



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



In the matter of:	)	
	)	
(Redacted)	)	ISCR Case No. 15-06650
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Rhett C. Petcher, Esq., Department Counsel  
For Applicant: Alan V. Edmunds, Esq.

04/25/2017

---

**Decision**

---

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant mitigated the risk of foreign preference raised by her possession of a Chinese passport by her naturalization in the United States, which revoked her citizenship with the People's Republic of China (China). Foreign influence concerns are raised by her parents-in-law's citizenship and residency in China and their previous employments for China's military. Yet, Applicant has strong ties to the United States and can be counted on to act in U.S. interests. Clearance is granted.

**Statement of the Case**

On April 5, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline C, Foreign Preference, 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 May 13, 2016, and she requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. On July 20, 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 21, 2016, counsel for Applicant entered his appearance. On August 22, 2016, I scheduled a hearing for September 27, 2016. With the agreement of the parties, on August 25, 2016, I changed the start time for the hearing scheduled for September 27, 2016.

I convened the hearing as rescheduled. Two Government exhibits (GEs 1-2) and 18 Applicant exhibits (AEs A-R) were admitted into evidence without objection. Applicant and three of her co-workers testified, as reflected in a transcript (Tr.) received on October 6, 2016. At the request of both parties, I agreed to take administrative notice of pertinent facts related to China consistent with my obligation to make accurate and timely assessments of the political landscape in foreign countries when adjudicating Guideline B cases. See ISCR Case No. 05-11292 (App. Bd. Apr. 12, 2007). The Government's request for administrative notice, dated June 29, 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 2015 concerning military and security developments in China; from the U.S. Department of Justice's 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. Applicant's request for administrative notice was based on four publications from the U.S. State Department: *The Future of U.S.-China Economic Relations*, dated December 6, 2012; *Joint Statement on the 4<sup>th</sup> Round of the U.S.-China Strategic and Economic Dialogue*, dated May 4, 2012; *S&ED Opening Session Remarks*, dated June 6, 2016; and *Briefing on the 17<sup>th</sup> U.S.-China Human Rights Dialogue*, dated July 25, 2012. Applicant also relied on three articles obtained from the Internet, including a news article of the DOD of July 11, 2011, titled *Mullen Cites Importance of U.S.-China Relationship*. The facts administratively noticed are set forth in the Findings of Fact, below.

### **Summary of SOR Allegations**

The SOR alleges foreign preference concerns in that Applicant possesses a Chinese passport valid from April 2011 to April 2021 (SOR ¶ 1.a) and foreign influence concerns in that Applicant's parents-in-law are resident citizens of China who worked for a division of China's military (SOR ¶ 2.a). Applicant provided a detailed response in which she denies that she currently possesses a Chinese passport. Based on Article 9 of China's Nationality Law, her Chinese passport became invalid when she voluntarily acquired U.S. citizenship in 2013, and she surrendered her invalidated passport to her facility security officer (FSO) in April 2016. Applicant admitted the Chinese residency and

citizenship of her parents-in-law, but explained that her communication with them was casual and infrequent; that they were retired from positions that did not involve secure or defense information, and that she is not bound to them by affection or obligation.

### **Findings of Fact**

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

Applicant is 44 years old and has her doctorate degree in applied physical science. She has been employed as a principal engineer with a defense contractor since December 2014 and requires a DOD secret clearance as a condition of her continued employment. (GE 1; AE B; Tr. 59.) She has not previously held a DOD security clearance. (GE 1.)

Applicant is the middle of three daughters born in China to native resident citizens. Applicant's and her sisters' parents suffered from political persecution during the Chinese Cultural Revolution. Their father was forced from his hometown, and his parents died as a result of the political persecution. Their mother was sent to a remote village for labor and re-education from farmers for more than 15 years. Their father never realized his dream of becoming a scientist, but he became a high school teacher. Their mother worked as a farmer, then as a cashier, and finally as a factory worker. Education was valued in their home, and Applicant and her two sisters earned their bachelor's degrees in China. (GE 1; AEs E, Q; Tr. 60.)

