

KEYWORD: Foreign Influence

DIGEST: The Applicant's parents and three siblings are citizens of and reside in Hong Kong. A fourth sibling is a citizen of and resides in Canada. In the late 1940s, the Applicant's parents fled China for British Hing Kong in order to escape the communists. Two of the Applicant's Hong Kong siblings are civil servants. Both siblings became civil servants in the 1970s, long before Hong Kong's reversion to China in 1997. The other sibling is the principal of a school associated with he YMCA. Although two of the Applicant's siblings are arguably connected with a foreign government, they are not in a position to be exploited by a foreign power in a way that could force the Applicant to choose between loyalty to his siblings and the U.S. The Applicant would not submit to any such attempt at coercion. Mitigation is shown. Clearance is granted.

CASENO: 05-04265.h1

DATE: 01/19/2006

DATE: January 19, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-04265

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Jeff A. Nagel, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant's parents and three siblings are citizens of and reside in Hong Kong. A fourth sibling is a citizen of and resides in Canada. In the late 1940s, the Applicant's parents fled China for British Hong Kong in order to escape the communists. Two of the Applicant's Hong Kong siblings are civil servants. Both siblings became civil servants in the 1970s, long before Hong Kong's reversion to China in 1997. The other sibling is the principal of a school associated with the YMCA. Although two of the Applicant's siblings are arguably connected with a foreign government, they are not in a position to be exploited by a foreign power in a way that could force the Applicant to choose between loyalty to his siblings and the U.S. The Applicant would not submit to any such attempt at coercion. Mitigation is shown. Clearance is granted.

STATEMENT OF THE CASE

On August 25, 2005, 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 September 9, 2005.

The case was received by the undersigned on September 28, 2005. A notice of hearing was issued on October 11, 2005, and the case was heard on October 21, 2005. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also submitted documentary evidence. The transcript (TR) was received on November 3, 2005. The issue raised here is whether the Applicant's perceived 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 49 years of age, and is employed by a defense contractor who 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

In the late 1940s, the Applicant's now elderly parents fled China for British Hing Kong in order to escape the communists (TR at page 17 lines 9~22). The Applicant attended college in Scotland, and continued his university education in the U.S. in 1979 on a scholarship (*Id* and TR at page 18 lines 11~19, and Government Exhibit (GX) 1 at page 1). He was naturalized as an American in 1989 (GX 1 at page 1).

1.a. The Applicant's elderly parents and three siblings are citizens of and reside in Hong Kong (GX 1 at page 3). A fourth sibling is a citizen of and resides in Canada (*Id* and TR at page 24 line 8 to page 25 line 1). Two of the Applicant's Hong Kong siblings are civil servants (TR at page 22 lines 20~24, at page 25 line 16 to page 26 line 10, at page 27 lines 13~22, and Applicant's Exhibit (AppX) B at page 2). Both siblings became civil servants in the 1970s, long before Hong Kong's reversion to China in 1997 (*Id*). The other sibling is the principal of a school associated with he YMCA (TR at page 27 line 23 to page 28 line 16, and AppX B at page 20). None of the Applicant relatives have been nor are now members of the communist party (TR at page 17 line 23 to page 18 line 5).

1.b. and 1.c. The Applicant traveled to Hong Kong in 1995, 1996, 2000 and 2002 to visit his relatives (TR at page 35 lines 10~13, and at page 36 lines 7~11). He also visited China in 2002 to visit an American friend and to sight see (TR at page 36 line 12 to page 37 line 7). During these trips, the Applicant has never been approached by anyone inquiring as to his employment (TR at page 29 line 24 to page 31 line 17). He knows to report any such foreign inquisitions (TR at page 40 line 22 to page 41 line 11).

Mitigation

The Applicant is well thought of at his place of employment and in his community (AppX A at page 2, and AppX C).

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 his 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 disqualifying conduct, 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 came to the U.S. in 1979 on a scholarship to pursue his education, and he was naturalized as a U.S. citizen in 1989. However, the Applicant's parent's are citizens of Hong Kong, as are three of his siblings. Another sibling lives in Canada. The first disqualifying condition under Foreign Influence is therefore applicable as "[a]n immediate family member . . . is a citizen of . . . a foreign country." Two of the Applicant's siblings are also civil servants in Hong Kong; and as such, are arguably "connected with . . . [a] foreign government," which is the third disqualifying condition. However, there is no evidence that their presence or positions in Hong Kong can be exploited by any government. In addition, I conclude that it would be unlikely that the Applicant would even consider any such attempt at exploitation (TR at page 40 line 22 to page 41 line 11, and at page 40 line 6 to page 41 line 1). The first mitigating condition is therefore applicable as "the immediate family members . . . are not . . . 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 United States." His nuclear family, which includes native born children, and all of his financial wealth are in the U.S. (TR at page 31 line 18 to page 35 line 9, and AppX D). Mitigation is shown. Guideline B is found in the Applicant's favor.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his alleged foreign influence. The Applicant has thus met the mitigating conditions of Guideline B, and of Section E.2.2. of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guideline B.

FORMAL FINDINGS

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

Paragraph 1: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. For 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 clearly consistent with the interests of national security to grant or continue a security clearance for the Applicant.

Richard A. Cefola

Administrative Judge