

DATE: July 26, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-30708

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL J. BRESLIN

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 47-year-old employee of a defense contractor. He was born in Hong Kong, moved to Canada in 1974, and came to the U.S. in 1985. He has worked for his current employer for more than 10 years. Applicant's father worked as a concessionaire on a U.S. military reservation from 1958 to 1993, but retired in the People's Republic of China (PRC). Applicant has only seen his father seven times in his life, and has only casual and infrequent contact. Applicant mitigated the security concerns arising from his father's residence in the PRC. Clearance is granted.

STATEMENT OF THE CASE

On July 9, 2002, Applicant submitted an application for a security clearance. The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (the "Directive"). On December 6, 2004, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under Guideline B, Foreign Influence, of the Directive.

Applicant answered the SOR by letter dated December 20, 2004, with one attachment. Applicant requested a hearing before an administrative judge.

The case was assigned to me on February 25, 2005. With the concurrence of the parties, I conducted the hearing on March 29, 2005. The department counsel introduced eight exhibits. Applicant testified on his own behalf. DOHA received the transcript (Tr.) of the hearing on April 8, 2005.

FINDINGS OF FACT

Applicant denied the allegations in paragraph 1.d of the SOR. Answer to SOR, dated December 20, 2004, at 1. He admitted the factual allegations in paragraphs 1.a, 1.b, and 1.c of the SOR, with explanations. *Id.* at 1. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, I make

the following additional findings of fact.

Applicant is 47 years old. Ex. 1 at 1. He was born in Hong Kong in 1957, when it was under the rule of Great Britain. *Id.*; Answer to SOR, *supra*, at 1. While living in Hong Kong, he never visited the PRC. Answer to SOR, *supra*, at 1.

Applicant's father worked in Okinawa, Japan, operating a tailor shop on a military installation. In 1958, when Applicant was about one year old, his father moved to West Germany to operate a Hong Kong custom tailor shop on a U.S. military base. Applicant's father returned to Hong Kong to visit his family in 1966. Ex. 2 at 3. Since then, Applicant has only seen his father in 1971, 1977, 1980, and 1999.

Applicant obtained a British passport in Hong Kong. Ex. 2 at 2. In 1974, when Applicant was 16 years old, he emigrated to Canada. *Id.* He lived in Canada from 1974 until 1980. *Id.* He had his British passport renewed in Canada in 1979.

Applicant moved to the United States in 1980 to attend college. He took classes at a local college between 1980 and 1983, and also took classes at a well-known U.S. university until 1985. Ex. 2 at 1. Applicant had his British passport reissued in April 1984 while living in the U.S. *Id.* at 2.

Applicant also worked as a computer programmer for a technology company from 1984 to 1987. Ex. 3 at 2. He returned to the U.S. university to study between 1991 and 1995, earning his bachelor of science degree in computer information systems and aerospace engineering. Ex. 1 at 2; Ex. 2 at 2.

Applicant became a naturalized citizen of the United States in May 1995. Ex. 1 at 1. He denies any dual citizenship. *Id.* In 1996, Applicant began working as an engineer for his present employer, a defense contractor. Ex. 1 at 2.

Applicant's father ran the tailor shop on a U.S. military installation in Germany from 1958 until 1993, when he retired. Ex. 2 at 3. Applicant's parents ended their marriage in 1980 as a practical matter, without filing for divorce. Answer to SOR, *supra*, at 1. Therefore, Applicant's father moved to Shanghai, China, to reside with his only sister (Applicant's aunt). She is a retired factory worker.

In 1999, Applicant traveled to mainland China for two weeks for pleasure. Ex. 2 at 1. While visiting the city where his father lives, Applicant stayed in his father's apartment. *Id.* At that time, he met his aunt (his father's sister) for the first time. Answer to SOR, *supra*, at 1. He also met for the first and only time some cousins who lived in that city. He has had no contact with any of his cousins since that visit. Ex. 2 at 2.

In 2003, Applicant traveled to Hong Kong for one week to attend a wedding. Ex. 2 at 2. During that time, Applicant took a one-day trip to Macau for sightseeing. *Id.*

Applicant's mother, sister, and brother have lived in the United States since the 1970s, and became naturalized citizens of the U.S. in 1995. Ex. 3 at 1, 2. Applicant's mother is retired. His sister is a pharmacist, and his brother works for a U.S. university. Ex. 2 at 1, 2.

Applicant is not close to his father, having seen him only seven times. Ex. 2 at 3. They do not communicate very well, because Applicant speaks one Chinese dialect and his father speaks another dialect. Ex. 2 at 3. Also, Applicant's father is going deaf but refuses to wear a hearing aid. *Id.* When Applicant calls, he must speak to his aunt, who then shouts at Applicant's father to relay what was said. *Id.* At first, Applicant called his father in China about once every three months. Ex. 3 at 2. At the time of the hearing, Applicant called his father about once every six months. Tr. at 27. Applicant's father is 80 years old. Tr. at 28.

Applicant indicated that he feels a sense of obligation to his father based upon his cultural heritage, but he has no emotional connection to him. Applicant indicated that, should his father pass away, he might attend his funeral, but only if it did not conflict with his work schedule or compromise his security clearance. Tr. at 28, 38. Applicant has never told his father that he works on the defense aspect of his employer's business. Tr. at 30.

The People's Republic of China is an authoritarian state controlled by the Chinese Communist Party. It has a poor record of protecting human rights. Ex. 5 at 9. Historically, its interests were hostile to the United States. Since 2001, relations

between the United States and China have enjoyed a new sense of optimism and stability. Ex. 5 at 16-20. China is recognized as an active gatherer of foreign intelligence. Ex. 8 at 15.