Applicant married her first husband in China in July 1996. In mid-August 1996, Applicant and her younger sister came to the United States to pursue their graduate degrees on full scholarships. (GE 1; AE E; Tr. 61, 69.) Applicant entered the United States with a student visa on a Chinese passport issued in June 1996 that was valid for five years. (AE C.) Applicant's older sister came to the United States two years later for graduate study. (AE E; Tr. 69.) In August 1998, Applicant earned her master's degree. (GE 1; AEs F, K.) In December 1998, Applicant and her first husband divorced in the United States. (GE 2.) They were not living together, and Applicant had met her current husband while pursuing her master's degree. (Tr. 62.)

In November 2000, Applicant and her spouse married in the United States. (GE 1; AEs D, H, Q; Tr. 62.) They were both Chinese native citizens in the United States on student visas at the time. (Tr. 62.) Applicant's spouse was raised from infancy to age five by his grandparents, who lived some 800 miles from his parents. After his grandmother died, he lived with his parents until he was an adolescent, but he did not establish the emotional bond to his parents that one would normally expect. He went away to school, and attended college in the city of his infancy. After college, he was awarded a full scholarship for graduate study in the United States. He earned his master's degree in 1999 and his doctorate degree in 2003. (Answer; AEs D, K; Tr. 53.)

Applicant met her parents-in-law (hereafter in-laws) for the first time in 2000, when she and her spouse took a trip to China in December 2000 shortly after their marriage. (GE 1.) Her in-laws were already retired from their careers. Her father-in-law had spent his entire career as a construction engineer in support of airport and civilian construction for a branch of the Chinese military. Her mother-in-law had worked as a civilian nurse practitioner in a small outpatient center affiliated with the same division. (AE D.)

In approximately August 2002, Applicant's own parents were killed in a car accident in China. (GE 1; AE E.) In October 2002, Applicant was awarded her doctorate degree. (AE G.) From September 2002 to September 2004, Applicant worked as a post-doctoral research fellow at a public university in the United States. In October 2004, she began employment as a mechanical engineer in industry in the United States. (GE 1; AE K.) In June 2005, Applicant's spouse was hired as a research and development engineer for Applicant's then employer. (AE K.)

Over the next few years, Applicant and her spouse began establishing permanent roots in the United States. In June 2005, their first daughter was born. In March 2006, they bought their first home. (GE 1.) In 2008, they acquired U.S. permanent residency. (Tr. 63.) Their second daughter was born in June 2008. In December 2010, they moved for new employment for both of them with a defense contractor starting in January 2011. (AE K.) They bought a home in their new locale. (GE 1.)

In April 2011, Applicant, as a U.S. permanent resident, renewed her Chinese passport for another ten years. (GE 1.) In April 2012, Applicant and her spouse took their daughters to China for approximately ten days to visit her in-laws. Applicant traveled on her Chinese passport and had no contact with any foreign officials other than routine contact at the border. (GEs 1, 2; Tr. 57.) In June 2013, Applicant became a naturalized U.S. citizen. (AEs A, Q.) Applicant understood that by voluntarily settling abroad and being naturalized in a foreign country, she lost Chinese citizenship automatically under China's Nationality Act. (AE N; Tr. 77.) She believed that her Chinese passport was no longer valid for travel, although she did not notify Chinese authorities of her acquisition of U.S. citizenship or take any action to surrender her Chinese passport. (Tr. 44, 64.) In September 2013, Applicant obtained her U.S. passport. (GE 1.) In November 2013, Applicant registered to vote in the United States. (AE J.)

Applicant's spouse became naturalized in the United States in August 2013. (AE D.) Applicant and her spouse moved for his new job in October 2013, buying their current residence for \$805,000. (AEs I, K; Tr. 47-48.) They obtained their current mortgage for \$538,000 in February 2015. (AE I.)

In April 2014, Applicant and her family took a vacation trip to Canada. (GE 1.) Applicant traveled on her U.S. passport. (Tr. 65.) In December 2014, Applicant began working for her present employer as a principal engineer. (GE 1; AE K.) On December 31, 2014, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86). She disclosed that she had a Chinese passport,

which she used to travel to China in April 2012, before her U.S. naturalization. She indicated that her two sisters were both U.S. resident citizens after becoming naturalized in the United States. She reported that her in-laws were resident citizens of China; that she had contact with them once a month by telephone; and that they had visited her family in the United States for several months in 2013. Applicant disclosed her in-law's former employments for a division of the Chinese military. (GE 1.)

