

KEYWORD: Foreign Influence

DIGEST: Applicant, born in Hong Kong, came to the United States in 1986, at age 18, and became a United States citizen in 2003. His wife also became a U.S. citizen. Applicant's mother is a permanent resident of the U.S., living most of the time here, and his father now lives in Hong Kong, but plans to move permanently to the United States. His sister is a U. S. resident. None of his family members belong to, or are active with any government agency of Hong Kong. They are not in a position to be exploited by Hong Kong in a way that could force Applicant to choose between loyalty to these family members and his loyalty to the United States. Mitigation has been shown. Clearance is granted.

CASENO: 05-01317.h1

DATE: 1/31/2007

DATE: January 31, 2007

In Re: _____ SSN: _____ Applicant for Security Clearance))))))))	ISCR Case No. 05-01317
--	--------------------------------------	------------------------

**DECISION OF ADMINISTRATIVE JUDGE
MARTIN H. MOGUL**

APPEARANCES

FOR GOVERNMENT
Candace Le'i, Esq., Department Counsel

FOR APPLICANT
Pro Se

SYNOPSIS

Applicant, born in Hong Kong, came to the United States in 1986, at age 18, and became a United States citizen in 2003. His wife also became a U.S. citizen. Applicant's mother is a permanent resident of the U.S., living most of the time here, and his father now lives in Hong Kong, but plans to move permanently to the United States. His sister is a U. S. resident. None of his family members belong to, or are active with any government agency of Hong Kong. They are not in a position to be exploited by Hong Kong in a way that could force Applicant to choose between loyalty to these family members and his loyalty to the United States. Mitigation has been shown. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4), issued a Statement of Reasons (SOR), dated September 28, 2006, to Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted or denied.

Applicant filed a notarized Response to the allegations set forth in the SOR, dated October 5, 2006, and he requested a hearing before a DOHA Administrative Judge. On November 9, 2006, the case was assigned to me to conduct a hearing, and pursuant to formal notice, dated December 12, 2006, a hearing was conducted on January 3, 2007.

At the hearing, Department Counsel offered seven documentary exhibits (Government Exhibits 1- 7) and no witnesses were called. Applicant offered four documentary exhibits (Exhibits A-D) and offered his own testimony. The transcript (Tr) was received on January 10, 2007.

FINDINGS OF FACT

The SOR was based on Foreign Influence (Guideline B) concerns because of the foreign residency and/or citizenship of close family members and foreign travel. The SOR contains three allegations, 1.a., through 1.c., under Guideline B. Applicant admitted SOR allegations 1.c., and denied 1.a and 1.b. The admission is incorporated herein as a finding of fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the admitted documents, and testimony of Applicant, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 38 years old. He is employed by a United States defense contractor that wants him to have a security clearance.

Applicant was born in Hong Kong in 1968 and first came to the United States in 1986, at the age of 18, to enter a United States university. He received a Bachelor of Science Degree in Systems Engineering in 1990 and a Masters degree in Computer Science, both from United States universities.

Applicant became a naturalized U. S. citizen in 2003. He is married to a Hong Kong born, naturalized U. S. citizen, and they have no children. Her parents live in the United States.

(Guideline B - Foreign Influence)

The Government alleges that Applicant is ineligible for clearance because he has immediate family members or people to whom he may be bound by affection or obligation, who are not citizens of the United States, or may be subject to duress.

Applicant's parents are Hong Kong citizens. They both have resident alien status from the U. S. His mother resides most of the time in the United States, living for approximately a month in Hong Kong to receive medical care. His mother is retired. His father still resides most of the year in Hong Kong, where he works part time as a security guard under a contract that expires at the end of 2007. He plans to move to the U. S. permanently, when his contract term is completed. Neither of his parents ever worked for, or had any affiliation with, the Hong Kong Government.

Applicant has a sister, who was born in Hong Kong, but now lives in the United States.

Since Applicant came to the United States, he has traveled to Hong Kong on four occasions from 1999 to his last visit in October 2006. The primary reason for these visits was to see his family during vacations, and the most recent visit was as part of his honeymoon.

Applicant does not have any financial interest in Hong Kong, nor is he aware of the potential of receiving any inheritance there. He has owns his home in the United States and has additional financial holdings in this country. Applicant also testified that he has voted in the last three U.S. elections since he has become a citizen, and he plans to remain in the United States for the rest of his life.

Finally, Applicant testified that if pressure was exerted upon Applicant to compromise classified information, he would resist it, and he would report the incident to the proper authorities (Tr at 62-64).

Since Applicant's father resides in Hong Kong at the present time, this country was also considered. Hong Kong is one of the world's most open and dynamic economies. On July 1, 1997, the People's Republic of China (PRC) resumed the exercise of sovereignty over Hong Kong, ending more than 150 years of British Colonial rule. Hong Kong is a Special Administrative Region of the PRC, with a high degree of autonomy in all matters except foreign and defense affairs. Hong Kong will retain its political, economic, and judicial systems and unique way of life for 50 years after

reversion and will continue to participate in international agreements and organizations under the name, "Hong Kong, China" (Exhibit G).

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines that must be carefully considered in evaluating an individual's security eligibility and making the overall common sense determination required. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk.

Each adjudicative decision must also include an assessment of: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent 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 (*See* Directive, Section E2.2.1. of Enclosure 2).

BURDEN OF PROOF

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance. Assessment of an applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of rehabilitation.

A person who seeks access to classified information enters into a fiduciary relationship with the U.S. Government that is predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability, or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of Applicant, I conclude the following with respect to Guideline B:

Based on the evidence of record, the Government has established an initial reason to deny Applicant a security clearance because of Guideline B (Foreign Influence). Applicant's parents are citizens of Hong Kong, and his father is still a resident there. The Hong Kong citizenship and residency of Applicant's father creates the potential for foreign influence that could result in the compromise of classified information because it makes Applicant potentially vulnerable to coercion, exploitation, or pressure. The possession of such ties raises a security concern sufficient to require Applicant to present evidence in rebuttal, extenuation, or mitigation sufficient to meet his burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him. This Applicant has done.

The evidence of existence of an immediate family member, who is a citizen and resident of Hong Kong comes within Disqualifying Condition (DC) 7 (a), contact with a foreign family member, if that contact creates a heightened risk of foreign exploitation, pressure or coercion.

I have reviewed the overall record and the totality of the evidence, and considered: the lack of Hong Kong government involvement of Applicant's parents, currently and in the past; the fact that his wife is now a United States citizen; his mother and sister now live in the United States and his father plans to reside here after 2007; his history since coming to the United States and living here half of his life, attending two universities and receiving two degrees; and his strong feelings concerning this country. Based on this, I have determined that his father in Hong Kong does not constitute an unacceptable security risk and Mitigating Condition (MC) 8 (b), there is no conflict because 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, applies to this case.

After considering all of the evidence of record on Guideline B, I conclude that the mitigating evidence substantially outweighs the evidence supporting the SOR and even in the unlikely event pressure was exerted upon Applicant to compromise classified information, he would resist it, and he would, as he has testified, report the incident to the proper authorities.

FORMAL FINDINGS

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

DECISION

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 a security clearance for Applicant.

Martin H. Mogul
Administrative Judge