

KEYWORD: Foreign Influence; Foreign Preference

DIGEST: Applicant, a dual citizen of Hong Kong, a Special Administrative Region of the Peoples Republic of China, possesses a Hong Kong passport and identification card valid until April 2005. He is unwilling to relinquish his passport or foreign citizenship unless he is assured of receiving a security clearance. DoD policy in place since August 2000 requires denial under Guideline C (Foreign Preference) of a clearance for persons who possess a foreign passport. Applicant also has close ties of affection to friends and relatives in Hong Kong, Taiwan, and Singapore, but he has failed to mitigate resulting security concerns under Guideline B (Foreign Influence). Clearance is denied.

CASENO: 02-29726.h1

DATE: 07/30/2004

DATE: July 30, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-29726

DECISION OF ADMINISTRATIVE JUDGE

MATTHEW E. MALONE

APPEARANCES

FOR GOVERNMENT

Edward W. Loughren, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a dual citizen of Hong Kong, a Special Administrative Region of the Peoples Republic of China, possesses a Hong Kong passport and identification card valid until April 2005. He is unwilling to relinquish his passport or foreign citizenship unless he is assured of receiving a security clearance. DoD policy in place since August 2000 requires denial under Guideline C (Foreign Preference) of a clearance for persons who possess a foreign passport. Applicant also has close ties of affection to friends and relatives in Hong Kong, Taiwan, and Singapore, but he has failed to mitigate resulting security concerns under Guideline B (Foreign Influence). Clearance is denied.

STATEMENT OF THE CASE

On November 4, 2003, in accordance with DoD Directive 5220.6, as amended (Directive), the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed in the Directive under Guideline B (Foreign Influence) and Guideline C (Foreign Preference). The SOR informed Applicant that, based on available information, DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to continue Applicant's security clearance. [\(1\)](#)

On November 26, 2004, Applicant answered the SOR (Answer), wherein he admitted with explanation all of the allegations and chose to have his case decided without a hearing. On April 6, 2004, DOHA Department Counsel submitted a file of relevant material (FORM) in support of the government's preliminary decision, a copy of which Applicant received on April 13, 2004. Applicant was afforded 30 days from receipt of the FORM to file a response and submit additional supporting information, but he did not do so. The case was assigned to me on July 7, 2004.

FINDINGS OF FACT

Applicant's admissions are incorporated herein as facts. After a thorough review of the pleadings and exhibits, I make the following additional findings of fact:

Applicant is 25 years old and has worked for a defense contractor since August 2001. He requires a security clearance in connection with his employment.

Applicant was born in Hong Kong in 1979, when that city was British territory. On July 1, 1997, Hong Kong was returned to the Peoples Republic of China (PRC) as a Special Administrative Region. He and his brother settled in the United States in 1995. His father had passed away the year before and his mother was not allowed into the U.S. with Applicant because she was suffering from tuberculosis at the time. She eventually came to the U.S. in 2001 and is a permanent resident alien eligible to apply for citizenship in 2006. Applicant was naturalized in October 2000 and his brother became a U.S. citizen in April 2001.

Applicant and his brother are dual citizens of Hong Kong and the United States. His mother was born in the PRC, but lived with her husband in Hong Kong where they raised their family. She receives retirement pay from each month from the shipping company her husband worked for. Applicant's mother has never been associated with the governments of Hong Kong or the PRC.

Applicant and his brother received their high school, college, and graduate educations in the United States. In 1999, Applicant's brother returned to Hong Kong to pursue employment after receiving his master's degree. He lived there in a condominium his mother owns, but now lives in Singapore where he works as a stock market analyst. Applicant either calls or e-mails his brother about once a week.

Applicant's maternal grandmother lives with his mother's brother and family in Taiwan. She, too, was born in the PRC and is now in her 80's. Applicant exchanges e-mail with his uncle and cousins about three or four times a year. None of his relatives has any connection with a foreign government.

Applicant maintains weekly contact with three friends from his youth who are citizens of and still reside in Hong Kong. He also has two other friends with whom he has weekly contact and who are Hong Kong citizens, but reside in Canada and Great Britain. Also, his roommate at the time he completed a security clearance application in February 2002 was a Hong Kong citizen.