On March 5, 2015, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). She admitted that she renewed her Chinese passport in April 2011 for ten years, and that she traveled on that passport to China once, in April 2012, because she was not a U.S. citizen at the time. She explained that the passport was no longer valid because of her U.S. naturalization, and that she used her U.S. passport to travel to Canada for a brief family vacation in April 2014. Concerning her in-laws in China, Applicant related that they were both retired and had no current affiliation with any foreign government. Neither in-law knew that she was under consideration for a national security position. She denied any preference, sympathy, or alliance to any foreign interest or foreign government. (GE 2.)

Applicant did not realize before she received the SOR that her Chinese passport, which she considered invalid, was of concern to the DOD. On April 28, 2016, Applicant surrendered possession of her previous Chinese passport, which expired in June 2011, and of her Chinese passport renewed in April 2011 to her employer's FSO. (AE C.) On May 2, 2016, Applicant reaffirmed in the presence of her FSO that she had no allegiance or fidelity to any foreign state; that she would support and defend the U.S. Constitution and laws against all enemies; and that she would bear arms or perform noncombatant service or work of national importance for the United States if required by law. (AE B.)

Applicant and her spouse intend to remain permanently in the United States. (AE D; Tr. 56, 76.) All of their financial assets, which include employment income of \$300,000 (Tr. 57), homeownership (AEs I, R), savings, retirement funds, and college savings funds for their daughters, are in the United States. (AEs D, O.) Applicant and her spouse are financially independent from his parents. (AE D.)

Applicant's two daughters attend public school in their community. They are involved in several extracurricular activities, and have been raised with an appreciation for American history and holidays. (AEs D, E; R.)

Applicant has no family members of her own in China. (Tr. 56.) Applicant's bonds with her two sisters, both U.S. resident citizens, became stronger after the unexpected deaths of their parents. Despite the geographical distances between them, they see each other annually. (Tr. 59.) Applicant's older sister became a naturalized U.S. citizen in 2013. After receiving her master's and doctorate educations in the United States, she worked as a post-doctoral researcher at a state university from 2004 to 2006. She is currently a tenured associate professor in physics at a university in the United States. Applicant's sister has met Applicant's in-laws twice, both times in the United States. She observed

Applicant's relationship with her in-laws to be very polite and cordial but also remote. She has no concerns about Applicant's loyalty to the United States or that Applicant could be improperly influenced because of her in-laws. Applicant's sister is aware that Applicant and her spouse have worked hard to instill American values in their daughters and that they have toured historical sites as a family. Noting that it is not within Applicant's power to change the fact that her in-laws previously worked for the Chinese government, she believes Applicant's professional and personal life far outweigh the connection she has to her in-laws based on marriage. (AE E.)

Applicant's younger sister described her relationship with Applicant as "extremely close." She became a naturalized U.S. citizen in 2009 and is a professor of psychology at a public university in the United States. In 2005, Applicant's sister received a U.S. presidential early career award for scientists and engineers. Applicant's younger sister has observed that Applicant encourages her daughters to embrace American culture and values. This sister met Applicant's in-laws once, when they were in the United States in 2005 shortly after the birth of Applicant's first child. She observed Applicant's in-laws as very critical of their own son but having a mutually tolerant relationship with Applicant. While visiting Applicant in December 2014, Applicant's younger sister overheard a "heated" telephone conversation between Applicant's spouse and his parents. Applicant's younger sister believes that "[it] is entirely implausible" for Applicant's in-laws to exert any influence on Applicant. (AE E.)

