

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Applicant mitigated allegations of foreign preference and foreign influence by renouncing dual citizenship with Hong Kong and turning in the British passport issued to him before he emigrated to the U.S. in 1981 at age 14. Applicant has spent the last 12 years in the U.S., attending high school and university. He and his mother became citizens at the earliest opportunity and the only close relative that remains in Hong Kong, now a Special Administrative Region of China, is his father who holds a U.S. green card, and desires to emigrate to the U.S. Applicant's relationship with his father has always been remote. Based on a whole person analysis, clearance is granted.

CASENO: 04-03319.h1

DATE: 10/20/2005

DATE: October 20, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-03319

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Peregrine D. Russell-Hunter, Esq., Department Counsel

FOR APPLICANT

Robert R. Jones, Esq.

SYNOPSIS

Applicant mitigated allegations of foreign preference and foreign influence by renouncing dual citizenship with Hong Kong and turning in the British passport issued to him before he emigrated to the U.S. in 1981 at age 14. Applicant has spent the last 12 years in the U.S., attending high school and university. He and his mother became citizens at the earliest opportunity and the only close relative that remains in Hong Kong, now a Special Administrative Region of China, is his father who holds a U.S. green card, and desires to emigrate to the U.S. Applicant's relationship with his father has always been remote. Based on a whole person analysis, clearance is granted.

STATEMENT OF THE CASE

On November 10, 2004, the Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry* as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, 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. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated December 23, 2004, Applicant responded to the allegations set forth in the SOR, and requested a hearing. The case was assigned to me on June 20, 2005, and a Notice of Hearing was issued August 10, 2005, for a hearing held on August 31, 2005. The Government introduced ten exhibits at the hearing and the Applicant introduced eight. All were accepted into evidence. The Applicant testified on his own behalf. The transcript was received on September 16, 2005.

FINDINGS OF FACT

Applicant admitted the specific facts in all allegations under Foreign Preference-Guideline C, and under Foreign Influence-Guideline B with explanatory information provided for each allegation. Those admissions are incorporated herein as findings of fact. After a complete review of the evidence in the record and upon due consideration of the record the following additional findings of fact are made:

Applicant is a 26-year-old employee of a major defense contractor working as a software engineer. His parents emigrated from Hong Kong in 1981 when he was 14 years old. He attended high school and graduated from a state university in 2001 with a degree in computer science. He immediately began working for his present employer and continued his studies. He recently received a master's degree in computer science and is now enrolled in graduate school working towards an executive MBA sponsored by his employer. He worked on unclassified projects until 2003 when he applied for a security clearance.

After his family emigrated to the U.S., his father discovered that his lack of English language skills limited his employment as a public accountant in the U.S., so he returned to Hong Kong after only a month in the U.S. He was re-employed by his former employer and still lives and works there as an auditor. He and his wife visit each other in their respective countries, and he holds a U.S. green card. Applicant's mother and Applicant became citizens in 2000, at their earliest opportunity to do so.

Applicant traveled to Hong Kong six time since 1997. The first two were before he became a U.S. citizen, so he used a British passport issued to Hong Kong citizens. After becoming a U.S. citizen he used a U.S. passport for the next four trips. The purpose of those trips were as follows:

1. 1997-High school graduation trip;
2. 1998-terminal illness of grandmother;
3. 2001-college graduation trip;
4. 2002-60th birthday of father;
5. 2003-funeral of maternal grandfather; and
6. 2004-funeral of paternal grandfather.

The last trip was after the SOR was issued and Applicant advised the DSS agent of it when he was interviewed. Applicant has no intention of traveling to Hong Kong in the near future as he is heavily involved in his work and school studies, and his family ties have been reduced through the deaths of his grandparents.

Applicant held a British passport when he came to the U.S. but believed he was no longer a foreign citizen once he became a U.S. citizen. He realized that he might be when he received the SOR. The British passport has now expired. He had a Hong Kong identification card that is required for all persons living in or visiting Hong Kong which he had when he lived there. He used that card while in Hong Kong on visits because it is required to have either a card or a passport to show and he was reluctant to carry a U.S. passport with him at all times. When he realized that he held dual citizenship, he renounced his Hong Kong citizenship and turned in both the passport and identification card (Exh. A). He has never voted in Hong Kong, had bank accounts there, owned property, or served in the military (TR. 42).

