

**IF YOU HAVE A FAMILY MEMBER IN CHINA-
CHANCES OF GETTING A SECURITY CLEARANCE ARE REMOTE¹
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Every year American citizens with family ties in China apply for security clearances, but for them the chances of getting a security clearance are remote.³ Winning the lottery has better odds. After an applicant spends the time, effort, and frequently the money to hire legal counsel, the result is virtually always the same - clearance denied. While the government has the absolute right to decide to whom to grant a security clearance, and while it may have good reason to deny a security clearance to persons with close relatives still living in China, it should do away with the continuing illusion of due process, and just issue a blanket policy statement that applicants with family ties in China will not be granted a security clearance., That would save not only the applicants, but also the American taxpayers the money wasted on hearings which virtually always have a predictable outcome.

The criteria for determining whether a security clearance should be granted to anyone, are found in Guidelines that have been issued by the President and which are applicable throughout the government.⁴ They cover a wide range of factors, among which is “Guideline B - Foreign Influence”. The concern of Guideline B is that:

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³ This article deals only with employees of contractors doing classified business with the Department of Defense and about 20 other non-Defense agencies which, by agreement, have designated the Defense Office of Hearings and Appeals (DOHA) to be the appellate authority for their security clearance appeals. (See, DoD Directive 5220.6). DOHA and the Department of Energy are the only agencies which publish their decisions. This article does not cover appeals by government employees, or employees of contractors of the CIA, FBI, NSA, or DoD contractor employees holding Sensitive Compartmented Information (SCI) clearances which deal with intelligence information. Those clearances are subject to different appeal processes for which decisions are not published. There is no reason to believe however, that the intelligence agencies are any less stringent in vetting security clearance holders. In fact, experience shows that those agencies hold SCI clearance applicants to an even stricter standard.

⁴ Memorandum from Steven J. Hadley, Assistant to the President for National Security Affairs, Re: Adjective Guidelines, December. 29, 2005, as amended.

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, 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.

Guideline B further provides that:

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.

Among the disqualifying conditions in Guideline B is:

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.

There are also a number of considerations in Guideline B that could mitigate 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.

In applying Guideline B to applicants with ties to close relatives in China the DOHA Appeal Board has articulated a "heightened risk" or "very heavy burden" because of China's

hostility to the United States. (ISCR Case No. 06-24575 at 4 (App. Bd. Nov. 7, 2007) (reversing a grant of clearance to an applicant⁶ with family members living in China). IN another decision the Appeal Board stated, "Given the PRC's interest in U.S. intelligence, applicant's foreign relatives pose a real, rather than merely theoretical, risk that applicant could be targeted for manipulation or induced into compromising classified information." (ISCR Case No. 07-02485 at 4-5 (App. Bd. May 9, 2008). In that case the Appeal Board described those facts which supported its decision to reverse the grant a clearance to the applicant who had with connections to China (the PRC), stating:

that Applicant lives with a PRC citizen, her husband; that her husband maintains contact with his own father who is a citizen and resident of the PRC; that Applicant's brother is a citizen and resident of the PRC; that Applicant speaks with her brother over the telephone 'several times a year'; that the PRC targets U.S. citizens of PRC ancestry for intelligence gathering purposes; and that the PRC monitors telephone and other communications of its citizens, constitute significant record evidence of security significant foreign contacts and interest. As such, Applicant's evidence as to her good job performance and her ties to the U.S. are not sufficient to mitigate those concerns. It is not to question Applicant's patriotism to acknowledge that the record in her case raises the reasonable concern that she could be placed in a position of having to choose between her ties to the U.S. and her obligations to her foreign family members.

Id. At 5. The Appeal Board has reversed other cases on the same grounds.⁵

In cases where an applicant has close family ties living in China, because of the prior rulings of the Appeal Board, the mitigating conditions of Guideline B are given virtually no weight by the Administrative Judges hearing the cases in the first instance.⁶

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See also, ADP Case No. 05-17812 (App. Bd. June 11, 2007) and ISCR Case No. 05-10467 (App. Bd. May 8, 2007) (both reversing favorable clearance decisions for PRC-related Applicants); ISCR Case No. 06-23453 (App. Bd. Nov. 14, 2007) and ISCR Case No. 06-21622 (App. Bd. Oct. 15, 2007) (both remanding favorable clearance decisions for PRC-related Applicants).

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The Appeal Board has ruled that in analyzing countervailing evidence, it is legal error to give significant weight to any of the following factors: applicant's ties to the United States and lack of prominence of relatives living in a foreign country (ISCR Case No. 02-13595 at 5 (App. Bd. May 10, 2005); family members' low-key and noncontroversial lifestyle, and the fact that the foreign government has not contacted them about applicant (ISCR Case No. 04-12500 at 4 (App. Bd. Oct. 26, 2006); only one relative living in a
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A review of the 40 decisions by the DOHA Administrative Judges and Appeal Board between January, 2013 and September, 2016 in which applicants had *any* relatives living in China, shows that in only eight cases were clearances granted, and in only *two* of those eight cases were there ties to *immediate* family members.⁷ Of those two cases, in one the applicant had a sister and sister in-law living in China (ISCR No. 13-00838, Gales, AJ, Apr. 7, 2014) and in the other, a case completely out of the mold, the applicant had a mother, father, brother, sister, mother in-law and father in-law living in China. (ISCR No. 14-05743. Mogul, AJ, Feb. 29, 2016). In the remaining six cases, where there were any relatives, the family member or members in China were more distant; an estranged father-in-law,⁸ a mother in-law and father in-law⁹, a mother in-law, father in-law and brother in-law,¹⁰ a grandfather and two aunts,¹¹ and a case with three distant cousins.¹²

In the other 32 cases during this period, decided by 20 different Administrative Judges, all declined to grant a security clearance solely on the basis of close family ties in China.

