



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



In the matter of:)
)
-----) ISCR Case No. 14-04858
)
Applicant for Security Clearance)

Appearances

For Government: Benjamin Dorsey, Esq., Department Counsel
For Applicant: *Pro se*

12/07/2015

Decision

HARVEY, Mark, Administrative Judge:

In 1956, Applicant was born in the People’s Republic of China (China or PRC). In 1990, when Applicant was 34 years old, he entered the United States and began attending a U.S. university on an education visa. In 2008, Applicant was naturalized as a U.S. citizen. Applicant’s mother, parents-in-law, and three sisters are citizens and residents of China. He is close to his mother and visits her almost every year. Foreign influence concerns are not mitigated. Access to classified information is denied.

Statement of the Case

On September 18, 2012, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) version of a security clearance application (SF 86). (Government Exhibit (GE) 1) On January 20, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant, under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG), which became effective on September 1, 2006.

The SOR alleged security concerns under Guideline B (foreign influence). (Hearing Exhibit (HE) 2) The SOR detailed reasons why the DOD CAF was unable to

find that it is clearly consistent with the national interest to grant Applicant access to classified information and recommended referral to an administrative judge to determine whether Applicant's clearance should be granted or denied. (HE 2)

On February 27, 2015, Applicant responded to the SOR allegations and requested a hearing. (HE 7) On June 27, 2015, the case was assigned to me. On August 3, 2015, September 1, 2015, and September 22, 2015, the Defense Office of Hearings and Appeals (DOHA) issued hearing notices. (HE 2-4) On October 22, 2015, Applicant's hearing was held as scheduled on the third hearing notice. (HE 2) Department Counsel offered one exhibit into evidence, and Applicant offered two exhibits into evidence. (Tr. 16-18; Government Exhibit (GE) 1; Applicant Exhibit (AE) A-B) All exhibits were admitted into evidence without objection. (Tr. 17-18) On November 5, 2015, DOHA received the transcript of the hearing.

Procedural Rulings

At the hearing, Department Counsel requested administrative notice of facts concerning China (AN). (Tr. 16; HE 1) Department Counsel's AN listed 20 supporting documents to show detail and context for those facts. (HE 1 at 12-14, Items I-XX) There were no objections, and I granted the AN request. (Tr. 16; HE 1) The 20 documents listed in the AN included more than 2,000 pages of documents. The first document was 154 pages (Item I), and the largest document was 509 pages. (Item VIII) Two documents were no longer available at the suggested links. (Items XVII and XX) The current link for Item XVII, a 2008 guilty plea to an export violation, is now at <http://www.justice.gov/archive/usao/cac/Pressroom/pr2008/098.html>, (HE 8), and an updated document from the U.S. Department of State website, U.S. Relations With China, Bureau of Consular Affairs, China, December 3, 2014, <http://travel.state.gov/content/passports/en/country/china.html>, is substituted for Item XX. (HE 9) The 20 supporting documents are available for the Appeal Board and Department Counsel at: O drive/Public/Admin Notice/China. The documents are linked to the Items on pages 12-14 of the AN request. The documents themselves, Items I-XX, are not admitted into evidence, and are treated as references for possible consideration, just as the Federal Circuit Courts do not consider documents at hyperlinks as evidence. See Michael Dunbar, *Hyperlinking, Electronic Submissions in the Federal Courts* (June 10, 2013), available at <http://federalcourthyperlinking.org/wp-content/uploads/2013/05/6-10-13-Hyperlinking-Electronic-Submissions-in-the-Federal-Courts.pdf>. (HE 10)

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). Usually administrative notice at ISCR proceedings is accorded to facts that are either well known or from government reports. See Stein, *ADMINISTRATIVE LAW*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

