



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



In the matter of:)	
)	
(Redacted))	ISCR Case No. 15-05618
)	
Applicant for Security Clearance)	

Appearances

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

04/06/2017

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant mitigated the risk of foreign influence raised by her father-in-law's residency in the People's Republic of China (China). Neither Applicant nor her spouse has close relations or regular contact with him. Applicant, a lifelong resident citizen of the United States, can be counted on to act in U.S. interests. Clearance is granted.

Statement of the Case

On April 1, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing a security concern under Guideline B, Foreign Influence, and explaining why it was unable to grant or continue a security clearance for her. The DOD CAF acted under Executive Order 10865 (EO), *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 for Determining Eligibility for access to Classified Information (AG) effective within the DOD on September 1, 2006.

Applicant responded to the SOR allegations on April 21, 2016, and she requested a hearing before a Defense Office of Hearings and Appeals (DOHA)

administrative judge. On July 14, 2016, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On July 22, 2016, I scheduled a hearing for August 10, 2016. With the agreement of the parties, on August 5, 2016, I changed the start time for the hearing scheduled for August 10, 2016.

I convened the hearing as rescheduled. Before the introduction of any evidence, the SOR was amended at the Government's request without any objection from the Applicant, as set forth below. Three Government exhibits (GEs 1-3) and seven Applicant exhibits (AEs A-G) were admitted into evidence without objection. Applicant and her spouse testified, as reflected in a transcript (Tr.) received on August 18, 2016. At the Government's request and without any objection from Applicant, I also agreed to take administrative notice of pertinent facts related to China.¹ The Government's request for administrative notice, dated June 25, 2016, was based on excerpts from the Office of the National Counterintelligence Executive's *Report to Congress on Foreign Economic Collection and Industrial Espionage for 2009-2011*; from the U.S. Defense Department's annual reports to Congress for 2012, 2013, and 2014 concerning military and security developments in China; from the U.S. Department of Justice a press release from June 9, 2016; from the U.S.-China Economic and Security Review Commission's *2014 Report to Congress*; and from the U.S. State Department's *China (Includes Tibet, Hong Kong, and Macau) 2015 Human Rights Report* and its *Country Information-China* dated December 2, 2015. The facts administratively noticed are set forth in the Findings of Fact, below.

SOR Amendment

The SOR initially alleged that Applicant's fiancé's father is a dual citizen of the United States and a resident of China (SOR ¶ 1.a). When she responded to the SOR, Applicant denied the allegation, explaining that she married her fiancé in March 2016 and that his father has been a citizen solely of the United States since approximately 2000. She indicated that her father-in-law has resided in China since 2006, but he owns a home in the United States and is considering retiring to the United States. The SOR was amended at the Government's motion, as follows:

1.a. Your spouse's father is a citizen of the United States and is a resident of China.

Findings of Fact

After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

¹The Government's formal request and the attached documents were not admitted into evidence but were included in the record. I agreed to take administrative notice, subject to my obligation to make accurate and timely assessments of the political landscape in foreign countries when adjudicating Guideline B cases. See e.g., ISCR Case No. 05-11292 (App. Bd. Apr. 12, 2007).

Applicant is 30 years old and has her doctorate degree in applied science. She has been employed since September 2014 by a university-affiliated laboratory that has contracts with the DOD. She seeks her first DOD security clearance. (GE 1; Tr. 39, 44.)

A lifelong resident citizen of the United States, Applicant met her spouse while she was in graduate school in April 2009. He was pursuing his post-graduate education at the same university. They became a couple in 2011 and married in March 2016. (GEs 1, 3; Tr. 41, 59.)

Applicant's spouse was born in China. He immigrated to the United States with his mother in 1989 when he was four years old. They left China two days before the Tiananmen Square massacre and joined his father, who was already in the United States. (Tr. 57-58, 61.) An only child, Applicant's spouse was raised and educated in the United States, and he became a naturalized U.S. citizen.² (Tr. 52, 65, 75.) His parents separated when he was in seventh grade, and they divorced when he was in high school. (Tr. 70.) Following his parents' divorce, Applicant's spouse lived with his mother, who is a naturalized U.S. citizen employed as a lecturer at a private university in the United States. (Tr. 40, 51, 62.) His mother remarried a Hong Kong native, who has since retired from a career in the U.S. defense industry. (Tr. 41.)

