



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 21-00069

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: Charles McCullough, Esq.

12/16/2022

Decision

WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, exhibits, and testimony, Applicant did not mitigate foreign influence concerns. Eligibility for access to classified information or to hold a sensitive position is denied.

Statement of the Case

On July 23, 2021, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Central Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant detailing reasons why under the foreign influence guideline the DCSA could not make the preliminary affirmative determination of eligibility for granting 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); *Defense Industrial Personnel Security Clearance Review Program*, DoD Directive 5220.6 (January 2, 1992) (Directive); and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

Applicant responded to the SOR on August 10, 2021, and requested a hearing. The case was assigned to me on March 18, 2022. A hearing was scheduled for April 28, 2022, and heard on the scheduled date. At the hearing, the Government's case consisted of two exhibits. (GEs 1-2) Applicant relied on five exhibits and three witnesses (including himself). The transcript (Tr.) was received on July 8, 2022.

Besides its three exhibits, the Government requested administrative notice of detailed facts taken from 22 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 (China) (inclusive of Hong Kong, a part of China). 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 Special Administrative Region (SAR)*, U.S. Department of State (December 2007) and *Trade in Goods with Hong Kong*, U.S. Dept. of Commerce (March 2019). These documents were received and marked as HE 2.

I also took administrative notice of five source documents provided by the Government: *China 2017 Human Rights Report (includes Tibet, Hong Kong and Macao)*, U.S. Dep't of State (March 2017); *2016 Report to Congress of the U.S.-China Economic & Security Review Commission* at 289 (China Ec. Report); *Annual report to Congress: Military and Security developments Involving the People's Republic of China* at 10 (U.S. Dep't of Def. (2012); *Fact Sheet: U.S. Relations with Hong Kong* at 1 (U.S. Dep't of State (July 2018); and *Hong Kong Policy Act Report*, U.S. Dep't of State (May 2018) These documents were received as HE 3. Each of these documents was cited in the Government's post-hearing response to Applicant's post-hearing submission.

Procedural Issues

Before the close of the hearing, the parties were afforded the opportunity to supplement the record with post-hearing briefing submissions covering the raised foreign influence issues associated with Applicant's in-laws' residence and citizenship in Hong Kong. Within the times provided (seven days for Applicant and seven days for responding by the Government), the parties provided post-hearing briefs covering the raised foreign influence issues. The parties' post-hearing submissions were received as HEs 4 and 5, respectively.

Post-Hearing Submissions

In Applicant's post-hearing submission (HE 4), Applicant stressed the importance of distinguishing the facts in ISCR Case No. 17-04208 (App. Bd. App. Bd. Aug. 7, 2019) from those in the present case. In Applicant's case, security concerns are centered around his ties to his father-in-law and stepmother-in-law who are both citizens and residents of Hong Kong. With these in-laws, Applicant claimed little personal contacts with these in-laws, neither of whom are aware of what Applicant does for a living. See Applicant's closing submission, *supra*, at 2. Applicant, in turn, distinguished the key relationships discussed in ISCR Case No. 17-04208. The facts in this case involved an applicant and her spouse who were dual citizens of Hong Kong with and parents and in-laws, respectively, who were citizens residing in Hong Kong. With her mother in this earlier case, the applicant engaged in regular telephone communications. See Applicant's Post-Hearing Submission, *supra* at 2-3.

Applicant also stressed his deep and longstanding ties, loyalties, and relationships to the United States, as well as Applicant's understanding of the breadth and depth of "the geopolitical threats posed" to the United States by the People's Republic of China (PRC, *hereinafter* referred to as China). See Applicant's Post-Hearing Submission, *supra* at 2. In making his case, Applicant acknowledged the very heavy burden of persuasion he bears in mitigating the potential security risks posed by his father-in-law and stepmother-in-law in Hong Kong.

Additionally, Applicant noted the military contributions of his father and grandfather to U.S. military and security interests, as well as his own unique language and research skills and demonstrated high character. See *id.* Applicant closed with his demonstrated commitment to following all relevant DoD policies and guidelines should he be granted a security clearance.

The Government's response to Applicant's post-hearing submission accepted the facts of the case set forth in Applicant's response to the SOR and amplified in Applicant's hearing testimony and exhibits. See Response to Applicant's Post-Hearing Submission, *supra*, at 2 (HE 5). Accepting the facts pled by Applicant, the Government urged a standard to be applied that placed a very heavy burden on applicants seeking security clearances who have family members (both immediate and extended) who are citizens and residents of Hong Kong (a part of China). See *id.*, at 2-6.