In 1995, before Hong Kong was returned to PRC governance, Applicant obtained a British passport and Hong Kong Permanent Identification Card (PIC) in which he is identified as a British overseas national. The passport and PIC are

valid through April 2005. Since 1995, Applicant has traveled to Hong Kong five times and to Taiwan six times to visit family and friends, and to attend to personal affairs. After becoming a U.S. citizen in 2001, Applicant used his British passport and PIC on two trips to Hong Kong and Taiwan.

In April 2002, an agent of the Defense Security Service (DSS) interviewed Applicant about his foreign ties of affection and his foreign passport. In a written statement given to the agent at or about the time of the interview, Applicant stated:

I am unwilling to renounce my Hong Kong citizenship. Currently I have taken no steps to relinquish my foreign passport and identification card or renounce my Hong Kong citizenship. I will not take any steps to do so unless I am assured that I will obtain a security clearance.⁽²⁾

When he answered the SOR in November 2003, however, Applicant stated he would be willing to renounce his foreign citizenship and give up his passport. The letter forwarding the FORM to Applicant informed him that an Assistant Secretary of Defense for Command, Control and Communications (ASDC3I) memorandum dated August 16, 2000, included in the FORM as Item 9, requires denial of a clearance where an applicant possesses a foreign, unless the passport is relinquished.

POLICIES

The Directive sets forth adjudicative guidelines⁽³⁾ to be considered in evaluating an Applicant's suitability for access to classified information. The Administrative Judge must take into account both disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair, impartial, and commonsense consideration of all of available relevant and material information, and application of the pertinent factors and criteria provided in Enclosure 2 of the Directive. Further, the Administrative Judge must consider as appropriate the "whole person" factors listed in Section 6.3 of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Having considered the SOR allegations and having reviewed the record evidence as a whole, I conclude the relevant adjudicative guidelines to be applied here are those conditions listed in the Directive under Guideline B (Foreign Influence) and Guideline C (Foreign Preference).

BURDEN OF PROOF

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁽⁴⁾ for an applicant to either receive or continue to have access to classified information. The government bears the initial burden of proving, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If the government meets its burden, it establishes a *prima facie* case that it is not clearly consistent with the national interest for the applicant to have access to classified information. The burden then shifts to the applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, the Applicant bears a heavy burden of persuasion.⁽⁵⁾

A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the government.⁽⁶⁾

CONCLUSIONS

Under Guideline B, 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.⁽⁷⁾ The SOR alleges that Applicant has foreign ties of affection through his mother (SOR 2.a), his brother (SOR 2.b), his maternal grandmother, uncle and cousins (SOR 2.c and 2.d), and through friends in Hong King and other countries (SOR 2.e, 2.f, and 2.g). Applicant's mother is now a permanent resident alien in the United States and has no intention to return to Hong Kong. She is not an agent of a foreign government and, because she lives in the U.S., is not likely to be subject to coercion or pressure from a foreign government. Guideline B mitigating condition (MC) 1⁽⁸⁾ applies here and I conclude SOR 2.a in favor of the Applicant. As for his friends living in Great Britain and Canada, because those countries enjoy amicable relations with the U.S., they do not have a record of human rights abuse, and their respective intelligence services are not known to target U.S. interests, I make the same conclusions, based on MC 1, with respect to SOR 2.f and SOR 2.g.

However, along with Applicant's admissions, Department Counsel has presented sufficient evidence in the FORM to support the allegations in SOR 2.b, 2.c, 2.d 2.e, 2.h, and 2.i, and establish a *prima facie* case for disqualification under Guideline B. Disqualifying Condition (DC) 1⁽⁹⁾

applies. The presence of family ties in Taiwan and Singapore, as well as Applicant's regular contacts with friends in

Hong Kong may be benign, but Applicant bears the burden of providing information on which these facts may be mitigated. Applicant's family and friends living in Hong Kong and Taiwan do not appear to be agents of or otherwise connected to any foreign government, but Applicant has not shown that they are not subject to pressure or coercion by a foreign government. Therefore, MC 1 does not apply. Indeed, Taiwan is active in economic espionage against the United States, and the PRC, now in control of Hong Kong, has an abysmal human rights record. Combined with the long-standing state of poor relations between PRC and the U.S., it is reasonable to assume there is a risk of coercion against Applicant's friends in Hong Kong. Applicant's repeated travel to Hong Kong and Taiwan since he immigrated to the U.S. in 1995 (SOR 2.h and 2.i), while not per se disqualifying, reinforces the government's concerns about Applicant's vulnerability, through his close ties of affection, to coercion or pressure from a foreign government.

