

DATE: November 9, 2004

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-13045

**ECISION OF ADMINISTRATIVE JUDGE**

**MICHAEL J. BRESLIN**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a 63-year-old naturalized citizen of the United States. One of Applicant's brothers continues to live in Hong Kong and Applicant maintains regular contact with him. She also has extensive ties to the United States. Applicant has been employed by a defense contractor for over 19 years and has held a security clearance for over 12 years without incident. All her other family members, including her children, are citizens and residents of the United States or Canada. All of Applicant's financial assets are in the United States, including real estate, savings, and investments. Applicant has mitigated the security concerns arising from the possible foreign influence. Clearance is granted.

**STATEMENT OF THE CASE**

On January 31, 2002, Applicant submitted a security clearance application. Under Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (the "Directive"), the Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On February 12, 2004, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under the Directive, Guideline B, Foreign Influence.

Applicant answered the SOR in writing on March 10, 2004. She elected to have a hearing before an administrative judge.

The case was assigned to me on August 11, 2004. With the concurrence of the parties, I conducted the hearing on September 15, 2004. The government presented three documents, and Applicant testified on her own behalf. DOHA received the transcript on September 29, 2004.

**FINDINGS OF FACT**

Applicant admitted the factual allegations in the SOR. Applicant's Answer to SOR, dated March 10, 2004. Those

admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant is 63 years old. Ex. 2 at 1. She was born in Singapore and immigrated with her family to the United States. *Id.* at 1. Applicant became a naturalized citizen of the United States in 1972, and has lived and worked in this country since then. *Id.* She has substantial assets in the United States, including real estate, savings, and investments. Tr. at 21.

Applicant began working for her present employer, a defense contractor, in 1985 as a scientific programmer. *Id.* at 2. She is currently a systems engineer. *Id.* Applicant was first granted a top secret security clearance in 1992, and it was renewed in 1997. Tr. at 14; Ex. 2 at 8. Her security clearance has never been denied, suspended, or revoked. Ex. 2 at 8.

Applicant has been married and divorced twice. *Id.* at 3. Her mother is a citizen of Canada and resides in that country. *Id.* Her father is deceased. *Id.* She has two grown sons who are citizens and residents of the United States. *Id.* at 4. Applicant has one brother who is a naturalized citizen and resident of the United States, a second brother who is a citizen and resident of Canada, and a third brother who is a resident of Hong Kong. *Id.* at 4. Between about 1985 and 2000, Applicant and her mother took a trip as tourists each year. Tr. at 19. They visited Hong Kong every other year. *Id.* Applicant no longer makes these trips, because her mother does not want to travel. *Id.*

Applicant's brother in Hong Kong manages the family-owned printing company. Tr. at 14-15. He has never served in the military or worked for the government. Tr. at 18. Applicant believes her brother retained British citizenship after Hong Kong became part of the People's Republic of China (P.R.C.) in 1997, but is not certain. Tr. at 15; Ex. 2 at 4. Her brother applied to emigrate to the United States many years ago and was waiting for the opportunity. Tr. at 20. However, his wife may not want to leave Hong Kong. *Id.*

Applicant maintains regular contact with her brother in Hong Kong. She speaks to him about four times a year. Applicant's Answer to SOR, *supra*. Applicant traveled to Hong Kong in 2000 for pleasure and to seek alternative medical treatment for her back problems. *Id.*; Tr. at 12. Applicant also sends her brother nutritional supplements from time to time. Tr. at 12-13. Her brother visited the United States while his son was a student in this country. Tr. at 16. Applicant last saw her brother in Toronto in 2002 when her family got together to celebrate Chinese New Year. Applicant's Answer to SOR, *supra*.

## **POLICIES**

In Executive Order 12968, *Access to Classified Information*, § 3.1(b) (August 4, 1995), the President provided that eligibility for access to classified information shall be granted only to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. Exec. Ord. 10865, § 7. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are:

Guideline B, Foreign Influence: A security risk may exist when an individual's immediate family, including cohabitants, or other persons to whom he may be bound by affection, influence, or obligation, 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 or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure. Directive, ¶ E2.A2.1.1.