In 2000, Applicant's spouse's biological father became a U.S. naturalized citizen. There is no evidence that Applicant's father-in-law formally applied to renounce his Chinese citizenship at that time, but China does not recognize dual nationality.³ (AE C; Answer.) In 2006, Applicant's father-in-law moved to China and married a resident citizen of China. (Tr. 71.)

Applicant's spouse was in contact with his father on and off after his parents' divorce. (Tr. 61.) In part to reflect his close relationship with his mother, Applicant's spouse legally changed his name in November 2006. He changed his first name to the English name that he had used informally for years, and he took his mother's last name. (AE B; Tr. 64.) Applicant's spouse earned his doctorate degree in late 2012. (Tr. 59.) In January 2013, he began two years of post-doctoral research at a private university in the United States. (Tr. 59.)

In August 2013, Applicant traveled with her spouse to China for approximately two weeks. His mother was in China as a faculty advisor with some students on an exchange program. Applicant and her spouse spent most of their time with his mother.

² The date of his naturalization is not in evidence.

³ The U.S. State Department reports that China does not recognize dual nationality. If a traveler has dual nationality or otherwise has ethnic or historical ties to China, Chinese authorities may possibly assert that he or she is a Chinese citizen and deny access to U.S. consular representatives. Moreover, the State Department advises those traveling to China who are naturalized U.S. citizens or have a possible claim to Chinese citizenship that Chinese law and practices related to the determination and loss of Chinese citizenship may require formal renunciation of Chinese citizenship or cancellation of a household register. See the State Department's *Country Report-China*, updated on September 23, 2016, which may be accessed at <https://travel.state.gov/content/passports/en/country/china.html>.

They visited tourist attractions, including the Great Wall and the Forbidden City. During the last three days of their trip, Applicant accompanied her spouse to his paternal grandmother's home. They were joined there by his father, who spent a few days with them. Applicant and her spouse met his father's new wife and some other paternal family members. (Tr. 42-43, 66, 71-72.) His father has five siblings, four of whom are resident citizens of China. (Tr. 65-66.) Applicant relied on her spouse, who speaks Mandarin Chinese, to translate for her when conversing with his extended family members. (Tr. 43, 68.) Applicant and his spouse had only routine contact at the border with Chinese officials and were not approached by any representative of the Chinese government during their trip to China. (Tr. 46, 73.)

In May 2014, Applicant's father-in-law came to the United States for a conference. He visited with Applicant's spouse for a few days during a layover, and Applicant joined them for a few meals. (Tr. 43, 54-55, 77.) Her father-in-law expressed happiness with his new wife. (Tr. 77.)

Shortly after Applicant was awarded her doctorate degree, she began her current employment. On November 18, 2014, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86). She listed her spouse as a person who knew her well. As her then significant other of several years, they had cohabited for a few months in late 2011 and were currently in close contact. She also indicated in part:

While he and his immediate family are U.S. citizens, he and I visited with a number of foreign nationals in China in 2013 who are close friends of his family. We also met with a couple of these family friends more recently in the U.S. Currently I don't know any of their full names and have not really communicated with them directly (since most of them do not speak English) but there is a reasonable chance I will continue to be in contact with some of them.

Applicant listed her foreign travel in the last seven years, including to China in August 2013. (GE 1.)

On February 4, 2015, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM) partially about her contacts with foreign nationals. Applicant volunteered that her significant other has "family friends" living in China.⁴ They visited them in China in August 2013, and she also had in-person contact with some of them in the United States in 2014. She expressed her intention to report any continuing contact with foreign nationals to security officials. (GE 2.)

⁴ The summary of Applicant's interview does not include the names of the friends or the extent of Applicant's spouse's contacts with the friends who reside in the United States. There is no indication that Applicant was asked specifically about her spouse's family members, including his father in China. See GE 2.

In January 2016, Applicant's spouse began working as an assistant professor at a university in Canada. (Tr. 53, 60.) Of the 20 to 30 applications he submitted for a tenure-track position, he had two interviews. Given the amount of resources the Canadian university offered him for his research, it made sense for him to accept the offer. He has a temporary work permit in Canada and does not intend to obtain Canadian citizenship. He hopes to find work in the United States in the future. (Tr. 60.)

