



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



In the matter of: )  
)  
) ISCR Case No. 17-01140  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gatha Manns, Esq., Department Counsel  
For Applicant: *Pro se*

09/25/2018

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**Decision**

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GARCIA, Candace Le'i, Administrative Judge:

Applicant mitigated the foreign influence security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On May 19, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B (foreign influence). The action was taken under Executive Order (Exec. Or.) 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) implemented by DOD on September 1, 2006.<sup>1</sup>

Applicant responded to the SOR on June 19, 2017, and requested a hearing before an administrative judge. The case was assigned to me on March 15, 2018. The

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<sup>1</sup> I decided this case using the AG implemented by DOD on June 8, 2017. However, I also considered this case under the previous AG implemented on September 1, 2006, and my conclusions are the same using either set of AG.

Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 26, 2018, scheduling the hearing for April 26, 2018.

I convened the hearing as scheduled. The Government's exhibit list, discovery letter, and administrative notice request were appended to the record as Hearing Exhibits (HE) I, II, and III. Government Exhibit (GE) 1 was admitted in evidence without objection. Applicant testified, called two witnesses, and submitted Applicant's Exhibits (AE) A through F. I overruled Department Counsel's objection to portions of AE A and B that are in Chinese and admitted AE A and B in evidence, noting that I would not give any weight to those portions. I admitted AE C through F in evidence without objection. DOHA received the hearing transcript (Tr.) on May 4, 2018.<sup>2</sup>

### **Findings of Fact**

Applicant denied the SOR allegations. She is a 25-year-old native-born U.S. citizen. She was raised in China from when she was several months old through age 12, as her father worked there as a university teacher. She has since lived in the United States. As of the date of the hearing, she had never been married and she lived with her mother in her mother's home.<sup>3</sup>

Applicant graduated from high school in 2011 and obtained a bachelor's degree in 2014. As of the date of the hearing, she was working on a master's degree. She has worked as a digital communications specialist for a defense contractor since June 2015. She has never held a security clearance.<sup>4</sup>

Applicant's parents married in 1990 and divorced in 2012. Her father is a native-born U.S. citizen and her mother is a naturalized U.S. citizen; both reside in the United States. Her mother is from China, but she was studying in the United States when she met Applicant's father. In August 2013, Applicant's father remarried a Chinese citizen who has since resided with him in the United States. She is Applicant's stepmother (SOR ¶ 1.a). They have one child, a minor. Applicant met her stepmother only a few times in 2004, when Applicant was in elementary school. She learned then that Applicant's father was having an affair with this individual while married to her mother. She has since not had any contact with her stepmother. Applicant's father testified that Applicant did not have a relationship with his wife or child, and he did not anticipate that Applicant and his wife would ever have one.<sup>5</sup>

Applicant's father met his wife in China in 2004. She worked as a musician and a public school teacher in China, and she retired in 2007. She then became a partner in her brother's clothing company in China, but sold her interest in the company when she

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<sup>2</sup> Tr. at 19-26.

<sup>3</sup> Applicant's response to the SOR; Tr. at 5-7, 82-84, 86-88; GE 1.

<sup>4</sup> Tr. at 5-7, 9, 82-84, 86-88, 96; GE 1.

<sup>5</sup> Tr. at 27-66, 81; GE 1; AE A.

immigrated to the United States in 2013. She has since been unemployed. In around 2016, she sold her property in China. She also filed paperwork for her retirement benefits in China, but she has not received any such benefits since living in the United States. She became a permanent U.S. resident in July 2015. When she is eligible to become a U.S. citizen in 2020, she intends on doing so and terminating her Chinese citizenship. Applicant's father testified that Applicant does not have any financial interest in his wife's assets, and Applicant has never met his wife's family in China.<sup>6</sup>

