



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 10-03412
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Kathryn D. MacKinnon, Esquire, Department Counsel  
For Applicant: James R. Klimaski, Esq.

March 25, 2011

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**Decision**

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MARSHALL, Jr., Arthur E., Administrative Judge:

On September 20, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) 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; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

In her undated response to the SOR, Applicant admitted the three allegations raised under Guideline B and requested a hearing before an administrative judge. The case was assigned to me on November 4, 2010. Department Counsel and Applicant agreed to a December 7, 2010, hearing date. A Notice of Hearing setting the hearing for that date was issued by DOHA on November 16, 2010.

The hearing took place as scheduled. Department Counsel submitted three exhibits (Ex.) which were accepted into the record as Exs. 1-3 without objection. I also accepted Department Counsel's memorandum requesting administrative notice of certain facts related to the People's Republic of China (China). It was accepted without

objection as HE-1. Applicant gave testimony, introduced four witnesses, and offered two files, which were accepted into the record without objection as Exs. A-B. The transcript (Tr.) was received on December 15, 2010, and the record was closed. Based upon a review of the case file, exhibits, and testimony, security clearance is denied.

### **Administrative Notice**

The Government requested administrative notice of certain facts and materials regarding China. Its submission (HE-1) included 15 official documents to support the Government's summation about China (HE-1 I-XV). Applicant did not object to my consideration of those exhibits.<sup>1</sup> The facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute. The facts administratively noticed are as follows:

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

China is one of the most aggressive countries in the world for 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. Hotel guestrooms are sometimes bugged and searched for sensitive or proprietary materials. There are several reports of recent cases involving actual or attempted espionage and the illegal export of information to China.

### **Findings of Fact**

In her answer to the SOR, Applicant admitted the three factual allegations at issue (SOR allegations ¶¶ 1.a-1.c). Specifically, she admitted that her parents (¶ 1.a); a cousin (¶ 1.b); and three aunts, three additional cousins, and an uncle-in-law (¶ 1.c) are all citizens and residents of China with whom she maintains ongoing contact. Her admissions are incorporated into the findings below.

Applicant is a 45-year-old technical manager who has worked for the same defense contractor since 2003. She grew up in China, the daughter of two academics. After seeing the film *The Little House on the Prairie*, she thought, "that's the American dream I want to have."<sup>2</sup> She also felt that she did not fit into Chinese society as it now

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<sup>1</sup> Tr. 11-12, 81.

<sup>2</sup> Tr. 53.

exists.<sup>3</sup> She arrived in the United States in the late 1980s, after completing her undergraduate studies and working for about two years. She focused on graduate studies. She became more disillusioned with China during the Tiananmen Square incident.<sup>4</sup> After completing graduate school, she held multiple positions until starting her current job in 2003. In the interim, she became a U.S. citizen in 1999.<sup>5</sup>

In 2005, Applicant married a U.S. citizen with whom she shared common interests. They now have two young children. In 2007, with Applicant's help, her parents arrived in the United States. They received green cards in 2008. They later returned to China for medical care. While there, both suffered physical setbacks which have prevented them from returning to the United States.<sup>6</sup>

Without friends in China upon whom she can call for assistance, Applicant visits her parents at their home in China "quite often to attend to their health and care."<sup>7</sup> They are in their 70s. Neither parent is highly communicative, and Applicant's mother suffers from dementia.<sup>8</sup> Her father has Parkinson's Disease.<sup>9</sup> Applicant noted: "these are my parents. I have to take care of them. And I'm the only child. My relatives are not willing to help because, at this stage, it's a burden to everybody. . . . For some reason, they decided it's better to stay away. . . ." <sup>10</sup> Applicant also maintains telephonic contact with her parents, although conversations are limited due to their age and infirmities.<sup>11</sup>

Applicant's parents receive Chinese government benefits in the form of government pensions which supplement their personal savings.<sup>12</sup> Between visits, Applicant's parents receive assistance from hired help, who cook, clean, and provide care. Applicant's parents did open their home to a cousin of Applicant's, who was a young child when Applicant came to the United States. The cousin does not provide any

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<sup>3</sup> Tr. 72.

<sup>4</sup> Tr. 73.

<sup>5</sup> Tr. 49.

<sup>6</sup> Tr. 57-58.

