



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



In the matter of: )  
 )  
----- ) ISCR Case No. 09-03051  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Francisco Mendez, Esquire, Department Counsel  
For Applicant: *Pro Se*

February 24, 2010

**Decision**

HARVEY, Mark, Administrative Judge:

In 1962, Applicant was born in the People's Republic of China (China). In 1995, he immigrated to the United States. In 2008, Applicant and his spouse became U.S. citizens. One of his two children was born in China, and the other was born in the United States. However, he has retained significant connections to China. He traveled to China in 2003 and 2006. His parents and parents-in-law live in China, and he and his wife have frequent contacts with them. Foreign preference concerns are mitigated; however, foreign influence concerns are not mitigated. Access to classified information is denied.

**Statement of the Case**

On October 28, 2008, Applicant submitted a Questionnaire for National Security Positions (hereinafter SF-86) (Government Exhibit (GE) 1). On August 27, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, alleging security concerns under Guidelines C (foreign preference) and B (foreign influence) (Hearing Exhibit (HE) 2). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), 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. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and it recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On October 9, 2009, Applicant responded to the SOR and requested a hearing before an administrative judge (HE 3). On December 10, 2009, Department Counsel was prepared to proceed. On December 16, 2009, the case was assigned to me. On January 11, 2010, DOHA issued a hearing notice setting the hearing for February 2, 2010 (HE 1). The hearing was held on February 2, 2010, as scheduled. At the hearing, Department Counsel offered three exhibits (GE 1-3) (Transcript (Tr.) 22), and Applicant did not offer any exhibits (Tr. 13). There were no objections, and I admitted GE 1-3 (Tr. 22). Additionally, I admitted the SOR, response to the SOR, and the hearing notice (HE 1-3). On February 12, 2010, I received the hearing transcript.

### **Procedural Ruling**

Department Counsel requested administrative notice of facts concerning China (Tr. 17). Department Counsel provided supporting documents to show detail and context for these facts in the Administrative Notice request. Applicant and Department Counsel did not object to me taking administrative notice of all of the facts in all of the documents (Tr. 17-18). See the China section of the Findings of Fact of this decision, *infra*, for the material facts from Department Counsel's submissions on China.

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). Usually administrative notice in ISCR proceedings is accorded to facts that are either well known or from government reports. See Stein, *Administrative Law*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

### **Findings of Fact<sup>1</sup>**

Applicant admitted the SOR allegations in subparagraphs 2.a to 2.d in his response to the SOR (HE 3). He also admitted possession of a Chinese passport;

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<sup>1</sup>The facts in this decision do not specifically describe employment, names of witnesses or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information. Unless stated otherwise, the source for the facts in this section is Applicant's Office of Personnel Management (OPM) interview on January 5, 2009 (GE 2 at 5-8).

however, he said he destroyed it (HE 3). After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is a 48-year-old structural engineer, who has been employed by a defense contractor since March 2009 (Tr. 6, 29, 31). In January 2010, he received a confidential clearance from another government agency (Tr. 32).

In 1984, Applicant earned a bachelor's degree in China (Tr. 7, 29). In 1997, he earned a master's degree in control systems engineering in the United States (Tr. 7, 29).

In 1991, Applicant married (Tr. 7). In 1996, his wife immigrated to the United States. In 2008, she became a U.S. citizen (Tr. 8). He has two children, who are ages 16 and 8 (Tr. 8, 33). His eldest child was born in China, and his youngest child was born in the United States (Tr. 8). Both of his children are U.S. citizens (GE 1).

### **Foreign Preference**

Applicant's Chinese passport was issued in 2006 and does not expire until 2011. Applicant learned that his Chinese passport was a security concern (Tr. 24-25). He destroyed his Chinese passport by tearing out a page from the front part of his Chinese passport and writing "VOID" on it (Tr. 25; HE 3 at 1, 3). The last time he used his Chinese passport was in 2006 (Tr. 26-27). He has not used his Chinese passport after becoming a U.S. citizen in August 2008 (Tr. 27).

Applicant believes that once he became a U.S. citizen, his Chinese citizenship was automatically forfeited (Tr. 28). He offered to renounce his Chinese citizenship. He is not a dual citizen of China and the United States (Tr. 28). He has a U.S. passport (Tr. 27-28).

