

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: This 52-year-old Branch Manager worked in a foreign country for about ten years, five of which were as an executive for a U.S. company. He never acquired citizenship, a passport, or political ties to the FC. His wife is a national of FC. Back in the US since 1998, he has periodic business in FC and rarely sees his wife's family. Government did not establish its case as to Foreign Preference and Applicant mitigated Foreign Influence allegations. Clearance is granted.

CASENO: 01-02948.h1

DATE: 01/18/2002

DATE: January 18, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-02948

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On August 16, 2001, 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. 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 security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether a clearance should be granted, denied or revoked.

On September 2, 2001, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made after a hearing before a DOHA Administrative Judge.

The case was assigned to me on November 9, 2001. A Notice of Hearing was issued on November 14, 2001 and the hearing was conducted on November 27, 2001. At the hearing, Department Counsel offered two exhibits, which were marked as Government Exhibits (GX) 1 and 2. Applicant testified on his own behalf and offered 12 exhibits, which were marked for identification as Applicant's Exhibits (AX) A - L. Without objection by either party, all above exhibits were admitted into evidence as marked. Another exhibit from Applicant was timely received after the hearing and, without objection by Department Counsel, was marked and admitted collectively as AX M, pp. 1 - 4. The Transcript (Tr) was received at DOHA on December 5, 2001.

FINDINGS OF FACT

Applicant is a 52-year-old "Principal" in a business that provides engineering and consulting services for the Department of Defense. His company is seeking a Secret security clearance for Applicant in connection with his employment.

Based on the contents of the case file, including Applicant's testimony and all exhibits, I make the following findings of facts as to each SOR allegation.

GUIDELINE F (Financial Considerations)

1.a. - Applicant is a citizen of the U.S. He is not a Permanent Resident of Hong Kong; [\(U\)](#)

1.b. - Applicant travels to Hong Kong periodically on business for his United States firm, but does not do so to maintain his Permanent Resident status, since he has no such status;

1.c. - Applicant does not have a Permanent Resident Status that "allows [him] to work in Hong Kong without a permit";

1.d. - Applicant opened a consulting business in Hong Kong in 1985, but began working for his present employer, a U.S. engineering consulting firm, in 1990 (GX 2);

1.e. - In 1990, Applicant became Principal and/or Director of the Hong Kong office of a U.S. company that engages in engineering. He was so employed until 1998, when he returned to the United States to become head of the firm's West Coast headquarters;

1.f. - Applicant paid taxes in Hong Kong when he was working there. All such tax payments were reported to the U.S. Internal Revenue Service, which permitted a credit against his U.S. taxes.

Since returning to the United States in 1998, he has not paid any taxes to Hong Kong;

1.g. - Applicant continues to maintain a bank account in Hong Kong. He uses it mostly to

provide money to his mother-in-law. He also maintains it because he has had the account for many years and has seen no reason to cancel it as yet, but he is willing to do so. The account contains about US\$30,000.

GUIDELINE B (Foreign Influence)

2.a. - Applicant's wife is a citizen of Hong Kong, and holds a "British National - Overseas" passport. She resides with Applicant in State A and is a Permanent Resident of the United States.

2.b. - Applicant's mother-in-law is a citizen of Hong Kong and currently resides there. The mother is elderly and speaks little English;

2.c. - Applicant provides financial assistance to his mother-in-law in Hong Kong through his Hong Kong bank account, in amounts as high as Hong Kong \$6,000 a year (about US \$800.00);

2.d. - The six siblings of Applicant's wife are citizens of Hong Kong and currently reside there. Applicant rarely sees them and has little contact;

2.e. - Applicant's elderly mother, who is retired, and his sister are U.S. citizens who have resided in Mexico since 1991;

POLICIES

Considering the evidence as a whole, I find the following specific adjudicative guidelines to be most pertinent to this case:

GUIDELINE C (Foreign Preference)

The Concern: When an individual acts in such a way as to indicate a preference for a foreign country over the United states, then he or she may be prone to provide information or make decisions that are harmful to the interests of the

United States.

Conditions that could raise security concerns and may be disqualifying include:

None that are applicable under the facts of this case.

Conditions that could mitigate security concerns include:

None that are applicable under the facts of this case, particularly since he is not a citizen of Hong Kong.

GUIDELINE B (Foreign Influence)

The Concern: A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are: (1) not citizens of the United States or (2) may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual vulnerable to coercion, exploitation, or pressure.

Conditions that could raise security concerns and may be disqualifying include:

1. An immediate family member, or a person to whom the Applicant has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country;
8. A substantial financial interest in a country, or in any foreign-owned or -operated business that could make the individual vulnerable to foreign influence;

Conditions that could mitigate security concerns include:

1. A determination that the immediate family member(s), cohabitant(s), or associate(s) are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States;

5. Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.

I have evaluated the totality of the evidence under both the specific additional guidance found in Enclosure 3 to the Directive and the general guidelines under Section E2.2.1. of Enclosure 2 to the Directive.

