



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



In the matter of: )  
)  
) ISCR Case No. 16-03867  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Tara Karoian, Esq., Department Counsel  
For Applicant: Ryan C. Nerney, Attorney At Law, The Edmunds Law Firm

October 2, 2017

**Decision**

LOKEY ANDERSON Darlene D., Administrative Judge:

**Statement of the Case**

On January 7, 2017, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline B.<sup>1</sup> The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant’s security clearance.

Applicant answered the SOR on February 25, 2017, and requested a hearing before an administrative judge. (Answer.)<sup>2</sup> The case was assigned to me on May 16, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 8, 2017, scheduling the hearing for July 13, 2017. The hearing was convened

<sup>1</sup> I considered the previous Adjudicative Guidelines, effective September 1, 2006, as well as the new Adjudicative Guidelines, effective June 8, 2017. My decision would be the same if the case was considered under the previous Adjudicative Guidelines, effective September 1, 2006.

<sup>2</sup> Applicant was represented in his Answer to SOR by Bigley Ranish, LLP

as scheduled. The Government offered Exhibits 1 through 3, which were admitted without objection. Applicant called two witnesses and testified on his own behalf. He also presented sixteen documents, which I marked Applicant's Exhibits A through P, which were also admitted without objection. DOHA received the transcript of the hearing (TR) on July 21, 2017.

### **Procedural Rulings**

At the hearing, the Government requested I take administrative notice of certain facts relating to the People's Republic of China (China). Department Counsel provided a nine page summary of the facts, supported by eleven Government documents pertaining to China. The documents provide elaboration and context for the summary. Applicant had no objection. (Tr. p. 17.) I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

### **Findings of Fact**

Applicant admitted each of the allegations in the SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 61 years old and married. He has one daughter from his current marriage, and one son from a previous marriage. He has a Ph.D. degree. He holds the position of Engineering Specialist with a defense contractor. He has been working for his current employer since September 2004. He obtained a security clearance in 2005.

Applicant was born in China in 1955. He lived with his parents and siblings in China until he was about 15 years old. He was then sent to a labor camp for six or seven years where he experienced horrible conditions. He then returned to his parent's home where he lived for one year before he attended a University in China. As an honor student, after graduating, Applicant was hired by the University as an Assistant Teacher, where he taught physics from 1982 to 1986. He then applied for a University sponsored J-1 Visa to come to the U.S. He married his first wife in 1983. They had a son in 1985. He came to the United States in March 1986 to pursue his graduate studies with the intent of returning to China after receiving his degree. This was about the time the Tianamen Square massacre occurred and Applicant felt it unsafe to return to China. (Tr. p. 96.) Applicant left his troubled marriage with his wife and son in China. Applicant stayed in the U.S and filed for divorce in China which was final in 1993. (Tr. p. 108.)

In June 2000, Applicant became a naturalized U.S. citizen. He met a girl in China while visiting his family for two weeks in 2000. She worked as a travel agent in China. Applicant applied for a fiancé visa and they were married in the U.S. in 2001. She is a permanent resident of the U.S. She plans to apply for her U.S. citizenship next

year when she will be eligible to take the foreign language exam for citizenship. They have a daughter who was born in the U.S. Applicant has lived in the U.S. for the past 31 years. In 1998, he purchased a house worth \$600,000, which is almost paid off. He has a checking and savings bank accounts and a retirement account. He has about one million dollars in several IRAs and investment retirement account. (Tr. p. 52.) His total net worth in the U.S. is approximately 1.6 million dollars. (Tr. p. 53.) Applicant has traveled to China three or four times since moving here in 1986. (Tr. p. 58.) He has not been back to China since 2003.

Applicant's wife has three siblings, two brothers and one sister. They are all either retired or work in a factory. (Tr. p. 113.) His wife travels to China every two years or so to visit her parents in China. (Tr. p. 116.) She also communicates with her friends and family in China about once every few months by telephone or some sort of social media program. (Tr. p. 118.) Applicant's wife takes their daughter to visit family in China when she goes every couple of years.

Applicant's mother is a citizen and resident of China. She is an 84-year-old housewife. Applicant communicates with her about once a year. She has no internet or telephone. Applicant last spoke to her in 2016 during the Chinese New Year. His mother knows only that he is an Engineer. (Tr. p. 57.)

Applicant's two brothers and two sisters are citizens and residents of China. His older brother is a retired factory worker. Applicant communicates with this brother about once a year, when he talks with his mother. This brother has no association with the Chinese Government. Applicant's younger brother is the sole proprietor of a business selling U.S. machinery products to China. (Tr. p. 62.) He communicates with this brother about twice a year. (Tr. p. 65.) He only knows that Applicant works as a Software Engineer. Applicant also has one older sister and one younger sister. His older sister is a retired factory worker, with no affiliation with the Chinese government. He communicates with her once a year. Applicant's younger sister is also a retired factory worker. She has a part-time job working with kindergarten children. (Tr. p. 68.) They communicate about twice a year. None of his family members have any influence over the Applicant.

Applicant has a mother-in-law and father-in-law who are citizens and residents of China. They are both retired factory workers who are now in their 80's. They have no affiliation with the Chinese government. Applicant last communicated with them in 2013. They know that Applicant is an Engineer and nothing more. (Tr. p. 70.) Applicant states that they cannot influence or manipulate him to divulge classified information. (Tr. p. 70.)

