



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



In the matter of:	)	
	)	
	)	ISCR Case No. 17-04245
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Aubrey De Angelis, Esq., Department Counsel  
For Applicant: George B. Donnini, Esq.

10/12/2018

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**Decision**

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HEINTZELMAN, Caroline E., Administrative Judge:

Applicant mitigated the security concerns arising from her foreign business interest. Based upon a review of the record as a whole, national security eligibility for access to classified information is granted.

**History of Case**

Applicant submitted a security clearance application (SCA) on August 31, 2015. On January 26, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guideline B, foreign influence. Applicant answered the SOR on February 12, 2018, and requested a decision based on the administrative record. On April 25, 2018, Department Counsel converted this case to a hearing before an administrative judge.

I was assigned to the case on May 2, 2018. On May 16, 2018, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for June 14, 2018, and I issued an order to both parties to produce their documentary evidence by June 1, 2018. On May 22, 2018, Applicant's Counsel entered his appearance. Department Counsel and Applicant's Counsel submitted their documentation as requested. I convened the hearing as scheduled. Government's Exhibits (GE) 1 through 3 and Applicant's Exhibits (AE) 1 through 20 were admitted

without objection. Applicant also testified. The record was held open until June 22, 2018, and Applicant's Counsel timely submitted AE 21 through 23, which were admitted without objection. I received the completed transcript (Tr.) on June 25, 2018, and the record closed.

### **Administrative Notice**

I took administrative notice of facts concerning the People's Republic of China (PRC). Those facts are set forth in the following: Government's Request for Administrative Notice for PRC, marked as GE 3. These documents are included in the record. The facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute. Those facts are set out in the Findings of Fact, below.

### **Findings of Fact**

Applicant is 64 years old, and she is U.S. citizen by birth. She has been married to her second husband since 1993. He is also a U.S. citizen by birth. They own several businesses and properties in the United States. (Tr. 22, 28) In 1976, she graduated from University A with a bachelor of science degree in engineering. In 1989, she received a master of science degree in engineering from University B. (Tr. 23-24) After receiving both of her degrees, she worked as an engineer for companies supporting automobile manufacturers.

In 1995, Applicant created her own business (Business A) in State A, which performs contract packaging, warehousing, kitting, and light assembly. One of the major automobile companies (Automobile A) is a primary client of Business A. (Tr. 29-30) Applicant also owns 100% of a real estate holding company (REHC) which is located in State A. REHC owns the properties that Business A utilizes, including an office building, land, and at least one warehouse. (Tr. 42) In 2000, Applicant purchased a second business (Business B), located in State B. Business B re-manufacturers automobile components for Automobile A. Applicant spends approximately 75% of the month in State B, running the operations of Business B, and maintains a residence there. (Tr. 33-34; AE 16)

In the early 1990s, while Applicant was working at a company supporting Automobile A, she met another individual (Individual A), who is also a U.S. citizen, and also worked at a company supporting Automobile A. (Tr. 36, 41; GE 2 at 2-3; AE 16) At some point Individual A became the general manager of the North American subsidiary of a PRC automotive company (PCNA) and he contacted Applicant to conduct business with Business A.

Since 2009, Business A has had contracts with the PRC automotive company (PRC Company). PRC Company ships wheels on metal pallets from the PRC to Business A in the United States. Business A is contracted by PRC Company to take the wheels off of the metal pallets, inspect the wheels, and transfer the wheels to plastic returnable containers. Automobile A sends its trucks to Business A to load the plastic containers and

transport the containers to its assembly plants. Automobile A then returns the plastic containers to Business A. PRC Company ships approximately 3 million wheels to the United States each year. Business A has approximately 20% of PRC Company's volume. (Tr. 30-32; GE 2 at 2; AE 3; AE 4; AE 16)

Business A also scraps all of the metal pallets that originated in the PRC. (Tr. 31) PCNA has leased one-third of REHC's office building and pays \$2,500 per month for its lease. Business A is also a lease tenant in the same building and pays \$30,000 per month for its lease. Business A and PCNA share a conference room, but their remaining spaces are separate.<sup>1</sup> They have separate phone lines, servers, and alarm codes. (Tr. 41-45; AE 2) In 2018, Business A and PRC Company agreed to a second contract. This three-year contract starts in November 2018. (Tr. 32-33, 78; AE 5; AE 6; AE 11; AE 16)

In 2013, Applicant and Individual A were invited by PRC Company to visit the PRC and PRC Company's headquarters. Individual A was unable to take the trip. Applicant traveled by herself, and she paid for all of the expenses related to her travel. Approximately four other U.S. citizens, who are connected to other automobile manufacturers and do business with PRC Company, were part of the trip. When they toured PRC Company's facilities, no proprietary information was shared or disclosed by Applicant or anyone else. (Tr. 48-55; GE 1 at 25-26; GE 2 at 3; AE 9; AE 10; AE 11; AE 20)

In January 2015, Applicant was appointed by the governor of State A to an eight-year term to serve on the Board of Trustees (BOT) for University A. She was initially assigned to the BOT's Security Committee, and due to research conducted by University A, she was required to hold a security clearance to serve on this committee. (Tr. 35-39, 58-63, 83-84; GE 1 at 13; GE 2 at 2; AE 12; AE 13; AE 14; AE 15; AE 19) Applicant served on University A's Board of Control from 1979 to 1989. She was appointed by a past governor of State A. She currently serves as the vice chair of the BOT, but is slated to become the Chair of the BOT, which also requires her to hold a security clearance. (Tr. 27; GE 1 at 13; AE 15; AE 19)

