

DATE: July 30, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-17970

ECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Christopher D. Silcox, Personal Representative

SYNOPSIS

The Applicant's older brother is a fairly high level employee of the Hong Kong Special Administrative Region of the People's Republic of China (Hong Kong). This connection with a foreign government, through her brother, is not mitigated. Clearance is denied.

STATEMENT OF THE CASE

On February 23, 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 the Applicant, which detailed the 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

Applicant filed an Answer to the SOR on March 18, 2004.

The case was received by the undersigned on April 23, 2004. A notice of hearing was issued on April 27, 2004, and the case was heard on May 19, 2004. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also submitted documentary evidence. The transcript was received on June 3, 2004. The issue raised here is whether the Applicant's foreign influence militates against the granting of a security clearance. [The Applicant admits the underlying factual basis of all of the allegations.]

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The Applicant is 36 years of age, and is employed by a defense contractor that seeks a security clearance on behalf of the Applicant. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact.

Guideline B - Foreign Influence

1.a.~1.e. The Applicant married a dual national of the United States and the United Kingdom in Hong Kong in 1991 (Government Exhibit (GX) 1 at page 1, and GX 2 at page 1). She immigrated to the U.S. in 1992 to be with her husband (*id*). She has lived in the U.S. since 1992, became a U.S. citizen in 1996, and she has a 14 month old American born daughter (Transcript (TR) at page 14 lines 12~16, at page 17 lines 6~12, and at page 31 line 17 to page 32 line 17). Since coming to the U.S., the Applicant has returned to Hong Kong "four to five times" to visit her family (TR at page 15 line 23 to page 16 line 4, at page 18 lines 1~9, and at page 22 lines 16~24).

The Applicant's parents are citizens of and reside in Hong Kong (TR at page 19 line 3 to page 22 line 15, at page 23 line 4 to page 24 line 18, GX 1 at page 4, and GX 2 at pages 2~3). Both are retired (TR at page 19 line 3 to page 22 line 15, and at page 23 line 4 to page 24 line 18). Her 67 year old father was a jeweler, and her 62 year mother was a seamstress (*id*). Neither of her parents have any connection with the government of Hong Kong or any other government (*ibid*).

The Applicant's younger brother is a citizen of and resides in Hong Kong (TR at page 27 line 20 to page 28 line 12, GX 1 at page 4, and GX 2 at pages 2~3). He is a loan officer for a private bank (*id*).

The Applicant's sister is a citizen of and resides in Hong Kong (TR at page 29 line 12 to page 30 line 6, GX 1 at pages 4~5, and GX 2 at pages 3~4). She works as a secretary for a private accounting firm (*id*).

The Applicant's older brother is also a citizen of and resides in Hong Kong (TR at page 24 line 19 to page 25 line 25). He is a fairly high level employee of the Hong Kong government (TR at page 26 lines 1~25). The Applicant does not know whether or not her older brother is a member of the communist party, but she believes he is not a member (TR at page 35 line 24 to page 36 line 21).

Mitigation

The Applicant's former supervisor thinks most highly of the Applicant, and would recommend her for a position of trust (Applicant's Exhibit A at page 1).

POLICIES

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern. Furthermore, as set forth in the Directive, each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature, extent, and seriousness of the conduct and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future.

The Administrative Judge, however, can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature.

The Government must make out a case under Guideline B (foreign influence), which establishes doubt about a person's

judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and her ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct or situation, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who is subject to a foreign influence may be prone to provide information or make decisions that are harmful to the interests of the United States. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSIONS

The Applicant's parents, sister and brothers are "citizen[s] of . . . [and] present in, a foreign country," Hong Kong. The first disqualifying condition is therefore applicable. Furthermore, as the Applicant's brother is a fairly high level employee of Hong Kong's government, she has a relative who is . . . "connected with . . . a foreign government;" and as such, the third disqualifying condition is also applicable. There are no mitigating conditions applicable under Foreign Influence, as her brother is an agent "of a foreign power." Guideline B is found against the Applicant.

Considering all the evidence, the Applicant has not rebutted the Government's case regarding her foreign influence. The Applicant has thus not met the mitigating conditions of Guideline B, and of Section E.2.2. of the Directive. Accordingly, she has not met her ultimate burden of persuasion under Guideline B.

FORMAL FINDINGS

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: AGAINST THE APPLICANT

- a. Against the Applicant.
- b. Against the Applicant.
- c. Against the Applicant.
- d. Against the Applicant.
- e. Against the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

DECISION

In light of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant or continue a security clearance for the Applicant.

Richard A. Cefola

Administrative Judge