



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-04208

Appearances

For Government: Gatha Manns, Esquire, Department Counsel

For Applicant: *Pro se*

03/14/2019

Decision

WESLEY, Roger C., Administrative Judge:

Based upon review of the pleadings and exhibits, I conclude that Applicant mitigated the security concerns regarding foreign influence. Eligibility for access to classified information is granted.

History of Case

On January 31, 2018, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DOD adjudicators could not make the affirmative determination of eligibility for a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or) 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 Security Executive Agent, Directive 4, *National Security Adjudicative Guidelines* (SEAD) 4), effective June 8, 2017.

Applicant responded to the SOR on February 15, 2018, and requested a hearing. The case was assigned to me on August 3, 2018, and was scheduled for hearing on October 30, 2018. A hearing was convened as scheduled, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's security clearance. At hearing, the Government's case consisted of four exhibits; Applicant relied on one witness (herself) and one exhibit. The transcript (Tr.) was received on November 7, 2018.

Besides its four exhibits, the Government requested administrative notice of detailed facts taken from 14 U.S. Government official publications. Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 (App. Bd. April 2007); Administrative notice is appropriate for noticing facts or government reports that are well known. See *Stein*, Administrative Law, Sec. 25.01 (Bender & Co. 2006). For good cause shown, administrative notice was granted with respect to the above-named background reports containing the identified facts in Department Counsel's Request for Administration Notice regarding the People's Republic of China (PRC) that address the geopolitical situation in the PRC. Administrative Notice was extended to the documents themselves, consistent with the provisions of Rule 201 of Fed. R. Evid. This notice did not foreclose Applicant from challenging the accuracy and reliability of the information contained in the reports addressing Hong Kong's current state. Department Counsel's Administrative Notice Request was received as HE 1.

In addition to the source documents covered by Department Counsel's Administrative Notice Request, I took official notice of *Background Note: Hong Kong SAR*, U.S. Department of State (December 2007). This document was received as HE 2.

Procedural Rulings

Before the close of the hearing, Applicant requested the record be kept open to permit her the opportunity to supplement the record with pertinent information about U.S. relations with Hong Kong. For good cause shown, Applicant was granted 10 days to supplement the record. Department Counsel was afforded three days to respond. Within the time permitted, Applicant supplemented the record with citations to web-sites addressing U.S. Relations with Hong Kong, the Hong Kong Policy Act Report, and U.S. Trade in Goods with Hong Kong. Applicant's post-hearing submissions (three in all) were admitted without objection as AEs B-D .

Summary of Pleadings

Under Guideline B, Applicant is alleged to have (a) parents who are dual citizens of Hong Kong and the United States who reside in Hong Kong; (b) a stepfather who is a citizen and resident of Hong Kong; and (c) a mother-in-law who is a dual citizen of Hong Kong and the United States.

In her response to the SOR, Applicant, admitted that her mother is a dual citizen of Hong Kong and the United States who resides in Hong Kong, but denied that her father is a dual citizen of Hong Kong and the United States who resides in Hong Kong, claiming he is a citizen and resident of Hong Kong. She admitted that her stepfather is a citizen and resident of Hong Kong, but denied that her mother-in-law is a dual citizen of the United States, claiming she is a citizen and resident of Hong Kong.

Findings of Fact

Applicant is a 40-year-old digital electronics engineer employed by a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Applicant's background

Applicant was born and raised in Hong Kong to parents of Chinese descent. After finishing her high school education in Hong Kong, she immigrated to the U.S. in November 1997 at the age of 19 to pursue her education. (GEs 1-2; Tr. 35-36, 55-56, 60-62) Before Hong Kong's reversion to the PRC in July 1997, Applicant and her family members were citizens of the British Colony of Hong Kong. British culture and capitalism were major influences on Applicant in her formative years. Mainland China and the Communist Party played no part in her family upbringing.