Hong Kong has been a special administrative region of China since 1997. It has enjoyed a high degree of autonomy, except in defense and foreign affairs. Ex. 7 at 1. Hong Kong remains a free society, and its citizens have rights protected by law. The government of Hong Kong generally respects the human rights of its residents.

Macau became a special autonomous region of the People's Republic of China in 1999. Ex. 6 at 1. The region also has a high level of autonomy, retaining its own currency, laws, and border controls. *Id.* China controls the region's foreign policy and defense. *Id.* Macau is a well-known tourist destination, especially for gambling. *Id.* U.S. citizens entering Macau on their U.S. passports, including those born in the PRC, are considered U.S. citizens by the Macau authorities for the purpose of ensuring access to the U.S. consul and protection. *Id.* at 5.

POLICIES

The President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guideline at issue in this case is:

Guideline B, Foreign Influence: A security risk may exist when an individual's immediate family, including cohabitants, or other persons to whom he 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. Directive, ¶ E2.A2.1.1.

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to this adjudicative guideline, are set forth and discussed in the conclusions below.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." Directive, ¶ E2.2.1. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. *Id.* An administrative judge should consider the following factors: (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 voluntariness of participation; (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. *Id.*

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. Directive, ¶ E3.1.14. Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. Directive, ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2.

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of

the applicant. Exec. Ord. 10865, § 7. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

CONCLUSIONS

I considered carefully all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Paragraph E2.A2.1.2.1 of the Directive provides that it may be disqualifying if "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." Paragraph E2.A2.1.3.1 defines "immediate family members" to include a spouse, father, mother, sons, daughters, brothers, and sisters. Applicant's father is an "immediate family member" and resides in the PRC. Thus, this potentially disqualifying condition applies.

Paragraph 1.a of the SOR also alleges Applicant's aunt resides in the PRC. Applicant's aunt is not an "immediate family member" under the Directive. The evidence shows Applicant does not have close ties of affection or obligation to his aunt. Indeed, he met her for the first and only time in 1999, and speaks to her only rarely when he is trying to communicate with his father. I conclude Applicant's limited relationship with his aunt does not raise a security concern.

Under the Directive, potentially disqualifying concerns can be mitigated under certain conditions. It is potentially mitigating where the "immediate family member(s), 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 involved and the United States." Directive, ¶ E2.A2.1.3.1.

The evidence indicates Applicant's father is not an "agent of a foreign power" as defined by 50 U.S.C.A. § 1801(b). He is not and has never been an employee of or affiliated with the government of the PRC, its military forces, or any political party or group in the country.

In assessing whether an applicant's relatives in a foreign country are vulnerable to exploitation, it is helpful to consider several factors, including the character of the government of the relevant foreign country. The PRC is a communist country which has clashed with the United States in the past. It is a well-known collector of foreign intelligence, and has a poor record of protecting human rights. Under the circumstances, the possibility that a "foreign power" in the PRC would attempt to exploit or pressure Applicant's father to influence Applicant to act adversely to the interests of the United States raises a security concern.

It is also important to consider the vulnerability to exploitation of Applicant's father in the PRC. He is 80 years old, retired, and in declining health. I conclude Applicant's father is vulnerable to exploitation from a foreign power. Weighing all these factors, I conclude the mitigating condition set out in ¶ E2.A2.1.3.1 of the Directive does not apply.

Under ¶ E2.A2.1.3.3 of the Directive, it may also be mitigating where "[c]ontact and correspondence with foreign citizens are casual and infrequent." Applicant's contact with his father is undoubtedly infrequent. Indeed, he has only seen his father seven times in his life, most recently in 1999. Applicant only calls his father about once every six months, and then only to inquire about his health. Even that limited contact is strained-Applicant must speak to his aunt and have her relay the message to his father.

It is a closer question whether Applicant's contact with his father is casual. Normally, it may be presumed that contact with immediate family members is not casual. However, as the Appeal Board has observed, "Nothing in the plain language of Foreign Influence Mitigating Condition 3 precludes its application to an applicant's immediate family members. See, e.g., ISCR Case No. 98-0592 (May 4, 1999) at p. 7." ISCR Case No. 00-0484 (Appeal Board, Feb 1, 2002). Here, Applicant has very little contact with his father-as Applicant notes, his father is practically a stranger to him. Applicant's emotional connection to his father is so slight that he would not travel to attend his father's funeral if it conflicted with his work commitments. In this exceptional case, I find this potentially mitigating condition applies.

I considered carefully all the potentially disqualifying and mitigating conditions in light of the "whole person" concept, keeping in mind that any doubt as to whether access to classified information is clearly consistent with national security

must be resolved in favor of the national security. Applicant is a U.S. citizen by choice, and has lived in this country for more than 25 years. His closest relations-his mother, his sister, and his brother-are citizens and residents of the United States. Applicant has worked for his current employer for almost 10 years. Applicant has very little contact with his father, and it is inspired more by culture than any affection. His travel to China and Macau was for sightseeing purposes, and he has no plans to return to China. Considering his commitment to this country and his limited connection with his father, Applicant is not vulnerable to exploitation or duress applied through his father. I conclude Applicant has mitigated the potential security concerns arising from his father's residence in the PRC.

FORMAL FINDINGS

My conclusions as to each allegation in the SOR are:

Paragraph 1, Guideline B: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

DECISION

In light of all of 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. Clearance is granted.

Michael J. Breslin

Administrative Judge