



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



In the matter of: )  
)  
) ISCR Case No. 12-00058  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Chris Morin, Esquire, Department Counsel

For Applicant: *Pro Se*

1/23/2013

**Decision**

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings, testimony, and exhibits, I conclude that Applicant failed to mitigate the Government's security concerns under the foreign influence adjudicative guideline. His eligibility for a security clearance is denied.

**Statement of the Case**

On August 18, 2011, Applicant signed and certified an Electronic Questionnaire for Investigations Processing (e-QIP). On September 5, 2012, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, Foreign Influence. DOD 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) effective within DOD for SORs issued after September 1, 2006.

On October 10, 2012, Applicant answered the SOR, provided additional information, and requested a hearing before an administrative judge at the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on November 6, 2012. I convened a hearing on December 5, 2012, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

The Government called no witnesses and introduced one exhibit (Ex. 1), which was admitted without objection. The Government offered for administrative notice a summary memorandum containing facts about the People's Republic of China (China) as found in 12 official U.S. Government documents. The Government also provided for administrative notice the 12 source documents from which the facts in the summary memorandum were derived. I marked the Government's summary memorandum as Hearing Exhibit (HE) 1. Applicant did not object to my taking notice of the facts about China in the summary memorandum or in the source documents.

Applicant testified on this own behalf and called no witnesses. At the hearing, he introduced two exhibits, which were identified as Ex. A and Ex. B. Ex. A, a letter of character reference, was admitted without objection. Applicant's Ex. B was an article from a popular magazine about the business activities in China of a relative of a high U.S. official. I did not admit Ex. B. Applicant offered a number of DOHA decisions in Guideline B cases for administrative notice. I marked these documents as HE 2. DOHA received the transcript (Tr.) of the hearing on December 13, 2012.

### **Findings of Fact**

The SOR contains three allegations under AG B, Foreign Influence (SOR ¶¶ 1.a. through 1.c.). In his Answer to the SOR, Applicant admitted the three allegations and provided additional information. Applicant's admissions are admitted as findings of fact.

After a thorough review of the record in the case, including Applicant's testimony, all exhibits, all relevant policies, and the applicable adjudicative guideline, I make the following findings of fact:

Applicant is 59 years old, and since 2008, he has been employed as a database administrator by a government contractor. In 2003, Applicant was denied a security clearance in a DOHA adjudication, which he appealed.<sup>1</sup> The Appeal Board decision affirmed the administrative judge's denial of a security clearance. Applicant now renews

---

<sup>1</sup> See ISCR 02-06723 (App. Bd. Sep. 15, 2003).

his request for a security clearance and asserts changed circumstances.<sup>2</sup> (Ex. 1; Tr. 15, 55.)

Applicant was born and raised in the People's Republic of China (China). After completing his secondary education, he did farm work, as required by the Chinese Communist government. He then enrolled in a teachers' college, and upon graduation, taught in a middle school in China. Later, he became interested in computers, and he went to work for a computer company. In 1985, when he was 32 years old, he immigrated to the United States. In 1988, Applicant earned a master's degree at a U.S. university. He became a naturalized U.S. citizen in 1998. (Ex. 1; Tr. 50-52.)

Applicant has been married three times. He married his first wife, a citizen of China, in 1981 in China. Applicant's first wife came to the United States sometime before he arrived in 1985. They divorced in China in 1987. (Ex. 1; Tr. 56-57.)

In 1997, Applicant traveled to China, where he married his second wife, a citizen and resident of China. She remained in China. Applicant and his second wife divorced in 1999. (Ex. 1; Tr. 72-73.)

In 2001, Applicant married for a third time. His third wife was also born in China. She is now a U.S. citizen. Applicant and his third wife are the parents of an 11-year-old daughter, who was born in the United States and is a U.S. citizen. (Ex. 1; Tr. 35-36.)

Applicant's father is no longer living. The SOR asserts at ¶ 1.a. that Applicant's mother is a citizen and resident of China. Applicant stated that his mother, a retired physician, is approximately 85 years old and suffering from poor health, including dementia. In 2005 and in 2010, Applicant traveled to China to visit his mother when her failing health required hospitalization. (Ex. 1; 31-32, 49.)

Before Applicant's mother began to suffer from dementia, he spoke with her on the telephone about three times a year. Since his last visit in 2010, Applicant has had little contact with his mother. (Tr. 61-62.)

Applicant does not believe his mother receives a pension from the Chinese government. Instead, he surmises that because some hospitals in China were privatized, she receives a private pension from the hospital that employed her. (Tr. 54-56.)

The SOR alleges at ¶ 1.b. that Applicant's brother is a citizen and resident of China. Applicant's younger brother is 57 years old and married. Applicant believes his brother works as a salesman for small companies in China. When Applicant's mother was in better health, Applicant spoke with his brother about three times a year.