Upon her arrival in the United States, she enrolled in a local community college with the academic objective of pursuing an engineering curricula. (GEs 1-2; Tr. 62-63) She earned an associate's degree in June 2000 before transferring to a respected state university. Applicant earned a bachelor's degree in electrical engineering in June 2003 and was awarded a master's degree in electrical engineering from the same university in June 2004. (GE 2; Tr. 63-64) She reported no U.S. military service.

Since 2016, Applicant has worked for her current employer. (GEs 1-2 and AE A; Tr. 42-43, 46-48, 73-74) Between 2005 and 2016, she worked for another defense contractor. (GEs 1-2; Tr. 43-46) Between November 1997 and April 2005, she was employed by other employers in assorted capacities. (GEs 1-2; Tr. 68) Applicant was naturalized as a U.S. citizen in May 2003 and received her U.S. passport in June 2004. (GEs 1-3) In February 2005, she applied for and received a Chinese passport. (Tr. 66) Once she began working for her prior defense contractor employer, she returned her Chinese passport. (Tr. 67)

Applicant is married and has two children (ages seven and nine) from this marriage. (GEs 1-4; Tr. 41, 43, 48-49, 70-71) For most of the past 21 years of her residency in the United States before her marriage, she lived alone and described herself as self-sufficient. (GEs 1-4)

Applicant's immediate family members include her mother (a dual citizen of the PRC and the United States) and father (a citizen of the PRC and resident of Hong Kong). Extended family members include her stepfather (a citizen of the PRC and resident of Hong Kong) and her mother-in-law (a citizen of the PRC and resident of Hong Kong). (GEs 1-3; Tr. 37, 40) Her parents, stepfather, and mother-in-law are dual citizens of Great Britain and the PRC by virtue of their birth in Hong Kong and unilateral declaration by the PRC that persons who are of Chinese descent and who were born in the mainland China or Hong Kong are PRC citizens. See *Background Note: Hong Kong SAR, supra*.

Applicant's father is a retired accountant (not affiliated with the Hong Kong or PRC government); while her mother is a homemaker. (Tr. 110) Applicant's mother owns a small apartment in Hong Kong; while her father owns no property in Hong Kong. (Tr. 103-104)

Applicant also has three sisters. Two reside in the United States, and the third sister resides in Scotland. (Tr. 54) While in college, Applicant traveled on several occasions to Hong Kong to visit her parents and other family members (2005-2011), with her last trip occurring in 2011. (GEs 1-3; Tr. 36-37, 90-92, 95) Applicant maintains little contact with her father, but has regular telephone contact with her mother (Tr. 103-107) and periodic contact with her other family members. (Tr. 103, 107) Her mother-in-law has visited Applicant and her husband to see their children, and stayed with them on each visit. (Tr. 79-81)

Applicant has not been involved in any embarrassing or compromising incidents overseas, and has not engaged in any illegal activities (GEs 1-4) She provides no financial assistance to any of her family members (who are self-sufficient), or to anyone or any entity outside the United States. (Tr. 105-108) She has never served in a foreign military; nor is she willing to do so. (GEs 1-3) She has had no contact with any foreign government representatives or organizations since residing in the United States. She has no financial interests or obligations in Hong Kong. (GEs 3-4) She has no property ownership, no foreign bank accounts, no retirement, medical, or education benefits in Hong Kong, and no social security or any other received government benefit from Hong Kong or any other foreign country. (GEs 1-4)

Applicant has never had any foreign property confiscated, and she has never sponsored any foreign nationals to the United States. (GEs 1-4). Nor has she ever voted or sought political office in Hong Kong or any foreign country. Further, she has not performed or attempted to perform duties that could serve the interests of Hong Kong or any foreign government.

By contrast, Applicant has held jobs in the United States for over 20 years and owns property in the United States. She considers herself a fully assimilated U.S. citizen (GEs 1-4) and professes no allegiance, preference, sympathies or alliances with any person or entity or government in the PRC, or anywhere else (GEs 1-4) She fully understands the importance of reporting any and all foreign travel to her employer's security officials.