In addition to covering Appeal Board precedents addressing the security interests associated with applicants who have immediate and extended family members in Hong Kong, the Government stressed the very heavy burden of persuasion that Applicant faces in this case to rebut the presumption of affection and common interests that implicitly exists between an applicant and his family members who reside in Hong Kong (citing Appeal Board case precedents) to satisfy Applicant's very heavy evidentiary burden.

After summarizing Appeal Board precedents, the Government urged that the record evidence of the country conditions in Hong Kong create a heightened risk of

coercion or exploitation on Applicant and his in-laws that are not mitigated. See Response to Applicant's Post-Hearing Submission, *supra*, at 4.

Summary of Pleadings

Under Guideline B, Applicant allegedly has a father-in-law who is a citizen of Canada and Hong Kong and a stepmother-in-law who is a citizen and resident of Hong Kong. Allegedly, the citizenship status of Applicant's in-laws remain unchanged.

In his response to the SOR, Applicant admitted the allegations with explanations. He provided attachments that included endorsements, work history, and limited relationships with his in-laws.

Findings of Fact

Applicant is a 36-year-old civilian analyst of a defense contractor who seeks a security clearance. Applicant admitted each of the allegations with explanations. Allegations covered in the SOR and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant met his wife in 2012 and married in June 2018. (GEs 1-2 and AE A) He has no children from this marriage. Applicant's wife was born in Canada and still maintains her Canadian citizenship. (GEs 1-2; Tr. 54) She immigrated to the United States with her mother (since divorced from her father) in 2005 and became a naturalized U.S. citizen in June 2019 at the age of 16. (GE 1; Tr. 60-61) Applicant's father served in the U.S. Marine Corps as a fighter pilot in both WW II and the Korean War and was killed in action. (GE 1; Tr. 50, 75-76) His surviving mother communicates regularly with Applicant. (GE 1; Tr. 91)

Applicant earned a bachelor's degree in May 2009 from a respected U.S. university with a dual major in foreign affairs and Chinese language and literature. (GE 1) He earned a master's degree in global politics from another highly respected university in May 2018. (GE 1; Tr. 87) Within two years of his graduation from his undergraduate university, Applicant relocated to China to spend a couple of years (2010-2012) teaching for a U.S. non-profit educational organization. (GE 1; Tr. 44-48)

Applicant reported no military service but cited his enrollment in a Navy Reserve Officers Training Corps (NROTC) for the first two years (August 2005-April 2007) of his university enrollment. (GEs 1-2) Records confirm that he was dis-enrolled from his NROTC program in April 2007 for cited ineptitude and charges of making and using a fake driver's license. (GEs 1-2) He was discharged from the Navy under terms of less than honorable conditions with a directive to reimburse the Navy for the educational assistance he received.

Since December 2019, Applicant has been employed as an analyst for a defense contractor. (GE 1) His current work assignments include research of potential illegal Chinese influence in the supply chains of DoD programs. (AE A) Previously, he served as a fellow for a national consulting group (October 2018-November 2019), and worked as an admissions assistant for his graduate school. (GE 1) Upon returning to the United States in 2013, Applicant continued working for the same non-profit educational organization in a teaching capacity as a Chinese translator with good Chinese language and teaching skills. (GEs 1-2; Tr. 43-44) His employment assignments between June 2017 and October 2018 included internships and research positions with U.S. education and research organizations. (GEs 1-2)

Applicant has consistently complied with his employers' requirements for reporting foreign contacts and pledged to continue doing so in the future. (AE A) He has no property interests or foreign bank accounts in China, and his wife is willing to divest herself of her inheritance if necessary. (AE A) Applicant has never held a security clearance. (GE 1)

Applicant's immediate and extended family members residing in Hong Kong

Applicant's immediate family members have deep roots in the United States and have devoted their lives and fortunes to the security interests of their country. (GEs 1-2 and AE A) One of Applicant's grandfathers served in the U.S. Army in WW II. (GEs 1-2) Another grandfather was a U.S. Marine aviator who served in WW II and the Korean War, where he was shot down and killed. (GEs 1-2) Applicant's father worked as a civilian for the U.S. intelligence community and possessed high-level security clearances. (GEs 1-2)

