



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



In the matter of: )  
)  
) ISCR Case No. 15-05308  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Andrew H. Henderson, Esq., Department Counsel  
For Applicant: *Pro se*

04/27/2017  
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**Decision**  
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MURPHY, Braden M., Administrative Judge:

Applicant failed to mitigate the security concerns about his family and financial connections to the People's Republic of China (China) under Guideline B, foreign influence. Applicant's eligibility for a security clearance is denied.

**Statement of the Case**

On March 30, 2016, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, foreign influence. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR on April 13, 2016, and elected to have his case decided on the written record in lieu of a hearing. On June 9, 2016, Department

Counsel submitted the Government's file of relevant material (FORM), along with documents identified as Items 1 through 4. Applicant received the FORM on June 17, 2016. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant submitted a FORM Response on June 28, 2016. The FORM Response is marked as Applicant's Exhibit (AE) A and is admitted without objection. Applicant did not object to any of the Items offered by the Government. The SOR and the answer (combined as Item 1) are the pleadings in the case. Items 2 and 3 are admitted without objection. Item 4 is the Government's request for administrative notice. The case was assigned to me on March 13, 2017.

### **Request for Administrative Notice**

As part of the FORM, Department Counsel submitted a written request that I take administrative notice of certain facts about China. The request is included with the FORM as Item 4. Applicant did not object, and I have taken administrative notice of the facts contained in the request that are supported by source documents from official U.S. Government publications. The facts are summarized in the Findings of Fact, below.

### **Findings of Fact**

Applicant admitted the SOR allegations. His admissions and other comments are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 40 years old. He was born in China. He attended college and graduate school there, earning a bachelor's degree in 1998, and a master's degree in 2001. He came to the United States on an H1B visa in 2001. He has lived in the United States ever since. From 2001 to 2006, he worked as an engineer for an American company. Between fall 2006 and spring 2007, he attended graduate school in the United States, earning another master's degree. He then resumed his career as an engineer. Since 2010, he has worked for his current employer, who is now sponsoring him for a clearance.<sup>1</sup>

Applicant received his green card for permanent U.S. residency in 2005. He became a U.S. citizen in 2010. He completed a security clearance application (SCA) in September 2014. He disclosed his foreign family members and financial interests in China.<sup>2</sup>

Applicant met his wife in 2007. She was then living in China. They married in 2008. After he became a U.S. citizen, he sponsored his wife's application for a green card, which was approved in April 2011. Their daughter, a U.S. citizen, was born in February 2012, in China. Applicant's wife and daughter remained in China until June

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<sup>1</sup> Item 2.

<sup>2</sup> Item 2.

2014, when they moved to the United States. They both now live with the Applicant. Applicant's wife remains a Chinese citizen and U.S. permanent resident (SOR ¶ 1.a).<sup>3</sup>

Applicant's parents (SOR ¶¶ 1.b and 1.c), and his wife's parents (SOR ¶¶ 1.d and 1.e), are citizens and residents of China. They are in their mid-60s and early 70s. Applicant maintains weekly contact with his parents, and monthly contact with his in-laws.<sup>4</sup> The frequency of his wife's contact with her parents is unknown.

Applicant is a co-owner of his parents' home in China, and his name is on the deed. Similarly, his wife co-owns her parents' home in China. Applicant estimates the combined value of this real estate at almost \$400,000. Applicant and his wife also maintain a bank account in China, holding about \$5,000 (SOR ¶¶ 1.f and 1.g). Applicant has an annual salary of more than \$120,000. He and his wife purchased their home in the United States for \$690,000.<sup>5</sup>

Applicant travelled to China approximately ten times between 2007 and June 2014, when his wife and child came to the United States. He has not been to China since then.<sup>6</sup>

## **China**

China has an authoritarian government, dominated by the Chinese Communist Party. It has a poor human rights record, suppresses political dissent and engages in arbitrary arrests and detentions, forced confessions, torture, and mistreatment of prisoners.

China is the world's most active and persistent perpetrator of economic espionage. It is among the most aggressive countries in seeking sensitive and protected U.S. technology, as well as military and economic intelligence. China targets the United States with active intelligence-gathering programs, both legal and illegal. Its focus is on obtaining U.S. information and technologies beneficial to China's military modernization and economic development. 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 trade secrets using removable media devices or e-mail. There are several recent cases involving actual or attempted espionage, as well as the illegal export of sensitive military technology to China.

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<sup>3</sup> Item 2; AE A.

<sup>4</sup> Item 2; AE A.

<sup>5</sup> Item 2; AE A.

<sup>6</sup> Item 2; AE A.