Character references

Applicant is highly regarded by her supervisor. (AE A) Her supervisor with her current employer characterizes her work as excellent in quality. The supervisor considers Applicant to be honest, polite, respectful, and very responsible. (AE A)

Hong Kong's historical background

Hong Kong's history dates back over five millennia. It developed strong trading relationships with Britain in 1842 (following the First Opium War) under the Treaty of Nanking. *See Background Note: Hong Kong SAR, supra*, at 2). Britain was granted a perpetual lease on the Kowloon Peninsula under the 1860 Convention of Beijing, and Britain expanded its control over the surrounding area under a 99-year lease of the New Territories in 1898. *See id.*

In the late 19th and early 20th centuries, Hong Kong developed as a warehousing and distribution center for British trade with southern China. *See Background Note: Hong Kong SAR, supra*). Heavy migration to Hong Kong occurred after the Communist takeover of mainland China in 1949. Hong Kong achieved considerable economic success as a British colony in the post-1949 period as a manufacturing, commercial, finance, and tourism center. High life expectancies, literacy, per capita income, and a confluence of other socioeconomic indicators serve to illustrate Hong Kong's measurable socioeconomic achievements.

Hong Kong's reversion

Since July 1, 1997, Hong Kong has been a Special Administrative Region (SAR) of the PRC. This is important to note because of the generally recognized heightened risks that are associated with the PRC, and the unilaterally imposed citizenship and residency status on Applicant and her parents as birth residents and citizens of Hong Kong before the reversion. *See Background Note: Hong Kong SAR, supra*. This does not mean that the U.S. Government will not offer consular services to dual nationals who use their non-U.S. passports in Hong Kong and other sectors of the PRC. But because the PRC does not recognize dual citizenship under its nationality law, use of other than a U.S. passport to enter China can simply increase the difficulties of consular assistance for any dual national who is arrested under such circumstances. *See id.*. Due to Applicant's returning her Chinese passport to the PRC shortly after going to work for her previous employer in 2005, this feature of PRC law has no application to Applicant.

Hong Kong today has a population of over 7 million (95 per cent of which are Chinese), and is one of the most densely populated regions of the world. China has given Hong Kong considerable autonomy over its domestic affairs. The PRC has retained responsibility and control over foreign and defense affairs. State Department records confirm that the PRC has taken an increasingly active oversight role over Hong Kong's political developments. *See Background Note: Hong Kong SAR, supra*, at 2-3.

Still, both the Sino-British joint declaration (1984) and the Basic Law provide political safeguards to ensure that Hong Kong retains its own political, economic, and judicial systems and unique status for at least 50 years after reversion. These legal documents permit Hong Kong to continue to participate in international conventions and organizations under the name of “Hong Kong, China. See *Background Note: Hong Kong SAR, supra*, at 2. Hong Kong, with its quasi autonomy, remains a free and open society where human rights are respected, courts are independent, and there are established traditions of respect for the rule of law. See *id.*, at 3. Hong Kong continues to retain a common law system from its time as a British colony before 1997 and maintains extradition agreements with more than a dozen countries, including the United States, the United Kingdom, and Singapore. The PRC, by contrast, operates a civil-law system.

Citizens of Hong Kong are limited, however, in their ability to change their government, and the legislature is limited in its power to change government policies. See *Background Note: Hong Kong SAR, supra*. And the PRC still retains oversight and ultimate veto authority over all of Hong Kong’s economic and political decision making. Any changes in Hong Kong’s Basic Law (such as to achieve full universal suffrage) will require approval by Hong Kong’s chief executive, at least a two thirds approval by the Legislative Council (Legco), and then the PRC’s National People’s Congress Standing Committee (NPSCS), which is by no means assured. See *id.*

Because Applicant’s parents, stepfather, and mother-in-law are still citizens and residents of Hong Kong with unilaterally imposed Chinese citizenship by the PRC’s immigration law, the PRC’s system, its respect for human rights and the rule of law, and its collection activities that extend throughout its maintained intelligence operations in Hong Kong and Macau, become quite relevant to evaluating any potential security risks associated with Applicant’s parents and extended family members. Concerns are also extended to limitations on freedom of the press and expression, academic freedom, arbitrary detention, aggressive police tactics that hamper freedom, trafficking in persons, and societal prejudice against certain ethnic minorities. See *id.*, at 3-4.

