



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



In the matter of: )  
)  
) ISCR Case No. 17-02488  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Mary M. Foreman, Esq., Department Counsel  
For Applicant: *Pro se*

06/06/2018  
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**Decision**  
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RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline B, foreign influence. Eligibility for access to classified information is denied.

**Statement of the Case**

On September 7, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, foreign influence. The action was taken under Executive Order (EO) 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 June 8, 2017.

Applicant answered the SOR on October 5, 2017, and requested a hearing before an administrative judge. The case was assigned to me on November 30, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 2, 2017. I convened the hearing as scheduled on April 17, 2018. The Government offered

exhibits (GE) 1 through 3. Applicant testified and offered Applicant Exhibits (AE) A through E. Applicant made corrections to GE 2. There were no objections to any of the exhibits offered, and they were admitted into evidence. After the record closed, Applicant submitted AEs F and G. Department Counsel did not object to my considering these documents, and they are admitted into evidence.<sup>1</sup> DOHA received the hearing transcript on April 25, 2018.

### **Request for Administrative Notice**

Department Counsel submitted Hearing Exhibit I, a written request that I take administrative notice of certain facts about The People's Republic of China (China). Applicant did not object, and I have taken administrative notice of the facts contained in the request that are supported by source documents from official U.S. Government publications.<sup>2</sup> The facts are summarized in the Findings of Fact, below.

### **Findings of Fact**

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

Applicant is 39 years old. He was born in Bulgaria and attended college there for two years. His parents, sister, and he immigrated to the United States in 1998. He continued his college education in the United States and earned a bachelor's degree in 2004. He became a naturalized U.S. citizen in 2004. Applicant was granted a security clearance in 2011, while working for a federal contractor. The contractor has changed, but he continues to work in the same field for another federal contractor.<sup>3</sup>

After completing his college degree, in 2005, Applicant enrolled in a study abroad program. He traveled throughout Europe and enrolled in a university in Bulgaria in 2006. He received another degree in 2010 from the Bulgarian university. While in Bulgaria, he worked for an American nongovernmental organization research center. In January 2011, while overseas, he began working for the U.S. Government as a translator and interpreter. His employment concluded in July 2011. He returned from Bulgaria at that time to attend graduate school in the United States.<sup>4</sup>

Applicant received a full scholarship and fellowship to complete his master's degree in language studies, a two-year program. The fellowship allowed him to study in Turkey for an additional year. He traveled to Turkey in the fall of 2012. The fellowship

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<sup>1</sup> Hearing Exhibit II is Department Counsel's email memorandum.

<sup>2</sup> Source documents are attached to Hearing Exhibit I.

<sup>3</sup> Tr. 32-37.

<sup>4</sup> Tr. 37-42.

included a two-year obligation of service through the program. He completed his master's degree in May 2014.<sup>5</sup>

While studying in Turkey, Applicant met his wife in November 2012. She was also studying at the same school, and they had a class together. She is a citizen of China. Applicant testified that his wife's parents paid for her education in Turkey. Later, she received some type of scholarship through the school. She was there for one academic year. Applicant testified that her English language skills were not very good. In January 2013, Applicant traveled to the United States for the holidays. When he returned, his relationship with his wife became serious. He proposed marriage to her in the spring of 2013. She returned to China in June 2013 to complete her education. She visited him in the United States for a month in December 2013.

In July 2014, Applicant traveled to China to meet her family and get their blessing for their marriage. Applicant's wife's parents and extended family are citizens and residents of China. Applicant testified that his wife's parents initially objected to their marriage because he was not Chinese. Applicant stayed in China for three weeks in 2014. Her parents refused to acknowledge their relationship. Applicant and his wife had planned to travel back to the U.S. together, but her family took her passport away. She subsequently obtained it and traveled to the U.S. in August 2014. Applicant and his wife married in the United States in September 2014. After they married, Applicant's wife applied for permanent resident status and a work permit. Applicant explained his wife has a temporary green card that she obtained in March 2015 and expired in March 2017. He stated that she retains her status, but has not renewed the card yet because it requires a lot of paperwork. She lived in the U.S. from August 2014 to August 2015. This is the only period of time Applicant's wife has lived in the United States. She continues to reside with Applicant in Bulgaria.<sup>6</sup>

