



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



In the matter of:)
)
) ISCR Case No. 19-00064
)
)
Applicant for Security Clearance)

Appearances

For Government: Tara Karoian, Esq., Department Counsel
For Applicant: *Pro se*

September 26, 2019

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of the Case

On August 22, 2016, Applicant submitted a security clearance application (SF-86). On March 4, 2019, 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); dated July 8, 2017.

Applicant answered the SOR on April 8, 2019, and requested a hearing before an administrative judge. The case was assigned to me on July 31, 2019. The Defense Office of Hearings and Appeals issued a notice of hearing on July 29, 2019, and the hearing was convened as scheduled on August 21, 2019. The Government offered two exhibits, referred to as Government Exhibits 1 and 2, which were admitted without objection. The Applicant offered no exhibits at the hearing. However, he did testify on his own behalf. The record remained open until close of business on September 4,

2019, to allow the Applicant the opportunity to submit supporting documentation. Applicant submitted seven Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits 1 through 7, which was admitted without objection. DOHA received the transcript of the hearing (Tr.) on September 9, 2019.

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 84 page summary of the facts, supported by eighteen Government documents pertaining to China. (HE-2.) They also provided a 34 page summary of the facts, supported by eight Government documents pertaining to Hong Kong. (HE-1.) The documents provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports. 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 42 years old. He is married with one minor daughter. He has a Bachelor's degree in Electrical Engineering. He is employed with a defense contractor as an Electrical Engineer. He is seeking to retain a security clearance in connection with his employment.

Guideline B – Foreign Influence

Applicant was born in Hong Kong in 1977. He grew up there before he, his mother, and brother came to the United States in 1995. Applicant's aunt and uncle, his mother's siblings, were already living in the United States and sponsored Applicant's family to come to the U.S. Applicant went to live with his aunt, and his brother lived with their uncle, while his parents were still situating. Applicant became a naturalized U.S. citizen in 2001. Applicant's father was a retailer, but was not the primary financial provider for their family. He did not move to the United States until 1996, and became a naturalized U.S. citizen in 2001. Applicant's mother, who worked as a nurse in Hong Kong, traveled back and forth from Hong Kong to the United States until she retired in 2000. She then moved to the United States permanently. She became a naturalized U.S. citizen in 2005. She also worked as a clinical nurse in the United States for ten years before retiring here.

Applicant mother and father are dual citizens of the United States and Hong Kong. Each year, they customarily spend about six months in the United States, and six months in Hong Kong. Applicant's mother will be 74 years old this year, and his father just turned 81. They reside in Hong Kong part-time, as they find that because Hong Kong is more condensed, they are able to be more independent. They do not need help, as they are able to take public transit to get to where they are going. In the United States they had to learn to drive, and they are not good at it. At this point in their

lives, their health is beginning to deteriorate, and they will continue to stay longer in the United States, especially with the political protesting in Hong Kong, as they do not feel safe to go back there. (Tr. p. 38.) Applicant's parents own a house in Hong Kong and a house in the United States. As his parents get older, they ultimately plan to live in the United States full time.

Applicant became a naturalized citizen of the United States in 2001. (Tr. p. 29.) He obtained his college degree here. He is married to a naturalized U.S. citizen and his daughter was born in the United States. Since then, he has traveled to Hong Kong or China about three times for vacation and on each occasion he stays no longer than three weeks. (Tr. p. 30.) His most recent trip to Hong Kong was in March 2018. Before Applicant received his U.S. passport, he used his ID card issued by the Chinese government to enter Hong Kong. After he received his U.S. passport and since applying for a security clearance he only uses his U.S. Passport. He states that he is willing to surrender his foreign ID card and renounce his Hong Kong citizenship. (Tr. p. 51.) When he travels to Hong Kong he stays at his in-laws house where his brother-in-law lives. His in-laws reside in the United States. Applicant's mother-in-law is a U.S. citizen and his father-in-law is a green card holder, or permanent legal resident. (Tr. p. 31.) Applicant has little or no contact with his brother-in-law in Hong Kong.

Applicant also has two long-time friends, he considers to be his best friends in Hong Kong that he maintains contact with through messaging and texting. One he has known since junior high school, the other is a childhood friend. One works in the quality control department for a barbeque grill, the other sells water filters. Neither of them have any connections or affiliation with the Chinese government. They know that Applicant works for a defense contractor and that he is an Electrical Engineer. Applicant messages one of them weekly, the other less frequently.

Applicant has also formed close friends since relocating to the United States. Over the years, he has also established some wealth and purchased a house.

Applicant credibly testified that he cannot be coerced into divulging any national security secrets. He also stated that he believes that his limited relationships with any of his family members or friends in Hong Kong cannot threaten him to do anything against the interests of the United States. 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. pp. 53-54.)

Performance appraisals of the Applicant for the years 2016, 2017, 2018 and part of 2019 reflect that he has consistently exceeded job requirements. (Applicant's Post-Hearing Exhibits 1 through 5.)

Letters of reference from two of Applicant's managers attest to his honesty, integrity, hardworking nature and trustworthiness. He is considered to be an asset to their company and the United States. (Applicant's Post-Hearing Exhibits 6 and 7.)

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 2)

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. (HE 1)

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 dual citizens of both the United States and Hong Kong. They live part-time in the U.S. and part-time in Hong Kong. His two foreign friends are only citizens and residents of Hong Kong. Applicant maintains minimal contact with his family and two friends there. Applicant's ties to his foreign family members and friends 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 parents are United States citizens. They live here part-time. They only know that Applicant is an engineer and nothing more about his job. Applicant's conversations with them are minimal, casual, and infrequent and done through messaging or texting. His parents are not affiliated in any way with any foreign government.

Applicant also has two friends in Hong Kong that he maintains minimal contact with, but they have no specific knowledge of what he does, or that he is applying for a security clearance. It is recognized that Applicant is at a higher risk of being targeted for Chinese intelligence gathering since he works for a defense contractor. Applicant has lived in the U.S. since 1995 and has been a naturalized citizen since 2001. Applicant is willing to surrender his Hong Kong ID Card and renounce his foreign citizenship. Going forward he will only use his U.S. passport for any foreign travel no matter what the inconveniences. 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. Applicant must continue to demonstrate allegiance, commitment and loyalty to the U.S. government in every instance. 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 managers. It is noted that while he was born in Hong Kong, he is an American by choice. With his wife and daughter 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 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

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