Applicant's in-laws are 79 and 74 years old. (GE 1.) They came to the United States after the births of Applicant's daughters in 2005 and 2008 and stayed with Applicant and her spouse for several months to help care for their grandchildren. (Answer.) They have come to the United States on three other occasions, including in 2013 and most recently in December 2015. During this recent visit, they stayed with Applicant's family for six months and cared for the home while Applicant and her spouse worked. Applicant's spouse took his parents sightseeing on the weekends. Applicant talks to her in-laws occasionally when her spouse calls his parents. She indicated on her SF 86 that she had monthly contact. Her conversations with her in-laws focus on greetings and her daughters' activities. Applicant believes her in-laws do not know about her employment or that she has applied for a security clearance. Applicant advised her spouse not to tell them. (Tr. 71-76.) Applicant's spouse limits his phone conversations with his parents to health, weather, and his daughters. (AE D.)

Applicant is unaware whether his parents receive a pension from the Chinese government. (Tr. 71-76.) To the best of her spouse's knowledge, her in-laws "are completely disconnected from past professional life." Many of his parents' former colleagues are bedridden or have died. He described his parents' life as private, and they are without close friends. (AE D.)

Applicant's spouse knows where she works but nothing about the nature of her work. He is aware that she has applied for a DOD security clearance. (Tr. 72-73.) They do not discuss her work at home. (Tr. 78-79.)

## **Work and Personal Character References**

Applicant presented favorable character references from former and present co-workers. A former co-worker from April 2005 to December 2010 worked alongside Applicant on technical projects for some of that time. During their five years of professional interaction, he came to have high regard for Applicant's technical abilities and her personal traits. She was honest, trustworthy, and reliable, and demonstrated a preference for the freedoms, values, and culture of the United States. This former co-worker is aware that Applicant's in-laws are resident citizens of China, but he strongly believes that this relationship could not cause Applicant to act contrary to U.S. interests. (AE M.) For her outstanding contributions on a project involving computational modeling expertise, Applicant was awarded a \$500 monetary award by her then employer in December 2010. (AE P.)

At her next employment, Applicant also demonstrated a high degree of personal integrity and technical competence. Two of her former co-workers attested to Applicant's value to their employer. She was dependable, willing to provide support when needed, was accountable for her work, and showed team spirit. She performed complex tasks, often within tight schedules, and she exercised extra care when complying with export control rules and policy. (AE M.) In June 2012, Applicant was given a \$1,000 award for her contributions in the development and application of advanced computer modeling technology. In October 2013, her employer awarded her \$2,500 for her leadership efforts. (AE P.)

Applicant works in an office with only 16 employees. (Tr. 38.) Applicant submitted a letter from her employer awarding a bonus in recognition of the company's success in fiscal year 2015 (AE P), although the letter does not show the amount of her bonus. Applicant's current department manager testified and also provided a character reference letter. He indicated that Applicant was hired in December 2014, as their employer expected Applicant to be granted a security clearance in a reasonable time based on her work history in the United States and her U.S. citizenship. Applicant has displayed a strong and consistent work ethic and personal characteristics of integrity, honesty, and trustworthiness. (AE M.) He supports Applicant's application for security clearance, although he knows little about her relations with any family members in China. (Tr. 24.)

A senior scientist with Applicant's employer, who holds a security clearance, considers Applicant to be a valued member of their office. Applicant has adhered to all security protocols and procedures, and shown an excellent work ethic on several unclassified programs. Concerning Applicant's personal life, this co-worker commented favorably about Applicant's active embrace of American culture and her involvement in her local community, including promoting a town library renovation project and campaigning for a school committee candidate. He described her as "highly deserving" of a DOD clearance. (AE M.)

Another co-worker, who has a secret-level clearance, indicated that he is aware of the security concerns raised in the SOR. He expressed his confidence about Applicant's loyalty to the United States. Applicant is the sole person in the office without a security clearance, and he has never seen her attempt to obtain classified information. He believes Applicant would be "a positive asset" in helping to keep our nation safe from foreign threats. He has only heard her discuss family members in the United States, and has heard nothing from her about any living family in China. (AE M.)

A scientist at work with a top secret clearance attested to "the privilege" of collaborating with Applicant on several projects. From his observations, Applicant and her family are "a perfectly typical family." In their day-to-day interactions, Applicant has shown "excellent judgment and consummate honesty." (AE M.) Applicant is highly competent technically and has a high work ethic. (Tr. 29.) He does not know whether Applicant has any relatives in China, but he has seen no evidence to give him concern about her security clearance eligibility. (Tr. 30-31.) Applicant has gained the respect of another scientist at work with whom she has performed some structural acoustics work. (AE M.)

