



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



In the matter of:)
)
) ISCR Case No. 12-04461
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: William H. Henderson, Personal Representative

11/21/2016

Decision

HARVEY, Mark, Administrative Judge:

Applicant was born in the United States and educated through the bachelor's degree level in the United States. From 2003 to 2010, he lived in China, and he received a master's degree. After leaving China, his connections to China have been very limited, and he has not had contact with anyone who is a citizen and resident of China since 2010. Foreign influence security concerns are mitigated. Access to classified information is granted.

Statement of the Case

On January 3, 2011, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) version of a security clearance application (SF 86). (Government Exhibit (GE) 1) On February 28, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant, under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), which became effective on September 1, 2006.

The SOR alleged security concerns under Guideline B (foreign influence). (Hearing Exhibit (HE) 2) The SOR detailed reasons why the DOD CAF was unable to find that it is clearly consistent with the national interest to grant Applicant access to classified information and recommended referral to an administrative judge to determine whether Applicant's clearance should be granted or denied. (HE 2)

On May 7, 2016, Applicant responded to the SOR allegations and requested a hearing. (HE 3) On August 8, 2016, Department Counsel was ready to proceed. On August 30, 2016, the case was assigned to me. On October 4, 2016, the Defense Office of Hearings and Appeals (DOHA) issued a hearing notice setting the hearing for October 28, 2016. (HE 1) Applicant's hearing was held as scheduled. Department Counsel offered three exhibits into evidence; Applicant offered two exhibits into evidence; and all exhibits were admitted into evidence without objection. (Tr. 16, 21-22; Government Exhibits (GE) 1-3; Applicant Exhibits (AE) A-B) On November 7, 2016, DOHA received the transcript of the hearing.

Procedural Rulings

At the hearing, Department Counsel requested administrative notice of facts concerning China (AN). (Tr. 16; HE 4) Department Counsel's AN listed five supporting documents to show detail and context for those facts. (HE 4 at 4-5, Items I-V) Applicant objected to the AN request because much of the AN notice information pertained to attempts of Chinese intelligence services to influence person's born in China, with relatives in China, or persons of Chinese descent. (Tr. 18-19; AE A) Applicant was not born in China, has no relatives in China, and is not of Chinese descent. I sustained the objection to the part of the AN request indicating a foreign influence concern arising from persons born in China, with relatives in China, or persons of Chinese descent. I overruled the remainder of Applicant's relevance objection. (Tr. 19) There were no other objections, and I granted the AN request. (Tr. 19-20; HE 4) Department Counsel's request for AN is quoted in the fourth through sixth paragraphs without introduction, quotation marks, brackets, and footnotes in the section labeled "China," *infra*. The information pertained to attempts of Chinese intelligence services to influence person's born in China, with relatives in China, or persons of Chinese descent were retained in the China section for completeness, but were not considered. A brief paragraph is substituted for the last paragraph of the administrative notice request.

The first paragraph in the China section is from the U.S. Dept. of State website, "Background Note, China," (September 6, 2011), <http://www.state.gov/outofdate/bgn/china/189475.htm>. (HE 5) The second and third paragraphs are taken verbatim from the U.S. Dept. of State website, "U.S. Relations with China, Fact Sheet," (January 21, 2015), <http://www.state.gov/r/pa/ei/bgn/18902.htm>. (HE 6) The parties had no objection to me taking AN of some of the contents of these two documents. (Tr. 20-21)

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization*

Service, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). Usually administrative notice at ISCR proceedings is accorded to facts that are either well known or from government reports. See Stein, *ADMINISTRATIVE LAW*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

Findings of Fact¹

Applicant admitted in part the allegations in SOR ¶¶ 1.a and 1.c. He admitted the allegations in SOR ¶¶ 1.d and 1.e. He denied the allegation in SOR ¶ 1.b. He also provided extenuating and mitigating information. Applicant's admissions are accepted as findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is a 38-year-old policy analyst who has worked for the same DOD contractor for six years. (Tr. 23; SOR response at 6; GE 3 at 9) He was born in the United States, and he has resided 31 years in the United States and 7 years in China. (Tr. 23) He attended school through the bachelor's degree level in the United States. (Tr. 23-24) He lived in China from 2003 to 2010. In 2010, he returned to the United States to enroll in a Ph.D. program and to begin employment with his current employer. (Tr. 25) In 2014, he received a Ph.D. in policy analysis. (Tr. 46; GE 3 at 8) In 2015, he married, and he does not have any children. (SOR response at 7)

