



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 11-08233
)	
Applicant for Security Clearance)	

Appearances

For Government: Raashid S. Williams, Esq., Department Counsel
For Applicant: Violeta L. Menendez, Personal Representative

09/21/2012

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline B (Foreign Influence). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on January 7, 2011. On May 8, 2012, the Defense Office of Hearings and Appeals (DOHA) notified him that it was unable to find that it was clearly consistent with the national interest to continue his access to classified information, and it recommended that his case be submitted to an administrative judge for a determination whether to continue or revoke his security clearance. DOHA set forth the basis for its action in a Statement of Reasons (SOR), citing security concerns under Guideline B. DOHA acted 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) implemented by the Department of Defense on September 1, 2006.

Applicant received the SOR on May 15, 2012; answered it on May 22, 2012; and requested a hearing before an administrative judge. DOHA received the request on May 24, 2012. Department Counsel was ready to proceed on July 6, 2012, and the case was assigned an administrative judge on July 18, 2012. It was reassigned to me on July 20, 2012. DOHA issued a notice of hearing on July 30, 2012, scheduling it for August 20, 2012. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 3 were admitted in evidence without objection. Applicant testified and presented the testimony of two witnesses. I kept the record open until September 5, 2012, to enable Applicant to submit documentary evidence. He timely submitted Applicant Exhibits (AX) A through S, which were admitted without objection. Department Counsel's comments regarding AX A through S are attached to the record as Hearing Exhibit (HX) III. (HX I and II are discussed below.) DOHA received the transcript (Tr.) on August 28, 2012.¹

Administrative Notice

Department Counsel requested that I take administrative notice of relevant facts about the People's Republic of China (PRC) and India. The two requests and their attached documents are included in the record as HX I and II. I took administrative notice as requested by Department Counsel. The facts administratively noticed are set out below in my findings of fact.

Findings of Fact

In his answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a-1.e, and he denied the allegation in SOR ¶ 1.f. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is the 54-year-old president of a company that does business with the Department of Defense. He began his career with the company as an aerospace engineer in April 1997. He received a security clearance in April 2003.

Applicant was born in Germany. After completing his 15 months of mandatory military service in the German Army, he obtained a university degree in mathematics. He then worked as a junior research scientist for a German government agency from June 1984 through December 1986. He came to the United States in December 1986 and obtained his doctorate in aerospace engineering in August 1990. He became a U.S. citizen in March 2000.

Applicant's father and two brothers, ages 51 and 49, are citizens and residents of Germany. His mother and a third brother are deceased. Applicant had a bank account in Germany worth about \$30,000, but the funds have been transferred to his father's account. Applicant's older brother is an architect, works for a private company, lives with their 91-year-old father, and has access to the account. His younger brother works for the German telephone company. (Tr. 44-50; AX F.)

¹ Applicant's execution of his SCA, responses to interrogatories, answer to the SOR, and testimony at the hearing were exceptionally detailed, precise, and specific.

Applicant married a native of the PRC in May 1990. He and his wife met while they were both graduate students in the United States. His wife became a U.S. citizen in 2000, and she holds a doctorate in biochemistry. She was employed at a university, but she left that job so that the family could be together. She now has her own consulting business. (Tr. 57; GX 1 at 14-15.) They have two children, a 21-year-old son and an 18-year-old daughter, who are native-born U.S. citizens. Applicant's wife received a security clearance in June 2011. (AX S².)

Applicant's wife's mother, father, three sisters, and one brother are citizens and residents of the PRC. Applicant cannot communicate with his wife's family because they do not speak English and he cannot speak Chinese. He does not know most of their names and probably would not recognize them. (Tr. 38-39.)

About five years ago, Applicant and his wife deposited about \$150,000 in a PRC bank account to assist his wife's family. Applicant and his wife are not the account holders. The account is solely in the name of Applicant's wife's youngest sister, who administers the account. Applicant's wife tells her sister how to spend the money. (Tr. 37, 67-69, 103-04; AX A.) Applicant does not track how the money is spent and does not review the bank statements. (Tr. 71.)

Applicant and his wife visited her family in the PRC for about 20 days in the summers of 2002, 2005, and 2008. Applicant has not visited the PRC since 2008. (GX 1 at 42-44; Tr. 86-87.) His wife attended a professional conference in the PRC in 2009. The conference was near her hometown and she was able to visit her family. (Tr. 122-23.) She last visited her family and a couple of college friends in the PRC in January 2012. (Tr. 107.)

