



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-01822

**Appearances**

For Government: Alison O'Connell, Esq., Department Counsel  
For Applicant: Gregory F. Greiner, Esq.

11/30/2016

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant was born, raised, and educated in the People's Republic of China (China). In 1995, when Applicant was 33 years old, she entered the United States. She became a naturalized U.S. citizen in 2009. She has frequent contact with her mother and sister, who are citizens and residents of China, and visits them almost every year. 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 November 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 September 15, 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

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

November 11, 2015, and requested a hearing before an administrative judge. The case was assigned to me on April 12, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 25, 2016, scheduling a hearing for May 25, 2016.

At the hearing, the Government offered three exhibits (GE 1 through 3). Applicant testified, and submitted 20 exhibits (AE) A through T. All exhibits were admitted into the record as evidence without objections, except for GE 2 (admitted for the limited purpose of taking administrative notice), and GE 3 (attached to the record to show compliance with discovery requirements). DOHA received the hearing transcript (Tr.) on June 2, 2016.

### **Procedural Ruling**

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 request for administrative notice is quoted in the section labeled, "China," *infra*.

### **Findings of Fact**

In her response, Applicant admitted the allegations in SOR ¶¶ 1.a to 1.d. She partially admitted the allegation in SOR ¶ 1.e. Applicant's admissions are incorporated into my 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 53-year-old computer programmer and information technology specialist, who has worked for the same DOD contractor since 2014. She was born, raised, and educated in China to Chinese parents. She received her bachelor's degree in China. In 1989, Applicant married a Chinese citizen-resident. In 1992, Applicant and her husband moved to Singapore. In 1995, when Applicant was 33 years old, they came to the United States from China because her husband was seeking his Ph.D. from a U.S. university. Applicant also testified they left China because they did not like their life in China, or China's political system. In 2009, she became a naturalized U.S. citizen and received a U.S. passport. (AE N)

In 1999, Applicant received a master's degree in business information systems and education in the United States. (AE A) That same year, she obtained employment in the United States as a computer programmer. (Tr. 30. 64)

In 2004, Applicant and her husband adopted a two-year-old child who was a citizen and resident of China. They were unable to bring her to the United States because Applicant and her husband were not U.S. citizens at that time. Her adopted daughter was left with Applicant's husband's parents in China. In 2006, Applicant's spouse passed away in China. Her adopted daughter does not wish to live in the United

States. Applicant is not emotionally attached to her adopted daughter because she has never lived with Applicant, and she has only visited her adopted daughter seven times over the last 12 years. She provided about \$150 to \$300 monthly for her adopted daughter's support until 2012. She claimed the grandparents told her the child did not need her financial support. (Tr. 41) Applicant had two Chinese bank accounts to assist in her adopted daughter's support; however, she closed them in 2013, because she had ended financial support for her adopted daughter. (AE C)

Applicant claimed she does not have any financial or property interests in China. On the other hand, she has two real estate properties, retirement accounts, and financial interests in the United States. Her deceased husband's mother prefers for Applicant not to be involved in her adopted daughter's life, and Applicant does not object to her limited contact with her adopted daughter. She has not seen her adopted daughter since 2013, and her most recent communication with her adopted daughter was a telephone conversation in April 2015.

Applicant's 87-year-old mother is a citizen and resident of China. In 1985, Applicant's father died. He worked for a university. She communicates with her mother on a weekly basis. Her mother's health is not good; she resides in a nursing home; and their telephone discussions are about personal issues such as her health. Applicant travels to China about once a year to visit her mother. Her mother has retirement income based on her husband's employment. Her mother has never visited the United States. Applicant averred she will not inherit anything when her mother dies.

Applicant's most recent visit to China was in April 2015, and she was in China about eight days. She visited her mother, brother, sister, nephew, and sister-in-law in China. She did not visit her adopted daughter on the April 2015 trip.

Applicant's sister is a 58-year-old citizen and resident of China. She worked at a university in a library before she retired. She is divorced. Applicant communicates with her sister about three times a month. Her sister's daughter lives in the United States, and intends to remain in the United States.

