



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 16-02226

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel

For Applicant: *Pro se*

08/13/2018

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense's (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. Applicant's sister and brother-in-law are citizens and residents of the People's Republic of China (China). His mother-in-law, sister-in-law, and daughter-in-law are citizens of China residing in the United States. Applicant's family connections to his sister and brother-in-law in China are close and continuing. China aggressively seeks classified and protected information from the United States. Foreign influence security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,² on March 8, 2017, the DoD issued a Statement of Reasons (SOR) detailing security concerns under

¹ Applicant is also known as .

² Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*

Guideline B, foreign influence. On March 31, 2017, Applicant answered the SOR and elected to have the matter decided without a hearing. On May 17, 2017, Defense Office of Hearings and Appeals (DOHA) Department Counsel (DC) submitted the Government's case in a File of Relevant Material (FORM). The FORM contained five attachments (Items). On June 5, 2017, Applicant received a copy of the FORM, along with notice of his opportunity to object to the Government's evidence and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. On June 6, 2017, Applicant responded to the FORM. His response was admitted into the record without objection as Item A. On October 1, 2017, I was assigned the case.

While this case was pending a decision, the Director of National Intelligence issued Security Executive Agent Directive 4, establishing the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), which he made applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The new AGs supersede the Sept. 1, 2006 AGs and are effective "for all covered individuals" on or after June 8, 2017. Accordingly, I have evaluated Applicant's security clearance eligibility under the new AGs.³

Procedural Rulings

Department Counsel offered a summary for administrative notice concerning foreign influence security concerns raised by Applicant's connections to the People's Republic of China. Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 16-02522 at 2-3 (App. Bd. July 12, 2017); ISCR Case No. 05-11292 at 4 n. 1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n. 4 (3d Cir. 1986)). Usually administrative notice at ISCR proceedings is accorded to facts that are either well known or from government reports. Administrative notice was taken of the foreign influence security concerns posed by China. Portions of the Department Counsel's administrative notice request are quoted without quotation marks and footnotes in the China section of this decision, *infra*.

Findings of Fact

In Applicant's answer to the SOR, he admitted his sister and brother-in-law are citizens and residents of China, but denied the security concern as to their citizenship and residence. The SOR also alleged his mother was a citizen and resident of China, however, she died in 2015. He also denied the security concern as to the citizenship of his mother-in-law, sister-in-law, and daughter-in-law who are Chinese citizens living in the

(January 2, 1992), as amended (Directive); and the adjudicative guidelines (Sept. 1, 2006 AG) effective within the DoD on September 1, 2006.

³ Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case. The new AGs are available at http://ogc.osd.mil/doha/5220-6_R20170608.pdf.

United States. After a thorough review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 66-year-old senior database administrator who has worked for a defense contractor since March 2008. He seeks to obtain a security clearance. (Item 3) He has been married since September 1985 and has one son age 31. His wife, a senior software engineer, is a naturalized U.S. citizen who was born in Taiwan and works for a defense contractor. (Item 2) His son was born in the United States and attended a private college in the United States. (Item 2) Applicant and his wife own two homes in the United States worth approximately one million dollars. (Item 2)

Applicant was born in China in 1966. He obtained a bachelor's degree in engineering in China. In 1986, at age 35, both he and his wife moved to the United States. He came to pursue a master's degree. (Item 2) In 1999, they became naturalized U.S. citizens. In 2008, 2011, and 2012, he visited China for a period of 11 to 20 days on each trip. In 2013, he visited China for one to five days. The 2008, 2012, and 2013 trips were to visit his mother in a nursing home. In 2013, he also visited his sister in China for a period of one to five days.