United States-Hong Kong Relations

Hong Kong, as a Special Administrative Region of the PRC, who bears full responsibility for its foreign relations and defense, is a customs territory and economic sector that operates separately from the rest of the PRC in matters that pertain to its customs zone. See *U.S. Relations with Hong Kong*, U.S. Dept. of State (July 2018). (AE B) Operating in its sphere of reserved authority, it is able to enter into international agreements on its own behalf in commercial, economic, and in certain legal areas. See *id.*

U.S. policy toward Hong Kong is set forth in the U.S.-Hong Kong Policy Act of 1992 (Policy Act), whose stated purpose is to promote Hong Kong’s prosperity, autonomy, and way of life. See *Hong Kong Policy Act Report*, U.S. Dept. of State (May 2018). (AE D); *U.S. Relations with Hong Kong, supra*. Under the Policy Act, the United States supports Hong Kong’s autonomy under the “One Country, Two Systems” framework by concluding and implementing bilateral agreements; promoting trade and

investment; broadening law enforcement cooperation, pursuing educational, academic, and cultural ties, supporting high-level visits of U.S. officials; and serving the large community of U.S. firms, residents, and visitors. See *id*; *U.S. Relations with Hong Kong, supra*. Hong Kong's one country, two systems framework was established in the Basic Law of the Hong Kong Special Administrative Region of the PRC, as enacted by the National People's Congress. See *id*. The Act establishes the policy of the U.S. government to treat Hong Kong as a non-sovereign entity distinct from China for the purposes of U.S. domestic law, based on the principles of the 1984 Sin-British Joint Declaration. (*id.*)

Hong Kong is active in counter-terrorism and counter-proliferation initiatives and remains an important partner in efforts to eliminate funding for terrorist networks, exact strategic trade controls, and combat money laundering. See *U.S. Relations with Hong Kong, supra*; *Hong Kong Policy Act Report, supra*, at 2-5. In March 2014, Hong Kong passed legislation allowing it to adopt the most recent globally recognized standards for exchange of tax information, and both countries have since concluded an international governmental agreement under the U.S. Foreign Account Tax Compliance Act. See *id.*

Currently, the United States maintains a strong trade surplus with Hong Kong. In 2018, it had a trade surplus of \$32.6 billion in 2017 and 31,14, billion in 2018, which represent the largest single trade surpluses of any U.S. trading partner. See *id*; Trade in Goods with Hong Kong, U.S. Dept. of Commerce (March 2019). (AE C); *Hong Kong Policy Act Report, supra*, at. 2. Trade balance reports confirm that two-way trade in goods and services totaled an estimated \$68.9 billion in 2017. (*id.*) U.S. exports of goods and services to Hong Kong in 2015 are reported to have supported an estimated 188,000 U.S. jobs (latest data available), all based on free market principles. (*id.*)

Hong Kong is a major participant in international organizations. See *U.S. Relations with Hong Kong, supra*, at 2. Both the United States and Hong Kong belong to the World Trade Organization, Asia-Pacific Economic Cooperation forum, and Financial Action Task Force. Hong Kong remains an effective champion of free markets and the reduction of trade barriers. See *id*; *Hong Kong Policy Act Report, supra*, at 2-3.

