



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



In the matter of:	)	
	)	
SSN:	)	ISCR Case No. 09-05109
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Caroline H. Jeffreys, Esquire Department Counsel  
For Applicant: Alan V. Edmunds, Esquire

September 8, 2010

**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 mother is a citizen and resident of PRC for part of the year. Her brother is a citizen and resident of the PRC. Applicant's sister is a citizen and resident of PRC. She visited the PRC twice in 2004 for her father's illness and funeral. 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,<sup>1</sup> the Defense Office of Hearings and Appeals (DOHA) issued to

<sup>1</sup> Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security*

Applicant a Statement of Reasons (SOR) on January 25, 2010, detailing security concerns under foreign influence.

On February 25, 2010, Applicant answered the SOR, and requested a hearing. On March 30, 2010, I was assigned the case. On May 13, 2010, DOHA issued a notice of hearing scheduling the hearing, which was held on June 23, 2010. The government offered Exhibits (Ex.) 1 through 3, which were admitted into evidence. Applicant testified on her own behalf and submitted Exhibits A through AA, which were admitted into evidence. Five witnesses also testified on her behalf. The record was held open until July 9, 2010 for additional documents. Applicant timely submitted a duplicate of AA and a letter of reference admitted as BB. On June 29, 2010, 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—XIII. The facts administratively noticed are set out in the Findings of Fact, below.

### **Findings of Fact**

In her Answer to the SOR, Applicant denied 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 45-year-old-engineer who has worked for a defense contractor since July 1996, and is seeking to obtain a security clearance. Her 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. (AE I) 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. (AE B) Applicant is a team player. She greatly contributes to the success of her company by sharing technical knowledge. (AE U) She is highly respected by her peers. Applicant is described as a reliable, skilled and honest person. (AE G) Her supervisor is confident that she is qualified to obtain a secret-level security clearance. He also believes that her loyalty is to the U.S.

Applicant was born and raised in the PRC and came to the U.S. in 1988. (GE 1) She attended a university in China. When she came to the United States, she studied at an American university and received a Master of Science degree (computer science) in

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*Clearance Review Program* (January 2, 1992), as amended (Directive), and the adjudicative guidelines (AG).

1990. (AE R) In June 1998, she married her husband in the United States. She entered the U.S. on a visa (education) in 1988. (Tr. 79) She and her husband have two children. In June 2000, Applicant became a U.S. citizen (AE Q).

Applicant's husband was born in the United States. He is a United States citizen. Applicant and her husband live together with their children, ages ten and seven, in their U.S. home. (AE S) Applicant also cares for her mother-in-law. (AE J)

Applicant's parents were born in China. Her father is deceased. (AE M) Applicant's mother is a citizen of PRC but lives six months out of the year with Applicant in the United States. Applicant calls her mother once per week when her mother is in China. (GE 3) Applicant's mother calls China on a regular basis to speak to her other children. (Tr. 90) She has a permanent resident card for the U.S. (AE N) Applicant's mother has an apartment in China. She is 68 years old, retired, and receives a small Chinese pension from her accounting job. (AE K) Applicant's mother visits her grandchildren when she visits China. Her last visit was from December 2009 until May 2010. Her mother does not plan to return to China to live but will continue to visit if her children and grandchildren are there. She hopes to become a U.S. citizen. (AE K) Applicant's mother does not yet possess sufficient English language abilities to apply for U.S. citizenship. (Tr. 85)

Applicant's brother is a citizen and resident of the PRC. He works for an export-import company. Applicant does not know the name of the company. She contacts her brother by telephone approximately "once a couple months." (Tr. 64) She saw him in 2004 when she was in China visiting her parents. He visited her in the United States once, but Applicant does not remember the exact time. She believes it was 2003. (Tr. 91) Applicant has petitioned the U.S. for her brother to live in the United States. (AE O) Applicant has no contact with her brother's wife (sister-in-law). (GE 3)

Applicant sister is a citizen and resident of the PRC. At the hearing, Applicant testified that she does not speak to her sister often. During her investigative interview in June 2009, Applicant reported speaking to her sister four times per year. (GE 3) She recalls speaking to her sister about half a year ago. (Tr. 67) Applicant also petitioned the United States for her sister to live in the United States. She last saw her sister in 2004 when she was in China to see her father. (Tr. 68) Applicant has no contact with her sister's husband (brother-in-law).