In China, authorities routinely monitor telephone conversations, facsimile transmissions, e-mail, text messaging, and internet communications. Authorities open and censor mail. Its security services have entered personal residences and offices to gain access to computers, telephones and fax machines. Hotel guest rooms are sometimes bugged and searched for sensitive or proprietary materials.<sup>7</sup>

## **Policies**

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

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, 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 ¶ 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 as to obtaining 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

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<sup>7</sup> Item 4.

extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 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 expresses the security concern regarding foreign influence:

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 describes conditions that could raise a security concern and may be disqualifying. I have considered all of them and the following are potentially applicable:

- (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;
- (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;
- (d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure or coercion; and
- (e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned business, which could subject the individual to heightened risk of foreign influence or exploitation.

AG ¶¶ 7(a), 7(d) and 7(e) require evidence of a “heightened risk.” The “heightened risk” required to raise this disqualifying condition is a relatively low standard. “Heightened risk” denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or owning property in a foreign country. The totality of Applicant’s family ties to a foreign country as well as each individual family tie must be considered.

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>8</sup>

China has a significant history of conducting espionage against the United States to gain access to both industrial and military information. China’s tactics include seeking to exploit Chinese citizens or persons with family ties to China who can use their insider access to corporate networks to gain useful information. China has a poor human rights record. This creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. It also creates a potential conflict of interest.

Applicant’s parents and his wife’s parents are citizens and residents of China. Applicant has an ownership interest in his parents’ home. His wife has an ownership interest in her parents’ home. Applicant maintains frequent and regular contact with his parents and in-laws. Applicant’s wife is a citizen of China and a permanent U.S. resident. She lives with Applicant and their daughter. AG ¶¶ 7(a), 7(b) and 7(d) have been raised by the evidence.

Applicant and his wife maintain several hundred thousand dollars in property interests in their parents’ homes in China, as well as a bank account. These financial interests subject the Applicant to a heightened risk of foreign influence or exploitation. AG ¶ 7(e) applies.

I have analyzed the facts and considered all of the mitigating conditions under AG ¶ 8 and conclude the following are potentially applicable:

- (a) the nature of the relationship 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 and 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

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<sup>8</sup> ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

and loyalties in the U.S., that the individual can be expected to resolve any conflict of interests in favor of the U.S. interests;

(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; and

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

Applicant has regular contact with his parents and his in-laws. He has visited his family in China numerous times. He has daily contact with his wife, a Chinese citizen. Applicant's contact with their foreign relatives is not infrequent or casual. Therefore, I cannot conclude that it is unlikely that his familial relationships could create a risk for foreign influence or exploitation. AG ¶ 8(c) does not apply.

Applicant and his wife maintain a bank account in China. His name is on the deed to his parents' home in China. His wife maintains an ownership interest in her parents' home there. These interests are valued at almost \$400,000. These financial interests are not insignificant. I cannot conclude that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate or pressure the applicant. AG ¶ 8(f) does not apply.

The foreign influence concerns are increased because China aggressively and actively engages in espionage against the United States. There is insufficient evidence to conclude that the Applicant's familial connections in China would make it unlikely that Applicant would be placed in a position of having to choose between his family interests and the interests of the United States. AG ¶ 8(a) does not apply.

Applicant has significant ties to his parents and his wife's parents. There is insufficient evidence to conclude there is no conflict of interest, either because Applicant's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or Applicant has such deep and longstanding relationships and loyalties in the U.S., that he can be expected to resolve any conflict of interests in favor of the U.S. interests. AG ¶ 8(b) does not apply.

The nature of a nation's government and its relationship with the United States is relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if a family member is associated with or dependent upon the foreign government or the country is known to conduct intelligence operations against the United States. There is insufficient evidence to make a determination regarding Applicant's family's association with the Chinese government or their vulnerability to government coercion. However, owning real property and a bank account in China very likely involves government regulation of those interests. Although it is possible that Applicant's parents, in-laws and

his wife do not pose a security risk, I cannot make that determination without additional evidence. The record is void of sufficient information about Applicant or his family that would allow me to find that any of the mitigating conditions are applicable.

## 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. 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.

Applicant was born, raised and educated in China. His parents remain there, as do his wife's parents. Applicant has regular contact with them. Applicant and his wife maintain significant financial interests in China. His wife remains a Chinese citizen. He failed to provide sufficient information to meet his burden of persuasion to mitigate the foreign influence security concerns. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate 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: **AGAINST APPLICANT**

Subparagraphs 1.a-1.g:                      Against 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's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Braden M. Murphy  
Administrative Judge