Applicant's brother is 59 years old. Her brother is married, and his spouse is retired. He is a citizen and resident of China. Applicant stated she is not close to her brother. She communicates with him two or three times a year. He served in the Chinese military for two or three years. He currently has an administrative job, and he does not work for the Chinese government. (Tr. 37) In 2011, Applicant's brother came to the United States when his son graduated from a U.S. college, and he visited Applicant. Her brother's son returned to China after graduation.

Applicant does not provide financial support to anyone in China. Her family living in China knows that she is employed; however, they do not know the specifics of her employment. She does not have any Chinese friends. Her friends are U.S. citizens. When she became a U.S. citizen, she destroyed her Chinese passport. Applicant said

she renounced her Chinese citizenship. (AE O)<sup>2</sup> Applicant stated she does not intend to go back to live in China – she averred that her job and her life are in the United States.

Applicant's fiancé has known her for seven years. They plan to marry in 2016, and are building a home together. Her fiancé is a software engineer who served for 20 years in the Navy. He has held a security clearance for 44 years. Applicant is proud of her U.S. citizenship. (AE F) She votes in U.S. elections whenever eligible to vote. (AE P) Applicant's fiancé describes Applicant as honest, trustworthy, and reliable. (AE F)

Three of Applicant's coworkers, one supervisor, one chief executive officer and retired Army colonel, and two managers describe her as reliable, positive, dedicated, diligent, conscientious, knowledgeable, professional, and trustworthy. She makes important contributions to her employer. (AE G-M) Their statements support approval of her security clearance. Her 2013 performance evaluation lauds her hard work, dedication, and contributions to her employer. (AE B)

## China

I take administrative notice of the following facts concerning the government of China: 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.

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.

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<sup>2</sup> Information about how to renounce Chinese citizenship and nationality is available at the website for Immigration Department, Hong Kong Special Administrative Region, "Application for Renunciation of Chinese Nationality," [http://www.immd.gov.hk/eng/services/chinese\\_nationality/Application\\_for\\_Renunciation\\_of\\_Chinese\\_Nationality.html](http://www.immd.gov.hk/eng/services/chinese_nationality/Application_for_Renunciation_of_Chinese_Nationality.html). 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>.

- 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, brother, sister, and adopted daughter are citizens and residents of China. She is close to her mother and sister and visits them almost every year. Applicant has frequent contact with her mother (she telephones her on a weekly basis) and her sister (she communicates with her sister about three times a month); however, she does not have frequent contact with her other relatives living in China.<sup>3</sup> She does not provide financial support to any relatives living in China. She does not have any financial accounts 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 mother and sister as indicated by her frequent contact with them and her almost annual visits to China to visit her mother.

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 their 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

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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).



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, raising 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 any 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 mother and sister, who are citizens and residents of China. She visits her mother and sister in China almost every year, and she telephones her mother on a weekly basis and her sister about three times a month. Applicant's contacts with her brother and adopted daughter living in China are infrequent, and SOR ¶¶ 1.b and 1.d are mitigated. In 2013, she closed her two financial accounts in China, and SOR ¶ 1.e is mitigated.

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. Notwithstanding, her connections to her family living in China are significant. Security concerns are not analyzed in a piecemeal assessment. Instead, the overall situation must be considered. Applicant's close relationship to her mother and sister, who are vulnerable to potential Chinese coercion, outweighs her connections to the United States in the security analysis. 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. She entered the United States in 1995, and began attending a U.S. university. She was awarded a master's degree in the United States. She has no investments in China. She destroyed her Chinese passport, and said she renounced her Chinese citizenship. Applicant was naturalized as a U.S. citizen in 2009. She has successfully worked for a government contractor for several years. She intends to marry a man who served 20 years in the Navy and has held a security clearance for 44 years.

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 mother and sister are citizens and residents of China. Applicant has close ties of affection and obligation to her mother and sister. "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 mother, sister, or Applicant, 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d and 1.e:	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.

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JUAN J. RIVERA  
Administrative Judge