The company's FSO also testified for Applicant. He is aware that Applicant's spouse has relatives in China and considers Applicant to be honest, loyal, and trustworthy. (Tr. 35-36.)

Applicant also has the positive endorsement of her neighbor, who is an emeritus professor of Art History. She described Applicant's relationship with the United States as "deep." Applicant has been active in their local community and celebrates U.S. holidays with her family. She has no doubt about Applicant's loyalty to the United States. Applicant's spouse, daughters, and sisters are U.S. citizens while her tie China was severed with the death of her parents. Applicant and her spouse's properties, financial assets, and friends, are all in the United States. Applicant is a devoted mother who appreciates the opportunities life in the United States affords her daughters. (AE M.)

A close family friend, who has known Applicant since 2011 when his spouse worked with Applicant, is aware that Applicant's in-laws are retirees living in China. In this friend's opinion, her in-laws do not have any influence on Applicant or her family. Applicant is "proud to be an American and enjoys contributing through her work in technical development in her company." (AE M.)

### **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 parties 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 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.

In 2013, an information security provider detailed Chinese spying on America companies. In response, the Obama Administration unveiled a government-wide strategy to mitigate the theft of intellectual property from American companies, proposing solutions to increase cooperation between the two countries. Yet, 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.

China maintains that it has made some progress in human rights, including in Internet freedoms, furthering democracy and the legal systems, improving its citizens' living conditions and public health, and providing equal access to civil rights for all ethnic groups. Yet, the U.S. State Department reports that 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 *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline C—Foreign Preference**

Foreign preference concerns arise under AG ¶ 9 “[w]hen an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.” As of the issuance of the SOR on April 5, 2016, Applicant still possessed a Chinese passport that she renewed in April 2011 for another ten years. Possession of a current foreign passport raises concerns of foreign preference under AG ¶ 10(a)(1), which provides as follows:

- (a) Exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to:
  - (1) possession of a current foreign passport.

In mitigation, Applicant renewed her Chinese passport when she was a U.S. permanent resident and not eligible for a U.S. passport. She acquired her U.S. citizenship in June 2013 with the understanding that her voluntary acquisition of U.S. nationality

revoked her Chinese citizenship automatically. While she did not take any action to notify China of her U.S. citizenship or to surrender her Chinese passport, she considered her Chinese passport invalid for foreign travel and did not use it. Her retention of her Chinese passport was not intended as an act of foreign preference. Moreover, after she realized that her possession of her Chinese passport was of concern to the DOD, she surrendered it to her FSO. Mitigating condition AG ¶ 11(e), “the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated,” applies. The foreign preference concerns are adequately mitigated.

## **Guideline B—Foreign Influence**

The security concerns about foreign influence are 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.

If an applicant or his or her spouse has a close relationship with even one relative living in a foreign country, this factor alone may be sufficient to create the potential for foreign influence. The evidence establishes that Applicant’s in-laws are resident citizens of China and that they are retired from civilian engineering and nursing positions with a branch of China’s military. Applicant credibly testified to lacking affection for her in-laws. Her spouse claims to have a distant relationship with his parents because of his upbringing. Even so, Applicant’s spouse calls his parents once a month, and Applicant speaks with her in-laws on occasion. Furthermore, Applicant’s in-laws stayed in Applicant’s home for several months in 2005 and 2008 after Applicant gave birth to help care for their granddaughters. In April 2012, Applicant and her family went to China for about ten days to visit her in-laws. Her in-laws came to the United States and stayed with Applicant and her spouse in 2013 and in December 2015. They stayed for six months during this last visit and cared for the home while Applicant and her spouse worked during the day. While Applicant’s relationship with her in-laws may accurately be one of mutual tolerance, the contact and connections that she has through her spouse establish two disqualifying conditions under AG ¶ 7:

(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 "heightened risk" under AG ¶ 7(a) 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 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. China's history of economic espionage and its poor human rights record are factors that present a heightened risk. Given that Applicant's in-laws retired more than 20 years ago, the risk of a potential conflict of interest because of her in-laws previous employments for a branch of China's military is lessened, but it cannot be completely ruled out. Applicant's spouse believes that his parents do not have any ongoing affiliation with their former co-workers and are completely disconnected from their previous professional lives. Glaringly omitted from his account of his parents' lives is any mention of his parents' source of support. Applicant's in-laws may well be living off pensions from China's military or government.