Applicant's wife's mother and father have been retired for at least 20 years. Her mother worked in a textile factory and her father worked in the printing business. (Tr. 52-53.) Applicant's wife talks to her mother about once a month. She does not talk to her father by telephone, but she visits him in the PRC. (Tr. 108.)

Applicant's wife talks to her youngest sister about once a week. Her conversations with her youngest sister usually concern their mother's well-being and her sister's son, who attended a U.S. university and is currently living in the United States. (Tr. 105, 108-09.) This sister's husband is employed by a utility company. (Tr. 112.) This sister and her husband visited Applicant and his wife in the United States in May 2011. When Applicant and his wife visit China, they usually stay at her house. (GX 2 at 13.)

Applicant's wife talks to her next older sister about once a year. This sister is a retired bank employee. (Tr. 110-11.) This sister's husband is unable to work because of health problems. (Tr. 113.)

² AX S is the Joint Personnel Adjudication System (JPAS) printout reflecting Applicant's wife's security clearance. The document also reflects that she disclosed her family connections to the PRC.

Applicant's wife talks to her oldest sister about every three months. This sister is retired from a job as an architect for a petroleum facility designer. (Tr. 112.) This sister's husband is retired from a job with the same company. (Tr. 113.)

Applicant's wife talks to her brother about once a year. Her brother is retired, but the record does not reflect his job before retirement. (Tr. 115.) All the retired members of Applicant's wife's family receive pensions from the PRC government. (Tr. 124.)

Applicant's wife's siblings are all married, and she has numerous nieces and nephews in the PRC. Applicant has virtually no contact with any of them, except for one nephew who attended college in the United States, speaks English, and now lives and works in the United States. (GX 2 at 13.)

Applicant's wife testified that her family members in the PRC do not know anything about her security clearance or Applicant's clearance. She testified that she does not know how to translate "security clearance" into Chinese. (Tr. 106.) Her family knows that Applicant works in the aerospace industry and that she is a consultant, but they do not know the details of their jobs. (Tr. 119.)

Applicant owns a 35-percent interest in a company in India that provides information technology services for commercial clients of Applicant's U.S.-based company. His partner, who also owns a 35-percent interest, is a native of India, was Applicant's college classmate, and is now a U.S. citizen. (Tr. 74-75.) This partner also is the chief executive officer (CEO) of Applicant's U.S.-based business. (Tr. 78.) The company in India is not involved in any classified projects or government contracts. (Tr. 80, 89.) Applicant estimates that his share in the Indian company is worth about \$35,000. (Tr. 72; GX 2 at 17; GX 3 at 6.) The CEO and chief technology officer of the Indian company are citizens and residents of India and shareholders in the company. (Tr. 85; AX Q.) Applicant also maintains a bank account in India, with a balance of about \$30,000, which he uses for travel expenses and small investments. (GX 3 at 6.)

About 15 or 20 years ago, Applicant went to India for the wedding of his partner's brother. At the wedding, he was introduced to man in the Indian Foreign Service who was regarded as a "rising star." When Applicant visited his wife's family in the PRC for 20 days in August 2008, his business partner suggested that he contact the Foreign Service officer who had been at the wedding. The Foreign Service officer had been appointed as India's ambassador to another country and was in Taiwan for a conference. He visited the ambassador, who gave him and his wife a tour of Taipei. Since 2008, Applicant has had "maybe two" email exchanges with the ambassador, but no other contact. (Tr. 81-85.) Applicant disclosed his contact with the ambassador in his SCA and listed him as a "friend" during an interview with a security investigator in January 2011 and in response to DOHA interrogatories in February 2012. (GX 1 at 38; GX 2 at 8; GX 3 at 12.)

Applicant and his wife are financially comfortable. He earns about \$150,000 per year and she earns about \$100,000. (AX 3 at 6.) In response to DOHA interrogatories, he estimated that his net worth was about \$5,000,000. (GX 2 at 18.) He has a reputation for being financially generous. In addition to the \$150,000 given to his wife's family and the \$30,000 given to his father and brother, Applicant gave substantial financial support in January 2008 to two families who were in danger of losing their homes.

In the first case, a family had fallen behind on their mortgage payments, the interest rate adjusted upward because of the missed payments, and foreclosure of their home was imminent. After considering several options, Applicant purchased the home for the amount owed on the mortgage and agreed to rent the home to the family until they could afford to buy the home back for the same price that Applicant had paid to buy it. Unfortunately, the wife in this family was diagnosed with cancer shortly after they sold the home to Applicant and began renting it back. Applicant allowed the family to stay in the home rent free until they could afford to begin paying rent. As of the date the record closed, the family had been staying in the home rent free for more than a year. (AX K; AX M.)