Applicant's father-in-law (aged in his late 60s) is a citizen and resident of Hong Kong. (GEs 1-2) He is currently married to Applicant's stepmother-in-law, a citizen and resident of Hong Kong (a district of China). (GEs 1-2) Applicant's personal face-to-face contacts with his father-in-law have been infrequent (no more than five to six times) since he first met him in 2014. (GEs 1-2 and AE A; Tr. 52 and 80) Moreover, of these face-to-face contacts, only one conversation involved a direct face-to-face conversation (i.e., when Applicant asked for permission to marry his daughter). (AE A)

Applicant knows his father-in-law to be a past chief executive officer (CEO) of a regional retail department store in Hong Kong that maintains trading operations in China. (GEs 1-2 and B; Tr. 5663-64) His father-in-law is a past registered elector on the wholesale and retail sub-sector of the Hong Kong election committee (a non-government organization of Hong Kong), and a member of the Shanghai Hong Kong, Macao, and Taiwan Overseas Chinese Committee (part of the Shanghai Political Consultative Conference). (GEs 1-2; Tr. 63-64)

Based on Applicant's reported understanding, his father-in-law was one of about 80 foreigners on this Overseas Chinese Committee, which was designed to aid Shanghai use lessons learned in Hong Kong, Macao, and Taiwan. (GE 1 and AE C) Applicant cited one July 2021 speech delivered by his father-in-law that he believed to be on the importance of public toilets. (GEs 1-2; Tr. 72-73) Applicant understands that his father-in-law is no longer associated with either his former Hong Kong retail department store, the

Hong Kong election committee, or the Overseas Chinese Committee. (AEs D-E; Tr. 55-56, 68-69, and 73-74)

Neither of Applicant's in-laws has any known affiliations or connections with China's military or intelligence apparatus. (Tr. 55) Further, neither of his in-laws know what Applicant does for a living. (Tr. 54) Presumably, though, intelligence officials of the PRC possess background data on Applicant's father-in-law and his past association with his retail store and committee memberships. Whether Chinese military and intelligence officials have and maintain background data on Applicant and his wife is unknown.

Applicant's stepmother-in-law is also a citizen and resident of Hong Kong. (GEs 1-2) She is the second wife of Applicant's father-in-law and does not work outside of the home. (Tr. 55) Applicant sees his mother-in-law once a year and participates in infrequent family group chats. (GEs 1-2; Tr. 62, 84) Both in-laws attended Applicant's wedding in 2018, and Applicant's wife maintains monthly contact with her father. (Tr. 83) Applicant last traveled to Hong Kong to see his in-laws in 2016. (Tr. 81)

Out of concern for getting too close to his father-in-law, Applicant maintained "his distance" from his father-in-law during his wife's skype calls spanning mid-2019-early 2022 and estimated seeing him "twice over the last, maybe six months" during his "group text chats with them" and his wife. (Tr. 83-84) Despite Applicant's limited contact with his father-in-law and stepmother-in-law since his wedding in 2018, and distance Applicant enjoys in the relationship he has with his in-laws, both Applicant and his wife presumably retain mutual bonds of affection, influence, and common interests with his in-laws. (Tr. 53-54, 83-84) So, while Applicant considers his relationship with his in-laws in Hong Kong to be "distant, infrequent, and casual" (Tr. 52), the presumption still holds that he and his wife, who maintains monthly contact with her father, retain mutual bonds of affection, influence, and common interests with her father and stepmother.

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 of China. This is important to note because of the generally recognized heightened risks that are associated with China, 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 China. However, because China 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.*

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. China has retained responsibility and control over foreign and defense affairs. State Department records confirm that China 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 provides 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 permitted 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, remained for years a free and open society where human rights are respected (albeit less so now under closer Chinese controls and monitoring), courts are independent, and there are established traditions of respect for the rule of law. See *Background Note: Hong Kong SAR, supra*, at 3. Hong Kong still retains 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. China, 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*. Moreover, China 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 China's National People's Congress Standing Committee (NPSCS), which is by no means assured. See *id.*

Because Applicant's father-in-law and stepmother-in-law are still citizens and residents of Hong Kong with unilaterally imposed Chinese citizenship by China's immigration law, China'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 in-laws. 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 China, who bears full responsibility for its foreign relations and defense, is a customs territory and economic sector that operates separately from the rest of China in matters that pertain to its customs zone. See *Fact Sheet, U.S. Relations with Hong Kong*, U.S. Dept. of State (July 2018). 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); *Fact Sheet, 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 China, 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. See *Hong Kong Policy Act Report*, *supra*; *Fact Sheet, U.S. Relations with Hong Kong*, *supra*.

