

DATE: March 3, 2004

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 02-17148

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 29-year-old American was born in Hong Kong to an American father and a Hong Kong mother. His father registered his birth with U.S. authorities. Applicant came to the U.S. in 1988, at age 14, to attend school. A member of the Marine Corps Reserve (1992 to 2000), he also attended and graduated from college (1993 to 1999) with a B.S. in Engineering. His only foreign ties are his elderly father and mother, who live in Hong Kong, but who are now in the process of emigrating to the U.S., with Applicant as his mother's sponsor. I find little risk that they would be asked to persuade him to act against U.S. interests, or that they would ask him. Based on his history and proven commitment to the U.S., there is minimal risk Applicant would ever act against U.S. interests. Mitigation has been established. Clearance is granted.

STATEMENT OF THE CASE

On August 11, 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 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 August 28, 2003, Applicant submitted a response to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge after a hearing. The matter was assigned to me for resolution on October 7, 2003. On October 30, 2003, a Notice of Hearing was issued, setting the hearing for November 18, 2003. At the hearing, the Government did not present any witnesses but offered three exhibits, which were marked for identification as Government Exhibits (GX) 1 and 2. Applicant testified and offered six exhibits, which were marked as Applicant's Exhibits (AX) A - F. All exhibits were admitted without objection. The transcript (Tr) was received at

DOHA on December 5, 2003.

FINDINGS OF FACT

Applicant is 29 years old. The SOR contains two allegations, 1.a. and 1.b. under Guideline B (Foreign Influence). As to SOR 1.a., Applicant denies that his father is a dual citizen of the U.S. and China. As to SOR 1.b., Applicant admits his mother is a citizen of and resident in Hong Kong. The admission cited above is incorporated herein as a Finding of Fact.

After considering the totality of the evidence derived from the hearing testimony and all evidence of record, I make the following additional FINDINGS OF FACT as to each SOR allegation:

Guideline B (Foreign Influence)

1.a. and 1.b. - Applicant's *father* is a U.S. citizen only. He came to the U.S. in the 1950s to attend college. He became a U.S. citizen in 1968 and renounced his Hong Kong citizenship. In about 1970, he returned to Hong Kong, where he met and married Applicant's mother, and continued to work there until 1998, at which time he retired but stayed in Hong Kong. Applicant was born in Hong Kong in October 1974, at which time Hong Kong was controlled by Great Britain, but which is now part of the People's Republic of China (China). Applicant was an American citizen by birth because his father was (and remains) a U.S. citizen (AX B at 5, GX 1 and GX 2).

Applicant came to the United States in 1988, at age 14, because his parents wanted him to have a better education. He lived with a relative in State A for one year and then moved to State B, where he lived with his mother's sister and her family for three years before entering college. He enrolled in the U.S. Marine Corps Reserve in 1992 and served until 2000, with the rank of corporal (E4), during which time he also attended and graduated from college with an Engineering degree (*Id.*).

1.b. - Applicant's *mother* has at all time been a citizen of Hong Kong/China and resided there. She worked as tour guide and is now retired. She never became a U.S. citizen and has never resided here. He has no brothers or sisters. In fact, Applicant is the only member of his family to reside in the U.S. (*Id.*).

Applicant speaks to his mother and father only once in a while on the telephone (*Id.*, AX C and AX D). Applicant and his father "were never really that close" (GX 2). Applicant has visited Hong Kong twice since his 1998 arrival in the U.S., in 1996 and 1997 (*Id.*). He speaks to his parents periodically. He has no siblings. Applicant has "completely assimilated into life in the United States and has no desire to ever leave" (*Id.*, at 3).

Applicant received an Honorable Discharge from the U.S. Marine Corps in November 1999 (AX B at 1); a highly positive citation from the Brigadier General commanding his unit (AX B at 2); a Certificate of Release or Discharge from Active Duty that cited his accomplishments in the Marine Corps and his acceptance in a Reserve Special Enlistment Program (*Id.*, at 3); and a Meritorious Mast citation praising Applicant for professional achievement and superior performance (*Id.*, at 4). Applicant is "an American" and "can't be coerced or blackmailed for any reason. I would never betray my country, the United States" (*Id.*).

