



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



In the matter of: )  
)  
) ISCR Case No. 10-00708  
)  
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Applicant for Security Clearance )

**Appearances**

For Government: Greg A. Cervi, Esq., Department Counsel  
For Applicant: *Pro se*

September 21, 2010

**Decision**

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DAM, Shari, Administrative Judge:

Based upon a review of the record evidence, eligibility for access to classified information is denied.

**History of Case**

On October 26, 2009, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On April 26, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B and Guideline C. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the Adjudicative Guidelines effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on May 10, 2010, and waived his right to a hearing before an administrative judge. On June 23, 2010, Department Counsel prepared a File of Relevant Material (FORM) containing eight Items and mailed Applicant a complete copy the same day. Applicant received the FORM on June 30, 2010, and had 30 days from its receipt to file objections and submit additional information. Applicant timely submitted Applicant Exhibits (AE) A and B, to which Department Counsel had no objections. On August 6, 2010, DOHA assigned the case to me.

## **Procedural and Evidentiary Rulings**

### **Request for Administrative Notice**

Within the FORM, Department Counsel submitted a formal request that I take administrative notice of certain facts relating to the People's Republic of China (PRC). Attached to the FORM are documents marked as Item 8. Applicant did not object to my consideration of those exhibits, as relating to the PRC. Hence, the facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute. The facts administratively noticed are set out under the heading "People's Republic of China."

### **Findings of Fact**

In his Answer to the SOR, Applicant denied the factual allegations contained in Paragraph 1 of the SOR and admitted the allegations contained in Paragraph 2 of the SOR. His admissions are incorporated into the findings below.

Applicant is 47 years old. He was born in the PRC. He attended a U.S. university from January 1993 to August 1994, when he earned a master's degree in computer sciences. He returned to the PRC in 2006, 2007, and 2008 to visit family and friends. He became a naturalized U.S. citizen in December 2008 and obtained a U.S. passport in April 2009. In January 2009, he started his current position with a defense contractor. Prior to this position, he worked for private corporations. (Item 5.)

Applicant married his wife in 1989 in the PRC. She was born in the PRC and is a naturalized U. S. citizen. They have two children, both of whom were born in the United States. Applicant's parents were born in the PRC and are deceased. He has one brother, who is a U.S. citizen and resides in the PRC. His three sisters were born in the PRC and reside there. His parents-in-law are citizens and residents of the PRC. (Items 4, 5.)

In June 2008, Applicant renewed his PRC passport. It expires in June 2018. (Item 5 at 39.) He used it to visit his family in the PRC in September 2008. He did not have a U.S. passport at the time. During a December 2009 interview, he stated that he does not have dual citizenship because he relinquished his Chinese citizenship when he became a U.S. citizen in December 2008. China does not recognize dual citizenship.

(Item 4.) He indicated that he would willingly relinquish the passport. (Item 7 at 2; AE B.) In a March 2010 set of Interrogatories, he stated that he could not surrender the passport because the Chinese government would not issue a Chinese visa without it. (Item 7.) After receiving the FORM on June 23, 2010, he had the passport invalidated by the Chinese embassy on or about June 29, 2010. (AE A, B.) He asserted that he never used the passport for travel after he became a U.S. citizen. (Item 7; AE A.) Applicant considers the United States to be his home. (Item 7 at 2.)

## **People's Republic of China**

The PRC is a large and economically powerful country, with a population of over a billion people and an economy growing at about 10% per year. China has an authoritarian government, dominated by the Chinese Communist Party. China has a poor record with respect to human rights, suppresses political dissent, and engages in arbitrary arrests and detentions, forced confessions, torture, and mistreatment of prisoners.

China is one of the most aggressive countries in seeking sensitive and protected U.S. technology and economic intelligence. It targets the United States with active intelligence gathering programs, both legal and illegal. As a result, it is a growing threat to U.S. national security. In China, authorities routinely monitor telephone conversations, facsimile transmissions, e-mail, text messaging, and internet communications. Authorities open and censor mail. Its security services have entered personal residences and offices to gain access to computers, telephones, and fax machines. All major hotels have a sizable internal security presence, and hotel guestrooms are sometimes bugged and searched for sensitive or proprietary materials. There are several recent cases involving actual or attempted espionage and the illegal export of information to China.

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the Adjudicative Guidelines. In addition to brief introductory explanations for each guideline, the Adjudicative Guidelines (AG) list potentially disqualifying and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's 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.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by an applicant or proven by Department Counsel and has the ultimate burden of persuasion as to obtaining a favorable clearance 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* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline C, Foreign Preference**

The security concern relating to the guideline for Foreign Preference is set out in AG ¶ 9:

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 a condition that could raise a security concern and be disqualifying in this 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.