<sup>7</sup> Tr. 58. Applicant only returns to China to check on and care for her parents. Tr. 60. She generally visits by herself. Her one trip with her young children proved to be too stressful. Tr. 80.

<sup>8</sup> Tr. 66-69.

<sup>9</sup> Tr. 57.

<sup>10</sup> Tr. 62-63.

<sup>11</sup> See, e.g., Tr. 82.

<sup>12</sup> Tr. 75-76. Applicant did not provide testimony or evidence indicating to what degree Applicant's parents might be dependent on this pension.

domestic or health care support and works very long shifts. Applicant does not “really know her,” but the younger woman agreed to give up her apartment and live with Applicant’s parents “in case anything happens.”<sup>13</sup> Applicant and the cousin, who is in her early or mid-20s, share no emotional ties, although Applicant appreciates the cousin for being the only family member willing to help with Applicant’s parents.<sup>14</sup>

In China, Applicant also has three aunts, three additional cousins, and an uncle-in-law.<sup>15</sup> Having lived in the United State the majority of her adult life, she has had “very limited contact” with these relations, who otherwise avoid contact with Applicant’s ailing parents.<sup>16</sup> She noted that now that her mother is uncommunicative, “they want to run away as fast as they can or as far away as they can. I don’t think I owe them anything.”<sup>17</sup>

Applicant is a responsible U.S. citizen. She votes in elections because she “wants to put in [her] opinion to make this a better place for everybody.”<sup>18</sup> She is proud to work in the defense industry, helping to make the country stronger for her husband and children.<sup>19</sup> She owns a single family home and a townhouse, which are cumulatively worth about \$1,250,000. She maintains a significant savings account, IRA account, and a 401(k) account. Her only debt is related to the balance owed on a mortgage.<sup>20</sup> She has no assets in China. Applicant considers the United States to be her home. It is where she wishes to share her life with her husband and raise their children. She noted that, given her parents’ illnesses, she only finds emotional and family support here. She only returns to China to make sure her parents are receiving proper medical and domestic care.<sup>21</sup> Applicant last visited in China in 2010, and she plans to return in 2011.<sup>22</sup>

Applicant is highly valued at work. A former supervisor praised Applicant for her natural candor, integrity, and technical knowledge.<sup>23</sup> A personal friend confirmed that

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<sup>13</sup> Tr. 65.

<sup>14</sup> Tr. 67.

<sup>15</sup> There is no evidence as to how Applicant is related to the uncle-in-law.

<sup>16</sup> Tr. 67.

<sup>17</sup> Tr. 68.

<sup>18</sup> Tr. 60.

<sup>19</sup> Tr. 61.

<sup>20</sup> Tr. 79.

<sup>21</sup> Tr. 67.

<sup>22</sup> Tr. 84.

<sup>23</sup> Tr. 20-21.

Applicant is a trustworthy, direct, and truthful individual.<sup>24</sup> A childhood acquaintance described Applicant as a loving wife, mother, and daughter, and a “regular U.S. citizen.”<sup>25</sup> A neighbor confirmed this positive assessment.<sup>26</sup>

## Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the 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 over-arching adjudicative goal is a fair, impartial and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” All available, reliable information about the person, past and present, favorable and unfavorable, must be and were considered 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 my decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence submitted.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .”<sup>27</sup> The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.<sup>28</sup>

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 an applicant may deliberately or inadvertently fail to protect or safeguard classified

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<sup>24</sup> Tr. 32.

<sup>25</sup> Tr. 41.

<sup>26</sup> Tr. 45-47.

<sup>27</sup> See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>28</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

information. Such decisions entail a certain degree of legally permissible extrapolation about 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). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>29</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>30</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.<sup>31</sup> It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of the evidence, I find Guideline B (Foreign Influence) to be the most pertinent to the case. Conditions pertaining to this AG that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are discussed below.

## **Analysis**

### **Guideline B – Foreign Influence**

The concern under Guideline B is that 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. Consideration should be given to 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 U.S. citizens to obtain protected information or is associated with a risk of terrorism. Conditions pertaining to this adjudicative guideline that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, are discussed in the conclusions below.

The country at issue is China. It targets the United States with active intelligence gathering programs, both legal and illegal, and poses a considerable threat to U.S.