### **Foreign Influence**

Applicant's younger sister was living in the United States and attending a U.S. university (Tr. 43). Applicant came to the United States and lived with her (Tr. 43). She is a Chinese citizen and has returned to China (Tr. 43; HE 3 at 2; SOR ¶ 2.b). Applicant also indicated she is a U.S. citizen and is married to a U.S. citizen (GE 1). Applicant is close to her (Tr. 43). He talks to her about once a month (Tr. 44). The week before his hearing, his sister came to the United States from China. She stayed with Applicant briefly and then returned to China (Tr. 38-39). Her son is attending a university in the United States (Tr. 39).

Applicant visited China in 2003 and 2006 (Tr. 34; HE 3 at 2; SOR ¶ 2.d). He visited his parents and his spouse's parents (Tr. 34). Applicant's parents are citizens and residents of China (HE 3). His parents visited Applicant in the United States in 1999 and 2002. They stayed with Applicant for nine to eleven months. His parents are retired (Tr. 36). Neither of his parents worked for the Chinese government (Tr. 36). His parents receive a pension from the Chinese government, which is similar to social security in the

United States (Tr. 37). Their primary sources of income are savings and retirement funds. He does not provide financial support to his parents (Tr. 37). He talks to his parents about once a week (Tr. 37-38).

Applicant's father-in-law, mother-in-law, and two sisters-in-law are citizens and residents of China (Tr. 40, 44; HE 3 at 2; SOR ¶ 2.c). His spouse speaks to her father about once a week (Tr. 41). His spouse does not send them money (Tr. 41).

In 2001, Applicant purchased a home in the United States (Tr. 35). He has a mortgage on it (Tr. 35).

### **Character Evidence**

There is no derogatory information concerning Applicant's police or financial records.<sup>2</sup> He has never been fired from a job. There is no evidence that he has ever been arrested, used illegal drugs, or been involved in an alcohol-related incident. There is no evidence of any security violations, or work-related rule violations.

### **China<sup>3</sup>**

China has powerful military forces, including strategic nuclear missiles. China is geographically vast, and has a population of over a billion people. It has significant resources and an economy that in recent years has expanded about 10% per year. China aggressively competes with the United States in many areas. China's competitive relationship with the United States exacerbates the risk posed by Applicant's connections to family members living in the China.

In China reported human rights problems include suppression of political dissent, arbitrary arrest and detention, forced confessions, torture and mistreatment of prisoners. The China also monitors communications devices, such as telephones, telefaxes, and internet servers.

China has an authoritarian, Communist government. China has a poor human rights record, suppresses political dissent, and practices arbitrary arrest and detention, forced confessions, torture, and other prisoner mistreatment.

China actively collects military, economic, and proprietary, industrial information about the United States for the following reasons: (1) its position as a global power; (2) its military, political, and economic investments in the Pacific Rim and Asia; and (3) its leading role in the development of advanced technology that China desires for economic growth. China's active intelligence gathering programs focus on sensitive and

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<sup>2</sup>The source for the facts in this paragraph is his SF 86 (GE 1).

<sup>3</sup>The facts in the section concerning China are from the Department Counsel's documents submitted for Administrative Notice and U.S. Department of State, *Background Note, China*, October 2009 and, *China—Country Specific Information*, July 20, 2009 (Enclosures I and II).

protected U.S. technologies. “China’s espionage and industrial theft activities [are] the leading threat to the security of U.S. technology.” Department Counsel’s summary at 2. Department Counsel’s summary provides additional details of China’s aggressive intelligence efforts directed towards acquiring U.S. secrets and proprietary technologies. *Id.* at 2-5.

## 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 that, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon meeting the criteria contained in the revised adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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. Adverse clearance decisions are made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the [a]pplicant concerned.” See Exec. Or. 10865 § 7. See *also* Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v.*

*Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ 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 or her] security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

### **Analysis**

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the relevant security concerns are under Guidelines C (foreign preference) and B (foreign influence) with respect to the allegations set forth in the SOR.

### **Foreign Preference**

AG ¶ 9 describes the foreign preference security concern stating, "when an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States."