The PRC's country status

Established in 1949, the Peoples Republic of China (PRC) with over 1.3 billion people is the world's most populous country. Today it continues to undergo rapid economic and social change. Political power, however, remains centralized in the Chinese Communist Party (CCP) with little indication of any change in the foreseeable future. The PRC, with its 70.8 million square miles of land space, is authoritarian in structure and ideology and possesses increasingly sophisticated military forces which continues to transform itself from a land-based military power to a smaller, more mobile, high tech military that eventually will be capable of mounting limited operations beyond its coastal waters. See *Background Note: China, supra*, at 14-16.

While not a country acclaimed to be hostile to U.S. persons and interests, the PRC maintains a relationship that is more competitive than cooperative. The PRC operates a large and sophisticated intelligence bureau, entitled the Ministry of State Security (MSS). These operations use clandestine agents to collect intelligence on Western consortia investing in the PRC who are suspected of involvement in attempts to democratize the PRC, as well as other pro-democracy groups thought to be engaging in anti-communist activities. See Administrative Notice, *supra*, at 4; *Annual Report to Congress: Military and Security Developments Involving the People's Republic of China*, at 59, 65, 71, U.S. Dept. of Defense (2017)

Based on past reports to Congress, the PRC is considered one of the most active collectors of U.S. economic and proprietary information. See Administrative Notice, *supra*, at 3-4; *Report to Congress on Foreign Economic Collection and Industrial Espionage 2009-2011* at 2-3, Office of National Counterintelligence Executive (Oct. 2011) the PRC uses its intelligence services to gather information about the US and to obtain advanced technologies. See *id.* The PRC actively monitors international communications satellites from maintained intercept facilities, in addition to collecting information on US military operations and exercises. Examples of PRC economic espionage are cited in the *Annual Report to Congress from the National Counterintelligence Executive on Economic Collection, 2005-2006*, *supra*, at 10-12. Most of the examples of illegally exported technology to the PRC involved high tech equipment and devices used in missile and aircraft guidance systems, highly sensitive weapons parts, infrared cameras and missile microchips. See case illustrations cited in Administrative Notice, *supra*, at 7-8; *Summary of Major U.S. Enforcement, Economic Espionage, and Sanctions-Related Criminal Cases*, U.S. Dept. of Justice at 14-15 (Jan. 2018).

As a corollary of its authoritarian roots, the PRC has never been known for a positive human rights record among Western nations and international human rights groups. Part of this can be explained in terms of the PRC's lack of any cognizable tradition for respect for developing democracies and the rule of law. State Department country reports on the PRC cite the country's poor human rights record. Its noted historical abuses include the suppression of political dissent, arbitrary arrest and detention, forced confessions, torture, and mistreatment of prisoners. See Administrative Notice, *supra*, at 8-9; *2017 Human rights Report: China* (includes Tibet, Hong Kong, and Macau), U.S. Department of State (April 2018).

Of growing concern to U.S. security interests are the State Department's latest reports of increased high profile cases in the PRC involving the monitoring, harassment, detention, arrest, and imprisonment of journalists, writers, activists, and defense lawyers seeking to exercise their law-protected rights. See Administrative Notice, *supra*, at 9; *International Travel, Country Information-China International Travel Information*, U.S. Department of State (Jan. 2018) The State Department cites a comprehensive, credible accounting of all those killed, missing, or detained, reported incidents of deaths in custody, disappearance, torture, and other cruel, inhuman, or degrading treatment or punishment. See *id.*

In its November 2016 Report to Congress, the Security Review Commission described the PRC as a country intent on acquiring and exploiting the knowledge developed by multiples of collection agents: legally, if possible, and otherwise illegally by espionage. Administrative Notice, *supra*, at 7; *2016 Report to Congress of the U.S.-China Economic and Security Review Commission* at 293, 297 (Nov. 2016). The PRC's concerted efforts to acquire sensitive technology poses a considerable challenge to U.S. counterintelligence measures. Recent indictments of Chinese citizens for espionage have served to highlight the PRC's spying activities in the U.S. See Administrative Notice, *supra*, at 6-7; *Report to Congress of the U.S.-China Economic and Security Review Commission, supra*. Better U.S. export controls can be effective only if they are multilateral in scope. See *id.* Without effective dual use export controls in place, the PRC can be expected to acquire dual use technologies with military potential through the U.S. and other source countries.