Applicant's brother, a stock market analyst now living in Singapore, left the U.S. in 1999 and lived until recently in Hong Kong in a condominium owned by Applicant's mother. Because of the close nature of this relationship (as opposed to Applicant's more casual friendships elsewhere), and in view of the regular contact he maintains with his brother, I conclude SOR 2.b against Applicant. In view of all of the foregoing, I conclude Guideline B against the Applicant.

Under Guideline C, a security concern exists where it is shown an individual acts in such a way as to indicate a preference for a foreign country over the United States, because he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.⁽¹⁰⁾ The SOR alleges Applicant has exercised dual citizenship since his naturalization through his use of a foreign passport and identity documents when he traveled overseas in 2000 and 2001 (SOR 1.a, 1.b, and 1.c). Along with Applicant's admissions, Department Counsel has submitted sufficient evidence in the FORM to establish a *prima facie* case for disqualification under Guideline C. Applicant's British passport clearly identifies him as a British national and his continued possession of that passport will allow him to travel in and out of the U.S. free of vital immigration controls. Guideline C DC 1⁽¹¹⁾ and DC 2⁽¹²⁾ apply.

In the face of the government's case for disqualification, Applicant had the opportunity to respond to the FORM and present information to mitigate, extenuate or refute the government's evidence. He did not respond to the FORM and has failed to meet his burden of persuasion. Of the Guideline C mitigating conditions (MC), only MC 4⁽¹³⁾ is potentially applicable here. While Applicant stated in his Answer a willingness to renounce his foreign citizenship, he had earlier declared to DSS he would only do so if he knew he could get his security clearance. While it is not necessary to actually renounce his foreign citizenship, Applicant's conflicting statements in this regard preclude application of MC 4 because he did not avail himself of his opportunity to respond to the FORM and try to resolve lingering questions about his intent to renounce.

Applicant was also advised in the FORM cover letter of the August 2000 ASDC3I memorandum regarding possession of a foreign passport. The memorandum itself was included in the FORM as Item 9. Because Applicant has taken no action to relinquish the passport and identification card, both of which are still valid, he is disqualified from holding a clearance. I conclude Guideline C against the Applicant.

I have carefully weighed all of the evidence, and I have applied the disqualifying and mitigating conditions as listed

under each applicable adjudicative guideline. I have also considered the whole person concept as contemplated by the Directive in Section 6.3. A fair and commonsense assessment ⁽¹⁴⁾ of Applicant's foreign ties of affection and his exercise of dual citizenship raises reasonable doubts about Applicant's willingness to put the interests of the United States government ahead of those of foreign governments. Such conflicting interests might hinder his ability to protect classified information and exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. Absent substantial information to resolve those doubts, which Applicant failed to provide, I cannot conclude it is clearly consistent with the national interest to grant Applicant's request for a security clearance.

FORMAL FINDINGS

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

Paragraph 1, Foreign Preference (Guideline C): AGAINST THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.c: Against the Applicant

Paragraph 2, Foreign Influence (Guideline B): AGAINST THE APPLICANT

Subparagraph 2.a: For the Applicant

Subparagraph 2.b: Against the Applicant

Subparagraph 2.c: Against the Applicant

Subparagraph 2.d: Against the Applicant

Subparagraph 2.e: Against the Applicant

Subparagraph 2.f: For the Applicant

Subparagraph 2.g: For the Applicant

Subparagraph 2.h: Against the Applicant

Subparagraph 2.i: 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 the Applicant. Clearance is denied.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. FORM, Item 5.
3. Directive, Enclosure 2.
4. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
5. *See Egan*, 484 U.S. at 528, 531.
6. *See Egan*; Directive E2.2.2.
7. Directive, E2.A2.1.1.
8. Directive, E2.A2.1.3.1. A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question 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;
9. E2.A2.1.2.1. An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country;
10. Directive, E2.A3.1.1
11. Directive, E2.A3.1.2.1. The exercise of dual citizenship;
12. Directive, E2.A3.1.2.2. Possession and/or use of a foreign passport;
13. Directive, E2.A3.1.3.4. Individual has expressed a willingness to renounce dual citizenship.
14. Directive, E2.2.3.