Applicant's brother is a naturalized U.S. citizen living in the United States. (Item 3) The record is silent as to how much contact Applicant has with his brother, but he had yearly contact with his brother's wife from 1993 to June 2014. (Item 4) He has had no contact with her since 2014. (Item 4) Applicant's older sister has been an art school principal and is a citizen and resident of Singapore. (Item 2, 3) His other sister is a citizen and resident of China. Before retiring ten years ago, his sister was a clerk at a construction company. His brother-in-law is a citizen and resident of China who worked as an electrical engineer at a ship equipment company before retiring three years ago. (Item 2, 3) Applicant asserts his relatives in China have sound financial resources, and he does not expect to provide them with financial assistance. (Item 2)

Until March 1986, when Applicant left China, he had daily contact with his sister who is a citizen and resident of China. (Item 4) Between March 1986 and April 1995, he had no in-person contact with his sister. And from April 1995 to March 2014, he had yearly contact with his sister. Starting in 2011, he began email contact with his sister and since October 2014, he has had monthly email contact with his sister. He had in-person contact with her when he visited China and also when she visited the United States in March 2014. (Item 4) Applicant had contact with his brother-in-law during their five-day stay in the United States, but has no direct contact with him since that time. (Item 4)

In 2011, Applicant stopped his monthly telephone contact with his sister in Singapore and started email communication with her. (Item 4) In December 2013, he had in-person contact with her during his five-day stay in Singapore.

Applicant's mother-in-law is 87 and worked as a chemical engineer before retiring. (Item 2, 3) She is a Chinese citizen living in the United States. From 1996 to April 2010, Applicant had in-person contact with her two or three times a year when he visited China. (Item 4) The record is silent as to his contact with his mother-in-law since she moved to

the United States. In 1993, his sister-in-law came to the United States and is a U.S. permanent resident. She currently resides with his brother in the United States. (Item 2, 3) Before she retired, she worked as a bank clerk. In 2014, Applicant's daughter-in-law married Applicant's son. (Item 2) She is a Chinese citizen living in the United States. She obtained her master's degree in engineering from a U.S. university. (Item 2) Applicant has weekly contact with her. (Item 4) Applicant asserts none of his relatives ever worked or were affiliated with either the Chinese or any other foreign government. (Item 2)

Applicant maintains a bank account in China with a balance of approximately \$4,516. When his mother was alive, he brought some gifts to his relatives living in China. They insisted in paying him back in Yuan, the official Chinese currency. Since he could not use Yuan in the United States, and since the amount was small, he simply deposited it in a Chinese bank for his use the next time he visited China. (Item 2)

Applicant came to the United States 30 years ago as a student with all his belongings in two suit cases. He asserts he loves the United States and no foreign influences would make him betray the country who gives him prosperity and the chances to realize my American Dream. (Item 2)

Character Evidence

Applicant's work performance has been outstanding. (Ex. A) He received a company award in recognition of his outstanding performance and dedication. (Ex. A)

China

The National Counterintelligence Executive has identified China and Russia as the most aggressive collectors of U.S. economic information and technology. China's intelligence services, as well as private companies and other entities, frequently seek to exploit Chinese citizens or persons with family ties to China who can use their insider access to corporate networks to steal secrets using removable media devices or e-mail.

In assessing the military and security developments in China, the U.S. Department of Defense has reported that:

Chinese actors are the world's most active and persistent perpetrators of economic espionage. Chinese attempts to collect U.S. technological and economic information will continue at a high level and will represent a growing and persistent threat to U.S. economic security. The nature of the cyber threat will evolve with continuing technological advances in the global information environment.

In the long term, Chinese leaders are focused on developing the capabilities they deem necessary to deter or defeat adversary power projection and counter third-part[ies] including U.S.-intervention during a crisis or conflict. China's military modernization is producing capabilities that have the potential to reduce core U.S. military technological advantages.

China very likely uses its intelligence services and employs 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 is using its cyber capabilities to support intelligence collection against the U.S. diplomatic, economic, and defense industrial base sectors that support U.S. national defense programs. The information targeted could potentially be used to benefit China's defense industry, high-technology industries, and provide [China] insights into U.S. leadership perspectives on key China issues. Additionally, targeted information could inform Chinese military planners' work to build a picture of U.S. defense networks, logistics, and related military capabilities that could be exploited during a crisis.

China uses state-sponsored industrial and technical espionage to increase the level of technologies and expertise available to support military research, development, and acquisition.

The organizational network of China's military-industrial complex is such that the People's Liberation Army (PLA) is able to access sensitive and dual-use technologies or knowledgeable experts under the guise of civilian research and development.

As recently as March 2016, for instance, a Chinese national pleaded guilty to participating in a conspiracy, between approximately October 2008 through March 2014, to hack into the computer networks of major U.S. defense contractors, steal sensitive military—including data relating to military aircraft that are indispensable in keeping our military personnel safe--and export-controlled data, and send the stolen data to China.