Since coming to the United States, Applicant traveled to the PRC to visit her father when he was gravely ill in 2004. Applicant's visits were approximately two or three weeks in length. She stayed with her parents in their apartment in 2004. (Tr. 70) At her father's funeral in 2004, Applicant saw her extended family. (Tr. 88)

Applicant and her husband own a home in the U.S., which is their residence. They own no property outside the U.S. (Tr.62) Applicant is active in her church. (Tr. 77)

Applicant volunteers in her community at schools and hospitals. She helps with Sunday school classes. (AE F) She is described as a very dedicated wife and mother. (AE C) Applicant's colleagues note that she is always willing to put in whatever extra time and effort is needed to get the job done. (AE D) Family friends note that Applicant's children are "top priority" and based on Applicant's reputation for honesty, good judgment, and integrity she would not jeopardize her children's future in the United States. (AE E)

Applicant's last three employment appraisals are consistent in their praise of Applicant's tremendous abilities and performance on the job. She exceeds expectations on all levels of performance. (AE X) Applicant is flexible and her customer relations skills are excellent. (AE Y) Applicant is a valued member of her team. (AE Z)

## **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. The PRC possesses large and increasingly sophisticated military forces, which include strategic nuclear weapons and missiles. 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.

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. The PRC obtains access to restricted technology through industrial espionage and the PRC operates an aggressive clandestine effort to acquire additional technologies.

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 protected U.S. technologies. The United States is its second most targeted intelligence source. There is evidence that enterprise-directed espionage may be growing in importance and taking on less random and more targeted form.

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. 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.

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 adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required 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 overarching adjudicative goal is a fair, impartial, and commonsense 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 mother, brother, sister and their spouses are citizens and residents of the PRC. Applicant maintains contact with her brother by telephone usually once every month. Although, she acknowledged that it could be less. Her brother visited Applicant in the United States in 2003. She also maintains contact with her sister by phone perhaps four times a year. Applicant went to China twice in 2004 when her father was gravely ill. She stayed in her family's apartment. Applicant's mother lives with Applicant approximately six months out of a year. Her mother has a permanent resident card for the United States and hopes to become a U.S. citizen. Her mother lives in China when she is not living with Applicant.

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.<sup>2</sup> With its mixed human rights record, and

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<sup>2</sup> 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 relationship to the United States and aggressive intelligence collection efforts. See ISCR Case No. 06-24575 at 4 (App. Bd. Nov. 7, 2007) (articulating

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 two occasions in 2004 to visit her gravely ill father who is now deceased. She has not visited since that time.

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

(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;

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"very heavy burden" standard and reversing grant of clearance in case involving family members living in 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).



(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 mother and brother. Applicant has a close relationship with her mother and brother. She maintains phone contact with her sister at least four times a year and telephone contact with her brother about six times per year. She has travelled to China on three occasions since coming to the U.S. in 1988. Her most recent visit was in 2004. Applicant has a husband and two young children in the United States. 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 mother, brother, and sister, 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, especially her mother when she is in China, is not casual or infrequent.

Applicant's close relationship with her husband and two children and her strong connections to the United States partially mitigate foreign interest security concerns under 8(b). Her children are U.S. citizens who reside in the U.S. Her husband is a 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. She has no desire to return to live in the PRC. She is a loyal, dedicated U.S. citizen. 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.

### **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 2000. Her husband and her two children 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 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 approval of her security clearance. She is a kind and caring wife, daughter, and mother.

Unfortunately, the totality of the circumstances in this case does not weigh in favor of Applicant. Given Applicant's family ties to her mother and her brother in the PRC, and the frequency of her contacts with her mother, 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”<sup>3</sup> 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 mother, brother and sister 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:	For Applicant
Subparagraph 1.f:	For 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.

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NOREEN A. LYNCH  
Administrative Judge

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<sup>3</sup>See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).