During this same period five decisions by the DOHA Appeal Board all affirmed initial

⁶ (. . . continued)

foreign country (ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006)); foreign relative's fragile health (ISCR Case No. 02-29403 at 4 (App. Bd. Dec. 14, 2004));, advanced age (ISCR Case No. 02-00305 at 7 (App. Bd. Feb. 12, 2003), financial independence (ISCR Case No. 02-31154 at 6 (App. Bd. Sep. 22, 2005)); lack of financial dependency upon applicant (ISCR Case No. 03-15205 at 4 (App. Bd. Jan 21, 2005)); foreign relatives spend part of each year in the U.S. (ISCR Case No. 02-31154 at 6 (App. Bd. Sep. 22, 2005)); lack of any connection between the foreign relative and the foreign government in question (ISCR Case No. 02-31154 at 6 (App. Bd. Sep. 22, 2005)); absence of any attempt at exploitation in the past (ISCR Case No. 03-15205 at 4 (App. Bd. Jan. 21, 2005).

⁷ A review of all of the decision of the Department of Energy, Office of Hearings and Appeals for the years 2014, 2015 and through September 2016 showed only one instance of consideration of applicants with relatives in a foreign country (although consisting of two back-to-back cases of a husband and wife), which country appears to be India. Case No. PSH-14-0010, June 17, 2014 and Case No. PSH-14-0011, June 19, 2014. [Http://energy.gov/oha/security-cases](http://energy.gov/oha/security-cases).

⁸ ISCR CASE No. 14-03287 (Curry, AJ, April 7, 2015); ISCR CASE No.14-02431 (Ross, AG, May 6, 2015).

⁹ ISCR CASE No. 11-09955 (Mason, AJ, May 14, 2013).

¹⁰ ISCR CASE No. 14-00021 (Mendez, AJ, Sept. 15, 2014).

¹¹ ISCR CASE No. 12-04992 (Foreman, AJ, July 24, 2014).

¹² ISCR CASE No. 12-02778 (Noel, AJ, Apr. 29, 2014).

denials of a clearance.¹³ Among the reasons given by the Appeal Board for affirming the denials were that, “Applicant’s stellar career and ties to the community are not enough to trigger the [mitigating factors]”¹⁴, a lack of evidence of threat or espionage, or the foreign relatives’ obscurity were not sufficient¹⁵, evidence of U.S. military service and having held a clearance for many years without incident or concern was not sufficient,¹⁶ and being an ethnic and cultural minority in China and having experienced persecution and hardship at the hands of the Chinese government was not sufficient.¹⁷

The facts that applicants had no other ties to China, had spouses and children born in the United States, had significant assets and ties to the United States, had outstanding recommendations from others, had taken an oath to support the constitution of the United States when they became citizens, and had automatically lost their Chinese citizenship when becoming a United States citizen, were not sufficient to overcome the concern of the Appeal Board that China continues to engage in commercial and political espionage against the United States.

DOHA officials complain that it is overworked and cannot keep up with its ever increasing workload. Its Judges, who previously took one to three months to issue a decision, are now taking six months or more to do that. DOHA is hiring more judges and attorneys to keep up with its increasing case load, yet cases which formerly were scheduled for a hearing in two to three months are now taking almost a year before being scheduled.

Undoubtably the United States has the right to deny security clearances to persons with close family ties in China as it does to any other country. However, instead of indulging in the charade of granting a “due Process” hearing whose outcome is a forgone, in fairness to those applicants for security clearances, all of whom must be American citizens before they can even apply, and to the American taxpayers who fund the agencies making these decisions, the Government should issue a blanket policy statement that security clearances will not be granted

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ISCR Case No. 12-04780 (App. Bd. Aug. 21, 2013, remanded, Nov 13, 2013, denial affirmed); ADP Case No. 14-01655 (App. Bd Nov, 3, 2015, remanded, Dec. 9, 2015, denial affirmed); ISCR Case No. 12-00058 (App. Bd. Apr. 9, 2013); ISCR Case No.14-03200(Ap. Bd. July 16, 2015); ISCR Case No. 15-00042 (App. Bd. July 6, 2016).

¹⁴ ISCR Case No. 12-04780, p. 3 (App. Bd. Nov 13, 2013).

¹⁵ ADP Case No. 14-01655, p.4 (App., Dec. 9, 2015).

¹⁶ ISCR Case No.14-03200, p. 3 (App. Bd., July 16, 2015).

¹⁷ ISCR Case No. 15-00042, p. 2 (App. Bd., July 6, 2016).

to persons with immediate family ties to China. This would not only increase government efficiency by ending the waste of taxpayer's money on useless hearings and appeals with foregone outcomes, but would, and not the least for the sake of decency, inform hard working, loyal American citizens with immediate family members in China to not spend their time, energy, hopes and money on a fruitless effort to get a security clearance.