Applicant has one son who is a citizen and resident of China. He and the Applicant do not have a close relationship. Applicant left China to come to the United States when his son was six months old. Applicant did not establish any relationship with his son until his son was about 15 years old and in high school. In 2009, Applicant's son traveled to the U.S. for an internship, and he had lunch with the Applicant on one occasion. Applicant's son then returned to China. Applicant has had

occasional conversations with his son, about once a year. (Tr. p. 76.) In 2014, Applicant's son returned to the U.S. on a student visa. Since then, Applicant's son has been in the United States pursuing his graduate studies in business management. Applicant last saw his son at graduation, in February of this year. His son has tried to reach out to the Applicant, but after receiving the SOR in this matter, Applicant is hesitant to respond to his son, for fear that it may jeopardize his security clearance. (Tr. p. 72.) Applicant communicates with his son on average about three times a year and their conversations are limited and casual. Applicant's son does not know what Applicant does for a living.

Applicant's wife receives a retirement payment in the approximate amount of \$312 monthly from the Chinese government. She uses it for her travel expenses. She receives the money in a Chinese bank account. Applicant does not benefit from her retirement payment. Applicant receives nothing from the Chinese government. Applicant plans on applying for social security from the U.S. when he is old enough to do so. (Tr. p. 84)

Two witnesses testified favorably on behalf of the Applicant. His team lead, who has daily contact with the Applicant, stated that Applicant is a hard worker who gets the job done. He is honest, trustworthy, and responsible. His department director testified that Applicant is an outstanding, dedicated, loyal employee. Applicant is said to interact well with his teammates and can at all times be trusted. They both have no reservations about the Applicant holding a security clearance. (Tr. pp. 29-43.)

Performance Evaluations of the Applicant for years 2014, 2015 and 2016, indicate that Applicant either meets or exceeds expectations in every category. (Applicant's Exhibit C.)

Letters of reference from supervisors, professional associates, and friends indicate that Applicant is an integral member of the technical development team. He is said to be highly dependable, valued, and respected. He is considered to be honest and a person of integrity. Applicant is also said to be competent, hardworking, dedicated to the mission, trustworthy, and responsible. He handles all material strictly according to the guidelines. He is strongly recommended for a security clearance. (Applicant's Exhibit E.)

Applicant's Personal Financial Statement dated February 22, 2017, indicates that after he pays his regular monthly expenses, he has about \$1,905 in dispensable income left at the end of the month. (Applicant's Exhibit H.)

Applicant's mortgage statement dated December 1, 2016, reflects that he had an unpaid balance on his home loan in the amount of \$15,700.75. (Applicant's Exhibit I.)

I have taken administrative notice of the following facts about the People's Republic of China. China is one of the world's most active and persistent perpetrators of economic espionage, and it is predicated that their attempts to collect U.S. intelligence will continue at a high level and will represent a persistent, if not growing

threat to U.S. economic security. China's intelligence services, as well as private companies and other entities, frequently seek to exploit Chinese citizens, or person with family ties to China, who can use their insider access to corporate networks to steal secrets using removable media and devices or e-mail. China is using its cyber capabilities to support intelligence collection against the U.S. national diplomatic, economic, and defense industrial base sectors that support U.S. national defense program. China very likely uses its intelligence services and employees other illicit approaches that violate U.S. laws and export controls to obtain key national security and export-restricted technologies, controlled equipment, and other materials unobtainable through other means. In 2015, numerous computer systems around the world, including those owned by the U.S. Government, continued to be targeted for intrusions, some of which appear to be attributable directly to China's Government and military. These and past intrusions were focused on accessing networks and exfiltrating information. China uses state sponsored industrial and technical espionage to increase the level of technologies and expertise available to support military research, development, and acquisition.

## **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 to be 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, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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 national security eligibility and 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies for access to classified information seeks to enter 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 the applicant may deliberately or inadvertently fail to protect or 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 Executive Order (EO) 10865 provides that adverse 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 set out in AG ¶ 6:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Three are potentially applicable in this case:

(a) contact, regardless of method, 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 classified or sensitive information or technology and the

individual's desire to help a foreign person, group, or country by providing that information or technology; and

(e) shared 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;

Applicant's family members are citizens and residents of China. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 including:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation;

Having considered the fact that China presents a heightened risk to the national security of the U.S., the nature of the relationships with Applicant's family in China does not pose a security risk. There is no strong connection with his family in China or the country of China for that matter. No one in his family is associated with the Chinese government, nor do they show any interest in the Applicant or his work. Applicant has only limited and casual contact with his extended family in China. There is nothing between he and them that could potentially create a conflict of interest. Applicant resides with his spouse and daughter. His spouse is a permanent resident of the U.S., who plans to apply for her American citizenship next year when she is eligible to take the exam in her native language. Their daughter is an American citizen. Applicant's older son, who was born in China, recently moved to the U.S. to attend graduate school and is now in a business training program here. Applicant's relationship with his son is distant and seems troubled, but is not a risk to the U.S. Applicant has a deep and long-standing relationship and loyalty to the U.S. He has established his life here, his assets are here, and his immediate family is here. Based upon this history, he will always

resolve any situation in favor of the U.S. Full mitigation under AG ¶ 8(a), 8(b), and 8(c), has been established.

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

(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 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(d) were addressed under those guidelines, but some warrant additional comment.

Applicant's connections with China do not pose a risk to the U.S. government. Applicant clearly understands the responsibilities required of him in holding a security clearance. He has obviously shown the maturity and level of judgment required to access classified information as evidenced by his longstanding commitment to the U.S. In the event that Applicant breaches this trust, his security clearance will be in immediate jeopardy.

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

## Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	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 national security eligibility and a security clearance. Eligibility for access to classified information is granted.

Darlene Lokey Anderson  
Administrative Judge