

DATE: June 30, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-29146

## **DECISION OF ADMINISTRATIVE JUDGE**

**JOSEPH TESTAN**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Melvin A. Howry, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant's current possession of a valid foreign passport requires a denial of his security clearance request. Clearance is denied.

### **STATEMENT OF THE CASE**

On January 31, 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, 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 19, 2003, and elected to have his case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's written case (FORM) on or about May 9, 2003. Applicant did not respond to the FORM. The case was assigned to me on June 27, 2003.

### **FINDINGS OF FACT**

Applicant is a 27 year old employee of a defense contractor.

Applicant was born and raised in Hong Kong. In 1994 he immigrated to the United States, and in 1999 he became a United States citizen.

Applicant possesses a United Kingdom passport that was issued to him while he was still a resident of Hong Kong. He renewed the passport shortly before moving to the United States in 1994, and it is valid until February 2004. Applicant states that he is willing to give up the passport, but to date he has not taken any action to surrender it. He further states that he does not plan to use it before it expires, and once it expires, he will not renew it.

Applicant possesses a Hong Kong identification card, which he used on a pleasure trip to Hong Kong in 2000.

Applicant's brother is a Hong Kong citizen who has resided in the United States for the past 14 years. The brother intends to apply for United States citizenship as soon as he is eligible to do so in 2004. The brother has no connection with any foreign governments or officials. The brother is applicant's only immediate family member who is not a United States citizen.

Applicant exchanges email with a Hong Kong citizen residing in Hong Kong who he met while attending college in the United States.

Applicant states that he takes his "allegiance to the United States seriously and would not do anything to betray that allegiance."

## **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:

1. E2.A2.1.2.1: An immediate family member is a citizen or resident of a foreign country.

#### Conditions that could mitigate security concerns:

1. E2.A2.1.3.1: The immediate family member in question is not an agent of the foreign power or in a position to be exploited by the foreign power in a way that could force applicant to choose between loyalty to the immediate family member and the United States.

### **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:

2. E2.A3.1.2.2: Possession and/or use of a foreign passport.

#### Conditions that could mitigate security concerns:

None.

## **CONCLUSIONS**

With respect to Guideline B, the evidence establishes that applicant's brother is a citizen of Hong Kong. However, this brother has lived in the United States for 14 years, and as soon as he is eligible to do so in 2004, he intends to apply for

United States citizenship. These facts, together with the fact there is no evidence that the brother has any connection with the Hong Kong government, leads me to conclude the brother is not an agent of a foreign power, or in a position to be exploited by a foreign power in a way that could force applicant to choose between loyalty to the brother and loyalty to the United States. <sup>(1)</sup> Based on the foregoing, Guideline B is found for applicant. <sup>(2)</sup>

With respect to Guideline C, applicant's conduct since moving to the United States indicates, for the most part, a preference for the United States. The sole exception is his possession of the foreign passport. The Money memorandum (Exhibit 4) sets forth the official DoD policy for cases involving possession and/or use of a foreign passport. Pursuant to this memorandum, an applicant possessing a valid foreign passport cannot be granted access to classified information unless he does one of two things: (1) surrenders the passport, or (2) offers credible evidence that he obtained official approval for its use from the appropriate United States Government agency. Given the facts that applicant has not surrendered the passport, and has not offered credible evidence that he has received official approval for its use from the appropriate United States Government agency, applicant's clearance request must be denied under Guideline C.

### **FORMAL FINDINGS**

GUIDELINE B: FOR THE APPLICANT

GUIDELINE C: AGAINST THE APPLICANT

### **DECISION**

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 security clearance for applicant.

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Joseph Testan

Administrative Judge

1. Accordingly, Mitigating Factor 1 is applicable.

2. The fact that applicant exchanges email with a friend from college who is a citizen and resident of Hong Kong does not, by itself, raise a security concern.