In the second case, a single mother with a teenage son, who is the facility security officer for Applicant's U.S.-based business, also fell behind on her mortgage payments. Applicant made a similar purchase and lease-back agreement, allowing her to remain in her home. She also was unable to make the rent payments. She testified that she owed Applicant about \$55,000 at the time of the hearing. (AX K; AX L.)

The PRC has an authoritarian government dominated by the Communist Party. It has large and increasingly sophisticated military forces. The United States and the PRC have been rivals since the Cold War. Despite serious political disagreements, the United States and the PRC have become major economic and trading partners.

The PRC seeks to transform and modernize its military forces in order to improve its capacity for power projection. The PRC is the most aggressive country in the world in conducting espionage against the United States, focusing on obtaining information and technology beneficial to the PRC's military modernization and economic development. The PRC uses multiple state entities, commercial entities, and private individuals to acquire restricted U.S. technology. The PRC is second only to Iran as the leading destination for illegally exported U.S. technology. Rather than exploiting greed or other personal weaknesses, PRC intelligence agents are more inclined to use people who are sympathetic toward the PRC. They use ethnic targeting to arouse feelings of obligation to the PRC.

The PRC has a poor human rights record. It suppresses political dissent, and it practices arbitrary arrest and detention, forced confessions, torture, and mistreatment of prisoners. Travelers to the PRC can expect to be placed under surveillance, with their hotel rooms, telephones, and fax machines monitored and personal possessions, including computers, searched without their knowledge or consent.

India is a multiparty, federal, parliamentary democracy, with a bicameral parliament and a population of approximately 1.1 billion. Its political history since it gained independence from Great Britain in 1947 has included several armed conflicts with Pakistan, assassinations of two prime ministers, sporadic outbreaks of religious riots, and violent attacks by several separatist and terrorist groups in different parts of the country. There is a continuing threat from terrorism throughout the country, including attacks on targets where U.S. citizens or Westerners are known to congregate or visit.

India's size, population, and strategic location give it a prominent voice in international affairs. India has always been an active member of the United Nations. Starting this year, it is a non-permanent member of the Security Council, and it seeks a permanent seat on the Security Council.

The United States and India have differences over India's nuclear weapons programs, the pace of India's economic reforms, and India's bilateral strategic partnership with Iran. Nevertheless, the United States recognizes that India is important to U.S. strategic interests. The strategic partnership between the United States and India is based on shared values such as democracy, pluralism, and the rule of law. Since 2002, the United States and India have held a series of substantive combined exercises involving all military services.

The United States is India's largest foreign investment partner. Since December 2006, direct civilian nuclear commerce with India has been permitted. The two countries have a common interest in the free flow of commerce and resources, including through the vital sea lanes of the Indian Ocean.

The United States and India share a common interest in fighting terrorism and in creating a strategically stable Asia. They are seeking to foster bilateral relations by establishing working groups to address (1) strategic cooperation; (2) energy and climate change; (3) education and development; (4) economics, trade, and agriculture; and (5) science and technology, health, and innovation.

In the past, India had long-standing military supply relationships with the Soviet Union. Russia remains India's largest supplier of military systems and spare parts. India is one of many countries engaged in economic intelligence collection and industrial espionage directed at the United States. The United States has longstanding economic issues with India regarding protection of intellectual property rights and trade in dual-use technology. There have been numerous incidents of international businesses illegally exporting, or attempting to export restricted, dual-use technology from the United States to India.

The Indian Government generally respects the rights of its citizens, but there are serious problems involving abuses by police and security forces. Corruption in the police force is pervasive, and police officers often act with impunity. Abuses by police and security forces have occurred primarily in criminal investigations and efforts to suppress separatist and terrorist groups.

Policies

“[N]o 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 applicants 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.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance 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 (4th 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. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

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 burden of proving a mitigating condition,

and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[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

Guideline B, Foreign Influence

The SOR alleges that Applicant’s mother-in-law, father-in-law, four brothers-in-law, and four sisters-in-law are residents and citizens of the PRC (SOR ¶ 1.a). It alleges that he has a friend who is a citizen and resident of India and is an ambassador for India (SOR ¶ 1.b). It alleges that he is a part owner of an Indian software company and has two friends who are residents and citizens of India and corporate officers of the software company (SOR ¶¶ 1.c and 1.d). Finally it alleges that he maintains a bank account in the PRC worth \$150,000 and a bank account in Germany worth \$30,000 (SOR ¶¶ 1.e and 1.f).