In March 2010, Applicant admitted that he possessed an unexpired passport in order to obtain a Chinese visa after becoming a U.S. citizen. Those facts are sufficient to raise a disqualification under AG ¶ 10(a)(1).

After the Government raised a disqualification, the burden shifted to Applicant to produce evidence and prove mitigation. AG ¶ 11 provides six conditions that could potentially mitigate security concerns raised under this guideline, two of which may be applicable:

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

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

Applicant expressed renouncement of his Chinese citizenship in his Answer, which triggered the application of AG ¶ 11(b). Pursuant to his request, the Chinese embassy recently invalidated his Chinese passport. AG ¶ 11(e) is applicable.

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

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

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 county 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 two 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.<sup>1</sup>

(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 desire to help a foreign person, groups, or country by providing information.

Applicant's three sisters and parents-in-law are resident citizens of the PRC. His brother, a U.S. citizen, resides there. Within the past five years, he visited his family three times. His family's presence in a country that consistently engages in espionage against the United States raises a significant security concern and generates a heightened risk of exploitation, pressure or coercion of the Applicant. Those circumstances could place Applicant in a position of having to choose between his family members residing in the PRC and the United States. The Government met its burden of production by raising the above disqualifying conditions and shifts the burden to Applicant to prove mitigation.

Three mitigating conditions under AG ¶ 8 are potentially applicable to the security concerns raised under this guideline:

(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; and

(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.

Because the record does not contain evidence about the nature or scope of Applicant's relationships with his family members or their positions and activities in the

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<sup>1</sup> 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 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).

PRC, a heightened risk of foreign exploitation, inducement, or coercion remains a concern. Hence, AG ¶ 8(a) does not apply. Because he did not provide evidence detailing the nature and frequency of his contact and communication with his family residing in the PRC, AG ¶ 8(c) cannot apply.

Applicant did not provide persuasive evidence to establish his deep or longstanding relationships to the United States, which would warrant the application of AG ¶ 8(b). He provided information that he has lived in the United States since 1993, has two children who were born here, obtained an advanced degree from a U.S. university, and has been employed by private companies and a defense contractor over the years. He became a U.S. citizen only two years ago. Those facts are inadequate to demonstrate that he would resolve any conflict of interest in favor of the United States.

### **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 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.

In cases involving foreign influence, the Appeal Board requires the whole-person analysis address "evidence of an applicant's personal loyalties; the nature and extent of an applicant's family's ties to the U.S. relative to his [or her] ties to a foreign country; his or her ties social ties within the U.S.; and many others raised by the facts of a given case." ISCR Case No. 04-00540 at 7 (App. Bd. Jan. 5, 2007). In that same decision, the Appeal Board commented on the whole-person analysis in ISCR Case No. 03-02878 at 3 (App. Bd. June 7, 2006), which provides:

Applicant has been in the U.S. for twenty years and a naturalized citizen for seven. Her husband is also a naturalized citizen, and her children are U.S. citizens by birth. Her ties to these family members are stronger than her ties to family members in Taiwan. She has significant financial interests in the U.S. and none in Taiwan. She testified credibly that she takes her loyalty to the U.S. very seriously and would defend the interest of the U.S. Her supervisors and co-workers assess her as very loyal and trustworthy.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. There is some evidence tending to mitigate the raised security concerns under the whole-person concept. Applicant is a mature person, who has lived in the United States since 1993. His wife and children are U.S. citizens. He attended a U.S. university. There is no evidence that he has ever taken any action that could cause potential harm to the United States. He has worked for a defense contractor since January 2009 and private companies before that. He asserted his pride of American citizenship. His Chinese passport was invalidated.

Other circumstances weigh against Applicant in the whole-person analysis. First, China's government does not conform to widely accepted norms of human rights. More importantly for security purposes, China is actively involved in espionage against the United States, and may attempt to use émigrés such as Applicant for espionage. Second, three siblings are resident citizens of the PRC and another one, a U.S. citizen, resides there. Third, he maintains contact with his family as exhibited by his visits there over the years. Fourth, he became a naturalized U.S. citizen in December 2008, less than two years ago.

After weighing the disqualifying and mitigating conditions, all facts and circumstances in the context of the whole-person, and considering my inability to observe Applicant's demeanor or judge his credibility, I conclude he mitigated the security concerns pertaining to foreign preference, but not those related to foreign influence. Overall, the record evidence leaves me with questions as to Applicant's eligibility and suitability for a security clearance.

### **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
Subparagraphs 2.a through 2.d:	Against Applicant



## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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SHARI DAM  
Administrative Judge