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 *Fact Sheet, 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 *Fact Sheet*,

U.S. Relations with Hong Kong, supra; Trade in Goods with Hong Kong, supra; 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 *Fact Sheet, 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.

China's country status

Established in 1949, China 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.

China, with its 70.8 million square miles of land space, is authoritarian in structure and ideology and possesses increasingly sophisticated military forces that continue 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 historically acclaimed to be hostile to U.S. persons and interests, China maintains a relationship that is much more competitive than cooperative. China 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 China who are suspected of involvement in attempts to democratize China, as well as other pro-democracy groups thought to be engaging in anti-communist activities. See Administrative Notice Request, *supra*, at 3-4; *Annual Report to Congress: Military and Security Developments Involving the People's Republic of China*, at 150-151, U.S. Dept. of Defense (September 2020)

Based on past reports to Congress, China is considered one of the most active collectors of U.S. economic and proprietary information. See Administrative Notice Request, *supra*, at 3-4; *Annual Report to Congress: Military and Security Developments Involving the People's Republic of China, supra*; U.S. Dept. of Defense (September 2020) China uses its intelligence services to gather information about the US and to obtain advanced technologies. See *id.* China actively monitors international communications satellites from maintained intercept facilities, in addition to collecting information on US military operations and exercises.

Examples of Chinese economic espionage are cited in the *Annual Report to Congress Military and Security Developments Involving the People's Republic of China, supra*. Most of the examples of illegally exported technology to China 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 Request, *supra*, at 3-4.

As a corollary of its authoritarian roots, China 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 China's lack of any cognizable tradition for respect for developing democracies and the rule of law.

State Department country reports on China 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 Request, *supra*, at 5-6; 2020; *Human Rights Report: China* (includes Tibet, Hong Kong, and Macau), U.S. Department of State (March 2021).

Of growing concern to U.S. security interests are the State Department's latest reports of increased high profile cases in China involving the monitoring, harassment, detention, arrest, and imprisonment of journalists, writers, activists, and defense lawyers seeking to exercise their law-protected rights and freedoms. See Administrative Notice Request, *supra*, at 6; *Hong Kong Travel Advisory*, U.S. Dept. of State (June 2021). 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.*

China's efforts to acquire sensitive technology (including technology having dual use capabilities) pose a continuing challenge to U.S. counterintelligence measures. Recent indictments of Chinese citizens for espionage have served to highlight China's spying activities in the United States. See Administrative Notice Request, *supra*, at 4-5

Better U.S. export controls can be effective only if they are multilateral in scope. Without effective dual use export controls in place, China can be expected to continue to acquire dual use technologies with military potential through the U.S. and other source countries.

Endorsements, evaluations, and awards

Applicant is well regarded by his managers, supervisors, coworkers past and present, friends, and U.S. DoD customers who know him and have worked with him. (AE A; Tr. 25-27, 34-36) All of these character references credit Applicant with being hard working, patient with others, reliable, and trustworthy. (AE A; Tr. 25-27, 34-36) Together, they characterize Applicant as a person of integrity who can always be counted on for support and fulfillment of his client-related responsibilities.

Applicant's performance evaluations credit him with high marks for productivity, dependability, results, and teamwork. (AE A) His awards include a U.S. State department certificate of appreciation and recognition of academic excellence in his master's work. (AE A)

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 that 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's father-in-law and stepmother-in-law are both citizens and residents of Hong Kong and presumably retain mutual bonds of affection, influence, and common interests with Applicant and his wife (a dual citizen of Canada and the United States). Applicant is a highly regarded analyst of a U.S. defense contractor with a strong background in advising executives on complex international business decisions.

Security issues of concern to the Government focus on the citizenship and residence status of Applicant's father-in-law and stepmother-in-law who are citizens of Hong Kong, a part of China and a country known for its poor human rights record and its engagement in economic data collection activities throughout China (inclusive of Hong Kong) and the United States.

