



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-00528

**Appearances**

For Government: Tovah A. Minster, Esq., Department Counsel  
For Applicant: *Pro se*

11/30/2016

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant was born in the People's Republic of China (China). In 2006, when she was 22 years old, she entered the United States and became a naturalized U.S. citizen in 2012. She has frequent contact with her parents, who are citizens and residents of China. She visited her parents or they visited her eight times from 2009 to 2016. Her parents are aware that she works at a sensitive military installation. Foreign influence security concerns are not mitigated. Access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on August 20, 2012. After reviewing it and the information gathered during a background investigation, the Department of Defense (DOD) was unable to make an affirmative decision to grant Applicant a clearance. On August 8, 2015, the DOD Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline B (foreign influence).<sup>1</sup> Applicant answered the SOR on October 7, 2015, and

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<sup>1</sup> DOD acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines*

requested a hearing before an administrative judge. The case was assigned to me on April 13, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 2, 2016, scheduling a hearing for May 31, 2016.

At the hearing, the Government offered two exhibits (GE 1 and 2). Applicant testified, and submitted 14 exhibits (AE) 1 through 14. All exhibits were admitted into the record without objections. GE 2 was made part of the record for the limited purpose of taking administrative notice, but not admitted as evidence. DOHA received the hearing transcript (Tr.) on June 7, 2016.

### **Procedural Rulings**

Department Counsel requested I take administrative notice of facts concerning the government of China. (GE 2) There were no objections, and I took administrative notice as requested. Department Counsel's proposed administrative notice is quoted in the section labeled, "China," *infra*.

### **Findings of Fact**

In her response, Applicant admitted the allegations in SOR ¶¶ 1.a and 1.b. Applicant's admissions are incorporated into my findings of fact. She also provided extenuating and mitigating information. After a complete and thorough review of the evidence of record, I make the following additional findings of fact:

Applicant is a 32-year-old financial analyst at a DOD research center, who has worked for the same DOD contractor since 2012. She received her bachelor's degree in petroleum engineering in China in 2006. She is enrolled in a master's degree in business administration at a U.S. university. Her current grade point average in her master's program is 4.0. (AE 11) This is her first SCA.

Applicant's husband immigrated to the United States in 1993, at age 10. In 2002, he went to China to stay with his aunt. Applicant was living in the same apartment complex as he was and they started dating. He went to China several times for periods of up to about two months after coming to the United States. He did not study in China. He became a naturalized U.S. citizen in 1998. He is self-employed in a recreational business. Prior to his current employment, his business was involved with vending machines.

In 2006, Applicant moved to the United States when she was 22 years old. She became a naturalized U.S. citizen in 2012. (AE 4) She was not employed in China before moving to the United States. Applicant married in the United States in 2006. Her two children were born in the United States; and her children are ages three and seven. (AE 1, AE 2, AE 3) Applicant and her spouse own two residential properties in the

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*for Determining Eligibility for Access to Classified Information (AG), implemented by the DOD on September 1, 2006.*

United States. She owns two U.S. retirement accounts, and she has a checking and retirement account in the United States. (AE 7-10) She testified that she does not own any property or have any financial interests in China. (Tr. 54)

Applicant's mother, who is 59 years old, and her father, who is 60 years old, are citizens and residents of China. Her mother was a government employee involved in collecting taxes. Her father was a train conductor (engineer). Her parents are retired. They own two condominiums in China. Applicant's communications with them pertain to family matters and not to her work. She communicates with them two to four times a month. Her parents are aware that she works at a sensitive military installation in finance and accounting. Applicant does not have any siblings. She has not remained in contact with her friends from college.

Applicant traveled to China in 2009, 2010, 2012, 2014, and 2016. Her parents visited Applicant and her family in the United States in 2009, 2012, and 2013. (Tr. 51-52)

When Applicant became a U.S. citizen, her Chinese citizenship was revoked because China does not permit dual citizenship.<sup>2</sup> When Applicant requested a visa to visit China at the Chinese Embassy in 2012, they stamped cancel on her passport and cut the corner off of it. (AE 4)

A Navy commander is the deputy director of the division where Applicant works. He has known Applicant since September 2015, when he arrived in his assignment. He described Applicant's work as "impeccable," and he believes that she is a great person and very reliable. (Tr. 45)

Applicant's mother-in-law has a Ph.D. and has worked for the U.S. Army since 1992. She has held a top secret clearance for seven years. Her husband passed away 18 months ago after working for the federal government for 34 years. She believes Applicant has stronger roots in the United States than in China. Applicant is close to her family in the United States. (AE 14) Her loyalty to the United States is unquestionable.

Applicant's performance appraisal from February 2015 to February 2016 shows her excellent work and important contributions to accomplishment of her employer's mission. (AE 12) In April 2015, she received a promotion at work. (AE 13) She described herself as honorable, reliable, conscientious, diligent, trustworthy, and loyal to the United States and her family. Applicant believes that her life and future are in the United States.

