.*). His parents are deceased (Tr. 47). Applicant does not know whether he has any siblings in PRC (Tr. 46).

Applicant's mother, sister, and three brothers are PRC citizens and residents. Her father is deceased. Her mother is 84 years old. Before retiring in 1958, her mother worked as the head of a homeowner's association (Tr. 27). She was responsible for ensuring that her community paid various municipal fees timely (Tr. 48). Applicant talks to her mother about once every two weeks. Conversations are difficult, because her mother's memory has deteriorated (Tr. 50).

Applicant last travelled to the PRC to visit her mother in October 2008 (Tr. 48). She stayed for one month. She saw her siblings during the visit (Tr. 50). Previously, she travelled to the PRC to visit her mother in 2005 (Tr. 27).

Applicant sends her mother up to \$500 per year in support (Tr. 57). Applicant has no bank accounts or other property interests in the PRC (Tr. 54). She owns her home, which is valued at \$265,000 (*Id.*).

Applicant's sister is a homemaker. Before retiring, she was a tailor (Tr. 50). Applicant talks to her approximately once every two weeks. Applicant keeps abreast of her mother's well-being through her sister (Tr. 51).

Applicant's brothers are older than she. They are all retired. Applicant's oldest brother was a manager of a transportation company (Tr. 24). The next oldest brother was a college administrator, and her youngest brother was a construction worker (Tr. 24). None of her brothers have any connection with the PRC military. She communicates with them approximately once per year (*Id.*).

None of Applicant's relatives are members of the Communist party (Tr. 53). They are unaware of the nature of her job (Tr. 26). None of Applicant's family members have ever visited her in the U.S. (Tr. 53).

## **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. According to AG ¶ 2(c), the entire process is an evaluation 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.”

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.

## **Analysis**

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

Under this guideline, “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” (AG ¶ 6).

Applicant’s mother, sister, and brothers are citizens of the PRC, a totalitarian state and strategic competitor of the U.S., which aggressively seeks to acquire U.S. military and industrial technology by any means necessary. AG ¶ 7(a), “contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of, or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion,” applies.

Applicant’s husband is also a PRC resident. However, he lives in the U.S., dividing his time between Applicant’s home and the town where he works. Although he lived in the U.S. for several years illegally after his visa expired, he applied for, and was granted, permanent residence status shortly after meeting Applicant. Given the nature of his occupation and his U.S. residency, I conclude that neither AG ¶ 7(a) nor 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,” apply.

Applicant rarely talks with her brothers. 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,” applies.

None of the mitigating conditions apply to Applicant’s relationship with her mother and sister. She is close to both of them. Although her mother is struggling with memory

loss, Applicant keeps abreast of her health through Applicant's sister. Applicant has lived in the U.S. for more than 20 years, and all of her property interests are in the U.S. These factors, though significant, are unable to overcome the heavy burden generated by the PRC's status as a totalitarian state with a history of oppressing its citizens and aggressively collecting U.S. intelligence.

### **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.

I considered the whole person concept factors in my analysis of the mitigating and disqualifying conditions, and it does not warrant a favorable conclusion. Applicant has failed to mitigate the security concern.

### **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:	For Applicant
Subparagraph 1.b - 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 the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

MARC E. CURRY  
Administrative Judge