China has in place a long-term, comprehensive military modernization program designed to improve its armed forces' capacity to fight short-duration, high-intensity regional conflicts and, as China's global footprint and international interests grow, its military modernization program has become progressively more focused on investments for a range of missions beyond China's periphery.

There are also numerous examples of individuals who have been convicted of conspiring to violate federal export control laws by illegally exporting defense equipment to China, of which only the most recent is cited here. Most recently, in June 2016, a California resident was convicted in a federal district court of conspiring to illegally export fighter jet engines and unmanned aerial vehicles (drones) and related technical data to China, in violation of the Arms Export Control Act.

In assessing the national security implications of the bilateral trade and economic relationship between the U.S. and China, the U.S.-China Economic and Security Review Commission has reported:

Since at least the mid-2000s, the Chinese government has conducted large-scale cyber espionage against the United States. China has compromised a range of U.S. networks, including those of DoD, defense contractors, and private enterprises. China's material incentives for continuing this activity are immense and unlikely to be altered by small-scale U.S. actions.

China's progress modernizing its defense industry is due in large part to China's substantial and sustained investment in defense research and development (R&D). China's large-scale, state-sponsored theft of intellectual property and proprietary information also has allowed China to fill knowledge gaps in its domestic defense and commercial R&D.

Since the 1990s, China has promoted "civil-military integration" to facilitate the transfer of commercial technologies for military use. As part of this effort, China has encouraged civilian enterprises to participate in military R&D and production, sponsored research into dual-use science and technology, and developed common military and civilian technical standards.

With the emergence of a more modern and able domestic defense industrial base, China is gradually shifting its focus from purchasing complete foreign systems to procuring foreign military and dual-use subsystems and components via open sources, trade, and traditional and nontraditional espionage. Among China's most effective methods used to acquire sensitive U.S. technology are cyber espionage; witting and unwitting collection by Chinese students, scholars, and scientists; joint ventures; and foreign cooperation.

With respect to human rights concerns observed in China in 2015, the U.S. Department of State reported:

The People's Republic of China (PRC) is an authoritarian state in which the Chinese Communist Party (CCP) is the paramount authority. CCP members hold almost all top government and security apparatus positions.

Repression and coercion markedly increased during the year, particularly against organizations and individuals involved in civil and political rights advocacy, and public interest and ethnic minority issues, and against lawyers and law firms that took on sensitive cases.

Human rights concerns that were observed during 2015 also included: extralegal measures to prevent public expression of critical opinions; repression of speech, religion, association, assembly and movement for certain minorities; extrajudicial killings; enforced disappearance and incommunicado detention, including prolonged detentions at

unofficial holding facilities (black jails); torture and coerced confessions of prisoners; detention and harassment of individuals who sought to peacefully exercise their rights under the law; a lack of due process in judicial proceedings; searches of premises without warrants; monitoring of communications (including telephone conversations, facsimile transmissions, e-mail, text messaging, and Internet communications); opening of domestic and international mail; failure to respect freedom of speech and the press; severe restrictions on peaceful assembly, as well as severe restrictions on citizens' freedom of association. Additionally, citizens lacked the right to change their government and had limited forms of redress against the government.

The U.S. Department of State warns visitors to China that they may be placed under surveillance. Hotel rooms (including meeting rooms), offices, cars, taxis, telephones, Internet usage, and fax machines may be monitored onsite or remotely, and personal possessions in hotel rooms, including computers, may be searched without knowledge or consent.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must 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 overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the adjudication process is an examination of a sufficient period and a careful weight of a number of variables of an individual's life to make an affirmative determination that the individual is an acceptable security risk. This is known as the whole-person concept.

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 will be resolved in favor of the 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be in terms of the national interest and shall in no sense be a determination of 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

Foreign Influence

AG ¶ 6 explains the security concern about foreign influence as follows:

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.

AG ¶ 7 indicates four conditions that could raise a security concern and may be disqualifying 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;

(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; and

(f) substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest.