## **China**

I take administrative notice of the following facts concerning the government of China: The National Counterintelligence Executive has identified China and Russia as

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<sup>2</sup> China does not recognize dual citizenship. See e.g., website Consulate General of the United States in Guangzhou, China, <http://guangzhou.usembassy-china.org.cn/acivufaq.html>.

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.

In assessing the military and security developments in China, the U.S. Department of Defense has reported that:

- Chinese actors are the world's most active and persistent perpetrators of economic espionage. 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 security. The nature of the cyber threat will evolve with continuing technological advances in the global information environment.
- China 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 not readily obtainable through commercial means or academia.
- China is using its computer network exploitation (CNE) capability to support intelligence collection against the U.S. diplomatic, economic, and defense industrial base sectors that support U.S. national defense programs. The information targeted could potentially be used to benefit China's defense industry, high technology, policymaker interest in U.S. leadership thinking on key China issues, and military planners building a picture of U.S. network defense networks, logistics, and related military capabilities that could be exploited during a crisis.
- China uses State-sponsored industrial and technical espionage to increase the level of technologies and expertise available to support military research, development, and acquisition.
- The organizational network of China's military-industrial complex is such that the People's Liberation Army (PLA) is able to access sensitive and dual-use technologies or knowledgeable experts under the guise of civilian research and development.
- China has in place a long-term, comprehensive military modernization program designed to improve its armed forces' capacity to fight short-duration, high-intensity regional conflicts and, as China's global footprint and international interests grow, its military modernization program has become progressively more focused on investments for a range of missions beyond China's periphery . . . .

In assessing the national security implications of the bilateral trade and economic relationship between the U.S. and China, the U.S.-China Economic and Security Review Commission has reported:

- Since at least the mid-2000s, the Chinese government has conducted large-scale cyber espionage against the United States. China has compromised a range of U.S. networks, including those of DoD, defense contractors, and private enterprises. China's material incentives for continuing this activity are immense and unlikely to be altered by small-scale U.S. actions.
- China's progress modernizing its defense industry is due in large part to China's substantial and sustained investment in defense research and development (R&D). China's large-scale, state-sponsored theft of intellectual property and proprietary information also has allowed China to fill knowledge gaps in its domestic defense and commercial R&D.
- Since the 1990s, China has promoted civil-military integration to facilitate the transfer of commercial technologies for military use. As part of this effort, China has encouraged civilian enterprises to participate in military R&D and production, sponsored research into dual-use science and technology, and developed common military and civilian technical standards.
- With the emergence of a more modern and able domestic defense industrial base, China is gradually shifting its focus from purchasing complete foreign systems to procuring foreign military and dual-use subsystems and components via open sources, trade, and traditional and nontraditional espionage. Among China's most effective methods used to acquire sensitive U.S. technology are cyber espionage, witting and unwitting collection by Chinese students, scholars, and scientists; joint ventures; and foreign cooperation.

With respect to human rights concerns observed in China in 2014, the U.S. Department of State reported:

- The Peoples Republic of China (PRC) is an authoritarian state in which the Chinese Communist Party (CCP) is the paramount authority. CCP members hold almost all top government and security apparatus positions.
- Repression and coercion were routine, particularly against organizations and individuals involved in civil and political rights advocacy and public interest issues, ethnic minorities, and law firms that took on sensitive cases.
- Human rights concerns that were observed during 2014 also included a wide variety of human rights violations from extrajudicial killings to various violations of due process . . . .

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 knowledge or consent.

## **Policies**

Eligibility for access to classified information may be granted “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. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

## 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 was born, raised, and educated in China. Applicant’s mother and father are citizens and residents of China. She is close to her parents and has either visited them or has been visited by them eight times from 2009 to 2016. Applicant has frequent<sup>3</sup> contact with her parents (she communicates with her parents two to four times a month). She does not provide financial support to any relatives living in China. She does not have any financial or property interests in China.

There is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members. *See generally* ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at \*8 (App. Bd. Feb. 20, 2002). Applicant has ties of affection for her parents as indicated by her frequent contact with them and their frequent visits from 2009 to 2016.

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<sup>3</sup> See 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).

Applicant's relationships with residents of China create a concern about Applicant's "obligation to protect sensitive information or technology" and her desire to help her relatives, who live in China. For example, if intelligence agents or government officials in China wanted to expose Applicant to coercion, they could exert pressure on her relatives residing in China. Applicant would then be subject to coercion through her relatives and classified information could potentially be compromised.

An applicant's possession of close family ties with family living in a foreign country are 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, its history of intelligence gathering, 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, and China's "history of conducting espionage against the United States puts a heavy burden of proof on Applicant" to demonstrate that her relationships with family members living in China do 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 she might be forced to choose between loyalty to the United States and a desire to assist relatives living in China.

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).

