

KEYWORD: Foreign Influence

DIGEST: The Government established a *prima facie* case under Guideline B based on the fact applicant's mother, father, and grandmother are citizens and residents of Hong Kong. The applicant has, however, presented convincing evidence that his immediate family members in Hong Kong do not present a security risk. I therefore conclude that applicant has rebutted the Government's *prima facie* case. Clearance is granted.

CASENO: 03-25058.h1

DATE: 07/12/2005

DATE: July 12, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-25058

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

David P. Price, Esq.

SYNOPSIS

The Government established a *prima facie* case under Guideline B based on the fact applicant's mother, father, and grandmother are citizens and residents of Hong Kong. The applicant has, however, presented convincing evidence that his immediate family members in Hong Kong do 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 December 27, 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 January 12, 2005. The case was assigned to the undersigned on March 23, 2005. A Notice of Hearing was issued on April 7, 2005, and the hearing was held on May 19, 2005. The transcript was received on June 2, 2005.

FINDINGS OF FACT

Applicant is 29 years of age.

Applicant was born in Hong Kong. When it became clear that Hong Kong was going to be handed back to the Peoples Republic of China (PRC), applicant's parents decided it was time to get applicant and his two siblings out of the country. Applicant's mother's family had come from China, and their experience with the Communists before they moved to Hong Kong was anything but pleasant. ⁽¹⁾ In 1996, applicant and his siblings moved to the United States. Applicant became a naturalized United States citizen in 2002. His two siblings also became United States citizens, and both still reside in the United States. Applicant's wife, to whom he has been married since 2003, is a naturalized United States citizen. Their one child was born in the United States.

Applicant's mother and father are citizens and residents of Hong Kong. They are also permanent United States residents. They intend to move to the United States and become United States citizens. Applicant's elderly grandmother is also a citizen and resident of Hong Kong. None of these family members ever worked for the Hong Kong or PRC governments.

Applicant maintains regular contact with his parents. He has made at least six trips to Hong Kong to visit his immediate family members since moving to the United States.

Applicant and his wife testified that they are proud to be Americans and that their loyalty lies with the United States. This testimony was very credible.

Two of applicant's superiors at his place of employment appeared at the hearing and testified on applicant's behalf. Both witnesses testified that applicant is an excellent employee who is reliable and trustworthy. They further testified that they have no doubts about applicant's loyalty to the United States.

CONCLUSIONS

Although applicant, his wife, and his child are United States citizens living in the United States, applicant's parents and grandmother are citizens and residents of Hong Kong. These facts require 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 these immediate family members are not agents of Hong Kong or the PRC. I further conclude that they are not in a position to be exploited by Hong Kong or the PRC in a way that could force applicant to choose between loyalty to them 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 foregoing, I conclude that applicant's evidence was sufficient to overcome the Government's *prima facie* case under Guideline B.

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. Applicant's grandfather was tortured by the Communists.