

KEYWORD: Foreign Influence

DIGEST: The Government established a *prima facie* case under Guideline B based on the fact applicant's father is a British citizen residing in Hong Kong. The applicant has, however, presented convincing evidence that his father does not present a security risk. I therefore conclude that applicant has rebutted the Government's *prima facie* case. Clearance is granted.

CASENO: 03-22052.h1

DATE: 08/15/2005

DATE: August 15, 2005

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 03-22052

**DECISION OF ADMINISTRATIVE JUDGE**

**JOSEPH TESTAN**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

William F. Savarino, Esq.

**SYNOPSIS**

The Government established a *prima facie* case under Guideline B based on the fact applicant's father is a British citizen residing in Hong Kong. The applicant has, however, presented convincing evidence that his father does not present a security risk. I therefore conclude that applicant has rebutted the Government's *prima facie* case. Clearance is granted.

**STATEMENT OF THE CASE**

On September 15, 2004, 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 October 13, 2004. The case was assigned to the undersigned on March 29, 2005. A Notice of Hearing was issued on April 7, 2005, and the hearing was held on May 20, 2005. The transcript was received on June 6, 2005.

## **RULINGS ON PROCEDURE**

At the hearing SOR Allegation 1a was amended. As amended, SOR Allegation 1a is as follows:

1a. Your father is a citizen of the United Kingdom and currently resides in Hong Kong.

## **FINDINGS OF FACT**

Applicant is 27 years of age.

Applicant was born in Hong Kong. In 1990, when applicant was 12 years old, he, his parents, and brother moved to the United States. They made the move because of the uncertainty involved with Hong Kong being turned over to the Peoples Republic of China (PRC).

Applicant attended middle school and high school in the United States. Following his graduation from high school, he attended a four year university in the United States. From the time he received his degree to the present time, he has worked in the United States. He became a United States citizen in 1996 because he is "set on spending the rest of [his] life in the United States" (TR at 39).

Applicant's father has worked for a large and successful company based in Hong Kong<sup>(1)</sup> since before applicant was born. Within a month or two of moving his family to the United States, he moved back to Hong Kong to continue with his job. Applicant speaks with him an average of once a month. The father is a British citizen. He plans on retiring in two years and then moving back to the United States to live with his family. Applicant's mother will be sponsoring him (Exhibit I). When he is eligible he will be applying for United States citizenship (Exhibit G). Applicant's mother and brother still live in the United States, both are United States citizens, and both plan on remaining in the United States. Applicant has a grandmother, aunt and uncle (on his father's side) who are United States citizens living in the United States.

Applicant's parents have substantial assets in the United States, including two houses, bank accounts and mutual funds (Exhibit J).

Applicant testified credibly that if he were ever approached by anyone looking for classified information he would report the approach to his security department.

Applicant's supervisor at his place of employment appeared at the hearing and testified on applicant's behalf. She testified that applicant has an excellent work ethic, is highly regarded by coworkers and supervisors, and is reliable, dependable, and trustworthy.

### **CONCLUSIONS**

Although applicant, his mother and brother are United States citizens living in the United States, applicant's father is a British citizen residing in Hong Kong. This fact requires application of Disqualifying Condition 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 of or present in, a foreign country*).

Based on the evidence presented, I conclude that applicant's father is not an agent of Hong Kong. I further conclude that he is not in a position to be exploited by Hong Kong in a way that could force applicant to choose between loyalty to him and loyalty to the United States. Based on the foregoing, Mitigating Condition E2.A2.1.3.1 (*a determination that the immediate family member(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*) is applicable to this case. Based on the evidence as a whole, I conclude that applicant's evidence was sufficient to overcome the Government's *prima facie* case.

### **FORMAL FINDINGS**

GUIDELINE 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.

---

Joseph Testan

Administrative Judge

1. The company is now owned by a corporation based in a democratic country that is one of America's closest allies.