

KEYWORD: Foreign Influence

DIGEST: Applicant is a 64-year-old engineer who as born in China in 1942, came to the United States in about 1976, and became a naturalized United States citizen in 1985. In a second marriage, he wed a Chinese citizen in 2005. She continues to resides in Hong Kong as do many of his siblings. He has close family, professional, and financial ties to Hong Kong/China. No adequate mitigation has been established. Clearance is denied.

CASENO: 05-18287.h1

DATE: 05/22/2007

DATE: May 22, 2007

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| In Re: |) | |
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| ----- |) | ISCR Case No. 05-18287 |
| SSN: ----- |) | |
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| Applicant for Security Clearance |) | |

**DECISION OF ADMINISTRATIVE JUDGE
BARRY M. SAX**

APPEARANCES

FOR GOVERNMENT
Jennifer Goldstein, Esquire, Department Counsel

FOR APPLICANT
Pro Se

SYNOPSIS

Applicant is a 64-year-old engineer who was born in China in 1942, came to the United States in about 1976, and became a naturalized United States citizen in 1985. In a second marriage, he wed a Chinese citizen in 2005. She continues to reside in Hong Kong as do many of his siblings. He has close family, professional, and financial ties to Hong Kong/China. No adequate mitigation has been established. Clearance is denied.

STATEMENT OF THE CASE

On November 21, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to the Applicant (Government's Exhibit (GX) 1). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding required under the Directive that it is clearly consistent with the national interest to grant or continue a trustworthiness determination for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether a trustworthiness determination should be granted, denied or revoked.

On December 6, 2006, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge on the written record; i.e., without a hearing. On February 28, Department Counsel issued a File of Relevant Material (FORM). Applicant was instructed to submit any response within 30 days after receipt of the FORM. Any response was due by April 13, 2007, but none was received. This matter was assigned to me on April 30, 2007.

FINDINGS OF FACT

Applicant is a 64-year-old employee of a defense contractor. The November 17, 2006 SOR contains six (6) allegations under Guideline C (Foreign Influence). Applicant admits six allegations (GX 3). All admissions are accepted and incorporated herein as Findings of Fact.

After considering the totality of the evidence, I make the following additional FINDINGS OF FACT as to the status of each SOR allegation.

Guideline C (Foreign Influence)

- 1.a. Applicant's wife is a citizen of the United Kingdom and resident of Hong Kong.
- 1.b. Applicant's wife owns property in Hong Kong.
- 1.c. Applicant has three brothers and a sister who are citizens and residents of China.
- 1.d. From 1997 to 2002, while a naturalized citizen of the United States, Applicant accepted employment at a university in Hong Kong and spoke at a number of Chinese universities and

institutes.

1.e. Applicant visited China in November 1994, June 1995, October 1997 to April 2002, March 2005, and November to December 2005.

POLICIES

Each adjudicative decision must also include an assessment of nine generic factors relevant to the conduct, to include: (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 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 (Directive, on page 19 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons.

If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a trustworthiness determination for the Applicant.

A person seeking a security clearance enters into a fiduciary relationship with the Government based upon trust and confidence. As required by DoD Directive 5220.6, as amended, at E2.2.2., "any doubt as to whether access to classified information is clearly consistent with the interests of national security will be resolved in favor of the nation's security."

CONCLUSIONS

Applicant is 64 years old. In his response to the SOR, he admits all six allegations. I find that all six allegations are independently established by the Government's evidence (Government's Exhibits 1-9). Since Applicant did not submit and response to the FORM, his evidence ends with his response to the SOR in December 2006. Based on the totality of the record, I conclude the following:

Hong Kong has been a Special Administrative Region of the People's Republic of China (China) since July 1, 1997. Hong Kong currently possesses a degree of autonomy, except on the areas of defense and foreign policy. China has recently been increasing its oversight into Hong Kong's management of political affairs (Attachments: Background Note: China and Consular Information Sheet Hong Kong).