Applicant's wife is a naturalized U.S. citizen who was born in Taiwan and works for a U.S. defense contractor. His son was born in the United States. His brother is a naturalized U.S. citizen living in the United States. His older sister is a citizen and resident of Singapore. His other sister is a citizen and resident of China as is her husband, his brother-in-law. Applicant has monthly email contact with his sister in China. His contact with his daughter-in-law, a Chinese citizen living in the United States, is frequent. However, his contact with his mother-in-law and sister-in-law, both living in the United States, is minimal.

There is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members. See *generally* ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at *8 (App. Bd. Feb. 20, 2002). "[A]s a matter of common sense and human experience, there is [also] a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse." ISCR Case No. 07-17673 at 3 (App. Bd. Apr. 2, 2009) (citing ISCR Case No. 01-03120 at 4 (App. Bd. Feb. 20, 2002)). This concept is the basis of AG ¶ 7(e). Indirect influence from a spouse's relatives living in China could result in a security concern. See ISCR Case No. 09-05812 at 2 (App. Bd. Dec. 1, 2011) (finding "presence in India of close family members, viewed in light of that country's troubles with terrorism and its human rights abuses, and his sharing living quarters with a person (his spouse) having foreign family contacts, establish the 'heightened risk'" in AG ¶¶ 7(b) and 7(e)).

Applicant relationship with his sister in China creates a concern about Applicant's "obligation to protect sensitive information or technology" and his desire to help his sister living in China. For example, if intelligence officials, or other entities in China, wanted to expose Applicant to coercion, they could exert pressure on his sister living in China. Applicant would then be subject to coercion through his connections to China and classified information could potentially be compromised.

Applicant's ties with his sister living in China, is not, as a matter of law, disqualifying under Guideline B. However, if an applicant or his spouse has a close relationship with even one relative, living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or

the country is known to conduct intelligence collection operations against the United States. The relationship of China with the United States, places a significant, but not an insurmountable burden of persuasion on Applicant to demonstrate that his relationship with his sister living in China does not pose a security risk. Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist his sister in China.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002).

While there is no evidence that intelligence operatives or terrorists from China seek or have sought classified or economic information from or through Applicant or his sister and brother-in-law living in China, nevertheless, it is not possible to rule out such a possibility in the future. Applicant's relationships with his sister living in China create a potential conflict of interest because this relationship is sufficiently close to raise a security concern about his desire to assist his sister in China by providing sensitive or classified information. Department Counsel has raised the issue of potential foreign pressure or attempted exploitation, and further inquiry is necessary about potential application of any mitigating conditions.

Additionally, Applicant maintains less than \$5,000 in a bank in China.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns 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 U.S.;
- (b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

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

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

AG ¶¶ 8(a) and 8(c) have limited applicability. Applicant has contact with his sister living in China. They communicate using email and Chinese intelligence officials are known to monitor email. Loyalty to, support for, and connections to family are positive character traits. However, for security clearance purposes, those same relationships and Applicant's specialized education and background negate the possibility of full mitigation under AG ¶¶ 8(a) and 8(c). Applicant failed to fully meet his burden of showing there is little likelihood that his relationships with his sister in China could create a risk for foreign influence or exploitation.

AG ¶ 8(b) partially applies. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant has significant connections to the United States. Applicant, his spouse, and son are citizens and residents of the United States. China does not recognize dual citizenship, and Applicant's son is solely a citizen of the United States. When Applicant volunteered to assist the U.S. Government as a contractor, he manifested his patriotism, loyalty, and fidelity to the

United States over all other countries. He has significant financial assets in the United States and minimal assets in China. AG ¶ 8(f) has limited applicability as to Applicant's financial assets.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationships with family living in China. There is no evidence, however, that terrorists, criminals, the Chinese Government, or those conducting espionage have approached or threatened Applicant or his sister living in China to coerce Applicant for classified or sensitive information.⁴ As such, there is a reduced possibility that Applicant or his sister living in China would be specifically selected as targets for improper coercion or exploitation.

While the U.S. Government does not have any burden to prove the presence of such evidence, if such record evidence were present, Applicant would have a heavier evidentiary burden to mitigate foreign influence security concerns. It is important to be mindful of the United States' sizable financial and diplomatic investment in China. Applicant's sister living in China could become potential targets because of Applicant's support for the United States, and Applicant's potential access to classified information could theoretically add some risk to them from intelligence elements in China.

