

DATE: January 16, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-02438

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Brian A. Laird, Esquire, Karp, Heurlin & Weiss

SYNOPSIS

This 28-year-old engineer was born in Hong Kong and is a naturalized U.S. citizen. He has relatives, including grandparents, still living there. Applicant credibly avers that he would reject any request to disclose classified information and promptly report any such contact to U.S. authorities. Mitigation has been established. Clearance is granted.

STATEMENT OF THE CASE

On June 3, 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 June 19, 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 August 6, 2003. On September 8, 2003, a Notice of Hearing was issued, setting the hearing for September 25, 2003. At the hearing, the Government did not present any witnesses but offered three exhibits, Government Exhibits (GX) 1-3. Applicant testified and offered 14 exhibits, which were marked as Applicant's Exhibits (AX) A-N. All exhibits were admitted without objection. The transcript (Tr) was received at DOHA on October 6, 2003.

FINDINGS OF FACT

Applicant is a 28-year-old. He was born in 1975 in Hong Kong, which was then under the control of the United Kingdom. Hong Kong is now a part of the People's Republic of China (PRC). The SOR contains eight allegations, 1.a. - 1.h., under Guideline B (Foreign Influence) and one allegation, 2.a, under Guideline E (Personal Conduct). Applicant admits the factual allegations in SOR 1.a. - 1.h., and denies SOR 2.a. The admissions are incorporated into this decision and are deemed to be findings of fact.

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

Guideline B (Foreign Influence)

1.a. - Applicant's brother, grandfather, and grandmother are citizens of Hong Kong and currently reside in Hong Kong. The brother obtained U.S. Resident Alien Status and lived here for a while, but then returned to Hong Kong.

1.b - Applicant's brother and his wife are physicians employed at a Hong Kong hospital; they are paid on a government scale and are considered to be government workers. Applicant is "not particularly close to that brother." (Tr at 23).

1.c. - Applicant's father and mother are citizens of Hong Kong, but reside in the U.S..

1.d. - Applicant's parents own a home in Hong Kong, where they stay while visiting and caring for Applicant's grandparents. As far as he knows, he is not likely to receive any financial benefit from this property (Tr at 54)

1.e. - Applicant's girlfriend is a citizen of Hong Kong and resides in the U.S.

1.f. - Applicant has traveled to Hong Kong on at least 15 occasions since 1994; twice in 2002, three times in 2001, three times in 2000, once in 1999 and 1997, three times in 1996, and once each in 1995 and 1994. These visits are to see his elderly grandparents.

1.g. - Applicant traveled to the PRC in April 2000 on business for his U.S. employer.

1.h. - Applicant has occasional email contact with a friend who is a citizen of and resides in Hong Kong, and who is employed by a Hong Kong pharmaceutical manufacturer. The contact was monthly at the time the SCA was completed but has decreased to about twice a year. The friend is not employed by the Hong Kong or PRC governments. (Tr at 43, 44).

Guideline E (Personal Conduct)

2.a. - Applicant *did not* intentionally falsify his answer to Question **9 - Your Relatives and Associates** on his security clearance application (SCA), filed on July 23, 2001 when he incorrectly stated that his brother lived in the U.S., when in fact he resided in Hong Kong. Because of their infrequent contacts and less than close relationship, Applicant discovered only after he completed the SCA that his brother had returned to Hong Kong. (Response to SOR and Tr at 23, 24, 33-38).

Applicant received his B.A., M.A. and PhD in engineering from a U.S. university. He has received numerous awards from his employer (Tr at 44 and GX L). He has received highly positive letters of recommendation and work evaluations. (Tr at 45, AX A).

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 B (Foreign Influence)

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

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 or present in, a foreign country;
3. Relatives . . . who are connected with any foreign government.
8. Substantial financial interest in a foreign country, or in any foreign-owned or operated business that could make the individual vulnerable to foreign influence.

Conditions that could mitigate security concerns include:

1. A determination that the immediate family members . . . 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;
5. Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.

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

Applicant was born in September 1975 in Hong Kong, when the United Kingdom was in control. He resided with his family in Hong Kong until when they moved to the U.S. in 1992, five years before Hong Kong became a Special Administrative Region of the PRC in 1997. Applicant was 17 in 1992, he became a naturalized U.S. citizen in April 1999, and obtained a U.S. passport in May 1999. (AX M). He considers himself to be only a citizen of the U.S. and not a dual citizen of Hong Kong or the PRC. (GX 1). He has no feelings of affection or obligation to Hong Kong, the PRC, or even his relatives in Hong Kong, particularly in the context of where his loyalties and obligations lie.

The most important people in his life reside in the U.S. His father and mother became U.S. citizens in May 2003.