On February 25, 2016, Applicant submitted a detailed response to foreign influence interrogatories from DOHA. She reported her engagement to her spouse and his employment in academia in Canada since January 2016. She explained that they have daily contact and intend to marry by late March 2016. Applicant also disclosed her father-in-law's residency in China. Contact with him was solely through her spouse, who had reestablished cordial but not particularly close relations with his father. Applicant's spouse was in contact with his father once every few months by email or phone and less than once a year in person. Applicant added that her father-in-law has visited her spouse when he is in the United States for business reasons, and she was present for one such visit in 2014. She disclosed her and her spouse's in-person contact with his father when they were "already in China on vacation" in August 2013. Applicant also indicated that her spouse had some paternal aunts and uncles, two cousins (one employed as a wedding planner), and a grandmother in China but that she does not know the names of her spouse's extended family members. Her spouse had had no contact with them in the five years before their trip to China in August 2013 and no contact since then. Applicant disclosed that her mother-in-law had a dozen friends in China, two or three of whom had worked at a Chinese university. Applicant first met them when in China in August 2013. She and her spouse had dinner in the United States in 2014 with one of his mother's friends from China. Applicant expressed no plan to see her mother-in-law's Chinese friends in the future, but she did not rule out the possibility. Applicant also provided detailed information about some foreign citizens with whom she had interacted or collaborated while pursuing her graduate studies or had contact through her spouse. (GE 3.)

Applicant is close to her own parents, who are both U.S. native citizens. She was living with them as of her hearing in August 2016. (Tr. 40.) Applicant also has a close relationship with her mother-in-law. (Tr. 41.) She has a distant relationship with her father-in-law, based in part on what her spouse shared about his father and on her limited contact with his father. (Tr. 42.) She has had no in-person contact with her father-in-law apart from her trip to China in August 2013 and her father-in-law's visit in May 2014. She understands that one responsibility of a security clearance is to report any suspicious activities, and she would have no qualms about reporting any suspicious activity on her father-in-law's part. (Tr. 20, 43-44.) Her spouse is in contact with his father about twice a year, usually by texting. (Tr. 74-75.) He denies any sense of obligation to his father. (Tr. 62-63.) He does not know whether his father owns any property in China, but is aware that his father owns a condominium in the United States. (AE C; Tr. 50, 67.). His father has expressed an intention to retire to the United States and purchase a home in southern California. (Tr. 75-76.) To his knowledge, his father has not had any affiliation with China's government and his father's business is not

government or intelligence related. (Tr. 69, 75.) His father operates with his new wife a consulting business in China teaching people to be successful in the media. (AE C; Tr. 52, 69, 71, 78.)

Applicant's spouse contacted his father sometime in the summer of 2016 to obtain an affidavit. (Tr. 74.) On July 25, 2016, Applicant's father-in-law "declare[d] under penalty of perjury under the laws of the United States of America" that he currently works as a consultant in China; that he has been solely a citizen of the United States since 2000 and not exercised Chinese citizenship since then; and that he has never been employed by or been a member of a foreign (non-U.S.) government, military, or entity owned or operated by a foreign government, including China. (AE C.) His current U.S. passport was issued on April 21, 2010. (AE A.)

Character References

Applicant's direct supervisor described Applicant as "an ideal employee in all respects." Applicant has been conscientious, performs excellent technical work, and works well independently. Most of Applicant's colleagues have classified projects. While limited in her duties because of no security clearance, Applicant has made "important and significant contributions to several efforts of national importance." (AE D.)

A senior professional colleague at the defense laboratory, who is familiar with Applicant's work since November 2015, likewise attested to Applicant's exceptional work. Applicant has strictly adhered to their employer's security policies and procedures and been proactive in informing personnel that she does not have a security clearance. He believes Applicant has no affiliation or preference for China or any other foreign country and "strongly feels that [Applicant] has the character and honesty requisite with a security clearance." (AE E.)

Applicant also proved to be a key contributor to a research project led by a professional colleague. She had earned the high regard of her colleagues for the rigor and efficiency of her work before she joined the research project team in May 2015, and she proved to be a "willing and enthusiastic participant, mentoring junior staff and rolling up her sleeves to meet critical deadlines." Applicant handled sensitive unclassified information appropriately. Applicant's colleague highly recommends Applicant for a security clearance. (AE F.)

A close friend, who met Applicant in graduate school in 2009, worked closely with her on a number of projects over the years. He has the utmost respect for Applicant and her ethics. In his opinion, she has demonstrated that she can be trusted to handle professional technical information and personal information discretely and respectfully. He considers Applicant to be a loyal, law-abiding citizen of the United States. (AE G.)

