



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



In the matter of:	)	
	)	
XXXXXXXXXXXXXX	)	ISCR Case No. 16-03664
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Caroline E. Heintzelman, Esquire, Department Counsel  
For Applicant: *Pro Se*

05/30/2018

**Decision**

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,<sup>1</sup> Applicant's clearance is granted.

On 29 December 2016, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) raising security concerns under Guideline B, Foreign Influence and Guideline C, Foreign Preference.<sup>2</sup> Applicant timely answered the SOR, requesting a decision without hearing by the Defense Office of Hearings and Appeals (DOHA).<sup>3</sup> The record in this case closed 18 April 2017, when Department Counsel

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<sup>1</sup>Consisting of the FORM, Items 1-4 and Official Notice (ON) items I-X.

<sup>2</sup>DoD acted under Executive Order 10865, *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 (AG) effective within the DoD on 1 September 2006. On 10 December 2016, the Director of National Intelligence (DNI) signed Security Executive Agent Directive 4, implementing new AG, effective with any decision issued on or after 8 June 2017.

<sup>3</sup>The Government withdrew the Guideline C allegation based on Applicant's Answer.

indicated no objection to Applicant's response to the FORM. DOHA assigned the case to me 01 October 2017.

### **Findings of Fact**

Applicant denied the allegations of the SOR. She is a 32-year-old user experience architect sponsored by a defense contractor since December 2015. She was previously employed as a user experience designer between September 2014 and December 2015. She underwent a background investigation in February 2015, but the record does not report the results of that investigation. Her December 2015 clearance application (Item 3) was a pre-employment clearance request.

Applicant was born in the People's Republic of China (China) in May 1984. She grew up there and was educated there through high school (1999-2002), her bachelor's degree (2006-2006), and her first master's degree (2006-2008). In December 2010, she came to the United States (U.S.) to pursue additional master's degrees. She attended one program between January 2011 and May 2011, then switched to a different school, which she attended between June 2011 and December 2011, when she left the program. She resumed a master's program at her most recent school in August 2012, and received her second master's degree in May 2014. She married her husband, a naturalized U.S. citizen also originally from China, in March 2011. They have a daughter, born in the U.S. in April 2014.

Applicant came to the U.S. on a Chinese passport issued in June 2006. U.S. immigration law requires legal permanent residents of the U.S. to maintain a valid foreign passport. Applicant renewed her Chinese passport in November 2010. Applicant became a naturalized U.S. citizen in November 2014. She obtained her U.S. passport in February 2015. Ten days after she applied for this clearance, Applicant had her facility security officer (FSO) destroy both Chinese passports (Answer), an action which led Department Counsel to withdraw the Guideline C allegation in the FORM.

Applicant's December 2015 clearance application reported her parents' foreign residence and citizenship, as well as her in-laws' Chinese citizenship and legal permanent resident (LPR) status in the U.S. The SOR alleges security concerns only about her parents' Chinese residence and citizenship. Applicant applied for legal permanent status for her parents, and those applications had been accepted for processing in July 2016, information she provided to the Government in her January 2017 Answer (Item 2).<sup>4</sup>

Applicant's 57-year old mother and 60-year-old father are citizens of the PRC, currently legally resident in the U.S. as of April 2017 (Response). They thus raise the same security concerns as Applicant's in-laws.

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<sup>4</sup>Applicant's parents were then legally in the U.S. on visitor visas.

Although I took official notice of the Government's security concerns over China, further discussion of those concerns is moot, given Applicant's parents' permanent legal resident status in the U.S. That status is renewable every ten years.

### **Policies**

The adjudicative guidelines (AG) list factors for evaluating a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also reflect a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). Any one disqualifying or mitigating condition is not, by itself, conclusive. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline B (Foreign Influence).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the government.<sup>5</sup>

### **Analysis**

Under Guideline B (Foreign Influence), an applicant's foreign contacts and interests may raise security concerns if the individual 1) has divided loyalties or foreign financial interests, 2) may be manipulated or induced to help a foreign person, group, organization, or government in a way contrary to U.S. interests, or 3) is vulnerable to pressure or coercion by any foreign interest. Foreign influence adjudications 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, whether the country is known to target U.S. citizens to obtain protected information and/or is associated with a risk of terrorism.<sup>6</sup> Evaluation of an individual's qualifications for access to protected information requires careful assessment of both the foreign entity's willingness and ability to target

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<sup>5</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>6</sup>AG, ¶6.

protected information, and to target ex-patriots who are U.S. citizens to obtain that information, and the individual's susceptibility to influence, whether negative or positive. More specifically, an individual's contacts with foreign family members (or other foreign entities or persons) raise security concerns only if those contacts create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.<sup>7</sup> In addition, security concerns may be raised by a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.<sup>8</sup>

In this case, the Government did not establish a case for disqualification under Guideline B. Applicant's parents have been legal permanent residents of the U.S. since April 2017. They can retain that status until April 2028, when the status must be renewed. Applicant is not in a position where she might have to choose between her parents' interests or those of the U.S.<sup>9</sup> I resolve Guideline B for Applicant.

### **Formal Findings**

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraph a: For Applicant

Subparagraph b: For Applicant

### **Conclusion**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance granted.

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JOHN GRATTAN METZ, JR  
Administrative Judge

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<sup>7</sup>AG, ¶7(a).

<sup>8</sup>AG, ¶7(e).

<sup>9</sup>AG, ¶8(a).