Foreign Influence

In 2003, Applicant moved to China to teach English, to learn Chinese, and to enhance his career. (Tr. 24; GE 3 at 2) At times he was employed by companies in China or at Chinese schools to teach English. (Tr. 25, 44; SOR response ¶ 1.e; GE 3 at 3-4) In 2008, he received a master's degree in China. (Tr. 46; GE 3 at 5) He has not received any contacts from any Chinese companies since he left China in 2010. (Tr. 39)

When Applicant lived in China, he associated with numerous citizens and residents of China, including an officer of the People's Liberation Army (PLA). (SOR response ¶¶ 1.a and 1.c) He met a PLA officer while attending a Chinese university; however, he has not had any contact or communication with him after 2010. (Tr. 31) In 2008, he had a brief discussion with a person who was a member of the Chinese Foreign Ministry at a dinner in China; however, he did not have any contact with him after that dinner. (Tr. 32; SOR response ¶ 1.b)

In 2007, and in 2009, he received Chinese Government scholarships totaling \$8,700. (Tr. 38, 45; SOR response ¶ 1.d) Those scholarships were available to any foreign student and did not entail acceptance of any obligations or conditions to the Chinese Government. (Tr. 38-39)

¹The facts in this decision do not specifically describe employment, names of witnesses, or locations in order to protect Applicant and her family's privacy. The cited sources contain more specific information. Unless stated otherwise, the sources for the facts in this section are from Applicant's SF 86. (GE 1)

Applicant has not returned to China since 2010. (Tr. 26; GE 3 at 12) Applicant disclosed his Chinese contacts in his SCA and in a December 2011 affidavit. (Tr. 27-28; GE 1; GE 3) In the last several years, he received security-related training. (Tr. 28-29) In 2010, Applicant received an email from someone in China asking to be put in touch with Applicant's employer; Applicant did not respond to the email; and he reported the email to security. (Tr. 29-30; SOR response at 4) He promised to report any future contacts from citizens and residents of China to security. (Tr. 30)

Applicant has not had contacts with any citizens and residents in China since 2010. He acknowledged that he has friends or associates who are nationals of China who live in the United States and either are married to U.S. citizens, are colleagues at work, or attend U.S. universities. (Tr. 32-36; SOR response, Ex. A) Applicant does not have any family members who are citizens or residents of China. (Tr. 24)

Applicant has two Chinese bank accounts with minimal amounts of funds in them (less than \$50 total). (Tr. 40) He is unable to close the accounts without returning to China. (Tr. 40) He offered to return to China to close the accounts if that would alleviate remaining security concerns. (SOR response, Ex. B)

Connections to the United States

Applicant's parents and sister are citizens and residents of the United States, and he has frequent contact with them. (Tr. 42, 47) He has six aunts and uncles and six first cousins who are citizens and residents of the United States. (Tr. 47-50) His spouse, who is a speech therapist, was born in the United States, and her brother is a U.S. citizen. (Tr. 48-49; SOR response at 7) His spouse's parents were born in South Korea; they are naturalized U.S. citizens; and they reside in the United States. (SOR response at 7) Applicant and his spouse's net worth in the United States is about \$450,000. (Tr. 49)

Character Evidence

Applicant's colleagues at work and graduate school, faculty at graduate school, and friends, who have known Applicant professionally and socially for many years, provided statements supporting his access to classified information. (SOR response, Ex. C-H; AE B) The general sense of Applicant's character statements is that Applicant is diligent, intelligent, honest, reliable, responsible, conscientious about security, and exclusively loyal to the United States. (SOR response, Ex. C-H; AE B)

China

China has powerful military forces, including strategic nuclear missiles. China is geographically vast, and has a population of 1.3 billion people. It has significant resources and an economy that in recent years has rapidly expanded. China aggressively competes with the United States in many areas. China's competitive relationship with the United States exacerbates the risk posed by an applicant's connections to family members living in the China.

The United States seeks to build a positive, cooperative, and comprehensive relationship with China by expanding areas of cooperation and addressing areas of disagreement, such as human rights and cybersecurity. The United States welcomes a strong, peaceful, and prosperous China playing a greater role in world affairs and seeks to advance practical cooperation with China. The annual Strategic and Economic Dialogue (S&ED) has served as a unique platform to promote bilateral understanding, expand consensus, discuss differences, build mutual trust, and increase cooperation. The strategic track of the S&ED has produced benefits for both countries through a wide range of joint projects and initiatives and expanded avenues for addressing common regional and global challenges such as proliferation concerns in Iran and North Korea, tensions between Sudan and South Sudan, climate change, environmental protection, and energy security. The United States has emphasized the need to enhance bilateral trust through increased high-level exchanges, formal dialogues, and expanded people-to-people ties. On November 10, 2014, President Obama announced a reciprocal visa validity arrangement with China, increasing the validity of short-term tourist and business visas issued to each other's citizens from one to ten years, and increasing the validity of student and exchange visas from one to five years. The U.S. approach to China is an integral part of reinvigorated U.S. engagement with the Asia-Pacific region.