In addition to his father in Hong Kong he has three uncles, one maternal and two paternal, living there who have low level jobs. He has little or no contact with them except seeing them at funerals of their respective fathers, Applicant's grandfathers, in 2003 and 2004. One drives a garbage truck, another may be a musician and the occupation of the third is unknown. His relationship with his father is remote and cold (TR. 54). It has been since his youth when his father was so heavily involved in his work that he was rarely at home. He has little contact with him now except for occasional telephone calls no more than a dozen times a year when his father calls to inquire about Applicant. His father visits his wife in the U.S. but Applicant is unaware when these visits occur. His father has never visited Applicant in his home nor has he been invited to do so (TR. 54-55). The last time he saw his father was in 2004 at the funeral of his paternal grandfather in Hong Kong.

Applicant is well regarded in his job by his colleagues, loves his work and his graduate studies, and is proud of his work in the defense community (Exh. F-H). Applicant is single, and participates in community activities similar to those enjoyed by young single college graduates in a mid size U.S. city. He bicycles and works at a local festival in his community (TR. 43).

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position that will give that person access to such information." *Id.* at 527.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1)

the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "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. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b).

CONCLUSION

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors and conditions above, I conclude the following with respect to all allegations set forth in the SOR:

The applicable guidelines for Foreign Preference Guideline C provide that an individual who acts in such a way as to indicate a preference for a foreign country over the United States may be prone to provide information or make decisions that are harmful to the interests of the United States.

Conditions that could raise a security concern and may be disqualifying include the exercise of dual citizenship (E2.A3.1.2.1.), and the possession and/or use of a foreign passport. Security concerns may be mitigated by a willingness to renounce dual citizenship (E2.A3.1.3.4.)

Applicant has turned in his British passport and is not a dual citizen. He never regarded himself as one once he became a U.S. citizen and was surprised to learn that he was one when the SOR was issued. The government conceded that the passport issue was largely mitigated but expressed concern about the voluntary use of the identification card (TR. 71). However, Applicant's explanation of the reason for its use and the rationale for using it in lieu of carrying a passport is reasonable. While his travels to Hong Kong since 1997 were frequent, half of them were to attend funerals of grandparents, an understandable motivation for the trips.

While control of Hong Kong transferred from Great Britain to China in 1997, it retains a degree of independence as a Special Administrative Region with its own governance including an elected legislature. The government has asserted its independence of the mainland on a number of occasions and although it is not the same as it was pre-1997, it does not have the level of security concerns as the rest of the Peoples Republic of China (Exh. II and X, pp. 50-70).

Conditions under Guideline B that could raise a security concern and may be disqualifying include an immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident in a foreign country. (E2.A2.1.2.1.) Possible mitigating conditions (MC) that might be applicable are a determination that the individuals 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 persons involved and the U.S.(E2.A2.1.3.1.), and contacts and correspondence with foreign citizens are casual and infrequent. (E2.A2.1.3.3.)

Based on the evidence of record, including Applicant's admissions, the Government established reasons to deny him a security clearance because of foreign influence. Having established such reasons, the Applicant had the burden to establish security suitability through evidence which refutes, mitigates, or extenuates the disqualification and demonstrates that it is clearly consistent with the national interest to grant a security clearance. ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

The family members of the Applicant in Hong Kong are his father and three uncles. The government conceded that the issues regarding the uncles had been mitigated (TR. 72). None of them pose a security threat or are in a position to be influenced by the conduct of their government, and Applicant does not have a close relationship with them. Through the deaths of all grandparents in Hong Kong, the only close relative Applicant has in Hong Kong is his father. He holds a U.S. green card and would like to become a U.S. citizen once he retires from his employment at the accounting firm. Despite the separation by a continent and an ocean for a quarter of a century, his parents remain married and appear likely to both be in the U.S. upon the father's retirement.

Applicant's relationship with his father since his youth is unusual having a lack of the usual parental identification but is understandable because of the father's absence from the life of the son for a quarter century. Evidence an applicant has contacts with an immediate family member in a foreign country raises a rebuttable presumption the contacts are not casual in nature. The unique relationship Applicant has with his father comes as close to casual as might be imagined. They were never close and are even less so as Applicant becomes increasingly involved in his work and his graduate studies. The Applicant has overcome the presumption.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. The "whole person" concept recognizes that we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and

applying sound judgment, mature thinking, and careful analysis.

Applicant is a young person who has a responsible position of trust and is doing a good job for his company. He has spent his entire adult life since age 14 in the U.S. He is U.S. educated, and embarked on a promising career path as he continues his studies. He provided sincere, credible, and reliable testimony as to his relationships with his family, his motivations, his loyalty to the U.S., and his career goals. His is the classic story of the successful immigrant with drive and determination.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that it is clearly consistent with the national interest to grant clearance to Applicant.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline C: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Paragraph 2 Guideline B: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

DECISION

After full consideration of all the facts and documents 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.

Charles D. Ablard

Administrative Judge