Foreign influence concerns

The Government urges security concerns over risks that Applicant's father-in-law and stepmother-in-law who reside in Hong Kong (which has since reverted to China) might be subject to undue foreign influence by Chinese military and intelligence authorities to access classified information in Applicant's possession or control. Because Applicant and his in-laws have extended family members who have Chinese citizenship by virtue of Hong Kong's reversion to China 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 extended family members in what is now the PRC poses considerable security 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 application to Applicant's situation due to the presence of Applicant's father-in-law and stepmother-in-law in Hong Kong (a part of China since its reversion in 1997). While Applicant has infrequent contact with his in-laws and considers his relationship with them to be distant and casual, the presumed mutual bonds of affection, influence, and common interests that Applicant and his wife enjoy with his in-laws have not been rebutted under the very heavy burden of persuasion imposed on Applicant by current Appeal Board case precedents. To satisfy this heavy burden standard, some evidence of clear and deep rooted breaks with his in-laws was needed from Applicant and his wife. Lack of recent contact with his in-laws, without more, was not enough to rebut the presumption under Appeal Board precedents.

To be sure, Applicant's in-laws have a deep-rooted history 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. Neither of Applicant's in-laws have any reported contacts with China's military and intelligence officials. From what is known from the presented evidence, none of Applicant's in-laws residing in Hong Kong has any political affiliations with the Hong Kong or Chinese governing bodies. Nor do any of his in-laws 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.

Still, Applicant's father-in-law maintained considerable visibility while a CEO of his retail store in Hong Kong and as an active participant in local Hong Kong business committee activities. Presumably, Applicant's father-in-law remains a person of continuing interest to Chinese intelligence gathering officials, notwithstanding his recent retirements from all of his Hong Kong business activities.

Based on the evidence developed and governing Appeal Board precedents, the citizenship status and presence in Hong Kong of Applicant's father-in-law and stepmother-in-law pose continuing heightened security risks 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 cannot be minimized or safely reconciled with U.S. security interests without overriding evidence of Applicant's satisfying his very heavy burden of persuasion rebutting the presumption of mutual bonds of affection that Applicant and his spouse retain with his in-laws.

True, 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. And, the AGs do take into account of the country's demonstrated relations with the United States 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.

With respect to Hong Kong specifically, despite the favorable trade and investment relationship that the United States has historically enjoyed with Hong Kong, China (inclusive of Hong Kong) has exerted increasing “hostility to the United States” in recent years. ISCR Case No. 06-24575 at 4 (App. Bd. Nov. 9, 2007) Holding that China’s intelligence operations continue to threaten U.S. national security interests, with its exhibited authoritarian, anti-democratic (so antithetical to U.S. core values) at work in every phase of its domestic and foreign operations (from its collection activities to its noted human rights abuses), the Appeal Board has consistently found China to present a heightened risk to U.S. security interests. See, e.g., ISCR Case No. 17-04208 (App. Bd. Aug. 7, 2019); ISCR Case No. 06-24575, *supra* (articulating the “very heavy burden” standard and reversing a grant of clearance due to family members residing in China).

Because of Applicant’s expressed sincere and credible commitment to prioritize U.S. security interests when accessing classified information, he may take advantage of one important mitigating condition: 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.”

Under current Appeal Board precedents, however, his demonstrated loyalties to the United States are not enough under these factual circumstances to neutralize all potential conflicts that are implicit in his relationships with his in-laws. The presumption of mutual bonds of affection, influence, and common interests that define the relationship of his in-laws to himself, his spouse, and his in-laws are not sufficiently rebutted by Applicant under the evidence presented and governing Appeal Board precedents to enable him to meet his imposed very heavy persuasive burden.

Whole-person assessment

Whole person assessment requires evaluation of Applicant’s continued exposure to potential conflicts of interests with his father-in-law and stepmother-in-law who are citizens and residents of Hong Kong. To Applicant’s credit, he has demonstrated strong loyalties and commitments to U.S. core values and DoD policies and guidelines. Applicant’s work and contributions have earned him high praise from managers, supervisors, coworkers past and present, friends, and U.S. DoD customers he have worked with. Still, Applicant and his in-laws in Hong Kong remain subject to heightened risks of coercion, exploitation, and even hostage taking for so long as they remain in Hong Kong.

Overall, potential security concerns attributable to Applicant’s having in-laws who are citizens and residents of Hong Kong are insufficiently mitigated to permit safe predictive judgments about his ability to withstand risks of undue influence attributable to his familial relationships in Hong Kong. His demonstrated loyalties and commitments to protecting U.S. security interests, while strong and deeply rooted, are not enough to

overcome security concerns over his being exposed to heightened risks associated with having a father-in-law and stepmother-in-law who continue to reside in Hong Kong.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude foreign influence security concerns are not mitigated. Eligibility for access to classified information and or holding a sensitive position is denied.

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):	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant

Conclusions

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is denied.

Roger C. Wesley
Administrative Judge