The security concern under this guideline 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 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.

Four disqualifying conditions under this guideline are relevant:

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 foreign exploitation, inducement, manipulation, pressure, or coercion;

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;

AG ¶ 7(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; and

AG ¶ 7(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.

AG ¶¶ 7(a), (d), and (e) all require substantial evidence of a “heightened risk.” The “heightened risk” required to raise one of these disqualifying conditions is a relatively low standard. “Heightened risk” denotes a risk greater than the normal risk inherent in having a family member living under a foreign government. The PRC’s aggressive espionage program targeting U.S. technology is sufficient to establish the “heightened risk” regarding his wife’s family members. India’s poor record in protecting intellectual property, its illegal trading in U.S. dual-use technology, and the threat of terrorism against U.S. interests are sufficient to establish the “heightened risk” based on Applicant’s friends and business associates in India.

When foreign family ties are involved, the totality of an applicant’s family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). An applicant with family ties to the PRC is not *per se* disqualified from holding a security clearance. However, an applicant with foreign family ties to a country with interests inimical to the United States, such as the PRC, has a very heavy burden of persuasion to show that neither he nor his family members are subject to influence by that country. ISCR Case No. 11-01888 (App. Bd. Jun. 1, 2012), citing ISCR Case No. 07-00029 (App. Bd. Dec. 7, 2007).

“[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 cannot meaningfully communicate with his wife’s family members, but he has demonstrated his sense of obligation to them by giving them \$150,000.

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, “even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security.” ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, 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. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

Based on the evidence and the foregoing considerations, I conclude that AG ¶¶ 7(a), (b) and (d) are established. However, AG ¶ 7(e) is not established. The evidence shows that Applicant does not "maintain" a bank account in the PRC. He transferred the money to an account maintained by his wife's youngest sister for the benefit of his wife's family. Similarly, he has transferred the money in his German bank account to another account held by his father and his brother. He has refuted the allegations in SOR ¶¶ 1.e and 1.f, because he no longer holds those financial interests.

Four mitigating conditions are relevant:

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.;

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;

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; and

AG ¶ 8(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) is not established. Applicant has been married for 22 years. While he has rebutted the presumption that he has ties of affection for his wife's family members in the PRC, he has not rebutted the presumption that he has ties of obligation to them. He visited them for about 20 days on three occasions and gave them \$150,000.

Applicant's ties to India are related primarily to his business interests in that country, except for the relationship with the ambassador, which appears to be casual and based in large part on the ambassador's familial relationship with Applicant's business partner. Both the PRC and India engage in economic and industrial espionage and illegal trafficking in restricted U.S. technology.

AG ¶ 8(b) is established because of Applicant's deep and longstanding relationships and loyalties in the United States. He is a U.S. citizen by choice, not by birth. He has lived continuously in the United States since 1986. He has been a citizen since 2000, and his children are native-born U.S. citizens. The source of his wealth is in the United States. None of his immediate family members are citizens or residents of the PRC. He has held a security clearance since April 2003, apparently without incident.³

Applicant's wife of 22 years has been a U.S. citizen for almost 20 years. She left the PRC in the late 1980s to attend graduate school and never returned, except to visit her family. She is the mother of two children who are native-born U.S. citizens. Her professional future is in the United States. She demonstrated her loyalty to her family in the United States when she gave up her position at a university to be with her family. She recently received a security clearance, indicating that security officials at some level concluded that she would likely resist any efforts at coercion, exploitation, duress, or influence by PRC agents.

On the other hand, Applicant's level of education and expertise in aerospace technology make him a prime target for espionage or attempts at foreign influence. His wife, a well-educated U.S. citizen of Chinese ancestry, is a prime target for PRC intelligence agencies seeking to exploit her family connections and possible sympathy toward the PRC. Nevertheless, an indirect-influence effort directed at Applicant through his wife would fail unless Applicant's wife agreed to cooperate, notwithstanding her longstanding ties to the United States. Even if she agreed to cooperate, the effort would fail unless she convinced Applicant to set aside his longstanding ties and loyalties to the United States and act to his country's detriment. Based on all the evidence, I am satisfied that Applicant would resolve any conflict of interest between the interests of his in-laws in the PRC in favor of the United States.