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to these adjudicative guidelines, are set forth and discussed in the conclusions below.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." Directive, ¶ E2.2.1. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. *Id.* An administrative judge should consider the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable 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. *Id.*

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. Directive, ¶ E3.1.14. Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. Directive, ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2.

### CONCLUSIONS

I considered carefully all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

The Government's evidence and Applicant's admissions constitute substantial evidence of a potentially disqualifying condition under Guideline B of the Directive. Paragraph E2.A2.1.2.1 provides that it may be a disqualifying condition if "*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.*" Paragraph E2.A2.1.3.1. defines "*immediate family members*" to include a spouse, father, mother, sons, daughters, brothers, and sisters. The evidence indicates that Applicant's brother is a resident of Hong Kong, and Applicant maintains regular, although somewhat sporadic, contact with him.

These circumstances "could create the potential for foreign influence that could result in the compromise of classified information." Directive, ¶ E2.A2.1.1. While the

mere possession of family ties with persons in a foreign country is not, as a matter of law, automatically disqualifying . . . [it] does raise a prima facie security concern sufficient to require an applicant to present evidence of rebuttal, extenuation or mitigation sufficient to meet the applicant's burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for the applicant.

ISCR Case No. 99-0424, 2001 DOHA LEXIS 59 at \*\*33-34 (App. Bd. Feb. 8, 2001).

These security concerns can be mitigated where it is determined 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 involved and the United States.*" Directive, ¶ E2.A2.1.3.1. In this case, Applicant's brother in Hong Kong is not an "agent of a foreign power." *See* 50 U.S.C.A. § 1801(b).

In assessing whether relatives are vulnerable to exploitation, it is helpful to consider several factors, including the character of the government of the relevant foreign country. The People's Republic of China is an authoritarian state controlled by the Chinese Communist Party. Ex. 3 at 1. It has a poor record of protecting human rights. *Id.* Its interests are hostile to the United States. Since 1997, Hong Kong has been a special administrative region of China, which enjoys a high degree of autonomy, except in defense and foreign affairs. Ex. 3 at 47. Hong Kong remains a free society, and its citizens have rights protected by law. *Id.* The government of Hong Kong generally respects the human rights of its residents. *Id.* at 48. The possibility exists that the government would attempt to exploit or pressure its residents to act adversely to the interests of the United States, but the risk is not as great as in the P.R.C.

It is important to consider the vulnerability to duress of Applicant's brother in Hong Kong. As noted above, Applicant's brother is not and has never been an employee of the government or the military, nor does he rely upon a government pension. He operates an independent family business. His financial position is such that he can travel abroad if desired. Under these circumstances, the opportunity for adverse influence is substantially reduced.

Another significant factor is Applicant's vulnerability to pressure or duress applied indirectly through her ties with her brother. Applicant has strong familial and emotional ties to her brother in Hong Kong. At the same time, she has extensive ties to the United States. She has lived here most of her life, her children live here, and the rest of her family members live in the United States or Canada. All her financial interests are in the United States. She has worked for this defense contractor for over 19 years and has substantial professional and financial ties to the company. Finally, she has held a security clearance since 1992 without adverse incident. Considering the extent of her ties to the United States, it appears Applicant is not unusually vulnerable to pressure or duress. I conclude the mitigating condition set out in ¶ E2.A2.1.3.1 of the Directive applies.

I considered carefully all the facts and circumstances in this case. I conclude any potential security concerns arising from Applicant's family ties to Hong Kong are mitigated by Applicant's extensive interests in the United States.

### **FORMAL FINDINGS**

My conclusions as to each allegation in the SOR are:

Paragraph 1, Guideline B: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

### **DECISION**

In light of all of 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. Clearance is granted.

Michael J. Breslin

Administrative Judge