Findings of Fact¹

In his SOR response, Applicant said his mother, parents-in-law, and three sisters are apolitical and not connected with any government entity. (HE 7) He did not describe their citizenship or residency. (HE 7) In August 2014, his father passed away.² (HE 7) Applicant's admissions are accepted as findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is a 59-year-old senior software engineer, who has worked for the same DOD contractor for 51 months. (Tr. 5, 7, 20, 23-24, 49; GE 1) In 1975, he graduated from high school. (Tr. 5) In 1986, he received his bachelor's degree, and in 1988, he received a master's degree in China. In 1990, when he was 34 years old, he entered the United States and began attending a U.S. university. (Tr. 6, 14, 20-21) (Tr. 21; GE 1) In 1992, he received a master's degree in linguistics; and in 1999, he received a Ph.D in computation linguistics. (Tr. 6, 22; GE 1) He received his most recent master's degree and his Ph.D in the United States. (Tr. 22) Before working for his current employer, he developed financial transactions software for three years for a large company. (Tr. 24)

Applicant has never served in the U.S. or Chinese militaries. (Tr. 6-7) He has never held a security clearance. (Tr. 25) In 2008, Applicant was naturalized as a U.S. citizen. (Tr. 22) Applicant owns a condominium valued at about \$400,000, and he has a retirement account valued at about \$400,000. (Tr. 25-26) His spouse has a U.S. retirement account valued at about \$35,000. (Tr. 28) Applicant and his spouse do not have any foreign income or investments. (Tr. 26-27) Applicant's spouse does not work outside their home. (Tr. 27)

In 1996, Applicant's spouse, who is now 59-years-old, immigrated to the United States from China, and she became a naturalized U.S. citizen. (Tr. 20, 50) Applicant and his spouse do not have any children. (Tr. 20)

Applicant's mother, parents-in-law, and three sisters are citizens and residents of China. (Tr. 28-31, 34-36, 38-46; GE 1) Applicant's mother lives with his sister in China. (Tr. 28) His mother is retired from her work in a shop. (Tr. 34) He communicates with his mother on a weekly basis. (Tr. 34) His mother receives retirement from the Chinese government similar to U.S. Social Security of about \$500 monthly. (Tr. 35, 46-47) Applicant provides some money to his mother and sister when he stays with them, possibly about \$1,000 in 2015. (Tr. 47-49)

¹The facts in this decision do not specifically describe employment, names of witnesses, or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information. Unless stated otherwise, the sources for the facts in this section are from Applicant's SF 86. (GE 1)

²Department Counsel moved to withdraw SOR ¶ 1.a, which alleged Applicant's father was a citizen and resident of China. (Tr. 11-12) Applicant did not object, and the motion was granted. (Tr. 11-12)

Applicant's sisters do not have any connections to the Chinese government, and he communicates with them about once a year, usually when he visits China. (Tr. 39) Two sisters are retired. (Tr. 39-46) One sister works for a quasi-governmental community hospital as a physician. (Tr. 38-40)

Applicant's niece is a citizen of China, and she is attending college in the United States on a student visa. (Tr. 50) She occasionally visits Applicant. (Tr. 45-46, 50)

Since 2003, Applicant has returned to China almost every year. (Tr. 30) He visited China in 2012, 2013, 2014, and 2015. (Tr. 32-33) He returned from his annual visit to China the month before his hearing. (Tr. 33) He normally stays in China for two to three weeks at his sister's residence. (Tr. 30) In 2007, Applicant's parents visited him in the United States. (Tr. 30) He has visited his parents-in-law when he visits China. (Tr. 31) His parents-in-law have not visited Applicant in the United States. (Tr. 31) His parents-in-law are retired, and they do not have connections to the Chinese government. (Tr. 36) He communicates with his parents-in-law about once a year. (Tr. 38)

Applicant has never been a member of the Chinese Communist Party. (Tr. 16, 19) He emphasized that he swore an oath of allegiance to the United States, when he was naturalized as a U.S. citizen; he is willing to sacrifice his life to defend the United States; he is a law-abiding citizen; and he is hardworking and makes great contributions to his company and the United States. (Tr. 14-15, 19) Applicant concluded:

I just want to re-emphasize the fact that all the things, the family connection, the back and forth visiting China, frequent visits, contacts, all this is because I was a Chinese citizen. I have family duty. I have to see my mom, my family, especially my mom and my dad, when he was alive. Other than that, I don't have any. (Tr. 52)

Character Evidence

In March 2012, Applicant received a certificate of appreciation from his employer for a case study he generated. (AE A) In August 2012, Applicant received an award from his employer for technical services he provided. (AE B)

There is no derogatory information concerning Applicant's police or financial records. There is no evidence of record showing any U.S. arrests, illegal drug possession or use, or alcohol-related incidents.

China

China has powerful military forces, including strategic nuclear missiles. China is geographically vast, and has a population of 1.3 billion people. It has significant resources and an economy that in recent years has rapidly expanded. China aggressively competes with the United States in many areas. China's competitive

relationship with the United States exacerbates the risk posed by an applicant's connections to family members living in the China.

China has an authoritarian, Communist government. China has a poor human rights record, suppresses political dissent, and practices arbitrary arrest and detention, forced confessions, torture, and other prisoner mistreatment. China also monitors communications devices, such as telephones, telefaxes, and internet servers.

China actively collects military, economic, and proprietary, industrial information about the United States for the following reasons: (1) its position as a global power; (2) its military, political, and economic investments in the Pacific Rim and Asia; and (3) its leading role in the development of advanced technology that China desires for economic growth and military enhancement. China's active intelligence gathering programs focus on sensitive and protected U.S. technologies.

The 2009 Report of the U.S.-China Economic and Security Review Commission noted the following about China's enterprise-directed industrial espionage:

Enterprise-directed espionage may also be growing in importance and taking on less random and more targeted form. The 2008 unclassified report of the Defense Security Service cited a rise in efforts undertaken by commercial entities to target restricted technologies, speculating that this likely represents "a purposeful attempt to make contacts seem more innocuous by using non-governmental entities as surrogate collectors for interested government or government-affiliated entities. . . ."

Chinese intelligence personnel are more inclined [than Russian intelligence personnel] to make use of sympathetic people willing to act as a "friend of China." While this most clearly has been seen in PRC-targeted recruitment of Chinese-Americans, PRC agents also have used as sources U.S. citizens of other ethnic backgrounds. (AN request at 6)

In cases resulting in federal prosecutions during fiscal years 2007 and 2008, China was ranked second only to Iran as the leading destination for illegal exports of restricted U.S. technology.

In 2014, the DOD reported that China "relies on foreign technology, acquisition of dual use components, and focused internal research and development to further military modernization. . . . China has used its intelligence services and other illicit approaches to collect sensitive U.S. information and export controlled technology in violation of U.S. laws and export controls." (AN request at 5-6)

China's espionage and industrial theft activities are a threat to the security of U.S. technology. Department Counsel's summary provides additional details of China's aggressive intelligence efforts directed towards acquiring U.S. secrets and proprietary technologies as well as examples of criminal cases from 2010 to 2014 involving people

and organizations connected to China. However, there is no evidence Applicant has been involved in any criminal activity or violated any rules or statutes protecting U.S. secrets.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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 about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the

criteria listed therein and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Foreign Influence

AG ¶ 6 explains the security concern about "foreign contacts and interests" stating:

[I]f the individual has divided loyalties or foreign financial interests, [he or she] may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline 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, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 indicates three conditions that could raise a security concern and may be disqualifying in this case:

- (a) contact 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 sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information; and
- (d) sharing 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.

Applicant was born and educated through master's degree level in China. Applicant's mother, parents-in-law, and three sisters are citizens and residents of China. He is close to his mother and visits her almost every year. Applicant has frequent³ contacts with his mother (he telephones her on a weekly basis); however, he does not have frequent contacts with his other relatives living in China. He provides minimal financial support to his mother, which he estimates to be about \$1,000 when he visits her in China.