Applicant's father-in-law sells heavy equipment for industrial use. His mother-in-law was an agricultural worker. Applicant testified that they are poor and uneducated. His wife's younger brother is married and has two children. His wife's grandfather, uncles, and cousins are citizens and residents of China. Applicant testified that his wife is close to her relatives in China. He is attempting to learn their language, but for now he communicates with them through his wife. Apparently his wife's relatives have now accepted him into the family. Applicant stated that to the best of his knowledge his in-laws were not affiliated with the Government of China.<sup>7</sup>

In July 2015, Applicant obtained a job as a linguist and worked in Romania, and then a month later he was assigned to Bulgaria. His wife joined him in Bulgaria in 2015. In October 2015, Applicant and his wife had a daughter. The contractor he worked for changed in October 2016, and Applicant continued to work with the new employer. He

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<sup>5</sup> Tr. 42-45, 77.

<sup>6</sup> Tr. 19, 46-54, 58-62, 69-70, 77-85; GE 2.

<sup>7</sup> Tr. 54-58, 87-88, 92-93.

continues to work with the contractor and with the U.S. military overseas. Applicant testified that his wife intends to become a naturalized citizen of the United States. He stated his wife applied for naturalization under a special provision for individuals who have spouses who work for the U.S. government. He provided a copy of a naturalization application dated October 2017.<sup>8</sup>

Applicant's wife has traveled from the U.S. to China for New Year in 2015. She traveled from Bulgaria to China for the New Year in 2016, 2017, and 2018. Applicant did not accompany his wife. After his daughter was born, his wife took the baby with her to China. Before their child was born, his wife worked in the U.S. at a Chinese Church, a retail store, and taught Chinese to children. She stopped working after their baby was born. Applicant does not have any assets in the United States, except a 401K pension plan.<sup>9</sup>

Applicant testified that he shares the U.S. Government's concerns about China. He does not believe he is a security threat. He takes his job seriously. He does not share information about his job with his family or his wife's family. He stated his wife is not interested in his work, except as he provides for their family. He has advised his wife not to discuss his work with her family. He tells anyone who inquires that he works for a private company. He stated he would report any security concerns about his wife or her family. He stated no amount of money would buy his honor.<sup>10</sup>

Applicant provided character letters from a sergeant first class and an Army Captain with whom he worked with for seven months and two years respectively. They considered him professional, dedicated, educated, and knowledgeable. He has provided outstanding support to the mission and has an unwavering work ethic.<sup>11</sup> Applicant provided photographs of his wife, daughter, and her family in China. Applicant is a devoted husband and father.<sup>12</sup>

## **China<sup>13</sup>**

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 frequently seeks to exploit Chinese citizens or persons with family ties to China who can use their insider access to corporate networks to steal secrets using

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<sup>8</sup> Tr. 14, 70-74; AE D, E.

<sup>9</sup> Tr. 63-69, 74, 86.

<sup>10</sup> Tr. 95-96.

<sup>11</sup> AE B, C.

<sup>12</sup> AE A.

<sup>13</sup> HE I.

removable media devices and emails. Private companies and other entities in China also exploit Chinese citizens to steal information.

The U.S. Department of Defense reported that Chinese actors are the world's most active and persistent collectors of economic espionage. It is anticipated that this conduct will continue at a high level and will be a persistent and continuing threat to U.S. economic security.

China uses a variety of methods to acquire foreign military and dual-use technologies including cyber activity and exploitation of the access of Chinese nationals, such as students or researchers. It is suspected that China uses other illicit approaches that violate U.S. laws and export controls to obtain key national security and export-restricted technologies and materials unobtainable through other means.

Computer systems around the world, including those owned by the U.S. Government, are target by China. It uses its cyber capabilities to support intelligence collection against U.S. diplomatic, economic, and defense industrial based sectors. Its organizational network is able to access sensitive and dual-use technologies or knowledgeable experts under the guise of civilian research and development.

There are numerous examples of individuals who have been convicted of conspiring to violate federal export control laws by illegally exporting defense equipment to China. There are also recent examples of Chinese nationals and others who have been involved in hacking into computer networks of major U.S. defense contractors and failing to report repeated contacts with Chinese foreign intelligence agents.

Among the most serious threats by China is its effort at cyber and human infiltration of U.S. national security organizations. Reports of Chinese espionage against the United States has risen significantly over the past 15 years. China has a large and professional cyber espionage community demonstrating broad capabilities to infiltrate a range of national security and commercial operations. Many unofficial Chinese actors target the United States.