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's conversations with her in-laws are limited to casual greetings and the activities of her daughters. Applicant's spouse discusses his parents' health with them, his daughters' activities, and the weather. Neither Applicant nor her spouse talk about their jobs with them. Yet, because the foreign tie is to her spouse's parents and the contact is ongoing, albeit occasional, it cannot easily be said that the sense of obligation is so minimal to satisfy the first component of AG ¶ 8(b), which provides:

(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.

However, with the untimely death of her parents in 2002, Applicant has no ties of her own to China that would undermine her allegiance to the United States, which she has demonstrated most significantly by voluntarily acquiring U.S. citizenship in June 2013, knowing that it would automatically revoke her Chinese citizenship. Applicant and her spouse have established significant roots in the United States since separately coming to the United States in 1996 and 1997, respectively. They earned master's degrees and doctorate degrees from U.S.-based universities, and after completing post-doctoral research, they began successful careers in industry for U.S. employers. Their daughters were born in the United States in 2005 and 2008 and are U.S. native citizens. Under the sponsorship of their employer, they became U.S. permanent residents and five years later became U.S. citizens. All of their financial assets are in the United States, and include employment income totaling \$300,000 annually, savings and retirement accounts, and home ownership. Their current residence is the third home they have bought in the United States. They have raised their daughters to embrace American culture. As a family, they tour historical sites in the United States and celebrate U.S. holidays. Applicant has been involved in her community by promoting her town library's renovation project and campaigning for a local school board candidate.

Apart from her spouse and children, Applicant's closest bonds are to her two sisters, who also took advantage of educational opportunities in the United States. They obtained master's and doctorate degrees from U.S.-based universities and have successful careers in the United States, both holding academic positions with U.S.-based universities and appear well settled in the United States. Applicant's younger sister has two children close in age to Applicant's daughters. Applicant and her siblings consider their home to be in the United States, and they have no intention to reestablish a life in China. I have considered the risk that China may attempt to exert influence through Applicant's elderly in-laws, but Applicant has lived in the United States continuously since she was 23 years old. She has only been back to China twice since 1996: in December 2000 to meet her in-laws for the first time and then in April 2012 so that her daughters could see their grandparents. While there is a rebuttable presumption that a person has close ties of affection for, or obligation to, the immediate family members of one's spouse (See ISCR Case No. 07-17673 at 3 (App. Bd. Apr. 2, 2009)), Applicant has persuaded me that she is not likely to jeopardize the life and well-being of her spouse, children, and sisters by succumbing to any undue foreign influence through her in-laws with whom she has a respectful but not particularly close relationship.

## **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).<sup>1</sup> The analyses under Guideline C and Guideline B are 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).

The persons who know Applicant best and have had an opportunity to observe and assess her commitment to her life in the United States have no concern about her judgment, reliability, or trustworthiness with regard to handling and safeguarding classified information. Applicant presented extensive documentation establishing strong ties to the United States. Applicant had no say in her in-laws occupational choices or their decision to live out the rest of their days as resident citizens of China. However, Applicant can control her response to the security risk that exists through her spouse's tie to his parents. Applicant demonstrated her willingness to comply with DOD requirements by surrendering her foreign passport. She has wisely advised her spouse against informing his parents that she has applied for a DOD security clearance. After considering all the facts and circumstances, I find it is clearly consistent with the national interest to grant security clearance eligibility for Applicant.

### **Formal Finding**

---

<sup>1</sup> 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 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 C:           FOR APPLICANT

Subparagraph 1.a:           For Applicant

Paragraph 2, Guideline B:           FOR APPLICANT

Subparagraph 2.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