AG ¶ 10 describes conditions that could raise a security concern and may be disqualifying in Applicant's case:

(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to:

- (1) possession of a current foreign passport;
- (2) military service or a willingness to bear arms for a foreign country;
- (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;
- (4) residence in a foreign country to meet citizenship requirements;
- (5) using foreign citizenship to protect financial or business interests in another country;

(6) seeking or holding political office in a foreign country; and

(7) voting in a foreign election;

(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen;

(c) performing or attempting to perform duties, or otherwise acting, so as to serve the interests of a foreign person, group, organization, or government in conflict with the national security interest; and

(d) any statement or action that shows allegiance to a country other than the United States: for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship.

In 1962, Applicant was born in the People's Republic of China (China). In 2008, he became a U.S. citizen. Applicant's Chinese passport was issued in 2006 and does not expire until 2011. Applicant retained his Chinese passport after he became a U.S. citizen. AG ¶ 10(a)(1) applies.

AG ¶ 11 provides conditions that could mitigate security concerns:

(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

(b) the individual has expressed a willingness to renounce dual citizenship;

(c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;

(d) use of a foreign passport is approved by the cognizant security authority;

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated; and

(f) the vote in a foreign election was encouraged by the United States Government.

Applicant's receipt of benefits from China before immigrating to the United States, such as receiving a bachelor's degree in China, were based on his parents' citizenship or Applicant's birth in a foreign country. AG ¶ 11(a) applies to receipt of those Chinese benefits. Applicant learned that his Chinese passport raised a security concern and wrote "VOID" on a page. AG ¶ 11(e) applies to mitigate the concern arising under SOR ¶ 1.a.

## Foreign Influence

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

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 indicates three conditions that could raise a security concern and may be disqualifying in this case:

- (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; and
- (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.

AG ¶¶ 7(a), 7(b), and 7(d) apply. Applicant, his spouse, parents, parents-in-law, sister, and one of his children were born in China. His parents, parents-in-law, and sister live in China or have close connections with family members living in China. Applicant has particularly close connections with his parents and sister. His spouse has close connections to her parents. He shares living quarters with his spouse.

Applicant’s communications with his parents and sister, and his spouse’s communications with her parents are frequent. Those communications are a manifestation of Applicant and his spouse’s ties of affection with their family members living in China. “[T]here is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person’s spouse.” ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at \*8 (App. Bd. Feb. 20, 2002). Applicant has not rebutted this presumption. Applicant’s relationship with his parents and sister, as well as his wife’s relationship with her parents are sufficient to create “a heightened risk of



foreign exploitation, inducement, manipulation, pressure, or coercion.” These relationships with residents of China create a potential conflict of interest between Applicant’s “obligation to protect sensitive information or technology and [his] desire to help” family members who are in China. For example, if the Chinese Government wanted to expose Applicant to coercion, it could exert pressure on his parents or sister. Applicant is also subject to potential, indirect coercion through his spouse’s relationship with her parents.

The mere possession of close family ties with a family member living in China is not, as a matter of law, disqualifying under Guideline B. However, if an applicant has a close relationship with even one relative living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See *Generally* 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 or inducement. 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 collection operations against the United States. The relationship of China with the United States places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that his relationships with his family members living in China, and his spouse’s relationships with her family members living in China, do not pose a security risk. Applicant should not be placed in a position where he might be forced to choose between loyalty to the United States and a desire to assist a family member living in China, or to assist his spouse, who might be coerced through a family member living in China.

Guideline B is not limited to countries hostile to the United States. “The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States.” ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at \*\*15-16 (App. Bd. Mar. 29, 2002).

While there is no evidence that intelligence operatives from China seek or have sought classified or economic information from or through Applicant, his spouse, or their family members living in China, it is not possible to rule out such a possibility in the future. Applicant’s relationship with family members living in China, or who are very likely to return to visit China, creates a potential conflict of interest because these relationships are sufficiently close to raise a security concern about his desire to assist his spouse, or their family members living in China, in the event they should be

pressured or coerced by agents of the Chinese government or intelligence services for sensitive or classified information. Department Counsel produced substantial evidence of Applicant's contacts with his parents and sister and his spouse's contacts with her parents living in China and has raised the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a), 7(b), and 7(d) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

(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 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;

(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 8(c) have limited applicability. Applicant traveled to China in 2003 and 2006. Applicant has frequent contact with his parents and sister, who live in China. His spouse has frequent contact with her parents. Because of his connections to China, to his parents, his sister, and his spouse's contacts with her parents, Applicant is not able to fully meet his burden of showing there is "little likelihood that [he and his spouse's relationships with relatives who are China citizens] could create a risk for foreign influence or exploitation."