Administrative Notice

After reviewing U.S. government publications concerning China and its foreign relations and mindful of my obligation to consider updated information, I take administrative notice of the facts requested by the Government as supplemented by the following facts:

China is an authoritarian state with paramount authority vested in the Chinese Communist Party (CCP). CCP members hold almost all top government and security apparatus positions. In all important government, economic, and cultural institutions in China, the CCP ensures that party and state policy guidance is followed. Recognizing the increasing role that China plays in world affairs, the United States seeks to build a positive, cooperative, and comprehensive relationship with China and welcomes a strong, peaceful, and prosperous China.

China considers the first 20 years of this century to be a window of strategic opportunity for the country to focus on economic growth, independent innovation, scientific and technical advancement, and growth in renewable energy. Bilateral trade between the United States and China has grown to where China is the third largest export market for U.S. goods and the United States is China's largest export market. At the same time, China sees itself as a strategic competitor of the United States.

China continues to pursue a long-term, comprehensive military modernization program, which it views as essential to achieving great power status. Initially designed to improve its armed forces' capacity to fight short-duration, high-intensity regional conflicts, China's military modernization program has become more focused on investments for a range of missions beyond the country's periphery. China has made a substantial investment in domestic defense research and development. Even so, China fills the knowledge gaps in its domestic defense and commercial research by engaging in large-scale, state-sponsored theft of intellectual property and proprietary information. China aggressively pursues U.S. economic information and technology, leveraging foreign investments, commercial joint ventures, academic exchanges, the experience of repatriated Chinese students and researchers, and state-sponsored industrial espionage to increase the level of technologies and expertise available to support its military research, development, and acquisition. China blends intelligence and non-intelligence assets and frequently seeks to exploit Chinese citizens or persons with family ties to China who can use their insider access to steal trade secrets from U.S. companies. Since the mid-2000s, the Chinese government has conducted large-scale cyber espionage against the United States. A 2012 Defense Science Board report identified dozens of U.S. defense critical system designs compromised by Chinese cyber actors, including designs pertaining to an air defense system, fighter and reconnaissance aircrafts, helicopters, a missile defense system, and a combat ship. U.S. corporations and cyber-security specialists continue to report computer network intrusions originating from Internet Protocol addresses in China. Some Chinese nationals in the United States have acted as procurement agents or intermediaries to obtain key national security and export-restricted technologies or controlled equipment

for China in violation of U.S. laws and export controls. In June 2016, a California resident was convicted of conspiring with a person in China to illegally acquire and export to China fighter jet engines, an unmanned aerial vehicle, and related technical data to China.

China has a poor human rights record. Repression and coercion markedly increased in 2015 against organizations and individuals involved in civil and political rights advocacy and public interest and ethnic minority issues. Lawyers that handled cases deemed “sensitive” by China’s government were targeted for harassment and detention. Hundreds of lawyers were interrogated, investigated, and in many cases detained in secret locations for months without charges or access to attorneys or family members. Individuals and groups regarded as politically sensitive by authorities faced tight restrictions on their freedom to assemble, practice religion, and travel. Authorities resorted to extralegal measures, such as enforced disappearance and house arrest, to prevent public expression of critical opinions. Public discourse on the Internet and in print and other media was censored and tightly controlled. As in previous years, citizens did not have the right to change their government and had limited right of redress against official abuse.

The U.S. State Department continues to advise that foreign visitors in China may be placed under surveillance by security personnel; their hotel rooms, telephones, and facsimile machines may be monitored; and their personal possessions, including computers, may be searched without their knowledge or consent. Chinese security personnel have been known to detain and deport U.S. citizens sending private electronic messages critical of the Chinese government. In recent years, U.S. citizens and other foreign nationals visiting or residing in China have been interrogated or detained for reasons related to “state security.” Dual U.S.-Chinese nationals and U.S. citizens of Chinese heritage may be at a high risk of facing such special scrutiny.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has 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). 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 required to be considered 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 overall 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. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible 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

The security concern relating to the guideline for foreign influence is articulated in AG ¶ 6:

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.

As alleged in the amended SOR, Applicant's father-in-law is a naturalized U.S. citizen who lives in China. Not every foreign contact or tie presents the heightened risk under AG ¶ 7(a), which provides:

(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.