The U.S. approach to its economic relations with China has two main elements: integrating China into the global, rules-based economic and trading system and expanding U.S. exporters' and investors' access to the Chinese market. Two-way trade between China and the United States has grown from \$33 billion in 1992 to over \$562 billion in goods in 2013. China is currently the third largest export market for U.S. goods (after Canada and Mexico), and the United States is China's largest export market. The stock of U.S. foreign direct investment (FDI) in China was \$61 billion in 2013, up from \$54 billion in 2012, and remained primarily in the manufacturing sector. During the economic track of the July 2014 S&ED, the two countries announced measures to strengthen macroeconomic cooperation, promote open trade and investment, enhance global cooperation and international rules, and foster financial stability and reform. For more information see <http://www.treasury.gov/initiatives/Pages/china.aspx>.

The U.S. Department of State warns visitors to China that they may be placed under surveillance. Hotel rooms (including meeting rooms), offices, cars, taxis, telephones, Internet, usage, and fax machines may be monitored onsite or remotely, and personal possessions in hotel rooms, including computers, may be searched without travelers' knowledge or consent. Additionally, on occasion in recent years, citizens of the United States and other countries visiting or resident in China have been interrogated or detained for reasons said to be related to state security. In such circumstances, travelers could face arrest, detention or an exit ban prohibiting their departure from China for a prolonged period. Dual U.S.-Chinese nationals and U.S. citizens of Chinese heritage may be at a higher risk of facing such special scrutiny.

The National Counterintelligence Executive has identified China and Russia as the most aggressive collectors of U.S. economic information and technology. China's intelligence services, as well as private companies and other entities, frequently seek to exploit Chinese citizens or persons with family ties to China who can use their insider

access to corporate networks to steal secrets using removable media devices or email. China uses a variety of methods to acquire foreign military and dual-use technologies, including cyber activity and exploitation of the access of Chinese nationals—such as students or researchers—acting as procurement agents or intermediaries. China very likely uses its intelligence services and employs other illicit approaches that violate U.S. laws and export controls to obtain key national security and export-restricted technologies, controlled equipment, and other materials unobtainable through other means.

The U.S. Department of Justice maintains a summary of recent major U.S. export enforcement, economic espionage, trade secret and embargo-related criminal cases that have been prosecuted following investigation by the Homeland Security Investigations (HSI), the Federal Bureau of Investigation (FBI), the Department of Commerce's Bureau of Industry and Security (BIS), among other agencies. In recent years, these cases include actual or attempted espionage, procurement and/or illegal export of sensitive military technology to China, including proprietary documents setting forth information used in developing titanium for U.S. military aircraft; drone, missile and stealth technology; dual-use pressure transducers that can be used to produce weapons-grade uranium; military sensors that the U.S. does not allow to be exported to China; military software used for China's first modern attack helicopter; and firearms, among other sensitive military technologies.

With respect to human rights concerns observed in China in 2015, the U.S. Department of State reported a long list of human rights violations which make it clear that the Chinese Communist Party will violate numerous human rights standards to gain political, economic, or military advantage from extrajudicial killings to various violations of due process.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "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 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.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied 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 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 “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, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It 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. 95-0611 at 2 (App. Bd. May 2, 1996).

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 ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[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

Foreign Influence

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

[I]f the individual has divided loyalties or foreign financial interests, [he or she] 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.

Applicant lived in China from 2003 to 2010. He had contacts with citizens and residents of China that create a potential heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion because of the nature of the Chinese Government and its aggressive pursuit of intelligence information from the United States. His two financial accounts in China are worth less than \$50 and do not raise any security concern. The scholarships he received from the Chinese Government were provided to all foreign students and did not entail any obligation to China.

Applicant's relationships with residents of China create a concern about Applicant's "obligation to protect sensitive information or technology" and the possibility that he might aid citizens and residents of China. For example, if intelligence agents or government officials in China wanted to expose Applicant to coercion, they could exert pressure on his Chinese associates. Applicant would then be subject to coercion and classified information could potentially be compromised.

The nature of a nation's government, its relationship with the United States, its history of intelligence gathering, and its human rights record are relevant in assessing the likelihood that an applicant's associates 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, the applicant's associates are 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, and China's "history of conducting espionage against the United States puts a heavy burden of proof on Applicant" to demonstrate that his relationship with his Chinese associates does not pose a security risk. See ISCR Case No. 12-04780 at 3 (App. Bd. Nov. 13, 2013). Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist his Chinese associates.

