



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



In the matter of: )  
)  
) ISCR Case No. 15-04276  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Robert J. Kilmartin, Esq., Department Counsel  
For Applicant: *Pro se*

03/06/2017  
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**Decision**  
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COACHER, Robert E., Administrative Judge:

Applicant mitigated the security concerns under Guideline B, foreign influence. Applicant's eligibility for a security clearance is granted.

**Statement of the Case**

On December 13, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, foreign influence. The DOD CAF 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* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), effective within the DOD on September 1, 2006.

Applicant answered the SOR on January 13, 2016, and requested a hearing before an administrative judge. On May 24, 2016, the case was assigned to me. On July 21, 2016, the Defense Office of Hearings and Appeals (DOHA) notified Applicant

that the hearing was scheduled for August 24, 2016. I convened the hearing as scheduled. Government Exhibits (GE) 1 - 3 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibit (AE) A - N, which were admitted without objection. DOHA received the transcript (Tr.) on September 1, 2016.

## **Procedural Ruling**

### **Administrative Notice**

I took administrative notice of facts concerning The Peoples Republic of China (PRC). Department Counsel provided supporting documents that verify, detail, and provide context for the requested facts. The specific facts noticed are included in the Findings of Fact.<sup>1</sup>

Administrative or official notice is the appropriate type of notice used for administrative proceedings.<sup>2</sup> Usually administrative notice in ISCR proceedings is accorded to facts that are either well known or from U.S Government reports.<sup>3</sup>

### **Findings of Fact**

In Applicant's answer to the SOR, he admitted all the allegations with explanations. Those admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 59 years old. He was born in the PRC in 1957. He went to high school and undergraduate school in the PRC. In 1983, he came to the United States for graduate school. He received his master's degree and Ph.D. degrees in this country. While he was attending school in the United States, he only returned to the PRC once in 1984 to visit his parents. He received resident alien status (green card holder) in 1995 and became a U.S. citizen in 2000. He has worked for his current defense contractor employer since 1996. He has held a security clearance since 2006.<sup>4</sup> He has had no

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<sup>1</sup> The Government's request and the supporting background documents were marked as hearing exhibit (HE) I.

<sup>2</sup> 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).

<sup>3</sup> See Stein, *Administrative Law*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

<sup>4</sup> In 2005, Applicant was originally denied a clearance by DOD adjudicators based upon Guideline B concerns. He appealed his case and a hearing was held on September 22, 2005, before another DOHA administrative judge. The judge in that case found Applicant mitigated the Guideline B concerns and granted his clearance. Two of the allegations in the earlier case, involving Applicant's father and his sister, are restated in the present case. While I am not bound by any findings or conclusion from the

security violations in that time. He is married, for the second time, and has three children. His wife and children are all U.S. citizens.<sup>5</sup>

The SOR alleges that Applicant's father, one sister, and his mother-in law are all residents and citizens of the PRC. It also alleges his niece, with whom he regularly communicates, is a citizen and resident of the PRC.

Applicant's father, who is 83 years old, is a resident and citizen of the PRC. He is retired. He has no affiliation with the Communist Party. Since Applicant's mother died in 2009, he has not seen or spoken to his father. They have no relationship at all. When Applicant returned to the PRC in 2010 for the one-year anniversary of his mother's passing, he did not see or talk to his father. He does not know where his father currently resides. Applicant has less contact now with his father than he did in 2005.<sup>6</sup>

Applicant's oldest sister is a resident and citizen of the PRC. She is a local provincial clerk. She has no affiliation with the Communist Party. Applicant occasionally will be a part of a group text with this sister, himself, and a younger sister who is a resident and citizen of the United States. They will text on special occasions such as birthdays. He has not seen this sister in five years. He has no more contact with this sister than he did in 2005.<sup>7</sup>

Applicant's 82-year-old mother-in-law is a resident of the United States and a citizen of the PRC. She is a resident alien living in a retirement community in the United States. She is financially supported through Medicare and Social Security. Applicant does not provide her any financial support. She has lived in this country since at least 2009 when Applicant first met her. She has no ties to the Communist Party. She does not intend to return to the PRC.<sup>8</sup>

Applicant's niece is a citizen of the PRC. Applicant had contact with her from 2010 to 2014 when she was a student attending school in this country. Applicant and his family lived close to where his niece went to graduate school and she visited their home on occasion during holidays. Applicant moved from that area in 2014 and he has not seen her since then. His last communication with her was in December 2015 when they either talked or texted on Christmas. He has no regular contact with her. He believes she is still in graduate school. She has no known ties to the Communist Party.<sup>9</sup>

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earlier case, I may incorporate relevant facts from it into this decision. The earlier decision is ISCR Case No. 04-10220 (March 9, 2006); *See also* AE A.

