

KEYWORD: Foreign Influence

DIGEST: Applicant was born in Hong Kong in 1959, almost 40 years before it became a part of the People's Republic of China (PRC) in 1997. She came to the U.S. in 1970 with her parents at age 11, and has resided here ever since. They all became U.S. citizens in 1979. She is married, has two children, and has spent 22 years working in the U.S. defense industry. Her only ties to Hong Kong are the presence of one sister and two siblings-in-law, with whom her relationships are warm but not frequent. Her travels to Hong Kong and the PRC have mostly been family vacations and no security significance is apparent. Applicant credibly avers she would promptly report any contacts involving U.S. security interests. Mitigation has been established. Clearance is granted

CASENO: 03-24930.h1

DATE: 06/28/2005

DATE: June 28, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-24930

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant was born in Hong Kong in 1959, almost 40 years before it became a part of the People's Republic of China (PRC) in 1997. She came to the U.S. in 1970 with her parents at age 11, and has resided here ever since. They all became U.S. citizens in 1979. She is married, has two children, and has spent 22 years working in the U.S. defense industry. Her only ties to Hong Kong are the presence of one sister and two siblings-in-law, with whom her relationships are warm but not frequent. Her travels to Hong Kong and the PRC have mostly been family vacations and no security significance is apparent. Applicant credibly avers she would promptly report any contacts involving U.S. security interests. Mitigation has been established. Clearance is granted.

STATEMENT OF THE CASE

On December 2, 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, 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 January 25, 2005, 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 April 5, 2005. On May 6, 2005, a Notice of Hearing was issued, setting the hearing for May 24, 2005. At the hearing, the Government did not present any witnesses but offered three exhibits, which were marked for identification as Government Exhibits (GX) 1-4. Applicant testified and offered 13 exhibits, which were marked as Applicant's Exhibits (AX) A - M. All exhibits were admitted without objection. The transcript (Tr) was received at DOHA on June 2, 2005.

FINDINGS OF FACT

Applicant is a 45-year-old cost analyst for a major defense contractor. She was born in Hong Kong in 1959. Her parents brought her to the United States (U.S.) in 1970, when she was 11. She became a U.S. citizen in 1979, along with her parents. She considers herself to be an American, with no emotional or other ties to Hong Kong or any other nation. She holds only a valid U.S. passport (GX 1). She has worked in the aerospace industry for 22 years (Tr at 27). The record does not cite any security-related problems during her career.

She does not discuss "classified military information" with her foreign relatives (Tr at 27). Her contacts with those residing in Taiwan are "rare" (*Id.*). None of the relatives work for the Taiwan government (*Id.*).

The SOR contains four allegations, 1.a. - 1.d., under Guideline B (Foreign Influence). Applicant admits the factual bases of all four allegations and adds explanations. Applicant's admissions are accepted and incorporated herein as Findings 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. - Applicant's sister is a citizen and resident of Hong Kong. "[They] are not very close" and contacts are generally limited to visits back and forth for about a week at a time, at which they generally discuss only family matters (Tr at 31 and AX A). Applicant's parents are also U.S. citizens and reside in the U.S.

1.b. - Applicant's brother-in-law and sister-in-law are citizens and residents of Hong Kong.

Applicant rarely sees them - two or three times in the past ten years (Tr at 32 and AX B and AX C). They do not know what kind of work Applicant does. They think she works with commercial aircraft (Tr at 33).

1.c. - Applicant traveled to Hong Kong in December 1998, July 1998, and November 1997.

The first two visits were to attend the funerals of her husband's parents. The third trip was a family vacation to Japan and Hong Kong (Tr at 28).

1.d. - Applicant traveled to the People's Republic of China (PRC) in July 2002. Applicant and her family went on a group tour (Tr at 29).

During the period covered by 1.c. and 1.d., above, Applicant and her family have also taken family vacation trips to the United Kingdom, France, Italy, and Thailand (Tr at 35, 44). She has never been asked on any of the foreign trips about her work or related information (Tr at 45). She receives a briefing every year about what to do if she is asked questions about any classified information or programs. She credibly avers that she would promptly report any such contacts to company security officials (Tr at 47).

Several of her supervisors and colleagues (most holding a security clearance) speak very highly of Applicant and her dedication to U.S. security interests. They use such terms as dependable, trustworthy, and discreet in her handling of sensitive information (AX C, AX D, AX E, AX G, AX H, AX I, AX J, AX K, and AX L.). Her friends have similar positive things to say about Applicant (AX F, and AX M).

POLICIES

Each adjudicative decision must 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.

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

As with all DOHA decisions, the facts and circumstances, when viewed under the Directive's Guidelines, determine the outcome. The Government's evidence in support of the issuance of the SOR in this case comes entirely from Applicant's security clearance application (SF 86). The four suballegations are clearly supported by the evidence of record, and have a logical connection or "nexus" to the issue of Applicant's eligibility to hold a DoD security clearance. The remaining question is whether Applicant has adequately mitigated or extenuated the Government's concerns under Guideline B.

The SOR allegations are based on the facts that (1) Applicant has a sister and in-laws in Hong Kong, and that she has some contact with them and (2) that Applicant has traveled to Hong Kong and the PRC.

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.

None of the other disqualifying conditions are established by the record.

Condition that could mitigate security concerns:

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

Based on the totality of the evidence, Applicant has provided significant evidence in mitigation, as described above under Findings of Fact. There is no evidence suggesting that any of the cited relatives are agents of the Taiwan government or likely to be pressured by that government to induce Applicant to violate her security obligations to the United States. As far as Applicant knows, they are not in such a position. The fact that any pressure has not been applied in the past does not automatically mean it will not happen in the future, but it is a factor that must be considered in the context of all the evidence of record. Whether there is a risk that improper pressure may be applied to Applicant is certainly an issue to be considered, but even more important is how an applicant is likely to respond.

In the present case, there is an overwhelming weight of the evidence of record of Applicant's long residence in the U.S., her involvement in American society, and the U.S. defense industry for 22 years. This uncontradicted evidence demonstrates that Applicant considers herself to be an American, and will always act in defense of U.S. security interests. Nothing in the evidence comes close to suggesting that she would even hesitate before acting as she says she will, to immediately report the improper contact.

Applicant avers her "loyalty and desire to serve the United States as I have all my life. My loyalty is to my country, not [my relatives]" (Tr at 27). Her life and accomplishments support her statements. Overall, I conclude that any risk is minimal, if not nonexistent. I conclude she can be relied upon to act properly when it comes to protecting classified information and material

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

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