China is an authoritarian state in which the Chinese Communist Party is the paramount authority. 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 with limited forms of redress against official abuse. Public security officials harass, intimidate, and take punitive measures against family members of rights defenders in retaliation for their work. The Communist Party controls the judiciary and in certain cases dictates the court's rulings.

There are serious human rights concerns, which included illegal detention, torture and coerced confessions of prisoners, detention and harassment of journalists, lawyers, writers, bloggers, and others whose actions are deemed unacceptable by the authority. There is a lack of due process in judicial proceedings, closed trials, administrative detention and discrimination against women, minorities, and persons with disabilities.

Citizens do not have the right to choose their own government and have limited forms of redress against official abuse.

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

## **Policies**

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, 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(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security decision."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline B: Foreign Influence**

AG ¶ 6 expresses the security concern regarding foreign influence:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they resulted 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 it associated with a risk of terrorism.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. I have considered all of them and the following are potentially applicable:

(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; 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.

AG ¶¶ 7(a) and 7(e) require evidence of a “heightened risk.” The “heightened risk” required to raise 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 or owning property in a foreign country. The totality of

Applicant's family ties to a foreign country as well as each individual family tie must be considered.

The mere possession of a close personal relationship with a person who is a citizen and resident of a foreign country is not, as a matter of law, disqualifying under Guideline B. However, depending on the facts and circumstances, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.

China is one of the most aggressive collectors of U.S. economic information and technology. Its intelligence services frequently seeks 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 and emails. China has serious human rights issues.

Applicant's wife is a citizen of China. They live together with their infant daughter overseas as part of his job requirement. His parents-in-law are citizens and residents of China. Applicant's wife visits her family in China annually and takes their daughter. She has a temporary residence card that expired and was obtained shortly after they married. In 2017, she applied for U.S. citizenship naturalization. AG ¶¶ 7(a), 7(b), and 7(e) apply.

After the Government produced substantial evidence of those disqualifying conditions, the burden shifted to Applicant to rebut them or otherwise prove mitigation. Three mitigating conditions under AG ¶ 8 are potentially applicable to the disqualifying security concerns based on the facts:

- (a) the nature of the relationship 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 and 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 interests in favor of the U.S. interests; 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 contact with his wife is frequent and more than casual. His contact with his in-laws is infrequent, but his wife visits them annually in China. Applicant's relationship with his wife and her relationship with her family in China could create a risk for foreign influence or exploitation. I find AG ¶ 8(c) does not apply.



Applicant's wife has a close relationship with her family in China. Applicant and his wife live overseas with their daughter. His wife has spent minimal time living in the United States. Other than a pension plan, they have no assets in the United States. Applicant's wife's ties to the United States are through her husband. Her ties to China are extensive. When Applicant met his wife, he held a security clearance. The Chinese government and private entities exploit Chinese citizens to steal information. China's authoritarian government, treatment of its citizens by the government, and poor human rights protections raise concerns. I cannot find under these facts that it is unlikely that Applicant, his wife, or her family would be placed in a position of having to choose between the interests of their Chinese family members or the Chinese Government and the interests of the United States. AG ¶ 8(a) does not apply.

Applicant is a devoted husband and a proud father. He immigrated to the United States and has been a naturalized citizen since 2004. His wife has minimal ties to the United States, except through her husband. Her family are citizens and residents of China. She met Applicant while they were both students in Turkey. I cannot find that Applicant's sense of loyalty to his wife is minimal. His wife's ties to her relatives in China are not minimal. It is too great of a burden to expect him to be loyal to the interests of the United States and resolve any conflicts in favor of the United States over those of his wife and in-laws in China. AG ¶ 8(b) does not apply.

### **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):

- (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 the 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 that guideline, but some warrant additional comment.

Applicant is 39 years old. He became a naturalized citizen of the United States in 2004. He met his Chinese born wife in November 2012 while they were both students studying in Turkey. They married in September 2014. His wife has some U.S. resident status through Applicant and has applied for naturalization. Her family lives in China. Although I believe Applicant is loyal to the United States, it is outweighed by his familial obligations and loyalty to those closest to him. China's active and aggressive collection and espionage program that targets its people enhances the security concerns raised in this case. The heightened risks raised by familial ties to his Chinese wife and family in China continue to raise security concerns under Guideline B, foreign influence, and are unmitigated. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance.

### **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:	AGAINST APPLICANT
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Subparagraphs 1.a-1.b:	Against Applicant
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### **Conclusion**

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

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Carol G. Ricciardello  
Administrative Judge