Under Chinese nationality law, persons who are of Chinese descent and who were born on the mainland of China or Hong Kong are citizens of China. China's Military Intelligence Department is responsible for collecting military information about the United States and China is officially recognized as being an active collector of military and economic intelligence in and about the United States. In addition, individuals traveling to China may at times be placed under surveillance by Chinese security personnel (Attachments cited in footnotes 8-19 in the FORM). Under these circumstances, Applicant's situation must be viewed with particular care.

Applicant was born in Hong Kong in 1942, during World War II. At the time Hong Kong was British territory, occupied by the Japanese. At that time, China was an ally of the United States. In 1948 China came under Communist rule, and has remained so up to the present. Applicant came to the United States in 1976 and became a citizen in 1985 (GX 4 at 1). Applicant's wife, three brothers and one sister remain citizens and residents of Hong Kong and China. Applicant's sister, who was a citizen and resident of Hong Kong, introduced him to his wife, who was a Chinese citizen and resident, in about 1997. From October 1999 to March 2002, they lived together in Hong Kong, where Applicant was teaching at a university. They were married in December 2005. Applicant has applied for an immigrant visa to allow her to join him in the United States. In the interim, she continues to reside in Hong Kong. They are in frequent and close communication (GX 9).

Applicant is also in frequent communication with his four siblings in Hong Kong (*Id.*). One brother is an engineer, as is Applicant. The record does not show whether any relatives have connections with the Chinese government. When Applicant taught at a university in China from 1997 to 2002, he was paid about \$441,908.00. He also made academic visits to universities in various parts of China. Along the way he has a number of lasting friendships (*Id.*).

Disqualifying/Mitigating Conditions (DC/MC).

DC 7(a) applies, in that Applicant has "contact with a foreign family member, business or professional associate, friend or other person who is a citizen of or a resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion." The Directive makes it clear that it is not so much the existence of foreign contacts that is of the most concern but the heightened risk that exists because of the nature of the foreign country and the closeness of the ties with that country. In the present case, China is officially recognized as a major source of espionage against the United States and Applicant's ties with China can only be described as broad and deep.

As to mitigating conditions, the record compels the conclusion that a heightened risk exists, and is complicated by Applicant's extensive ties with China, including his wife, and family economic and other ties with that country. MC 8(a) requires evidence that circumstances exist that make it unlikely that an applicant will/might be forced choose between the interests of a foreign individual (his wife), group (the university where he taught from 1997 to 2002), organization or

government (Hong Kong/China) and the interests of the United States. I can not conclude that such evidence exists to the extent it mitigate the risk involved. Therefore, MC 8(a) is not applicable. Likewise, MC 8(b) requires that an applicant's loyalty or obligation to the foreign person or entity is so low and their loyalty to the United States is so high that they could be expected to resolve any conflict in favor of the United States. This too is not demonstrated by the record evidence.

The nature of his frequent contacts with his foreign wife and siblings in Hong Kong/China makes this mitigating condition inapplicable. The record does not suggest any disloyalty by Applicant to the United States, but it does suggest feelings for his family in China that increase the risks to a level that is unacceptable under the Directive.

In summary, the evidence in the FORM makes a prima facie case of ineligibility, and nothing Applicant has said or done has come close to mitigating the Government's evidence. Accordingly, Applicant has not established that he possesses the good judgment, reliability, and trustworthiness required of anyone seeking access to the nations's secrets.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

| <i>Guideline C (Foreign Influence)</i> | Against the Applicant |
|---|------------------------------|
| Subparagraph 1.a. | Against the Applicant |
| Subparagraph 1.b. | Against the Applicant |
| Subparagraph 1.c. | Against the Applicant |
| Subparagraph 1.d. | Against the Applicant |
| Subparagraph 1.e. | Against the Applicant |
| Subparagraph 1.f. | Against the Applicant |

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 a trustworthiness determination for Applicant.

**BARRY M. SAX
ADMINISTRATIVE JUDGE**