---

<sup>2</sup> Applicant stated that since his 2003 adjudication, his father died and his sister immigrated to the United States. (Tr. 15-16.)

Sometimes his brother calls Applicant to inform him of their mother's health condition. Applicant's last telephone contact with his brother was in January 2012. (Tr. 63-65.)

Applicant's brother has not served in the Chinese military. Applicant's brother's wife and daughter have moved to another Asian country where the daughter is attending college. Applicant's brother has remained in China. (Tr. 65-66.)

The SOR alleges at ¶ 1.c. that Applicant's sister is a citizen and resident of China. In China, Applicant's sister worked as an engineer or technician. Applicant believes his sister and her husband may have worked for an entity of the Chinese government. In July 2012, Applicant's sister immigrated to the United States with her husband and son.<sup>3</sup> Applicant's sister, a citizen of China, now has legal resident alien status in the United States. She continues to hold a Chinese passport, and she is working as a nanny for a Chinese family. Before she moved to the United States, Applicant spoke on the telephone with his sister about three times a year. (Tr. 31, 43-49.)

Applicant testified that he does not own any property in China. He estimated that the home he owns in the United States has a value of \$850,000. He feels that his loyalties are to the United States and not to China. (Tr. 35-41.)

Between 1994 and 2000, Applicant traveled to China five times. The human resources manager at the company where Applicant works as a government contractor provided a letter of character reference for Applicant. She reported that she observes his work on a daily basis and considers him to be reliable, accountable, and hard working. (Ex. A; Tr. 76-77.)

I take administrative notice of the following facts, which appear in official U.S. government documents:<sup>4</sup>

China has an authoritarian, Communist government and powerful military forces, including strategic nuclear missiles. China is geographically vast, and has a population of over a billion people. It has significant resources and an economy that in recent years has expanded about 10% per year. China aggressively competes with the United States in many areas. China's competitive relationship with the United States exacerbates the risk posed by Applicant's connections to family members living in the China.

In China, reported human rights problems include suppression of political dissent, arbitrary arrest and detention, forced confessions, torture, and mistreatment of

---

<sup>3</sup> In his answer to the SOR, Applicant stated that his sister immigrated to the United States in September 2012. He corrected this information at his hearing. (Tr. 31, 42.)

<sup>4</sup> The facts in the administrative notice narrative are from the Department Counsel's documents submitted for Administrative Notice. See HE 1.

prisoners. The Chinese government also monitors communications devices, such as telephones, telefaxes, and internet servers.

China actively collects military, economic, and proprietary industrial information about the United States for the following reasons: (1) its position as a global power; (2) its military, political, and economic investments in the Pacific Rim and Asia; and (3) its leading role in the development of advanced technology that it desires for economic growth. China's active intelligence-gathering programs focus on sensitive and protected U.S. technologies. Chinese intelligence services and private companies frequently try to target Chinese citizens or individuals with family ties to China who can "use their insider access to corporate networks to steal secrets using removable media devices or e-mail."<sup>5</sup> Department Counsel's summary at 4. Additionally "Chinese attempts to collect U.S. technological and economic information will continue at a high level and will represent a growing and persistent threat to U.S. economic interests."<sup>6</sup>

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "no 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 an applicant's 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 and modified.

When evaluating an applicant's suitability for a security clearance, an 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 used 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 these guidelines 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

---

<sup>5</sup> U.S.-China Economic and Security Review Commission, *2009 Report to Congress*, dated November 2009 (*U.S.-China ESRC 2009 Report*, at 13).

<sup>6</sup> U.S. Department of Defense, Office of the Secretary of Defense, *Annual Report to Congress: Military and Security Developments Involving the People's Republic of China 2012* (OSD 2012 Annual Report - PRC Developments) at 10.

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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion in seeking to obtain 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 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).

## **Analysis**

### **Foreign Influence**

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United

States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 indicates 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; and

(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(a) and 7(b) are raised in this case. Applicant, his mother, his brother, and his sister were born in China. Applicant's mother and his brother are citizens and residents of China. Applicant is a good son and solicitous of his mother, who is elderly and suffering from dementia. In 2005 and 2010, he returned to China to visit his mother when she fell ill. Before his mother suffered from dementia, Applicant was in contact with her by telephone several times a year. He remains in contact with his brother, who keeps him apprised of his mother's health.

Until recently, Applicant's sister was a citizen and resident of China. In July 2012, however, she immigrated to the United States with her husband and son. She has resident alien status and retains her Chinese passport. Applicant's sister and her family do not live with Applicant and his family, and her presence in the United States diminishes but does not extinguish the possibility of foreign exploitation or coercion.

However, Applicant's relationship with his mother and brother in China is sufficient to create "a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion." These relationships with residents and citizens of China create a potential conflict of interest between Applicant's "obligation to protect sensitive information or technology and [his] desire to help" family members who are in China.

