



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



In the matter of:)
)
) ISCR Case No. 18-01247
)
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: Ryan C. Nerney Esq., The Edmunds Law Firm

March 6, 2019

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of the Case

On February 19, 2016, Applicant submitted a security clearance application (SF-86). On May 30, 2018, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline B, Foreign Influence. The action was taken under Executive Order 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 for Determining Eligibility for Access to Classified Information*, effective within the DoD after September 1, 2006.

Applicant answered the SOR on June 19, 2018, and requested a hearing before an administrative judge. The case was assigned to me on September 5, 2018. The Defense Office of Hearings and Appeals issued a notice of hearing on November 15, 2018, and the hearing was convened as scheduled on December 7, 2018. The Government offered three exhibits, referred to as Government Exhibits 1 through 3,

which were admitted without objection. The Applicant offered twelve exhibits at the hearing, referred to as Applicant's Exhibits A through L, which were admitted without objection. Applicant testified on his own behalf. The record remained open until close of business on December 31, 2018, to allow the Applicant the opportunity to submit additional supporting documentation. Applicant submitted one Post-Hearing Exhibit, referred to as Applicant's Post-Hearing Exhibit M, which was admitted without objection. DOHA received the transcript of the hearing (Tr.) on January 11, 2018.

Request for Administrative Notice

The Government requested I take administrative notice of certain facts relating to the Peoples Republic of China (China) because it is inclusive of the territory of Hong Kong. Department Counsel provided an 11 page summary of the facts, supported by 14 Government documents pertaining to China. The documents provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports. (HE I) They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

Findings of Fact

Applicant is 56 years old. He is married with one son. He has a Bachelor's degree in Engineering. He is employed with a defense contractor as a Senior Manufacturing Engineer. He is seeking to retain a security clearance in connection with his employment.

Guideline B – Foreign Influence

Applicant was born in China in 1962. He grew up and completed elementary school, before he and his family moved to Hong Kong in 1975. He completed high school in Hong Kong, and in the summer of 1986, he came to the United States. During his month long visit as a tourist, he was so impressed by the amicable people, the harmony of society, and the diversity of cultures, that he decided to pursue his college education here. He applied and was admitted to a University in 1987. He obtained his Bachelor's of Science degree in Engineering in 1990. (Applicant's Exhibit D.) While in college here, Applicant met his wife, and got married in 1989. They have one son who is 18 years old, currently attending college, and studying engineering. Applicant became a naturalized citizen of the United States in 1994. (Tr. p. 22.) Over the years, he has established wealth, purchased a house, and has a retirement account and a number of investments in the United States. (Applicant's Exhibits J and K.)

Applicant has worked for a number of employers over the years. In March 2006, he was offered a position with a defense contractor, and granted a security clearance in September 2006. Applicant worked there for ten years while holding a security clearance without incident. During that time, Applicant received foreign travel briefings and understands the responsibilities involved with possessing a security clearance. (Applicant's Exhibit H.) In January 2016, Applicant was highly recommended for a

position with another defense contractor by a longtime colleague of the company. Applicant was subsequently hired, and has been working for the new company for the past three years.

Applicant has family that are citizens and residents of Hong Kong that include his mother, three brothers, and two sisters. Applicant's mother has always been a housewife. She is not affiliated in any way with the Government of Hong Kong or the People's Republic of China. Applicant communicates with his mother about her health and his son about once a month. They usually speak about twenty minutes. She knows that Applicant is an engineer, but nothing more. Applicant's mother last traveled to the United States to visit the Applicant in 2007. (Tr. p. 26.) Applicant last traveled to visit his mother in Hong Kong in 2013. (Tr. p. 27.) While traveling to Hong Kong, Applicant has always used his United States Passport. (Applicant's Exhibit C, and Tr. p. 37.) Applicant has no future intentions to travel to Hong Kong.

Applicant has three brothers who are citizens of and residents of Hong Kong. One of Applicant's brother's is a citizen of Britain, and resides in Hong Kong. He is self-employed as an interior designer. (Tr. p. 29.) He has never held a job or position with any foreign Government. The other two brothers are citizens and residents of Hong Kong. One of Applicant's brothers is a banker, for a private bank. The other brother is retired, and lives with their mother. Prior to his retirement, he worked for a commercial trading company, and is not affiliated, nor has ever been affiliated, in any way with the any foreign Government. Applicant communicates with each of his brothers not more than two to three times a year.

Applicant also has two sisters who are citizens and residents of Hong Kong. One is a travel agent, the other is retired. They are both married. One of his sister's husbands is a retired shoe salesman, and the other sister's husband is a private security guard. Neither husband has ever had any affiliation with the Hong Kong or Chinese Government.

Applicant's father is an American citizen who resides in the United States. He and Applicant's mother are still married. Applicant's mother prefers to live with one of her sons in Hong Kong than with her husband in the United States. (Tr. p. 43.)

Applicant credibly testified that he cannot be coerced into divulging any national security secrets. He also believes that his limited relationships with any his family members in Hong Kong cannot be used to threaten him to do anything against the interests of the United States. (Tr. p. 38.) Applicant has never been approached, confronted, or contacted by any foreign entity attempting to obtain protected information. In the event that this ever occurs, Applicant stated that he will immediately contact the DoD security officer and report the incident. (Tr. p. 46.)

