



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



In the matter of:)
)
 -----) ISCR Case No. 17-03450
)
 Applicant for Security Clearance)

Appearances

For Government: Julie Mendez, Esq., Deputy Chief Department Counsel
For Applicant: *Pro se*

11/28/2018

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant contests the Defense Department's intent to deny her eligibility for access to classified information. She presented sufficient evidence to explain, extenuate, or mitigate the security concern stemming from her contacts in the Peoples Republic of China (China). Accordingly, this case is decided for Applicant.

Statement of the Case

On October 12, 2017, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging that her circumstances raised a security concern under Guideline B for foreign influence.¹ Applicant answered the SOR on November 10, 2017, and requested a hearing.

¹ This action was taken under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended, as well as Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on June 8, 2017, apply here.

On June 27, 2018, a date mutually agreed to by the parties, a hearing was held. Applicant testified at the hearing, and the exhibits offered by the Government and by Applicant at the hearing were admitted into the administrative record without objection. (Government Exhibits (GE) 1 and 2; Applicant Exhibits (AE) A through E.) The transcript of the hearing (Tr.) was received on July 6, 2018.

Findings of Fact

The SOR alleged under Guideline B that: (1) Applicant's parents are citizens and residents of China and both were employed by a government-run institute of technology; (2) Applicant's mother-in-law and father-in-law are citizens and residents of China and the father-in-law was a member of the Chinese military; and (3) Applicant's sister-in-law is a citizen and resident of China and is an employee of the Chinese government.² Applicant admitted those allegations, with explanations.³

Applicant was born in China, is 47 years old, married with one daughter, age 21, who is in college in the United States. Applicant earned her undergraduate degree in computer science in 1993 from a Chinese institute of technology (the "Institute"). She earned her Master's degree in 2000 from a United States university and is now pursuing a doctoral degree from that same university, which she hopes to earn in January 2020. Applicant came to the United States in 1998 to pursue post-graduate studies. She and her husband (he is also Chinese-born and earned a post-undergraduate degree from the Institute) became naturalized U.S. citizens in 2007 and 2008, respectively. Applicant and her husband have owned their home in the United States since 2007. She estimates that including the value of the home, their assets in the United States are about \$2 million. They have no holdings in China. Since March 2002, Applicant has been employed by a defense contractor as an information technology ("IT") project manager, a field in which she has more than 20 years of experience.⁴

Applicant testified about her family members in China. Her father is 85 years old. He was a professor of semiconductor materials at the Institute. He retired from that position about 24 years ago at age 60, as male university professors in China are required to do. Applicant's father is no longer current in his former discipline, does not understand how computers work, struggles to make a call from his cell phone, and has no interest in what Applicant does professionally. He receives pension and medical benefits from the government. Applicant speaks via telephone with her parents about once a week. They discuss their family.⁵

² SOR ¶ 1.

³ Answer ¶¶ 1-4.

⁴ GE 1; Answer ¶ 1; Tr. 17-18, 20-21, 22-25. With her current employer, Applicant holds a position of public trust clearance but not a security clearance. Tr. 10, 27. Her husband earned his doctoral degree in China and his master's degree from a United States university. He received his master's degree in a different field of study after he received his doctoral degree. Tr. 21-22.

⁵ Tr. 30-31; Answer ¶ 2.

Applicant's mother is 82 years old. Her mother was a professor at the Institute and the vice-chair of the archives at the Institute. That mainly involved maintaining and accessing the professors' background files and documents. She has very limited IT knowledge. She has been retired for over 20 years. Applicant's mother receives pension and medical benefits from the government.⁶

Applicant's father-in-law is 81 years old. He served in a provincial military and rose to the rank of General. He retired about 15 years ago. Applicant described that military service as like a coast guard, with only regional duties. It is not part of the Chinese National Army. Her father-in-law is severely hearing impaired. He has trouble hearing normal telephone conversations during their monthly telephone calls. Because of her father-in-law's hearing disability, those conversations usually last fewer than 20 minutes and are about the family and their health. Applicant and her father-in-law have never talked about his military service.⁷