Applicant lives with his spouse. Applicant's spouse was born in China. Applicant did not provide evidence of his spouse's relationships with her parents, who are residents and citizens of China. There is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members. See *generally* ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at *8 (App. Bd. Feb. 20, 2002). Applicant has ties of affection and obligation to his spouse, and she is close to her parents. "[A]s a matter of common sense and human experience, there is [also] a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse." ISCR Case No. 07-17673 at 3 (App. Bd. Apr. 2, 2009) (citing ISCR Case No. 01-03120 at 4 (App. Bd. Feb. 20, 2002)). This concept is the basis of AG ¶ 7(d). Thus, an indirect tie remains between Applicant and his in-laws living in China. Indirect influence from Applicant's in-laws living in China, through Applicant's spouse to Applicant, could result in a security concern. In addition, Applicant has ties of affection to his mother as shown by his frequent communications with her and his annual visits to China to stay with her.

Applicant's relationships with residents of China create a concern about Applicant's "obligation to protect sensitive information or technology" and his desire to help his relatives, who live in China. For example, if intelligence agents or government officials in China wanted to expose Applicant to coercion, they could exert pressure on his relatives residing in China. Applicant would then be subject to coercion through his relatives and classified information could potentially be compromised.

An applicant or their spouse's possessions of close family ties with their family living in a foreign country are not, as a matter of law, disqualifying under Guideline B. However, if an applicant or their spouse has a close relationship with even one relative, living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See *Generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

The nature of a nation's government, its relationship with the United States, its history of intelligence gathering, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion or inducement. 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

³See ISCR Case No. 09-03114 at 2-3 (App. Bd. Oct. 22, 2010) (contact once a month is considered to be "frequent" under AG ¶¶ 7 and 8).

dependent upon the government or the country is known to conduct intelligence collection operations against the United States. The relationship of China with the United States, and China's "history of conducting espionage against the United States puts a heavy burden of proof on Applicant" to demonstrate that his and his spouse's relationships with family members living in China do not pose a security risk. See ISCR Case No. 12-04780 at 3 (App. Bd. Nov. 13, 2013) Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist relatives living in China.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002).

While there is no evidence that intelligence operatives from any foreign country seek or have sought classified or economic information from or through Applicant or his relatives living a foreign country, nevertheless, it is not possible to rule out such a possibility in the future. Applicant's and his spouse's relationships with family members living in China create a potential conflict of interest because these relationships are sufficiently close to raise a security concern about his desire to assist relatives in China by providing sensitive or classified information. Department Counsel produced substantial evidence of Applicant's and his spouse's contacts or relationships with family living in China. Department Counsel has raised the issue of potential foreign pressure or attempted exploitation; AG ¶¶ 7(a), 7(b), and 7(d) are established; and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists three conditions that could mitigate foreign influence security concerns including:

(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 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 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 Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

AG ¶¶ 8(a) and 8(c) have limited applicability. Applicant has frequent contacts with his mother, who is living in China, and he provides a minimal level of financial support to her. He visits her in China almost every year and he telephones her on a weekly basis. His contacts with his siblings and parents-in-law living in China are infrequent because they usually meet or converse about once a year. His loyalty and connections to family, especially his mother, are positive character traits. However, for security clearance purposes, those same connections with his mother living in China negate the possibility of mitigation under AG ¶¶ 8(a) and 8(c), and Applicant failed to fully meet his burden of showing there is "little likelihood that [his relationship with his mother who is living in China] could create a risk for foreign influence or exploitation."

AG ¶ 8(b) partially applies. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationships with family living in China.

There is no evidence that the Chinese government or those conducting espionage have approached or threatened Applicant, his spouse, or their family to coerce Applicant for classified or sensitive information.⁴ As such, there is a reduced possibility that Applicant or his family living in China would be specifically selected as targets for improper coercion or exploitation.