Policies

The revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (effective September 2006) list Guidelines to be considered by administrative judges in the decision-making process covering DOHA cases. These Guidelines require the administrative judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the administrative judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the administrative judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Foreign Influence

The Concern: 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, 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. See Adjudicative Guidelines (AG), ¶ 6.

Burden of Proof

By virtue of the precepts framed by the Directive, a decision to grant or continue Applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: It must prove any controverted fact[s] alleged in the Statement of Reasons, and it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of proof shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

Analysis

Applicant was born in Hong Kong to parents of Chinese descent and traces her British heritage through Hong Kong's historical colonial links with Britain. She immigrated to the U.S. in November 1997 for educational reasons. She earned associates, bachelors, and master degrees in the United States in electrical engineering and became a U.S. citizen in 2003. Applicant is a highly regarded digital electronics engineer for a U.S. defense contractor.

Security issues of concern to the Government focus on the citizenship and residence status of immediate family members (her parents) and extended family members (her stepfather and mother-in-law) in Hong Kong following its reversion to the PRC in 1997, a country known for its poor human rights record and its engagement in economic data collection throughout the PRC (inclusive of Hong Kong) and the United States.

Foreign influence concerns

The Government urges security concerns over risks that Applicant's immediate and extended family members (her parents, stepfather, and mother-in-law) that reside in Hong Kong (which has since reverted to the PRC) might be subject to undue foreign influence by PRC authorities to access classified information in Applicant's possession or control. Because Applicant and her family members who have PRC citizenship by virtue of Hong Kong's reversion to the PRC in 1997, they present potential heightened security risks covered by Disqualifying Condition (DC) ¶ 7(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," of the Adjudication Guidelines for foreign influence.

The citizenship/residence status of Applicant's parents and extended family members in what is now the PRC poses some potential concerns for Applicant because of the risks of undue foreign influence that could compromise classified information under Applicant's possession and/or control. DC ¶ 7(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," has possible application due to the presence of Applicant's parents, stepfather, and mother-in-law in Hong Kong (a part of the PRC since its reversion in 1997). While Applicant has not visited any of her family residing in Hong Kong since 2011, and has no financial interests or property in Hong Kong or the PRC that could create potential conflicts of interest, she does maintain frequent telephone contact with them.

Applicant and her family have deep roots in Hong Kong (for years a British colony) and are steeped in British culture, free markets, democratic government, human rights protections, and respect for the rule of law. Applicant herself has no contacts with PRC officials or interests in the PRC.

From what is known from the presented evidence, none of Applicant's immediate or extended family members residing in Hong Kong have any political affiliations with the Hong Kong or PRC governing bodies. Nor do any of her family members residing in Hong Kong have any history to date of being subjected to any coercion or influence, or appear to be vulnerable to the same.

The citizenship status and presence in Hong Kong of Applicant's parents, stepfather, and mother-in-law pose some risk because of Hong Kong's reversion to the PRC and the latter's sovereign oversight powers over all of Hong Kong's domestic affairs, and plenary responsibility over its external affairs. These risks are minimal, though, and are reconcilable with U.S. security interests. Applicant's contacts with her family members are more than neutralized by the former's demonstrated strong loyalties to the United States

and manifest commitments to protect this country's security interests and resist any family pressures that could weaken her fiducial duties to protecting classified information.

Although the United States and the PRC are global competitors, and the PRC is an active collector of protected information, Applicant is not in a position where she could be potentially vulnerable to pressure or coercion. Considering that Hong Kong generally respects human rights of its citizens and the rule of law, the risk that the PRC might seek protected information-or succeed in obtaining that information-from Applicant or her family members remains low.