CONCLUSIONS

Paragraph 1 - Foreign Preference

Although SOR allegations 1.a, 1.b., and 1.c. are based on the premise that Applicant is a Permanent Resident of Hong Kong, and impliedly that such status is analogous to citizenship, the record does not support the allegations nor the underlying premise. The Government's exhibits consist of (1) the August 16, 2000 emorandum from Assistant Secretary of Defense Arthur L. Money (the Money Memorandum) (GX 1) and (2) Applicant's Security Clearance Application (SF 86) (GX 2). Nothing in the SF 86 states or implies that Applicant is a Permanent Resident of Hong Kong. In his response to the SOR, Applicant denies he is a Permanent Resident of Hong Kong and he repeated the denial at the hearing (Tr at 56 - 58). The discrepancy or confusion apparently arose when Applicant told the Defense Security Service agent that he had "permanent residency" in Hong Kong, ⁽²⁾ but Applicant later discovered he did/does not have such status (Response to SOR).

According to Applicant, a person who is not a Chinese citizen may not obtain a Hong Kong passport (Tr at 23). The status of Applicant's legal/political relationship with Hong Kong is clarified by Applicant's exhibits. Applicant has a "Hong Kong Identity Card" (AX B). There are two types of identity cards: (1) a "Hong Kong Permanent Identity Card, which states that the holder has the right of abode in the Hong Kong Special Administrative region; and (2) a Hong Kong Permanent Identity Card that does not state that right (AX A). Applicant's Hong Kong Permanent Identity Card

does not mention a right of abode, only that Applicant "does not require a visa to re-enter Hong Kong within 12 months of his last departure" (AX C).

This straightforward language means that while Applicant does not need a visa to enter Hong Kong, he must continue to return to Hong Kong at least once a year or the Identity card will no longer be valid for entry. However, it also means that Applicant can return to Hong Kong whenever he wants, by simply obtaining a visa. Based on the above, I conclude Applicant's Hong Kong Identity Card does not possess any features of citizenship, but to the contrary, is intended only to facilitate the entry of frequent foreign visitors to Hong Kong, such as Applicant was (*See also* AX F - L).⁽³⁾

Applicant first moved to Hong Kong in 1980, to start a business, after completing his schooling. Over the next ten years he gradually moved out of the film and television business and into engineering consulting. While it is accurate that Applicant opened his own consulting business in Hong Kong in 1985, which may or may not have indicated some foreign preference at the time, the suggestion that such conduct indicates a continuing or current preference for Hong Kong is minimized by Applicant's working for an American firm since the late 1980s, and his returning to the U.S. in 1998.

Applicant has been employed, since 1990, by an American architectural/engineering consulting firm with a head office on the East Coast of the United States and a regional headquarters, out of which Applicant worked, on the West Coast. The firm's vice-president states that Applicant is "a Principal of the firm and manager of the [West Coast] Branch office" (AX D). The vice-president also states that Applicant was "hired initially to found and operate a branch office in Hong Kong, which he did for a period of eight years," and that he "represented the firm's interests throughout the Asian region, building up our presence in a number of countries" (Id.). The "vast majority of the firm's work in Asia was for "private sector clients," with few contacts with any governments or foreign militaries (Id., and Tr at 17).

After joining his present employer, Applicant lived in Hong Kong for about five years, at the request of his U.S. firm and for purposes of better representing his firm, rather than for any personal reasons. For the last three and a half years, since July 1998, Applicant has again resided in the U.S., in State A, not far from his firm's West Coast office. Applicant has, and uses, only a U.S. passport, issued in August 1999 and valid until 2009. It contains numerous entry stamps from

Hong Kong, Singapore, and other Asian nations (AX L at pp. 4, 5).⁽⁴⁾

Applicant has never requested citizenship in Hong Kong, or any other nation (Tr at 37). His interest and status "is purely business [and] professional, who has the right to land, but it is not citizenship" (Id.) He has never had and never asked for "a permanent right of abode in Hong Kong" (Tr at 37, 38, 45). Applicant does not have "any intent to return to live or work in Hong Kong" (Tr at 43). His business does take him back to Hong Kong once or twice a year, but he can get along without the Hong Kong identity Card (Tr at 58).

Applicant did pay taxes in Hong Kong when he was working there, as required by Hong Kong law. The last such year was 1998 (Tr at 46). He received a credit for the taxes paid Hong Kong when he filed his U.S. Income Tax returns for the years in question (Tr at 47). The U.S. and Hong Kong have a treaty concerning such taxes (Tr at 46).

Applicant keeps about US\$30,000 in a Hong Kong bank. While the amount is not small, Applicant apparently sees no immediate need to transfer the money to a U.S. bank. He views the amount as being "relative," which I take to mean he sees no immediate need for the money and no advantage to his moving it to a U.S. bank. However, he is willing to do so. Applicant maintains the account mostly to care for his mother-in-law and because he has had a longstanding relationship with the bank. He reports all income to the Internal Revenue Service (Tr at 47). Individually and overall, the evidence does not suggest that Applicant's maintaining the money there suggests a preference for Hong Kong over the United States.