In September 2015, Applicant received an interim secret clearance, which was upgraded a month later to an interim top secret clearance. (Tr. 9) This clearance was withdrawn in January 2018. (Tr. 14) Applicant did not have access to classified information between September 2015 and January 2018. The facility security officer (FSO) for University A submitted a letter recommending her for a security clearance due to her "high moral character."<sup>2</sup> (Tr. 35-39, 58-63, 83-84; GE 1 at 13; GE 2 at 2; AE 12; AE 13; AE 14; AE 15; AE 19)

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<sup>1</sup> PCNA has seven employees that regularly use the rented spaces at Business A. Five of these individuals are U.S. citizens, one is a Canadian citizen, and one individual is a Chinese citizen with an H1-B visa and a pending green card application. (AE 16)

<sup>2</sup> The FSO also noted that she is aware of Business A's commercial contracts with PRC Company and REHC's lease with PCNA. The FSO has briefed Applicant on her duties regarding reporting suspicious information and contacts. (AE 15 at 4)

Applicant testified that her business interests do not subject her to pressure, manipulation, or inducement. (Tr. 68; GE 2 at 3) PRC Company and PCNA currently account for approximately 12% of Business A and REHC's annual revenue. (Tr. 69-72; AE 7; AE 8) Applicant and her husband's net personal and professional assets total over \$9.5 million. (AE 21; AE 22; AE 23)

Applicant's companies do not have any defense contracts, nor does her business overlap with her role on the BOT for University A. She feels very honored to serve on University A's BOT, and is grateful to be able give back to her alma mater, because she believes University A is responsible for her career. "I have a fiduciary responsibility to the university...to serve and to serve well. And...help them...be successful going forward...and grow the university." (Tr. 83-84, 91, 95-96)

Applicant's loyalties are to the United States and her contact with foreign individuals is infrequent and minimal. (Tr. 84-85; AE 16) She takes being a U.S. citizen seriously and feels a responsibility to keep her employees employed. Applicant and her husband have a good life, and she would do nothing to jeopardize their life and their businesses. (Tr. 85-86) Applicant has received honors related to her work as an engineer and business owner. (Tr. 39-40) The general manager of Business A, who has known and worked with Applicant for twenty years, wrote a letter of recommendation for her. He "finds her to be of the highest moral character." (AE 16)

## **PRC**

The PRC is an authoritarian state in which the Chinese Communist Party is the paramount authority. Human rights concerns included the repression and coercion of organizations and individuals involved in civil and political rights advocacy; torture and coerced confessions of prisoners; detention and harassment of journalists, lawyers, writers, bloggers, dissidents, petitioners, and others; lack of due process; extrajudicial disappearances; and monitoring of communications. Citizens lacked the right to change their government and had limited forms of redress against the government.

The United States faces a large and growing threat to its national security from PRC intelligence collection operations. Among the most serious threats are the PRC's efforts at cyber and human infiltration of U.S. national security organizations. Computer systems, including those in the U.S. Government, are targeted by PRC-based intrusions. The PRC uses its cyber capabilities to support intelligence collection against U.S. diplomatic, economic, and defense industry sectors.

## **Policies**

This case is adjudicated 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), which became effective on June 8, 2017.

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(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."

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

## **Analysis**

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

The security concern relating to the guideline 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 includes 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
- (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 has ongoing business connections with a PRC company. This relationship creates a risk of foreign pressure or attempted exploitation because of the intelligence-gathering activities of China. The record evidence is sufficient to raise these disqualifying conditions.

After the Government produced substantial evidence of those disqualifying conditions, the burden shifted to Applicant to rebut them or otherwise prove mitigation. The following mitigating conditions under AG ¶ 8 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.

Applicant and her husband are both U.S. citizens. Her ties to the United States are life-long and deep. She is actively involved professionally and personally in her local community, as evidenced by her professional awards and her appointment by two governors to University A's BOT. Applicant's foreign contacts are related to her businesses, and there is little likelihood that they could create a risk for foreign influence or exploitation.

The nature of Applicant's relationships with foreign persons is such that it is unlikely that she will be placed in a position of having to choose between the interests of the PRC or PRC Company and the interests of the United States. Business A's contract with PRC Company represents a small portion of Applicant's personal and professional assets.

Applicant's loyalty is to the United States. She can be expected to resolve any conflict of interest in favor of the U.S. interest. Mitigation under AG ¶¶ 8(a), 8(b), and 8(c) is established.

### **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall commonsense judgment based upon careful consideration of the following guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under the guideline at issue in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under this guideline, and evaluating all the evidence in the context of the whole person, Applicant has mitigated the security concerns at issue. Accordingly, Applicant has carried her burden of showing that it is clearly consistent with the interests of national security of the United States 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 ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	FOR APPLICANT
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Subparagraph 1.a:	For Applicant
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### **Conclusion**

I conclude that it is clearly consistent with the national security interests of the United States to continue Applicant's eligibility for access to classified information. Clearance is granted.

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CAROLINE E. HEINTZELMAN  
Administrative Judge