There is no evidence that intelligence operatives from any foreign country seek or have sought classified or economic information from or through Applicant or her relatives living in China. Nevertheless, it is not possible to rule out such a possibility in the future. Applicant's relationships with family members living in China create a potential conflict of interest because these relationships are sufficiently close to raise a security concern about her desire to assist relatives in China by providing sensitive or classified information. Department Counsel produced substantial evidence of Applicant's contacts or relationships with family living in China, and raised the issue of



potential foreign pressure or attempted exploitation. AG ¶¶ 7(a) and 7(b) are established and further inquiry is necessary about potential application of mitigating conditions.

AG ¶ 8 lists three 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; 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) and 8(c) have limited applicability. Applicant has frequent contact with her parents, who are citizen-residents of China. She met her parents in either China or the United States eight times between 2009 and 2016, and she communicates with her parents about two to four times a month.

Applicant's loyalty and connections to family living in China are positive character traits. However, for security clearance purposes, those same connections negate the possibility of mitigation under AG ¶¶ 8(a) and 8(c), and Applicant failed to fully meet her

burden of showing there is “little likelihood that [her relationships with family living in China] could create a risk for foreign influence or exploitation.”

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’s relationship with the United States must be weighed against the potential conflict of interest created by her relationships with family living in China.

There is no evidence that the Chinese government or those conducting espionage have approached or threatened Applicant or her family to coerce Applicant for classified or sensitive information. However, there would be little reason for U.S. competitors or enemies to seek classified information from an applicant before that applicant has access to such information or before they learn of such access.

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 family living in China 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 Applicant’s family living in China.

Applicant has significant connections to the United States and more limited connections to China. In 2006, she came to the United States at the age of 22. In 2012, Applicant was naturalized as a U.S. citizen. She took an oath and swore allegiance to the United States. She supports the U.S. Government as an employee of a contractor. She has no investments in China. Over the past 10 years, she has been a resident of the United States, and through her immigration oath she has manifested her patriotism, loyalty, and fidelity to the United States over all other countries. She has investments in the United States; her husband is a naturalized U.S. citizen; and her two children were born in the United States. She is working on her master’s degree in the United States.

In sum, Applicant’s connections to her family living in China are significant. She also has strong connections to her family in the United States. Notwithstanding, security concerns are not analyzed in a piecemeal assessment. Instead, the overall situation must be considered. Applicant’s close relationship to her parents, who are vulnerable to potential Chinese coercion, outweighs her connections to the United States in the security analysis. Her parents are aware that she is employed at a sensitive U.S. installation. Moreover, Applicant is personally vulnerable to coercion when she visits China, as she does almost annually. Foreign influence security concerns under Guideline B are not mitigated.

### **Whole-Person Concept**

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person

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

There are some facts supporting a grant of Applicant's access to classified information. In 2006, she entered the United States and she married a naturalized U.S. citizen. She is working on her master's degree in the United States. She has no investments in China. Her Chinese passport was revoked, and she has lost her Chinese citizenship. In 2012, Applicant was naturalized as a U.S. citizen. She has successfully worked for a government contractor for four years. Her children are U.S. citizens.

A Navy commander described Applicant as reliable, and her work as "impeccable." Her mother-in-law has a Ph.D. said Applicant has stronger roots in the United States than in China. Applicant's loyalty to the United States is unquestionable. Her performance appraisal from February 2015 to February 2016 shows her excellent work and important contributions to accomplishment of her employer's mission. In April 2015, she received a promotion at work. She is honorable, reliable, conscientious, diligent, trustworthy, and loyal to the United States and her family. There is no evidence of any arrests, illegal drug possession or use, alcohol-related incidents, or delinquent debts.

A Guideline B decision concerning a foreign country must take into consideration the geopolitical situation and dangers in that country including from intelligence agents.<sup>4</sup> The danger of coercion from the Chinese government or intelligence agents is more likely 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.

The weight of the evidence supports denial of Applicant's access to classified information. Applicant's parents are citizens and residents of China. Applicant is close to her parents; she visited them or they visited her eight times from 2009 to 2016; and she frequently communicates with her parents. "It is not to question Applicant's patriotism to acknowledge that the record in [Applicant's] case raises the reasonable concern that [she] could be placed in a position of having to choose between [her] ties to the U.S. and [her] obligations to [her] foreign family members." ISCR Case No. 07-02485 at 5 (App. Bd. May 9, 2008) (reversing grant of security clearance because of Chinese connections). Applicant should not be placed into a position where Chinese government or intelligence officials could coerce her parents or Applicant, when she visits China, to attempt to obtain classified information. I conclude Applicant has failed to mitigate the foreign influence security concern.

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<sup>4</sup> 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).

### **Formal Findings**

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	AGAINST APPLICANT
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Subparagraphs 1.a and 1.b:	Against Applicant
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### **Conclusion**

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

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JUAN J. RIVERA  
Administrative Judge