Applicant's father testified that he sees Applicant "quite often," around twice monthly. They meet for lunch or dinner. He also testified that he does not discuss the nature of Applicant's work with anyone, to include his wife. He testified that he would report to U.S. authorities any attempt by the Chinese government or military to exert pressure on him or his wife, to in turn exert pressure on Applicant to reveal classified information.<sup>7</sup>

Applicant has maternal family members who are citizens and residents of China (SOR ¶ 1.b). She has two uncles, ages 65 (Uncle A) and 63 (Uncle B), both of whom are married. She also has two cousins, ages 34 (Cousin A) and 29 (Cousin B); Cousin A is married. Applicant first met her family in China when she lived there as a child. Uncle A, Uncle B, and their wives are retired; Uncle B retired from a telecommunications company. Cousin A is a small business owner. Cousin B attended school in the United States from 2008 to 2015 and received his bachelor's degree from a U.S. university; he has since lived and worked in finance in China. Applicant and Applicant's father testified that none of these family members have previously been or are currently affiliated with the Chinese government or military.<sup>8</sup>

Applicant primarily and frequently communicates with her family in China electronically, through a group chat application. They communicate telephonically during certain holidays. She traveled to China to visit them in 2006, 2008, and 2011, using her U.S. passport and a visa issued by the Chinese embassy in the United States. She anticipates visiting them in China in the future. She does not send any money or gifts to her family in China and they do not send her any money or gifts. She has not sponsored any of her family in China to the United States, as that has been done by her mother. Uncle A and his wife visited the United States in 2013 and 2015, when their son, Cousin B, attended school in the United States. Uncle B visited Applicant's mother in the United States in 2016. Applicant's father testified that Applicant's relationship with her maternal family in China did not pose a threat to U.S. national security.<sup>9</sup>

At the time of her background interview, Applicant was dating an individual who worked in the United Arab Emirates (UAE) for a UAE corporation (SOR ¶ 1.c). She met

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<sup>6</sup> Tr. at 27-66, 81; GE 1; AE A, F.

<sup>7</sup> Tr. at 54-5560-61; GE 1.

<sup>8</sup> Tr. at 27-66, 79-81, 84-86, 88-96; GE 1; AE B, E.

<sup>9</sup> Tr. at 27-66, 79-81, 84-86, 88-96; GE 1.

and began dating him when they attended the same college. They made a mutual decision to end their relationship in late 2016 due to cultural differences and distance. She has not since had any contact with him.<sup>10</sup>

Applicant described herself as a hard worker. She speaks Mandarin and some Arabic. She testified that she would report to U.S. authorities any attempts to blackmail her. She does not have any foreign financial interests or any expectation of inheriting any such interests. Her assets in the United States total \$20,000.<sup>11</sup>

In addition to her father, Applicant's close friend since 2006 testified at the hearing. They first met because they were neighbors. As of the date of the hearing, the witness held a public trust clearance since 2014. She and Applicant spoke often, saw each other a few times monthly, and celebrated holidays together on occasion. She testified that Applicant had no relationship with her stepmother. She testified that Applicant electronically communicated with her family in China weekly and last visited them in China in 2011. She testified that none of them were affiliated with the Chinese government or military, and she did not believe Applicant's relationship with them posed any threat to U.S. national security. She also testified that she was aware of Applicant's college ex-boyfriend, with whom Applicant has not had contact since late 2016. She testified that Applicant is loyal to the United States and would undoubtedly report any blackmail attempts on her to the proper authorities.<sup>12</sup>

## **China**

The National Counterintelligence Executive has identified China as among 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 email. Chinese attempts to collect U.S. economic and technological information will continue at a high level and will represent a growing threat to U.S. economic security. The nature of the cyber threat will evolve with continuing technological advances in the global information environment. China's military modernization is targeting capabilities with the potential to degrade core U.S. military-technological advances.

China is an authoritarian state in which the Chinese Communist Party is the paramount authority, with its members holding almost all top government and security apparatus positions. Repression and coercion of organizations and individuals involved in civil and political rights advocacy as well as in public interest and ethnic minority issues remained severe. Citizens have limited forms of redress against official abuse. Human rights concerns observed in 2016 included illegal detention, torture and coerced confessions of prisoners, and detention and harassment of journalists, lawyers,

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<sup>10</sup> Tr. at 81-82, 89; GE 1; AE C, D.