The mere possession of close family ties with a family member living in China is not, as a matter of law, disqualifying under Guideline B. However, if an applicant has a close relationship with even one relative living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See *Generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion or inducement. 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 collection operations against the United States. The relationship of China with the United States places a significant, but not insurmountable, burden of persuasion on Applicant to demonstrate that his contacts with his family members living in China do not pose a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.

While there is no evidence that intelligence operatives from China seek or have sought classified or economic information from or through Applicant or his family members living in China, it is not possible to rule out such a possibility in the future. Applicant's relationships with family members create a potential conflict of interest because these relationships are sufficiently close to raise a security concern about his desire to assist his family members living in China, in the event they should be pressured or coerced by agents of the Chinese government or intelligence services for sensitive or classified information. Department Counsel produced substantial evidence of Applicant's contacts with his mother and brother living in China and has raised the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a) and 7(b) apply.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

(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;

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and



(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

AG ¶¶ 8(a) and 8(c) have limited applicability. Applicant traveled to China five times between 1994 and 2000. He was married and divorced twice in China. When his mother fell ill in 2005 and 2010, he traveled to China to be with her. Applicant has had consistent contact with his mother and brother, both of whom live in China. Although his connections to his mother and brother in China are infrequent, Applicant is not able to fully meet his burden of showing there is “little likelihood that [his relationships with relatives who are Chinese citizens] could create a risk for foreign influence or exploitation” because of China’s aggressive pursuit of classified and sensitive U.S. information.

AG ¶ 8(b) partially applies. A key factor in the AG ¶ 8(b) analysis is Applicant’s “deep and longstanding relationships and loyalties in the U.S.” Applicant has strong family connections to the United States. His young daughter is a U.S. citizen and his wife is a naturalized U.S. citizen. He owns a house in the United States; he has lived and worked in the United States since 1985; and he has been a U.S citizen since 1998.

Applicant’s relationship with the United States must be weighed against the potential conflict of interest created by his relationships with his family members who live in China. He is filial and attentive to his mother, and he communicates with his brother, particularly on the status of his mother’s health. There is no evidence, however, that terrorists, criminals, the Chinese government, or those conducting espionage have approached or threatened Applicant or his family in China to coerce Applicant or his family for classified or sensitive information. As such, there is a reduced possibility that Applicant or Applicant’s family would be specifically selected as targets for improper coercion or exploitation. While the Government does not have any burden to prove the presence of such evidence, if such record evidence were present, Applicant would have a heavy evidentiary burden to overcome to mitigate foreign influence security concerns. It is important to be mindful of the United States’ recent relationship with China, and especially China’s systematic human rights violations. China’s conduct makes it more likely that it would attempt to coerce Applicant through his family living in China, if it determined it was advantageous to do so.

AG ¶¶ 8(d) and 8(e) do not apply. The U.S. Government has not encouraged Applicant’s involvement with family members living in China. Applicant is not required to report his contacts with family members living in China.

AG ¶ 8(f) has minimal applicability. Applicant has substantial property interests in the United States, which include his employment and the value of his home. However, this mitigating condition can only fully mitigate security concerns raised under AG ¶ 7(e), and AG ¶ 7(e) is not raised in this case.

In sum, the primary security concern is Applicant's close relationship with his mother and brother who are citizens and residents of China and who are readily available for coercion. The Chinese government's history of espionage (especially industrial espionage) against the United States and its failure to follow the rule of law further increase the risk of coercion.

Nothing in Applicant's answers to the Guideline B allegations in the SOR suggested he was not a loyal U.S. citizen. Section 7 of Executive Order 10865 specifically provides that industrial security clearance 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."

### **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 the whole-person concept and all the facts and circumstances surrounding this case. Applicant is a talented, honorable, and hard-working U.S. citizen. He is considered to be a valued employee. He sought to use his experience, skills, and knowledge to serve his adopted country, and he sought a security clearance as a government contractor.

Applicant is attentive and devoted to his mother, a retired physician, who is a citizen and resident of China. He stays in touch with his younger brother in China in order to learn of his mother's health condition. He is an admirable family member. However, while security concerns about his contacts with his sister have been extenuated by her immigration to the United States and her status as a U.S. resident alien, he failed to extenuate or mitigate the security concerns raised by his contacts and relationships with his mother and brother, who are citizens and residents of China, a

country that poses “an extraordinary threat to the national security, foreign policy, and economy of the United States.”

Overall, the record evidence leaves me with questions and doubts as to Applicant’s eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising under the foreign influence adjudicative guideline.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the amended SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a. and 1.b.:	Against Applicant
Subparagraph 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. Eligibility for access to classified information is denied.

---

Joan Caton Anthony  
Administrative Judge