AG ¶¶ 8(d) and 8(e) do not apply. The U.S. Government has not encouraged Applicant's involvement with anyone living in China. Applicant is not required to report his contacts with citizens or residents of China.

AG ¶ 8(f) applies to his bank account in China. The bank account with assets of about \$5,000 is insignificant compared to his property in the United States valued at about one million dollars. He is credited with mitigation of SOR ¶ 1.c

In sum, Applicant's connections to his sister living in China are sufficiently close to raise a security concern. His contact with his daughter-in-law living in the United States is frequent. He has infrequent contacts with his mother-in-law and sister-in-law who are citizens of China, but are living in the United States and pose minimal security concern. Applicant traveled to China in 2008, 2011, 2012, and 2013. Applicant has significant connections to the United States; however, these connections are not sufficient to overcome his connection to his sister living in China. Foreign influence security concerns are not mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

⁴ There would be little reason for U.S. enemies to seek classified information from an applicant before that applicant has access to such information or before they learn of such access.

(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), “[t]he ultimate determination” of whether to grant a security clearance “must be an overall commonsense judgment based upon careful consideration” of the guidelines and the whole-person concept. My comments under Guideline B are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant was born in China in 1951. He obtained a bachelor's degree in engineering in China. In 1986, at age 35, both he and his wife moved to the United States, where he pursued and obtained a master's degree. In 1999, he and his wife became naturalized U.S. citizens. In 2008, 2011, 2012, and 2013 he visited China. His only relative who is a citizen and resident of China is his sister. He asserted he would never allow a foreign influence to make him betray this country,

In ISCR Case No. 15-00528 at 3-4 (App. Bd. Mar. 13, 2017) the Appeal Board considered a Guideline B case involving a U.S. citizen with family members in China and commented:

In Foreign Influence cases, the nature of the foreign government involved and the intelligence gathering history of that government are among the important considerations that provide context for the other record evidence and must be brought to bear on the Judge's ultimate conclusions in the case. The country's human rights record is another important consideration. See, e.g., ISCR Case No. 05-03250 at 4-5 (App. Bd. Apr. 6, 2007); ISCR Case No. 04-11463 at 4 (App. Bd. Aug. 4, 2006). There is a rational connection between an applicant's family ties in a country whose interests are adverse to the United States and the risk that the applicant might fail to protect and safeguard classified information. See, e.g., ISCR Case No. 10-07436 at 3, n. 4 (App. Bd. Oct. 19, 2011).

We note record evidence and the Judge's findings of the following: Applicant's parents reside in China; Applicant communicates with them frequently; Applicant has visited them or they her on a regular basis; Applicant's parents are aware of the location and general nature of her work; China practices espionage against the U.S.; and China has used its cyber-espionage capability to compromise DoD and contractor computer systems. This evidence supports the Judge's conclusion that Applicant's parents could become a means through which Applicant could come to the

attention of Chinese intelligence personnel and be subjected to coercion or pressure.

There are some factual differences between Applicant's case, and ISCR Case No. 15-00528 (App. Bd. Mar. 13, 2017); however, the issues of security concern in that case and Applicant's case are similar. See e.g., ISCR Case No. 15-00042 (App. Bd. July 6, 2016) (denial of security clearance due to connections to China affirmed); ISCR Case No. 14-03200 (App. Bd. July 16, 2015) (same); ISCR Case No. 12-04780 at 3 (App. Bd. Nov. 13, 2013) (stating "The PRC's history of conducting espionage against the United States puts a heavy burden of proof on Applicant that he was unable to meet because of his ties to his relatives who are PRC citizens and residents.").

In requesting an administrative determination, Applicant chose to rely on the written record. In so doing, however, he failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding his circumstances, articulate his position, and mitigate the foreign influence security concerns. By failing to provide such information, financial considerations security concerns remain. Because Applicant chose to have this matter handled administratively, I am unable to evaluate his demeanor, appearance, or form a positive determination as to his truthfulness.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude that foreign influence security concerns are not mitigated. It is not clearly consistent with the interests of national security to grant Applicant security clearance eligibility.

Formal Findings

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B, Foreign Influence: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraphs 1.b and 1.c: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

CLAUDE R. HEINY II
Administrative Judge