Applicant prepared a notarized Statement of Intent dated October 1, 2018, which indicates that he will continue to have minimal or no foreign contacts outside of his official duties, and his family, and any conversations will remain strictly casual and

infrequent. Any future communication with foreign contacts, (other than described above) is grounds for revocation of national security eligibility. (Government Exhibit E.)

Performance evaluations of the Applicant during his prior employment and in his current position reflect favorable ratings. (Applicant's Exhibit I.) Applicant has received a number of Certificates and Awards for accomplishments. (Applicant's Exhibit L.)

Letters of recommendation from professional colleagues of the Applicant, including his direct supervisor, collectively attest to his dedication and commitment to the job, and he is described as one who excels in a fast paced potentially high stress, changing environment, with an excellent ability to interface with multiple stakeholders, works effectively in teams, and communicates with positive impact. His excellent work product, reliability, trustworthiness, and good judgment is recognized by many. He is considered a role model for integrity and honesty and is highly recommended for a security clearance. (Applicant's Exhibit G.)

Notice

I have taken administrative notice of the following information concerning the People's Republic of China (China). Targeting and collection of US political, military, economic, and technical information by foreign intelligence services continues unabated. China is one of the most aggressive collectors of U.S. economic information and technology. China's intelligence services, as well as private companies and other entities, frequently seek to exploit Chinese citizens or persons with family ties to China who can use their insider access to corporate networks to steal secrets using removable media devices or e-mail. Chinese actors are the world's most active and persistent perpetrators of economic espionage. Chinese attempts to collect U.S. technological and economic information will continue at a high level and will represent a growing and persistent threat to U.S. economic security. The nature of the cyber threat will evolve with continuing technological advances in the global information environment. (HE I)

I have also taken administrative notice of the following information concerning Hong Kong. Hong Kong is a presidential limited democracy and special administrative region of the People's Republic of China with a population of over 7 million people. As a special administrative region, its foreign relations and defense are the responsibility of China. However, Hong Kong is a customs territory and economic entity separate from China and is able to enter into international agreements on its own behalf in commercial, economic, and certain legal matters. The United States and Hong Kong have enjoyed a robust relationship, as stated in the U.S. – Hong Kong Policy Act of 1992 and grounded in the determination to promote Hong Kong's prosperity, freedom and way of life. The United States enjoys substantial economic ties with Hong Kong and U.S. companies generally have a favorable view of Hong Kong's business environment. Hong Kong is an independent body from China, participates as a full member of several international economic organizations such as The World Trade Organization, Asian Pacific Economic Cooperation Forum and Financial Action Task Force. The Government of Hong Kong generally respects human rights of residents

and the law and judiciary generally provide an effective means of dealing with individual instances of abuse. The basic law in Hong Kong provides for the protection against human rights abuses. There is freedom of speech, of the press, and of publication. Additionally, Hong Kong's basic law protects the citizen's freedom of expression, freedom of peaceful assembly, freedom of religion, and freedom of movement. Hong Kong has also passed laws to combat discrimination and is clearly committed to liberty, justice, and fair treatment, of their citizens through an effective government framework. Hong Kong is a global partner to the United States and shares much of the same human rights and economic views. There are more than 1,300 U.S. firms in Hong Kong and approximately 85,000 American residents in Hong Kong. (Applicant's Exhibit M.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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 national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies for access to classified information seeks to enter 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 protect or

safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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 notes several conditions that could raise security concerns under AG ¶ 7. Two 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; and
- (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.

Applicant's foreign family members are residents and citizens of Hong Kong. Applicant maintains some contact with his family there. Applicant's ties to his foreign family members in Hong Kong pose a heightened security risk for the United States Government. The evidence is sufficient to raise the above disqualifying conditions.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 and two of them are applicable in this case.

(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.

Family ties in a foreign country raises a prima facie security concern that required the applicant to present evidence of rebuttal, extenuation or mitigation sufficient to meet the burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him. Thus, Applicant bears the burden to establish that his relatives are not vulnerable to influence, coercion, exploitation, or duress. In this case, Applicant carefully explained that his family in Hong Kong only knows that he is an engineer and nothing more about his job. They don't know where he works or what he does. Their conversations are minimal, casual, and infrequent. None of his foreign family members in Hong Kong are affiliated in any way with any foreign government. It is recognized that Applicant is at a higher risk of being targeted for Chinese intelligence gathering since he works for a defense contractor. However, Applicant has held a security clearance for ten years from 2006 to 2016, and has incurred no security violations nor has he had any problems of any sort. Thus, it can be assumed that he will continue to place the interest of the U.S. paramount, and always protect the U.S. from any risk of terrorism, and/or any situation that could place the interests of the U.S. in jeopardy. Under the circumstances, Applicant has met this burden and has established two mitigating conditions set forth above under Guideline B.

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 relevant circumstances. The 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.

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 considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis.

Applicant is a mature, intelligent man, who performs well at his job, and has the endorsement of his supervisor and professional colleagues. It is noted that while he was born in China, he is an American by choice. With his wife and son as his closest family ties, he has established his own life here in the United States. He has also acquired significant assets, including a house, a retirement account, and a number of investments in the United States.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Foreign Influence security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant national security eligibility for a security clearance. Eligibility for access to classified information is granted.

Darlene Lokey Anderson
Administrative Judge