<sup>5</sup> Tr. at 5, 23-25, 30, 32; GE 1-3.

<sup>6</sup> Tr. at 33-34; GE 1, 2; AE A.

<sup>7</sup> Tr. at 35-36; GE 1, 2; AE A.

<sup>8</sup> Tr. at 36-37; GE 1, 2.

<sup>9</sup> Tr. at 37-38; GE 1, 2.

Applicant has been very successful in the United States. Two of his children are graduates of prestigious universities and his youngest child attends a renowned performing arts school. From 2013 to 2015, Applicant and his wife had taxable income that averaged \$1 million. His wife is a vice president for a major technical company. They own homes in this country. The value of these properties is approximately \$1.9 million. They have no holdings or assets in the PRC.<sup>10</sup>

Applicant is a highly respected engineer. Six of his former and current supervisors and coworkers submitted declarations on his behalf. These declarations describe Applicant as an outstanding professional who handles classified and proprietary information with the appropriate safeguards. All of the coworkers have absolute trust and confidence in Applicant's ability to safeguard classified information. He was recommended by many of these same individuals for the honor of being named a technical fellow for their company, which he received in 2004.<sup>11</sup>

Since he received his clearance in 2006, he has never been approached by anyone claiming to represent the PRC seeking information, nor have his relatives. He would immediately report any such contact to his appropriate security official.<sup>12</sup>

The PRC is an authoritarian state in which the Chinese Communist Party is the paramount authority. China is actively engaged in intelligence gathering efforts and activities against the United States. China has a poor human rights record, where the repression and coercion of individuals and groups is routine. The U.S. State Department warns visitors to China that they may be placed under surveillance. Hotel rooms, offices, cars, taxis, internet usage, and fax machines may be monitored onsite or remotely, and personal possessions in hotel rooms, including computers, may be searched.

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶

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<sup>10</sup> Tr. at 25-27, 40; AE H-K.

<sup>11</sup> AE A-G, L.

<sup>12</sup> Tr. at 30, 32.

2(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that an 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.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline B, Foreign Influence**

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

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

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

AG ¶ 7 indicates 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.

The mere possession of close family ties with a family member is not, as a matter of law, disqualifying under Guideline B. However, if an applicant has a close relationship with even one relative living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an Applicant's family members are vulnerable to government coercion or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, the country is known to conduct intelligence collection operations against the United States, or the foreign country is associated with a risk of terrorism. The relationship of the PRC with the United States places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that his relationships with his relatives living in the PRC do not pose a security risk. Applicant should not be placed in a position where he might be forced to choose between loyalty to the United States and a desire to assist his relatives living in the PRC who might be coerced by governmental entities.

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."<sup>13</sup> 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.

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<sup>13</sup> ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

While there is no evidence that intelligence operatives from the PRC seek or have sought classified or economic information from or through Applicant, or his relatives living in the PRC, it is not possible to rule out such a possibility in the future. Department Counsel produced substantial evidence to raise the issue of potential foreign influence.

AG ¶¶ 7(a) and 7(b) apply because of Applicant's relationships with his relatives who live in the PRC. Applicant communicates with these PRC relatives on a sporadic basis. There is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members. Applicant has not attempted to rebut this presumption. Given the PRC's aggressive intelligence approach toward the United States, Applicant's relationships with his relatives living in that country are sufficient to create "a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion."

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

(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.

AG ¶ 8(a) partially applies. Applicant's father and sister are not in government positions and do not have affiliations with the PRC government. Applicant's mother-in-law resides in the United States, and he has limited contact with his father and sister living in the PRC. It is unlikely that Applicant would be placed in a position of having to choose between his PRC relatives' interests and those of the United States. Because the contact is with relatives, the contact is presumed not casual. AG ¶ 8(c) does not apply.

Applicant has met his burden to establish his "deep and longstanding relationships and loyalties in the U.S." He has resided in this country since 1983, he became a citizen in 2004, and his wife and children are U.S. citizens. He owns three homes here and has annual income of \$1 million. He is a highly respected and trusted

engineer for his company where he has worked for over 20 years. He has held a security clearance for the past 11 years without an incident. The evidence supports that Applicant has longstanding loyalties toward the United States and would resolve any conflict of interest in favor of the United States. AG ¶ 8(b) applies.

### **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 circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. The circumstances tending to support granting Applicant's clearance are more significant than the factors weighing towards denying his clearance at this time. I considered the ties he established in this country, thereby demonstrating his longstanding loyalty to this country. Therefore, he provided sufficient evidence to mitigate the security concerns.

Overall the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guideline B, foreign influence.

### **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:  
Subparagraphs 1.a – 1.d:

FOR APPLICANT  
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.

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Robert E. Coacher  
Administrative Judge