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<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> Executive Order 10865 § 7.

national security. Consequently, given the heightened risk associated with that country, a high degree of scrutiny is used in my assessment below.

Applicant maintains regular contact with her parents by telephone and through regular visits to China, a country demanding heightened scrutiny. Such facts are sufficient to give rise to Foreign Influence Disqualifying Conditions 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 exploitation, inducement, manipulation, pressure, or coercion) and AG ¶ 7(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). With disqualifying conditions thus raised, the burden shifts to Applicant to mitigate security concerns.

Applicant's parents are in their 70s. They are retirees receiving pensions from the Communist-dominated Chinese government. Although they are infirm, they remain independent of group living or other assisted care. Applicant is a loving daughter who has dutifully and personally taken the responsibility to oversee her parents care from abroad. In her absence, she made arrangements so that they receive periodic monitoring from others. In contrast, Applicant only has a nominal relationship with the cousin who now lives with Applicant's parents. With regard to other relatives in China who have apparently distanced themselves from Applicant and her parents, Applicant maintains no notable contact, is generally dismissive, and she feels she owes them nothing. Given these facts, Foreign Influence Mitigating Condition AG ¶ 8(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.) applies with regard to her cousins, aunts, and uncle-in-law, but not to her parents.

As noted, Applicant maintains regular telephonic contact with her parents and visits them in China. In contrast, her contact with one cousin is transient and incidental to the well-being of her parents, while her contact with her other relatives in China is nonexistent. Therefore, 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 to Applicant's cousins, aunts, and uncle-in-law, but not to her parents.

There is no suggestion that Applicant is anything less than a loyal American devoted to her life in the United States. Her husband, children, investments, homes, work, and social life are all in the United States. Her devotion, support, and sense of obligation for her parents is notable. She helped them come to the United States, where they remained for a time before seeking medical care in China. Since their health issues precluded their return to the United States, she oversees their health and well-being

from the United States, traveling to China regularly to check on their care. Such behavior demonstrates her dutiful execution of her role as only child and loving daughter, and highlights a significant tie to China. Under these facts, AG ¶ 8(b) (there is no conflict of interest, either because the individual's sense of loyalty to 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) does not apply to her parents. However, given the earlier facts noted about her relationships with her cousins, aunts, and uncle-in-law, AG ¶ 8(b) applies to those relations. In light of the SOR allegations, none of the other mitigating conditions apply.

Applicant is clearly a loyal U.S. citizen and her relationships with her cousins, aunts, and uncle-in-law are, at best, negligible. Her understandable devotion to her parents, however, is worrisome, especially given the country at issue. Their age and vulnerability, in conjunction with her obvious love for them, invites the potential of manipulation or coercion. Foreign influence security concerns remain unmitigated.

### **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). 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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the "whole-person" factors. Applicant is a highly credible, mature, and blunt individual who has found much success in the United States. She is well-educated and has a stellar career. Applicant is married and is raising two children. She is a valued employed, friend, and neighbor. She has two homes, considerable savings, and a happy life in the United States.

Remaining in China are several relatives and Applicant's parents. Applicant had little contact with the younger cousin, who now lives with Applicant's parents, before Applicant came to the United States. They had not developed a significant relationship due to their age gap. Today, Applicant appreciates her young cousin's willingness to live with Applicant's parents, but the two only maintain a casual relationship. As for Applicant's other cousins, aunts, and uncle-in-law, time, distance, and apathy appear to have eliminated any familial bonds.

Sustaining security concerns are Applicant's parents. While elderly and infirm, they live independently in their own home. They are often at home alone. Applicant and her parents share an understandable bond that has led Applicant to oversee their care



from abroad and maintain regular telephonic contact. An only child, Applicant has acted dutifully in her oversight of their care and well-being. She understandably loves her parents. At present, their living situation, age, vulnerability, and their, at least, partial dependence on a Chinese government pension, however, tend to make them susceptible to manipulation. Given the country at issue, this represents a very real threat, despite Applicant's loyalty to the United States.

The protection of the national security is the paramount consideration in these cases. Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information. In light of the facts and the significant concerns raised by China, I find that Applicant failed to mitigate 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, Guideline B:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b-1.c:	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. Clearance denied.

ARTHUR E. MARSHALL, JR.  
Administrative Judge