<sup>11</sup> Tr. at 27-66, 82-84, 88-92; GE 1.

<sup>12</sup> Tr. at 68-79.

writers, bloggers, dissidents, petitioners, and others whose actions the authorities deemed unacceptable. There was also a lack of due process in judicial proceedings, political control of courts and judges, extrajudicial disappearance of citizens, restrictions of nongovernmental organizations, and discrimination against women, minorities, and persons with disabilities. Authorities continued to censor and tightly control public discourse on the internet, in print, and in other media.

The U.S. Department of State warns visitors to China that they may be placed under surveillance. Hotel rooms, offices, cars, taxis, telephones, internet usage, and fax machines may be monitored onsite or remotely. 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 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 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 access to classified information will be resolved in favor of national security."

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." 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 Exec. Or. 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* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline B, Foreign Influence**

The security concern 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. The following 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; 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 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.

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. 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 operations against the United States. In considering the nature of the government, an administrative judge

must also consider any terrorist activity in the country at issue. *See generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

AG ¶ 7(a) requires substantial evidence of a “heightened risk.” The “heightened risk” required to raise one of these disqualifying conditions is a relatively low standard. “Heightened risk” denotes a risk greater than the normal risk inherent in having a family member living under a foreign government.

Applicant has not had any contact with her college ex-boyfriend since late 2016. None of the disqualifying conditions apply as to Applicant’s ex-boyfriend. I find SOR ¶ 1.c in Applicant’s favor.

Applicant’s stepmother is a Chinese citizen. Applicant only met her stepmother a few times in 2004, has not since had any contact with her stepmother, and does not anticipate ever having a relationship with her stepmother. However, Applicant and her father see each other quite often, and Applicant’s stepmother resides with Applicant’s father in the United States. Applicant’s stepmother and father also have a child together.

Applicant’s maternal family members are citizens and residents of China. Applicant and her father do not believe any of them are affiliated with the Chinese government. However, Applicant maintains frequent electronic communication with them. They have also visited both Applicant and her mother in the United States as recently as 2015 and 2016. While Applicant last visited them in China in 2011, she anticipates visiting them in China in the future. AG ¶¶ 7(a) and 7(b) apply to SOR ¶¶ 1.a and 1.b.

AG ¶ 8 provides conditions that could mitigate security concerns. The following is potentially applicable:

(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.

Applicant's stepmother is a Chinese citizen and Applicant's maternal family are citizens and residents of China. Accordingly, AG ¶ 8(a) is not established for the reasons set out in the above discussion of AG ¶¶ 7(a) and 7(b).

While Applicant has not visited her family in China since 2011, they have visited her and her mother in the United States as recently as 2015 and 2016. She anticipates visiting them in China in the future. Applicant also maintains regular, electronic contact with them. AG ¶ 8(c) is not established.

Applicant is a native-born U.S. citizen. She has lived in the United States since she was 12 years old. She obtained her high-school diploma and bachelor's degree in the United States. She was working on her master's degree in the United States as of the date of the hearing. She has worked for a U.S. defense contractor since 2015. Her mother, with whom she lives, is a U.S. citizen and resident. She does not have any foreign financial interests or any expectation of inheriting any such interests. Her assets in the United States total \$20,000. AG ¶ 8(b) is 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 have incorporated my comments under Guideline B in my whole-person analysis. After weighing the disqualifying and mitigating conditions under this guidelines, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the foreign influence security concerns. Accordingly, I conclude she has carried her burden of showing that it is clearly consistent with the national interest to grant her eligibility for access to classified information.



### **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: FOR APPLICANT

Subparagraphs 1.a – 1.c: 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's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Candace Le'i Garcia  
Administrative Judge