

DATE: January 25, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-24295

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esquire, Department Counsel

FOR APPLICANT

Robert Alan Soltis, Esquire

SYNOPSIS

Applicant is a 53-years old senior engineer, born in Hong Kong in 1951, at a time when it was controlled by Great Britain. He came to the United States (U.S.) in 1966 and graduated from college in 1986 with a Master's degree in Engineering in 1986. He does not consider himself to be a dual citizen of Hong Kong, or the People's Republic of China, which has controlled Hong Kong since 1997U.S. university. His wife was also born in Hong Kong, in 1957. They were married in 1979 and have two grown children. His ties to the U.S. are deep and those to Hong Kong minimal. Applicant is clear about his obligation to protect U.S. security interests. Mitigation has been established. Clearance is granted.

HISTORY OF THE CASE

On December 22, 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 February 15, 2004, Applicant responded 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 June 28, 2004. A Notice of Hearing was issued on August 4, 2004, setting the hearing for August 27, 2004. At the hearing, the Government introduced four exhibits (GX 1 - GX 4) and the Applicant introduced 19 exhibits (AX A - AX S). Without objection all exhibits were admitted as marked. The transcript was received at DOHA on September 13, 2004.

FINDINGS OF FACT

Applicant is a 53-year-old engineer for a defense contractor. The April 14, 2004 SOR contains six allegations under Guideline B (Foreign Influence). In his April 1, 2004 Response to the SOR, Applicant *admits* parts of each allegation and denies or explains the remainder. The admitted parts of the allegations are accepted and incorporated herein as a Findings of Fact.

After considering the totality of the evidence, I make the following additional FINDINGS OF FACT as to the present status of each SOR allegation:

Guideline B (Foreign Influence)

1.a. - Applicant's brother, a naturalized U.S. citizen, has resided in Hong Kong since 1980. Applicant visits his brother in Hong Kong.

1.b. - Applicant's uncle is a resident of Hong Kong. Applicant has visited him once or twice while in Hong Kong. Before retiring, the elderly uncle (in his 80s) was a tennis coach (Tr at 34).

1.c. - Applicant traveled to the People's Republic of China (PRC) in 2001, 2000, and 1998.

1.d. - Applicant traveled to Hong Kong in 2001, 2000, 1998, and 1996. While in Hong Kong, Applicant resided with friends.

Applicant's entire family emigrated to the U.S. in 1966 "because of the opportunities" (Tr at 33). This was about 30 years before Hong Kong came under control of the PRC. Applicant held a DoD security clearance from 1975 to 1992, at which time his company moved to another state and Applicant resigned because he did not want to move his family. For most of his professional career he has specialized in guidance systems, both classified and non-classified (Tr at 35 - 39).

At times he worked on projects involving missiles and nuclear submarines and no one ever questioned his eligibility (Tr at 57). He has received excellent work evaluations and high praise from his colleagues (Tr at 27 - 31 and 51 - 59) and employer for his contributions to the company (AX A - AX F, AX R, and AX S). He is clear about what he would do if asked by anyone to do anything against U.S. interests: He would immediately report it to the appropriate authorities (Tr at 50 - 52).

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.

Because each security case presents its own facts and circumstances, it should not be assumed that the factors cited above exhaust the realm of human experience or that the factors apply equally

in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable financial judgment and conduct.

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. In reaching the fair and impartial overall common sense determination based on the "whole person" concept required by the Directive, the Administrative Judge is not permitted to speculate, but can only draw those inferences and conclusions that have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make

critical judgments as to the credibility of witnesses.

In the defense industry, the security of classified information is entrusted to civilian workers

who must be counted on to safeguard classified information and material twenty-four hours a day.

The Government is therefore appropriately concerned where available information indicates that an

applicant for a security clearance, in his or her private life or connected to work, may be involved

in conduct that demonstrates poor judgment, untrustworthiness, or unreliability. These concerns include consideration of the potential, as well as the actual, risk that an applicant may deliberately

or inadvertently fail to properly safeguard classified information.

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.