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, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002).

While there is no evidence that intelligence operatives from any foreign country seek or have sought classified or economic information from or through Applicant or his Chinese associates, nevertheless, it is not possible to rule out such a possibility in the future. Applicant’s relationships with his Chinese associates create a potential conflict of interest because these relationships raise a security concern about his desire to assist his Chinese associates by providing sensitive or classified information. Department Counsel produced substantial evidence of Applicant’s contacts or relationships with his Chinese associates and of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a) and 7(b) are established, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists three conditions that could mitigate foreign influence security concerns in this case 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; 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.

The Appeal Board concisely explained Applicant’s responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant’s security clearance eligibility, there is a strong presumption against the grant or maintenance

of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.” Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

AG ¶¶ 8(a) through 8(c) apply. Applicant does not have frequent² contacts with anyone who is a citizen and resident of China. He has not communicated with anyone living in China since 2010. He has not visited China since 2010. He does not provide financial support to anyone living in China. There is “little likelihood that [his relationships with Chinese associates] could create a risk for foreign influence or exploitation.” His relationships with Chinese citizens living in the United States are not sufficiently close to cause a security risk.

There is no evidence that the Chinese government or those conducting espionage have approached or threatened Applicant or his Chinese associates for classified or sensitive information.³ As such, there is a reduced possibility that Applicant or his Chinese associates would be specifically selected as targets for improper coercion or exploitation.

While the U.S. Government does not have any burden to prove the presence of such evidence, if such record evidence were present, Applicant would have a heavier evidentiary burden to mitigate foreign influence security concerns. It is important to be mindful of the United States’ sizable financial and diplomatic investment in China. Applicant’s Chinese associates could become potential targets of intelligence agents because of Applicant’s support for the United States, and Applicant’s potential access to classified information could theoretically add some risk to his Chinese associates living in China.

Applicant has “deep and longstanding relationships and loyalties in the U.S.” His relationship with the United States must be weighed against the potential conflict of interest created by his relationships with his Chinese associates. He has significant connections to the United States and limited connections to China. Applicant was born in the United States, and he lived 31 of his 38 years in the United States. He was educated through the bachelor’s degree level in the United States; he received his master’s degree in China; and he received his Ph.D. in the United States. He has

²See ISCR Case No. 09-03114 at 2-3 (App. Bd. Oct. 22, 2010) (contact once a month is considered to be “frequent” under AG ¶¶ 7 and 8).

³There would be little reason for U.S. enemies to seek classified information from an applicant before that applicant has access to such information or before they learn of such access.

numerous relatives living in the United States, including his parents, spouse, in laws, aunts, uncles, and cousins. He does not have any relatives living in China.

Applicant's contacts in China are limited. Although, he had numerous Chinese associates when he lived in China from 2003 to 2010, after leaving China, he ended his contacts with his Chinese associates living in China. Security concerns are not analyzed in a piecemeal assessment. Instead, the overall situation must be considered. Applicant's 31 years of U.S. residence in the United States and his family living in the United States constitute much stronger connections to the United States than to China. In addition to their U.S. employment, Applicant and his spouse's net worth in the United States is about \$450,000. His economic connection to China is two bank accounts with a total of only \$50. He is not close to anyone who is vulnerable to potential Chinese coercion. He promised to report any contacts from residents of China to his security manager. Foreign influence security concerns under Guideline B are mitigated.

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 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 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.

There is some evidence supporting denial of Applicant's access to classified information. Applicant lived in China from 2003 to 2010, and he associated with numerous citizens and residents of China; however, Applicant is not close to, and has not communicated with, anyone who is a citizen and resident of China since 2010. Any connections to China must be carefully assessed for foreign influence security concerns. Applicant should not be placed into a position where Chinese government or intelligence officials could coerce him through his Chinese associates in an attempt to obtain classified information.

A Guideline B decision concerning a foreign country must take into consideration the geopolitical situation and dangers in that country including from intelligence agents.⁴ The danger of coercion from the Chinese government or intelligence agents is greater than in many other countries. China competes with the United States militarily, diplomatically, and through trade. China has a history of espionage targeting U.S. military and industrial secrets.

Applicant's close connections to the United States as described in the foreign influence section outweigh his connections to China. The general sense of Applicant's character statements is that Applicant is diligent, intelligent, honest, reliable, responsible, conscientious about security, and loyal to the United States.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude Applicant has mitigated the foreign influence security concern.

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: FOR APPLICANT

Subparagraphs 1.a through 1.e: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Mark Harvey
Administrative Judge

⁴ See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole person discussion).