Applicant clarified that he does not need a Hong Kong Identity Card. He is not living or working in Hong Kong, he is not paying taxes there, he goes mostly on business for his U.S. employer, and he does not usually see his in-laws (Tr at 59, 60). Based on the totality of the evidence, I conclude that Applicant never intended to obtain Hong Kong citizenship or permanent residency, to obtain a Hong Kong passport, to transfer his allegiance from the United States to Hong Kong, or in any way to renounce or minimize his United States citizenship or his ties to this country.

In the present case, the evidence does not support the past and/or current accuracy of SOR allegations 1.a., 1.b., 1.c, and 1.e. SOR 1.d. and 1.f. are correct as stated, but have no current security significance because of the age, isolation, and noncurrent status of the cited conduct. SOR 1.g. is accurate as cited but, in context of the totality of the record, the amount in the bank account is not so large as to raise the risk that Applicant could be persuaded, or even tempted, to act against the interests of the United States.

Under Guideline C, I conclude that Applicant never exercised dual U.S. - Hong Kong citizenship (Disqualifying Conditions (DC) 1); never possessed or used a Hong Kong passport (DC 2) and never acted in such a way as to come within any of the other Disqualifying Conditions, DC 3 - 8). Consequently, none of the itigating Conditions are applicable. Overall, I find for Applicant as to all Guideline C allegations

Paragraph 2 - Foreign Influence

Applicant's wife is ethnic Chinese, born and raised in Hong Kong. She is strongly opposed to the political system in Mainland China, has never been there and has had no contacts with the government there. She does have family still residing in Hong Kong, but they speak little English and do not know what her husband does for a living. (AX E). She is now a permanent resident of the U.S., and has a "Green Card" (Tr at 40). Applicant and his wife visit Hong Kong about every two years, to see her family. Applicant has a friendly relationship with his in-laws, nothing more than that (Tr at 49). Applicant's mother, who is retired, lives in Mexico, because she is on a fixed income, which goes further in that country (Tr at 40). His sister lives there with his mother. Applicant would deny a request from any family member if they asked him to do anything averse to U.S. interests (Tr at 59).

The Government has made a *prima facie* case as all five allegations 2.a. - 2.e. Evidence as to the existence and status of Applicant's relatives has come directly from him. The issue is whether the evidence behind the allegations establishes a risk that Applicant could or might act against U.S. interests if asked to do so by his mother and/or sister, his wife or his wife's siblings. It is well established that an applicant for security clearance "has the burden of demonstrating that his family ties in a foreign country did not place him in a position of vulnerability through possible foreign influence." (S) Looking at all of the evidence as to the relatives and their relationship with Applicant, nothing even suggests they would ever ask Applicant to betray U.S. secrets.

The lack of proof of any foreign preference makes it even less likely that Applicant would respond favorably to undue or improper pressure or persuasion. The totality of the record establishes Applicant's strong ties to the United States, and his strong character as to work ethics and family relationships. I conclude he is a man of integrity, who understands his obligations to his country and is unlikely to respond favorably to any attempt to subvert those obligations. My conclusions as to Guideline B are reached first independently of my conclusions under Guideline C. However, when then made in the context or the totality of the record under both Guidelines, the overall conclusion in favor of Applicant is made even stronger.

It is a basic tenet of the security clearance adjudication process that the Government must first provide evidence establishing that a doubt exists as to an applicant's judgment, reliability, and trustworthiness. After the Government also establishes a connection between an applicant's conduct and his/her current security clearance eligibility, the burden shifts to the applicant to demonstrate rehabilitation, mitigation, and/or extenuation.

A person seeking access to classified information 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."

Overall, I conclude Applicant has demonstrated he possesses the requisite judgment, reliability, and trustworthiness required of anyone seeking access to the nation's secrets.

FORMAL FINDINGS

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

Guideline C (Foreign Preference) For the Applicant

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.c For the Applicant

Subparagraph 1.d. For the Applicant

Subparagraph 1.e. For the Applicant

Subparagraph 1.f. For the Applicant

Subparagraph 1.g. For the Applicant

Guideline B (Foreign Influence) For the Applicant

Subparagraph 1.a.. For the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.c For the Applicant

Subparagraph 1.d. For the Applicant

Subparagraph 1.e. For the 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.

BARRY M. SAX

ADMINISTRATIVE JUDGE

1. In any case, the Government has not produced any evidence establishing that Hong Kong Permanent Residence status is equivalent or analogous to Hong Kong citizenship.
2. There is no documentation from DSS or other evidence in the case file memorializing the conversation.
3. I note that the Permanent Identity Card of Applicant's wife does contain the notation, absent from Applicant's, that the "holder of this card has the right of abode in Hong Kong" (AX L at p. 3).
4. His wife has a United Kingdom passport, with her nationality given as "British National (Overseas)."
5. Appeal Board Decision, ISCR Case No. 00-0489 (January 10, 2002), at p. 11).