While the U.S. Government does not have any burden to prove the presence of such evidence, if such record evidence were present, Applicant would have a heavier

⁴There would be little reason for U.S. enemies to seek classified information from an applicant before that applicant has access to such information or before they learn of such access.

evidentiary burden to mitigate foreign influence security concerns. It is important to be mindful of the United States' sizable financial and diplomatic investment in China. Applicant and his spouse's family living in China could become potential targets of intelligence agents because of Applicant's support for the United States, and Applicant's potential access to classified information could theoretically add some risk to Applicant's family living in China.

Applicant has significant connections to the United States and more limited connections to China. In 1990, he came to the United States on a student visa. In 2008, Applicant was naturalized as a U.S. citizen. He took an oath and swore allegiance to the United States. His spouse is a naturalized U.S. citizen. He supports the U.S. Government as an employee of a contractor. He has substantial investments in the United States and no investments in China. Over the past 25 years, he has been a resident of the United States, and he has manifested his patriotism, loyalty, and fidelity to the United States over all other countries.

In sum, Applicant and his spouse's connections to family living in China are significant. Applicant frequently communicates with mother in China; he provides minimal financial support to his mother; and he visits China almost every year. Security concerns are not analyzed in a piecemeal assessment. Instead, the overall situation must be considered. Applicant's 25 years of U.S. residence, his U.S. financial investments, and his spouse living in the United States constitute stronger connections to the United States than to China. However, Applicant's close relationship to his mother, who is vulnerable to potential Chinese coercion, outweighs his connections to the United States in security analysis. Moreover, Applicant is personally vulnerable to coercion when he visits China, as he does annually. Foreign influence security concerns under Guideline B are not mitigated.

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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (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. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

There are some facts supporting a grant of Applicant's access to classified information. In 1990, he entered the United States and began attending a U.S. university. He was awarded a master's degree and Ph.D in the United States. He has substantial investments in the United States and no investments in China. In 2008, Applicant was naturalized as a U.S. citizen. He has successfully worked for a government contractor for 51 months. In March 2012, Applicant received a certificate of appreciation from his employer for a case study he generated. In August 2012, Applicant received an award from his employer for technical services he provided. He considers the United States to be his home, and he said he is willing to sacrifice his life to defend the United States; he is a law-abiding citizen; he is diligent and dedicated; and he makes great contributions to his company and the United States. There is no evidence of showing any arrests, illegal drug possession or use, alcohol-related incidents, or delinquent debts.

A Guideline B decision concerning a foreign country must take into consideration the geopolitical situation and dangers in that country including from intelligence agents.⁵ The danger of coercion from the Chinese government or intelligence agents is more likely than in many other countries. China competes with the United States militarily, diplomatically, and through trade. China has a history of espionage targeting U.S. military and industrial secrets.

The weight of the evidence supports denial of Applicant's access to classified information. Applicant's mother is a citizen and resident of China. Applicant is close to his mother; he visits her annually; and he communicates with her on a weekly basis. When he visits China, he stays with his mother and sister. "It is not to question Applicant's patriotism to acknowledge that the record in [Applicant's] case raises the reasonable concern that [he] could be placed in a position of having to choose between [his] ties to the U.S. and [his] obligations to [his] foreign family members." ISCR Case No. 07-02485 at 5 (App. Bd. May 9, 2008) (reversing grant of security clearance because of Chinese connections). Applicant should not be placed into a position where Chinese government or intelligence officials could coerce his mother or Applicant, when he visits China, to attempt to obtain classified information.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude Applicant has failed to mitigate the foreign influence security concern.

⁵ See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole person discussion).

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
Subparagraph 1.a:	Withdrawn
Subparagraphs 1.b:	Against Applicant
Subparagraphs 1.c through 1.f:	For Applicant

Conclusion

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

Mark Harvey
Administrative Judge