Applicant's mother-in-law passed away about 20 years ago. Applicant's father-in-law married Applicant's step-mother-in law about 10 years ago. Applicant has only met her twice, so Applicant barely knows her, and they do not share a very close relationship. The step-mother-in-law is about 65 or 70 years old, and she worked as a cashier in a convenience store. She retired more than 15 years ago.⁸

Applicant's sister-in-law is about 53 years old and works as a cashier for a bank. Applicant believes the bank is probably government-owned, because she does not know of any privately owned banks in China. The sister-in-law plans to emigrate to Australia and has already bought a house there in May of this year. Her spouse has lived in Australia for the past two years with their son, who is in college there.⁹

Applicant has aunts in China, but she does not have regular contact with them and does not even communicate with them or anyone else in her family yearly. She has also lost contact with her best friends, because she built her life in the United States.¹⁰

Applicant testified about her visits to China. Since immigrating to the United States, she has visited China three times in 20 years. Applicant visited in August 2011, June 2015, and January 2017. She saw her parents on all three visits and also her father-in-law on two of those visits. Applicant made the most recent trip, because her father had

⁶ Tr. 27-30; Answer ¶ 2.

⁷ Tr. 33-34; Answer ¶ 2.

⁸ Tr. 35; Answer ¶ 2. It is not clear whether the SOR was referring to the deceased mother-in-law or the current (living) step-mother-in-law. I have assumed the latter.

⁹ Tr. 36-38; Answer ¶ 2.

¹⁰ Tr. 38-39.

been hospitalized. Although her parents used to visit Applicant in the United States about once every two years, their last visit was about five or six years ago. They stopped visiting, because Applicant's father cannot travel for health reasons. Her father-in-law has never visited.¹¹

Applicant testified about her civic activities. She is a regular financial contributor to charitable organizations. She is one of the founders of her employer's women's forum, which assists young women with their professional development. Applicant is active in societies and organizations advocating for women seeking to establish careers in STEM fields (Science, Technology, Engineering, and Math). She recently spoke at a cybersecurity camp for girls interested in that field.¹²

Applicant submitted three character reference letters. Each author had years of personal knowledge of Applicant's professional performance. She is described as "an exceptional project manager," who has been complimented by clients as "valuable" to their projects. Applicant's direct supervisor stated that she has "demonstrated trustworthiness and the ability to protect sensitive data." A former supervisor stated that Applicant "has a high level of integrity and is very trustworthy."¹³

Administrative Notice (Peoples Republic of China)

In response to the Government's request, to which Applicant did not object, I have taken administrative notice of the following relevant facts about China:¹⁴

China is one of the world's most active and persistent perpetrators of economic espionage, and it is predicted that their attempts to collect U.S. intelligence will continue at a high level and will represent a persistent, if not growing threat to U.S. economic security. China's intelligence services, as well as private companies and other entities, frequently seek to exploit Chinese citizens, or person with family ties to China, who can use their insider access to corporate networks to steal secrets using removable media and devices or e-mail. China is using its cyber capabilities to support intelligence collection against the U.S. national, diplomatic, economic, and defense industrial base sectors that support U.S. national defense programs. China very likely uses its intelligence services and employees or 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

¹¹ Tr. 39-41.

¹² Tr. 19; AE D; AE E.

¹³ AE A; AE B; AE C.

¹⁴ GE 2.

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

Law and Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individuals are eligible for access to classified information “only upon a finding that it is clearly consistent with the national interest” to authorize such access. E.O. 10865 § 2; SEAD-4, ¶ E.4.

When evaluating an applicant’s eligibility for a security clearance, an administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision. SEAD-4, Appendix A, ¶¶ 2(c), 2(d).

Department Counsel must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Applicants are responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven . . . and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15.

Administrative Judges are responsible for ensuring that an applicant receives fair notice of the issues raised, has a reasonable opportunity to litigate those issues, and is not subjected to unfair surprise. ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014). In resolving the ultimate question regarding an applicant’s eligibility, “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.” SEAD-4, Appendix A, ¶ 2(b). See *also* SEAD-4, ¶ E.4. Moreover, the Supreme Court has held that officials making “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

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. 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 an 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.