POLICIES

Each adjudicative decision must also include an assessment of nine generic factors relevant in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowing 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 (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

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

Guideline C (Foreign Influence)

A security risk may exist when an individual's immediate family [members] . . . 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 . . . are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Condition that could raise a security concern and may be disqualifying:

1. An immediate family member . . . is a citizen of, or resident or present in, a foreign country;

Conditions that could mitigate security concerns include:

1. A determination that the immediate family member(s) . . . in question would not constitute an unacceptable risk.
3. Contacts and correspondence with foreign citizens are casual or infrequent.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of

whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons.

If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

CONCLUSIONS

There is no dispute as to the basic facts in this case. This 29-year-old U.S. citizen was born in Hong Kong in 1974 to an American father. His birth and U.S. citizenship was registered with U.S. authorities (GX 1). He came to the U.S. in 1988 and has lived here ever since, attending college and spending eight years in the Marine Corps, 1992 to 2000, where he was a highly respected air defense gunner. He considers himself to be only an American, and has spent eight years of his still young life dedicated to the country's defense.

The only concerns cited in the SOR are (1) that his father, who was a citizen of Hong Kong, came to the U.S. in the 1950s, became a U.S. citizen in 1968, then returned to Hong Kong as a U.S. citizen in the early 1970s, married and fathered Applicant, worked and retired, and chose to remain in Hong Kong with his Hong Kong born wife, Applicant's mother; and (2) that his Hong Kong born mother never became a U.S. citizen and has spent her life in Hong Kong.

Applicant's father was born in 1932 and his mother in 1937 (GX 1). Both reside in Hong Kong, now a part of the People's Republic of China. China is considered by the Executive Branch of the U.S. Government to be significantly involved in military and industrial espionage against the U.S. (GX 3). While the citizenship and/or presence of fact of relatives in any foreign country is of security concern, the fact that the other country is China is of particular concern, since the risks of attempts to commit espionage in cases such as the present one must be considered even higher that

with other countries. At the same time, the existence of foreign relatives is only one factor among many, and must be considered in the context of all available information.

On this basis, I have carefully considered the presence of Applicant's mother and father in Hong Kong and his relationship with them. Considering the nature of the relationship and the lack of any efforts to subvert Applicant in the past, the extent of the risk of his parents asking him to act improperly certainly exists, but it is not high. What I find most persuasive is Applicant's history and ties to the U.S. Applicant left his home in Hong Kong almost 14 years ago, when he was 16. He has been back to Hong Kong only twice during that long period, years ago, to see his parent, now about 67 and 72 years old.

At the hearing, Applicant introduced evidence that his mother is now interested in becoming a U.S. citizen and that Applicant is sponsoring her (AX E, dated June 4, 2003). Both parents are now interested in moving to the U.S. (Tr at 22). Applicant is not aware of anything suggesting that they are or have been agents of or otherwise connected to the Chinese government. (*Id.*). Any discussion of the risk that they may be asked or coerced by the Chinese government to pressure Applicant to reveal American defense secrets in the future is necessarily speculative. It may happen, but there is no record evidence suggesting that it will.

The burden of proof on Applicants with foreign relatives is a heavy one and, logically, proving a negative is difficult to do. What Applicant has established by his eight years of military duty and honorable discharge is the extent of his commitment to the U.S. So, while his stated intent to report any improper contact in the future, from whatever source, is really a promise of future conduct rather than evidence of past behavior, I find his promise to be both credible and persuasive, based on the totality of the record.

Disqualification and Mitigation,

Foreign Influence - Disqualifying Condition (DC) 1 (family members who are foreign citizens) is applicable, but Mitigating Condition (MC) 1 (a determination that the foreign relatives would not constitute an unacceptable security risk) also applies and outweighs the impact of DC 1.

Overall, I conclude that Applicant has shown himself to be a man of integrity and one who takes his obligations seriously. Considering the evidence as a whole, I conclude that the evidence does not show that any risk exists that Applicant would ever act against U.S. security interests.

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 Influence) For the Applicant

Subparagraph 1.a.. For the Applicant

Subparagraph 1.b. 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