The "heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government. The nature and strength of the family ties or other foreign interests and the country involved (*i.e.*, the nature of its government, its relationship with the United States, and its human rights record) are relevant in assessing whether there is a likelihood of vulnerability to government coercion. 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 on, the foreign government; or the country is known to conduct intelligence operations against the United States. In considering the nature of the foreign government, the administrative judge must take into account any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006). Despite China's increased international involvement in recent years and its considerable trade with the United States, it is an authoritarian state with an extensive, pervasive history of engaging in economic and technological espionage against the United States. The country's poor human rights record continues to hinder relations between the United States and China.

Applicant credibly asserts that she lacks close ties of affection or obligation to her father-in-law, with whom she has had limited contact. She spent a few days with her spouse visiting with his father during their trip to China in August 2013. She and her spouse shared a few meals with his father in May 2014 in the United States. She has had little opportunity to develop a personal relationship with her father-in-law, and her opinion of him has been colored by the strained relations that her spouse had with his father as a teenager and young adult. Applicant does not have a personal relationship or contacts with her father-in-law independent of her spouse's tie and contacts.

Applicant's connection to her father-in-law through her spouse, who has reestablished cordial relations with his father in recent years, establishes AG ¶ 7(b), which provides as follows:

(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.

Even though Applicant and her spouse have been living apart because of their respective employments, they have been a couple since February 2011, married in

March 2016, and have daily contact. Applicant's spouse changed his name in November 2006 to take the last name of his mother, in recognition of the close feelings of affection he has for his mother. It can also be seen as a repudiation of the father-son tie. However, he has had cordial relations with his father in the past few years. His father has made the effort in recent years to see him when he is in the United States. When Applicant and her spouse went to China in August 2013, they spent a few days with his paternal relatives, including his father. Additionally, Applicant's spouse has contact with his father a few times a year, usually by texting. While his father has never worked for the Chinese government, its military, or intelligence services, and he is a U.S. naturalized citizen, he works as a consultant apparently teaching persons to be successful in the media.

Concerning issues in mitigation, China's ongoing aggressive targeting of U.S. defense technology and intellectual property and its poor human rights record make it difficult to apply AG ¶ 8(a), which provides:

(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.

Applicant has no ties of her own to China that would undermine her allegiance to the United States. Born, raised, and educated in the United States, she is currently living with her parents while her spouse is on the faculty at a Canadian university. She has no foreign income or assets of her own. While her spouse currently lives and works in Canada, he is in Canada with a temporary work permit and has no plans to obtain Canadian citizenship. He has no financial assets in China. The persons to whom Applicant is closest (spouse, parents, and mother-in-law) are all U.S. citizens. Applicant's deep and longstanding relationships in the United States considerably outweigh the connection she has to her father-in-law through her spouse, who has a respectful but not close or intimate relationship with his father. AG ¶ 8(b) applies:

(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.

Furthermore, AG ¶ 8(d), "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," is established with respect to Applicant's contact with her father-in-law. The foreign influence concerns are adequately mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(a).⁵ The analysis under Guideline B is incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant demonstrated personal integrity by candidly detailing to the DOD her foreign contacts and ties through her spouse. Her professional colleagues endorse her for security clearance eligibility for her dedication, the excellent quality of her work, and her appropriate handling of sensitive unclassified information. She has been careful to advise personnel at work about her lack of a security clearance. In weighing the whole-person factors in a foreign influence case, the Appeal Board has stated:

Evidence of good character and personal integrity is relevant and material under the whole person concept. However, a finding that an applicant possesses good character and integrity does not preclude the government from considering whether the applicant's facts and circumstances still pose a security risk. Stated otherwise, the government need not prove that an applicant is a bad person before it can deny or revoke access to classified information. Even good people can pose a security risk because of facts and circumstances not under their control. See ISCR Case No. 01-26893 (App. Bd. Oct. 16, 2002).

Applicant has no say in her father-in-law's decisions to reside in China and to operate a consulting business instructing people how to be successful in the media. Given the Chinese government's control and influence over the media, the risk of undue foreign influence cannot be completely ruled out. However, Applicant can control her response to the security risk that exists through her spouse's tie to his father. Applicant has credibly indicated that she would have no problem reporting any suspicious activity by her father-in-law to security officials. After considering all the facts and circumstances, I find it is clearly consistent with the national interest to grant security clearance eligibility for Applicant.

⁵ The factors under AG ¶ 2(a) are as follows:

(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.

Formal Finding

Formal finding for or against Applicant on the allegation set forth in the amended SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, is:

Paragraph 1, Guideline B: FOR APPLICANT

Subparagraph 1.a: 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.

Elizabeth M. Matchinski
Administrative Judge