Discussion

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;
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology; and
- (e) shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

The guideline also notes several conditions in AG ¶ 8 that could mitigate security concerns raised under AG ¶ 8. The following are potentially applicable in this case:

- (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.

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 is known to conduct intelligence operations against the United States.

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 family members living under a foreign government. Because Applicant's parents, parents-in-law, and a sibling-in-law are citizens and residents of China, which has a record of engaging in foreign economic collection and industrial espionage against the United States, AG ¶ 7(a) applies. Applicant's Chinese familial relationships also make AG ¶¶ 7 (b) and (e) applicable. The next inquiry is whether any mitigating conditions apply.

Applicant came to the United States at age 20 in 1998 to pursue an advanced degree, which she accomplished in 2000. She has been employed by a defense contractor in a position of trust since March 2002. In addition, Applicant is now enrolled in a doctoral program, which she hopes to complete in January 2020. She and her husband became naturalized United States citizens in 2007 and 2008, respectively. They have a daughter attending university in the United States and have owned their own home since 2007. They have substantial assets in the United States and no holdings in China. As an IT expert, Applicant is held in high esteem by her employer and its clients. She is active in organizations supporting women in the STEM professions.

Applicant's parents are former professors at a technology institute. They are in their 80s and have been retired for over 20 years. Although her parents used to visit Applicant in the United States about every two years, they have not visited in about five or six years, because her father cannot travel due to health reasons. Applicant stays in touch via weekly telephone calls. In the past 20 years, Applicant has visited her parents only three times, and the last time was in 2017, when her father was hospitalized.

Applicant's father-in-law is 81 years old and retired about 15 years ago after a career as an officer in the Chinese equivalent of a regional coast guard. He is severely hearing impaired, and as a result he has difficulty conversing with Applicant during their monthly telephone calls. On those occasions when they do speak, their conversation is limited to routine family matters. She does not know anything about his military service. He has never visited Applicant in the United States. One two of her three trips to China, Applicant visited her father-in-law. Applicant has met her step-mother-in-law only twice. She and Applicant do not have a close relationship, and Applicant barely knows her.

Applicant's sister-in-law is a cashier at a Chinese bank. She is in the process, however, of emigrating to Australia, to join her husband and son who have lived there for two years while the son attends college. She and her husband bought a home there earlier this year. Applicant has lost touch with former close friends and extended family in China, because she has built her professional and personal life in the United States.

The current positions and activities of Applicant's Chinese family members make it unlikely that she will be placed in a position of having to choose between the interests of those family members and the interests of the United States. Applicant has lived her entire adult life in the United States, has built a family and a professional life in the United States, and has contributed to her community in the United States such that her loyalty to the United States will clearly overcome any conflict of interest, should one arise. In summary, due to the ages of Applicant's family members in China, their current status in China (long-retired and her father and father-in-law being in poor health), the attenuated nature of those relationships, and Applicant's long-standing and deep professional and personal roots in the United States, I conclude that AG ¶¶ 8(a), (b), and (c) apply.¹⁵

Applicant's testimony was thoughtful, candid, and credible. The record does not raise doubts about Applicant's reliability, trustworthiness, good judgment, and ability to protect classified information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also gave due consideration to the whole-person concept.¹⁶ Accordingly, I conclude that Applicant met her ultimate burden of persuasion to show 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 (Foreign Influence):	For Applicant
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Subparagraphs 1.a-1.e:	For Applicant
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¹⁵ AG ¶ 8(c) applies to Applicant's relationships with her step-mother-in-law and her sister-in-law.

¹⁶ AG ¶ 2(a)(1)-(9). *See also*, ISCR Case No. 17-00506 at 3 (Aug. 7, 2018) (Administrative Judges must consider the evidence as a whole and not in an isolated or piecemeal fashion).

Conclusion

In light of the record as a whole, it is clearly consistent with the national interest to grant Applicant access to classified information.

Philip J. Katauskas
Administrative Judge