AG ¶ 8(b) partially applies. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant has strong family connections to the United States. His spouse, two children, and several other relatives are U.S. citizens and live in the United States. Applicant owns a house in the United States.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationships with his family members who either live in China or spend extended periods of time visiting China. He frequently communicates with his parents and sister. His spouse frequently communicates with her parents. There is no evidence, however, that terrorists, criminals, the Chinese Government, or those conducting espionage have approached or threatened Applicant or his family in China to coerce Applicant or his family for classified or sensitive information. As such, there is a reduced possibility that Applicant or Applicant's family would be specifically selected as targets for improper coercion or exploitation. While the government does not have any burden to prove the presence of such evidence, if such record evidence was present, Applicant would have a heavy evidentiary burden to overcome to mitigate foreign influence security concerns. It is important to be mindful of the United States' recent relationship with China, and especially China's systematic human rights violations. China's conduct makes it more likely that China would coerce Applicant through his family living in China, if China determined it was advantageous to do so.

AG ¶¶ 8(d) and 8(e) do not apply. The U.S. Government has not encouraged Applicant's involvement with family members living in China. Applicant is not required to report his contacts with family members living in China.

AG ¶ 8(f) has minimal applicability. Applicant has substantial property interests in the United States, which include his employment in the United States, and the value of his home in the United States. However, this mitigating condition can only fully mitigate security concerns raised under AG ¶ 7(e), and AG ¶ 7(e) is not raised in this case.

In sum, the primary security concern is Applicant's close relationship with his parents and sister, as well as his spouse's relationships with her parents. These relatives live in China and are readily available for coercion. The Chinese government's history of espionage (especially industrial espionage) against the United States and its failure to follow the rule of law further increase the risk of coercion. The concern about his visits to China in 2003 and 2006 in SOR ¶ 2.d are mitigated because they occurred before he became a U.S. citizen and are not recent.

### **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 relevant 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. I have incorporated my comments under Guidelines C and B in my whole person analysis. Some of the factors in AG ¶ 2(a) were addressed under this guideline, but some warrant additional comment.

There are some facts supporting mitigation of security concerns. In 1995, Applicant immigrated to the United States from China. He earned a master's degree in the United States. In 2008, Applicant and his spouse became U.S. citizens. His two children are U.S. citizens. He owns a home in the United States, and his employment is in the United States. He has a U.S. passport. He offered to renounce his Chinese citizenship and wrote VOID on his Chinese passport.

There is no derogatory information concerning Applicant's police or financial records. He has never been fired from a job. There is no evidence of record showing any U.S. arrests, illegal drug possession or use, or alcohol-related incidents. He loves the United States. He considers the United States to be his home, and not China.

The circumstances tending to support denial of Applicant's clearance are more significant than the factors weighing towards approval of his clearance. Applicant's parents, sister, and parents-in-law live in China. He has frequent contact with his parents and sister. His spouse has frequent contact with her parents. He traveled to China in 2003 and 2006.

A Guideline B decision concerning China must take into consideration the geopolitical situation in China, as well as the dangers existing in China.<sup>4</sup> The danger of coercion from the Chinese government is more likely than in many other countries. China competes with the United States militarily, diplomatically, and through trade. China has a history of espionage targeting U.S. military and industrial secrets.

After weighing all the facts and circumstances in this decision, including Applicant's demeanor, sincerity, and honesty at his hearing, I conclude he has mitigated the foreign preference concerns; however, he has not mitigated the foreign influence security concerns.

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<sup>4</sup> See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole person discussion).

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”<sup>5</sup> and supporting evidence, my application of the pertinent factors under the Adjudicative Process, all the evidence in this decision, and my interpretation of my responsibilities under the Guidelines. For the reasons stated, I conclude Applicant is not eligible for access to classified information.

### **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 C:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant
Subparagraph 2.d:	For 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.

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Mark Harvey  
Administrative Judge

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<sup>5</sup>See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).