A person seeking access to classified information enters into a fiduciary relationship with the

Government based upon trust and confidence. As required by DoD Directive 5220.6, as amended,

at E2.2.2., "any doubt as to whether access to classified information is clearly consistent with the interests of national security will be resolved in favor of the nation's security."

CONCLUSIONS

Guideline B (Foreign Influence)

Applicant is 53-years old, born in Hong Kong in 1951, at a time when it was controlled by Great Britain. He came to the United States (U.S.) in 1966 and became a naturalized U.S. citizen in 1972, more than 30 years ago. He does not consider himself to be a dual citizen of Hong Kong, or the People's Republic of China, which has controlled Hong Kong since 1997. He went to college in the U.S. and received a Masters degree in Engineering in 1986 from a major U.S.

university. He is now a senior project engineer for a major defense contractor

His wife was also born in Hong Kong, in 1957. They were married in 1979. His father, now deceased, and his mother emigrated to the U.S. and both became U.S. citizens. Applicant and his wife have two children, born in the U.S. in 1987 and 1991, respectively.

1.a. - Applicant has five siblings, all of whom emigrated to the U.S. and became U.S. citizens. One brother, as cited in 1.a., returned to Hong Kong in 1980 to continue his employment as an accountant with a U.S.-based company. He later went out on his own and now owns a pet shop. He has no connections with the Hong Kong or PRC government.

1.b. - Applicant's communications with this uncle are limited to short visits on the occasions when Applicant went to Hong Kong to visit his brother, in 1998, 2000, and 2001. The uncle is now more than 80 years old and has been disabled by a stroke for the past decade. He lives in a nursing home, where Applicant went to bring regards from his mother to her brother.

1.c. and 1.d. - Applicant and his family love to travel and go to the Orient because of their cultural heritage and shopping. There were no contacts with any government officials and no financial or business reasons were involved on any of the three voyages alleged. All the trips are for pleasure and there have not been any trips to the region since 2001.

Applicant has worked in the defense industry and been an American and part of American culture for most of his adult life. He has no interest in Hong Kong beyond that being where he and

his wife were born (Tr at 83). If ever asked to do anything against U.S. interests, he would not even hesitate to refuse and report the contact (Tr at 96 - 99).

For much of Applicant's career, he has worked in supporting U.S. military and security interests. At age 53, there is nothing in the record to suggest any lack of commitment to his stated allegiance and loyalty to the U.S. and to the interests of his American family. He owes no allegiance to the PRC or any other country.

While any relatives in a foreign country may present a risk, the Directive does not make this factor an automatic bar to holding a security clearance. Fairness and commonsense require an analysis of the entire record and an overall common sense determination. The PRC is cited in official Government documents (GX 3 and GX 4) as a country substantially involved in economic espionage in the United States, but the overall record does not suggest that the PRC government is aware of Applicant's existence, of his limited remaining ties to Hong Kong, or of his career in the U.S.

The lack of any past improper contacts in the past is not evidence establishing that it will not happen in the future, but it is a positive factor that should be considered along with all other evidence, including, but not limited to, Applicant's statement that his allegiance is to the United States only. Based on the totality of the record, I conclude (1) that Applicant has done nothing to suggest any preference for the PRC, and (2) there is minimal risk that Applicant's few relatives still in Hong Kong will be pressured into contacting Applicant for improper purposes. In addition, based on his life-long connections with, and dedicated service to, this country, there is even less risk that Applicant would respond to any such contact by agreeing to act against U.S. interests.

A security risk may exist when an individual's immediate family . . . are (1) not citizens of the United States or (2) may be subject to duress. These situations may create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of foreign countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

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

Mitigating Condition - 1. A determination that the immediate family member(s) . . . in question would not constitute an unacceptable security risk.

Most of his family are Americans residing in the U.S., and nearly all of his close relationships are here. Nothing

suggests anything other than dedication to this country and its interests. His brother and uncle in Hong Kong are a reality but are far outweighed by Applicant's U.S. ties. From the totality of the evidence, I conclude the evidence does not suggest the presence of a security risk.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Guideline B (Foreign Influence) For the Applicant

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.c. For the Applicant

Subparagraph 1.d. For the Applicant

Subparagraph 1.e. For the Applicant

Subparagraph 1.f. 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