1.a. and 1.b. - Applicant's grandparents are in their mid and late 80s, in poor health and living in retirement in Hong Kong. Applicant's brother, a physician, came to the U.S. as a Resident Alien, and planned to bring his wife, also a physician to the U.S. as well. The brother thereafter returned to Hong Kong, where he and his wife are again both working in a Hong Kong hospital, which is owned by the PRC government.⁽¹⁾ Their contact with the Hong Kong or PRC governments is simple that they work in a hospital in Hong Kong and the hospital is ultimately owned by the government.

1.c. and 1.d. - Applicant's parents became U.S. citizens in May 2003. (AX G and GX H). The parents' residence in Hong Kong is for them to use when they visit Applicants grandparents. The single residence is worth about \$100,000. Applicant does not know if the property will be still be owned by his parents in the indefinite future, or even what percentage, if any, that he might inherit. While residing in Hong Kong, his father was a high school principal and his mother was a librarian. (Tr at 28).

Based on the totality of the evidence, I conclude that Applicant has no ties to or contacts with Hong Kong except for his visits to elderly and ailing grandparents. His affection for them is suggested by the frequency of his visits, but there is no indication they are agents of the Hong Kong or PRC governments or are likely to be. Likewise there is no evidence suggesting they are at risk of being asked to pressure Applicant to act against U.S. interests. There is not much more, if anything, that Applicant can do to mitigate that risk. However, he has consistently averred that he would never act against U.S. interests and that he would promptly report any improper contacts to U.S. authorities. In the absence of past contacts, he is making a promise unsupported by any prior similar conduct. Based on his record since coming to the U.S., I find him to be a credible witness and conclude he would act precisely as he promised.

1.e. - Applicant's girlfriend is still a citizen of Hong Kong, still resides in the U.S., but his no longer a girlfriend, as their relationship has changed to being more like long distance friends (Tr at 42). I conclude the risk here is even smaller than with the relatives in Hong Kong.

1.f. & 1.g. - Applicant has traveled to Hong Kong and the PRC as alleged in the SOR. Travel to Hong Kong has been to visit his grandparents. The one visit to the PRC was on company business (Tr at 39, 40). In both cases, I conclude his travels do not show any kind of preference for Hong Kong or the PRC, or make him susceptible to improper pressures.

When Applicant left Hong Kong, which was then under British control, he had a British passport (AX D), which he surrendered and renounced his British/Hong Kong citizenship when he learned during the investigative process that there might be a problem with his eligibility to hold a DoD security clearance. (AX I, and AX J (there is no AX K)). Applicant has "only one single loyalty and that s to the United States." (Tr at 24, 38, 39 and AX L). He will honor the vow to the U.S. he made during his naturalization ceremony. (Tr at 47).

Disqualification and Mitigation,

Foreign Influence - Disqualifying Condition (DC) 1 (immediate family members in Hong Kong) is the only condition that is applicable.⁽²⁾ However, Mitigating Conditions (MC) 1 applies in that I determine the immediate family members in question would not constitute an unacceptable security risk. To the extent that DC 8 applies(financial interest in Hong Kong), it is outweighed by MC 5 because the financial interest is not shown to even exist and, even if it came about, would be minimal.

Personal Conduct (Falsifications) - I find that Applicant did not intentionally provide a false answer, as alleged. Therefore, no Disqualifying Conditions apply.

There is no allegation or suggestion of any foreign preference being shown by Applicant. In the absence of any substantial financial interest, the sole remaining concern is that Applicant might be susceptible to pressure based on his relationships with family in Hong Kong. In other words, although he has done nothing to indicate a preference for Hong Kong or the PRC, (in fact the contrary is found to be the case), he is at risk of acting in favor of a foreign state if pressure, coercion, or persuasion is used. The evidence does not support that premise.

Overall, I conclude that Applicant is man of integrity and one who takes his obligations seriously. Taken separately, many of the allegations have no or minimal current security significance. Considering the evidence as a whole, I conclude there is minimal risk that Applicant's family members and friend in Hong Kong would be asked to influence Applicant or that they would agree to do so. More important, I conclude that Applicant would not feel "forced to choose" between his family and his obligations to the U.S., but would promptly report it to U.S. authorities. For these reasons, notwithstanding that the foreign country is the PRC, Applicant is not likely to be subject to foreign influence from any person or government.

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

Subparagraph 1.g. For the Applicant

Guideline E (Personal Conduct) For the Applicant

Subparagraph 1.a. 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

1. Several of Applicant's exhibits, AX D, AX E, AX F, and AX H, pertain to Applicant's older brother, who has the same first and last name, but a different middle name or names. The exhibits also show a birth date in 1969, while Applicant was born in 1975. AX G appears to be for the brother's wife.

2. There is no evidence of an existing, likely, or possible financial interest in Hong Kong.