



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



In the matter of: )  
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 ----- ) ISCR Case No. 10-11145  
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 Applicant for Security Clearance )

**Appearances**

For Government: Melvin A. Howry, Esquire, Department Counsel  
For Applicant: *Pro se*

02/27/2012

**Decision**

HOWE, Philip S., Administrative Judge:

On March 3, 2010, Applicant submitted his electronic version of the Security Clearance Application (SF 86) (e-QIP). On September 12, 2011, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant 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 Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on September 20, 2011. Applicant requested his case be decided on the written record in lieu of a hearing.

On November 8, 2011, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant on November 9, 2011. He was given the opportunity to file objections and

submit material in refutation, extenuation, or mitigation. Applicant received the file on November 22, 2011. Applicant did not file a Response to the FORM within the 30 day time allowed that would have expired on December 22, 2011. I received the case assignment on January 12, 2012. Based upon a review of the pleadings and exhibits (1-6), eligibility for access to classified information is denied.

## **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 People's Republic of China (PRC) (FORM). The request and the attached documents were part of the FORM and I marked them as Government Exhibit 6. The facts administratively noticed are set out in the Findings of Fact, below.

### **Findings of Fact**

Applicant admitted all the allegations in the SOR. Those admissions are incorporated in these findings. (Government Exhibit 3)

Applicant is 38 years old, married, and has one child. He is a naturalized United States citizen since April 17, 2003. Applicant and his wife came to the United States in September 1995 from the Peoples' Republic of China (PRC). His son, who was born in the PRC in 1989, arrived later in 1995. (Government Exhibits 4, 5)

Applicant's mother is a citizen and resident of the PRC. His sister is a citizen and resident of the PRC. She is an office manager for the PRC highway department. Applicant's brother is a citizen and resident of the PRC. He was jailed by the PRC authorities from June 2000 to June 2003 for taking bribes. (Government Exhibits 3-5)

Applicant's brother-in-law is a citizen and resident of the PRC. He is employed as a statistician for the PRC government. Applicant's sister-in-law is also a citizen and resident of the PRC. She works for the PRC tax collection department. Applicant's father-in-law and mother-in-law are citizens and residents of the PRC. The father-in-law is a retired police officer in the PRC. (Government Exhibits 3-5)

Applicant traveled to the PRC in December 2007 and August 2008. These visits were to visit his family. Each trip lasted 15 days. The August 2008 trip included his wife and son to visit his ill father. His father is now deceased. (Government Exhibits 3-5)

I take administrative notice of the following facts concerning the PRC. The PRC is a one-party Communist totalitarian state. It has an economy growing at 10% annually. The PRC is expanding its military forces, including its naval forces. All military forces are under the People's Liberation Army (PLA).

The United States and the PRC have been rivals since 1948, when the Communists took control of mainland China, and the Nationalist government fled to the

island of Taiwan. Diplomatic relations with the PRC were not established until 1972. Taiwan remains an issue of contention between the two countries.

The PRC engages regularly in military, economic, and industrial espionage, including stealing nuclear weapons technology, missile design information, and commercial technology from the United States and other countries. The U.S. - China Economic and Security Review Commission's 2006 report to the U.S. Congress found the PRC has a large and aggressive intelligence gathering operation in the United States, particularly in the scientific and military fields. The PRC also obtains commercial information through the use of front companies, buying dual-use technologies, and the direct collection of technology by non-intelligence agencies and individuals.

The PLA is integrated into the civil industrial base in the PRC, known as the "digital triangle." The *2011 Annual Report to Congress: Military and Security Developments Involving the People's Republic of China*, states the linkages between the military and Chinese commercial information technology companies and the R&D institute are longstanding, "as telecommunications and information technology in China were originally under military auspices and the commercial relationships with state and military research institutes remain important."

Additionally, the U.S. State Department reported in its *2010 Human Rights Report: China*, the PRC has a poor human rights record, including but not limited to, denial of free speech and press, fair and open trials, and other basic rights recognized by the international community. It also suppresses political dissent, using arbitrary arrests, forced confessions, and mistreatment of prisoners as part of its operational methods to maintain control of its population. (Government Exhibit 6)

## **Policies**

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

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, the administrative judge applies the guidelines in conjunction with the factors listed in the adjudicative process (AG ¶ 2(a)). 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.

According to Directive ¶ E3.1.14, the Government must 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 the applicant or proven by Department Counsel, and 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. See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

AG ¶ 6 expresses the security concern pertaining to 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. interest, 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Three are potentially applicable 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>

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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

(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.

Applicant's mother, brother, and sister are PRC residents. His brother was incarcerated by the PRC authorities for three years for taking bribes. His sister is employed by the PRC government's highway department. Furthermore, Applicant's father-in-law and mother-in-law are residents and citizens of the PRC. His father-in-law is a retired PRC policeman. Applicant's sister-in-law and brother-in-law are citizens and residents of the PRC. They both work for PRC government agencies. All of these family connections create heightened risks of PRC exploitation, inducement, manipulation, pressure, or coercion. They also create a potential conflict of interest for Applicant. These same concerns apply with regards to his wife's parents and siblings residence and employment. AG ¶ 7(a), (b), and (d) are raised by the evidence and apply to this case.

The Government produced substantial evidence of these three disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove mitigation. Two conditions that could mitigate the disqualifications are provided under AG ¶ 8:

(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.

Applicant did not establish the application of AG ¶ 8(b). Applicant only became a U.S. citizen in 2003. He has been in the United States only since 1995, an insufficient time to establish clearly that he would resolve any conflict in favor of U.S. interests. Applicant did not supply any information with his Answer about his connections to the

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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).

United States, including investments or other financial interests. He did not provide any information concerning his wife or child and the strength of their connection to the United States, including employment information. Based on his family relationships and the lack of time to develop a depth of loyalty to the U.S., he cannot be expected to resolve any conflict of interest in favor of the U.S. interests. Neither of these mitigating conditions applies.

### **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.

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 facts and circumstances surrounding this case. All of Applicant's family is located in the PRC. He did not provide information about his connections and investment, monetarily or otherwise, in the United States. Applicant did not submit any evidence concerning potential for coercion, pressure, exploitation, or duress if presented with a situation involving family members and the PRC authorities. There are no character statements from persons who know Applicant.

Overall, the record evidence leaves me with questions or substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under the guideline for Foreign Influence. I conclude the "whole-person" concept against Applicant.

### **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
Subparagraphs 1.a to 1.g:	Against Applicant

### **Conclusion**

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

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PHILIP S. HOWE  
Administrative Judge