Applicant's foreign travel to the PRC, India, and other countries also makes him vulnerable to surveillance, espionage, or direct coercion, but I am satisfied that he would resist any efforts at direct coercion. He presented himself as careful, conscientious, and meticulous in his SCA, responses to DOHA interrogatories, and testimony at the hearing, making him unlikely to negligently fall victim to covert surveillance or monitoring.

³ Except for cases involving compliance with security procedures in dangerous, high-risk circumstances, a prior history of complying with security procedures is of relatively low probative value for the purpose of mitigating the security concerns raised by family ties to a foreign country. See ISCR Case No. 06-25928 at 4 (App. Bd. Apr. 9. 2008).

Applicant's financial interests in India are modest, especially in comparison to his business interests in the United States and his estimated net worth of \$5,000,000. He does not entrust the Indian company or its officers with classified or sensitive information. His primary business partner is a native of India but is now a citizen and resident of the United States. He has only a business relationship with the other officers of the Indian company. I am satisfied that he would resolve any conflict of interest involving his Indian company or business associates in favor of the United States.

AG ¶ 8(c) is established for Applicant's in-laws in the PRC, because he cannot communicate with them. It is not established for Applicant's business associates in India, with whom he communicates regularly. It is established for Applicant's relationship with the Indian ambassador, with whom he has not communicated since 2008.

AG ¶ 8(d) is established. As noted above, Applicant does not own or control the bank accounts in the PRC and Germany. His business interests in India, while important, constitute a very small percentage of his business holdings. He has demonstrated by his generosity to his PRC in-laws, German family members, and friends in financial need that he is not motivated by money. He has given away substantially more money than he has invested in his business in India.

Whole-Person Concept

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. In applying the whole-person concept, an 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. An 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.

I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a well-educated, highly intelligent scientist and businessman. He is generous and has a strong sense of duty. Both he and his wife were candid, sincere,

and credible at the hearing. He was granted a clearance almost three years after he was married, indicating that any security concerns about his wife's family members in the PRC at that time were mitigated. Applicant's prior security clearance application is not part of the record before me. Thus, I cannot determine whether his travel to the PRC in June-July 2002 preceded his submission of a security clearance application and was known to the security officials who granted his clearance. In any event, the only additional facts relevant to the question whether his clearance should be continued are his visits to the PRC and the \$150,000 gift to his wife's family about five years ago. When foreign travel is solely for the purpose of visiting family members, it ordinarily has no independent security significance. See ISCR Case No. 02-26978 (App. Bd. Sep 21, 2005).

Applicant's wife received a security clearance in June 2011, but the decision to grant Applicant's wife a security clearance does not require a similar decision for Applicant. It has some persuasive value, but is not binding on my decision. The JPAS documentation of the clearance reflects that her family connections were disclosed, presumably were considered by security officials, and determined to be mitigated. The security determination regarding Applicant's wife's trustworthiness, reliability, and good judgment, notwithstanding her family ties to the PRC, attenuates the likelihood that she would be a knowing conduit for indirect influence exercised on Applicant.

The Government is not estopped from denying an application to continue an existing clearance when there have been changes in the law or a modification of significant facts. See, e.g., ISCR Case No. 03-00112 (App. Bd. Aug 10, 2004; ISCR Case No.01-19823 (App. Bd. Dec. 3, 2003); ISCR Case No. 01-24504 (App. Bd. Feb. 1, 2003). However, little has changed regarding Applicant's vulnerability to foreign influence since he received a clearance in April 2003. Nevertheless, as recognized by the Supreme Court in *Egan, supra*, there is no right to a security clearance. Consequently, "A decision to grant a security clearance to an applicant does not give the applicant any vested right or entitlement in keeping a security clearance. A prior grant of a security clearance does not preclude the federal government from considering, at a future date, whether to continue that grant or to revoke it." ISCR Case No. 99-0519 (App. Bd. Feb. 23, 2001); see also ISCR Case No. 99-0481 (App. Bd. Nov. 29, 2000). Thus, I have given little weight to the fact that Applicant received a clearance in April 2003, and I have evaluated *de novo* his current suitability for a security clearance.

After weighing the disqualifying and mitigating conditions under Guideline B, evaluating all the evidence in the context of the whole person, and mindful of my obligation to resolve close cases in favor of national security, I conclude Applicant has mitigated the security concerns based on foreign influence. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to continue his eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline B (Foreign Influence): FOR APPLICANT

Subparagraphs 1.a-1.f: For Applicant

Conclusion

I conclude that it is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

LeRoy F. Foreman
Administrative Judge