The Adjudicative Guidelines governing security clearances do not dictate *per se* results or mandate particular outcomes for applicants with relatives who are citizens/residents of foreign countries in general. What is considered to be an acceptable risk in one foreign country may not be in another. While foreign influence cases must by practical necessity be weighed on a case-by-case basis, guidelines are available for referencing in the supplied materials and country information about Hong Kong.

The AGs do take into account the country's demonstrated relations with the U.S. as an important consideration in gauging whether the particular relatives with citizenship and residency elsewhere create a heightened security risk. The geopolitical aims and policies of the particular foreign regime involved do matter.

As for security concerns associated with the presence of Applicant's parents and extended family members residing in Hong Kong (a Chinese sector that continues in a semi-autonomous way despite its reversion to the PRC), any potential heightened risk of a hostage situation or undue foreign influence brought in the hopes of eliciting either classified information or economic or proprietary data out of Applicant through her parents and other family members residing in Hong Kong is minimal.

Applicant, accordingly, may take advantage of one important mitigating condition: MC ¶ 8(a), "the nature of the relationships with foreign persons, the country in which these persons are located, or the persons or activities of these 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 a foreign individual, group, organization, or government and the interests of the United States." Hong Kong, with its quasi autonomy, remains a free and open society where human rights are respected, courts are independent and operate under the sector's inherited British common law, and there are established traditions of respect for the rule of law. True, citizens of Hong Kong are limited in their ability to change their government, and the legislature is limited in its power to change government policies. And the PRC still retains oversight and ultimate veto authority over all of Hong Kong's economic and political decision making. But since reversion, the PRC has essentially left Hong Kong to manage its own internal affairs without any interference from PRC authorities. This deference is not expected to materially change in the foreseeable future. And in the hypothetical situation where Applicant's parents or any of her family members residing in Hong Kong or the United States were to be pressured, Applicant's strong

loyalties and security commitments to the United States make it very unlikely that she would permit herself to be pressured into compromising classified information.

Of full benefit to Applicant is MC 8(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.” Applicant’s demonstrated loyalty, patriotism, and professional commitments to the United States are well demonstrated and enough under these circumstances to neutralize all potential conflicts that are implicit in her relationships with her parents and extended family members.

Whole-person assessment

Whole person assessment also serves to minimize Applicant’s exposure to potential conflicts of interests with her parents and extended family members residing in Hong Kong. Not only has Applicant become a naturalized U.S. citizen and received her advanced degrees in the United States, but she has made every effort to work, save, and pursue her financial interests exclusively in the United States. Applicant is highly regarded and trusted by her supervisor who regularly interfaces with her. Her supervisor expressed no awareness of any risks of coercion, pressure, or influence that any of her parents or other family members might be exposed to.

In Applicant’s case, any likelihood of coercion, pressure, or influence being brought to bear on her parents and extended family members would appear to be minimal. By all reasonable accounts of the presented record, Applicant has no visible conflicts of interest with Hong Kong and the PRC or property interests in China that could be at risk to exploitation or compromise by Hong Kong government authorities or PRC military or intelligence officials.

Overall, any potential security concerns attributable to Applicant's parents and extended family members residing in Hong Kong are sufficiently mitigated to permit safe predictive judgments about her ability to withstand risks of undue influence attributable to her familial relationships in Hong Kong (now part of the PRC). Her demonstrated loyalties and commitments to protecting U.S. security interests, make it highly unlikely she would succumb to any foreign influence brought to bear on herself or her family members by PRC government or military officials. Favorable conclusions warrant with respect to the allegations covered by Guideline B.

Formal Findings

In reviewing the allegations of the SOR in the context of the findings of fact, conclusions, and the factors and conditions listed above, I make the following separate formal findings with respect to Applicant's eligibility for a security clearance.

GUIDELINE B: (FOREIGN INFLUENCE):

FOR APPLICANT

Subparagraphs 1.a-1.d:

For Applicant

Conclusions

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is granted.

Roger C. Wesley
Administrative Judge