

DATE: June 13, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-07612

**DECISION OF ADMINISTRATIVE JUDGE**

**JOSEPH TESTAN**

**APPEARANCES**

**FOR GOVERNMENT**

Melvin A. Howry, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's dual citizenship is based on his birth in Hong Kong. His conduct since moving to the United States as a young child has indicated a clear preference for the United States. Clearance is granted.

**STATEMENT OF THE CASE**

On January 23, 2003, 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 administratively reissued on April 20, 1999), issued a Statement of Reasons (SOR) 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 and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR in writing on February 12, 2003. The case was assigned to the undersigned on March 28, 2003, and a Notice of Hearing was issued on April 21, 2003. The hearing was held on May 20, 2003. The transcript was received on June 5, 2003.

**FINDINGS OF FACT**

Applicant is 33 years of age. He is employed as a research engineer by a defense contractor.

In 1969, applicant was born in Hong Kong. In 1974, he moved to the United States with his parents, brother, and sister, and they have lived in the United States since then. Applicant became a permanent United States resident in 1995, and a naturalized United States citizen in 2001. His mother, father, brother, and sister have also become naturalized United States citizens.

In 1998, applicant married a native born United States citizen. They have a son who was born in the United States.

Applicant intends to remain in the United States.

Applicant had a British passport, which was set to expire in June 2003. He surrendered the passport to the British authorities, and renounced his British citizenship, in early 2003 (TR 8-9, 19-20, 24; Exhibits C, D and E). Applicant testified credibly that he was not aware that possession of a foreign passport was incompatible with holding a security clearance until he received the SOR (TR at 19-21).

Applicant has a grandmother and uncle who are citizens and residents of the People's Republic of China (PRC). He met them for the first time when he, along with his parents and sister, visited the PRC in 1996. Applicant has no real relationship with them. He had not contacted them before the 1996 visit, he has not contacted them since the 1996 visit, and he has no intention of contacting them in the future (TR at 16-17, 25).

A letter from the CEO of the company that employs applicant was admitted into evidence (Exhibit A). In it, the CEO states that applicant "has consistently proven to be an extremely honest, loyal, diligent and reliable manager," "his integrity is held in the highest regard and he has always been extremely professional and trustworthy both in his personal life as well as his professional life," and "I have absolutely no question as to his loyalties to this country."

A letter from the Government employee who manages the program on which applicant is working was admitted into evidence (Exhibit B). In it, the manager states that based on his experience with applicant, he recommends that applicant be granted access to classified information.

## **POLICIES**

Enclosure 2 of the Directive sets forth Guidelines (divided into Conditions that could raise a security concern and Conditions that could mitigate security concerns) which must be followed by the Administrative Judge. Based on the foregoing Findings of Fact, the following Disqualifying Factors and Mitigating Factors are applicable:

### **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 not citizens of the United States or 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 potentially vulnerable to coercion, exploitation, or pressure.

#### **Conditions that could raise a security concern:**

None.

#### **Conditions that could mitigate security concerns:**

1. Contacts with foreign citizens are casual and infrequent.

### **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 a security concern:**

1. The exercise of dual citizenship.
2. Possession and/or use of a foreign passport.

#### **Conditions that could mitigate security concerns:**

1. Dual citizenship is based solely on parents' citizenship or birth

in a foreign country.

2. Individual has expressed a willingness to renounce dual citizenship.

### **CONCLUSIONS**

With respect to Guideline B, the evidence does not establish that applicant is vulnerable to foreign influence. Although applicant has a grandmother and uncle living in the PRC, a country that is hostile to the United States, he has no real relationship with them. This lack of any real relationship makes it highly unlikely that the PRC would attempt to use them for the purpose of forcing applicant to take action contrary to the interests of the United States. However, even in the unlikely event the PRC did attempt to use applicant's relatives for such a purpose, applicant's lack of any real relationship with them, together with his strong ties to, and clear preference for, the United States, leads me to conclude that such an attempt would not succeed. Based on these facts, Guideline B is found for applicant.

With respect to Guideline C, the evidence establishes that applicant's dual citizenship is based on his birth in Hong Kong. Since moving to the United States when he was a child, his conduct has indicated a clear preference for the United States. He and his immediate family members have, through their actions and deeds, made it clear that the United States is their home, and there is no reason to believe that applicant's stated intention to make the United States his permanent home is not sincere and worthy of belief. Given these facts, and the fact applicant satisfied the security concern raised by his possession of the British passport by surrendering it to British authorities, Guideline C is found for applicant.

### **FORMAL FINDINGS**

GUIDELINE B: FOR THE APPLICANT

GUIDELINE C: 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.

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Joseph Testan

Administrative Judge