



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
) ISCR Case No. 07-08273
)
)
Applicant for Security Clearance)

Appearances

For Government: Robert E. Coacher, Esquire, Department Counsel
For Applicant: *Pro Se*

April 10, 2008

Decision

HEINY, Claude R., Administrative Judge:

Applicant was born in Hong Kong, is a naturalized U.S. citizen, and has lived in the United States since 1993. Applicant's grandmother and uncle are citizens and residents of Hong Kong. His mother and sister are dual citizens of the United States and Hong Kong living in the U.S. His fiancée is a legal resident of the U.S., a citizen of Hong Kong, who has lived in the U.S. since 2000.

After a thorough review of the case file, pleadings, exhibits, and evidence, I conclude Applicant has rebutted or mitigated the government's security concerns under guideline B, foreign influence. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is granted.

Applicant contests the Defense Department's intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued a

¹ Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG)

Statement of Reasons (SOR) on November 26, 2007, detailing security concerns under Foreign Influence.

On December 11, 2007, Applicant answered the SOR and elected to have the matter decided without a hearing. Department Counsel submitted the government's case in a File of Relevant Material (FORM), dated January 15, 2008. Applicant's response to the FORM was due 30 days after receipt of a copy of the FORM. A response was due on February 21, 2008. No response had been received. On March 27, 2008, I was assigned the case.

Procedural and Evidentiary Rulings

Within the FORM, Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Hong Kong and the People's Republic of China (PRC), along with nine attachments. The facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute. Those facts are set out in the Findings of Facts, below.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations, with explanations, for ¶¶ 1.a through 1.f.

Applicant is a 28-year-old intern who has worked for a defense contractor since January 2002, and is seeking to obtain a security clearance.

Applicant was born in Hong Kong. In 1993, he—then age 13—moved to the U.S. with his mother and sister. While living in Hong Kong, Hong Kong was a colony of the United Kingdom. In 1997, it reverted to China. Since being in the U.S., Applicant attended middle school, high school, and obtained degrees in computer engineering and piano. In December 2004, he became a U.S. citizen. (Item 4) He has no foreign interests, assets, or property in Hong Kong. He surrendered his Hong Kong/United Kingdom passport and is willing to renounce his Hong Kong citizenship. (Item 3) In August 2007, Applicant appeared at this company's security office and presented his United Kingdom passport for destruction. (Item 5) The passport had expired in April 2007.

Applicant's mother is a dual citizen of the United States and Hong Kong. In 1993, she moved to the U.S. and became a U.S. citizen in 1999. She currently is a pastry chief residing in the U.S. She has never worked for the government of Hong Kong or China. His mother owns a home in the U.S. When Applicant's father died, his "mother experience a lot of paper works" to obtain access to his father's bank account. (Item 3) His mother determined it was better for her to have a joint bank account with Applicant to avoid difficulty on her death. The account has approximately \$48,000 in it. (Item 5)

Applicant believes the money is his mother's money and he has no entitlement to it until her death. His assets in the U.S. are worth approximately \$36,000. (Item 5)

Applicant's sister is also dual citizen of the United States and Hong Kong. In 1993, she—then age 10—moved to the U.S. and became a U.S. citizen in 1999. She attended middle school, high school, and college in the U.S. She owns a restaurant. In 1987, Applicant's little sister born was born in the U.S. (Item 4)

Applicant's fiancée, a nurse, is a citizen of Hong Kong. She is a legal resident of the U.S. and has lived in the U.S. since 2000. In 2007, they purchased a home together in the U.S.

Applicant's uncle and grandmother are citizens and residents of Hong Kong and neither have ever been employed by the government of Hong Kong or China. The only time he talks with them is when he is at his mother's and she calls them. Calls are normally made at holidays such as New Year's Day and Christmas. The calls routinely consist of greetings and checking on health. His uncle was never employed by the government of China or Hong Kong. His relationship with his uncle, his father's brother, has become more distant following his father's death.

Hong Kong

I take administrative notice of the following facts. The People's Republic of China is an authoritarian state controlled by the Chinese Communist Party. It has a poor record of protecting human rights. 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. Hong Kong remains a free society, and its citizens have rights protected by law. The government of Hong Kong generally respects the human rights of its residents. 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 PRC.

Policies

When evaluating an Applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The administrative judge must consider all available,

reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Foreign Influence

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism. (AG ¶ 6)

Applicant’s uncle and grandmother are citizens and residents of Hong Kong. His mother, who he maintains a joint bank account with, and sister are dual U.S. and Hong Kong citizens living in the U.S. His fiancée is a citizen of Hong Kong and legal resident

of the U.S. Having considered all of the Foreign Influence disqualifying conditions, applicable conditions that could raise a security concern are AG ¶ 7(a) “contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion” and AG ¶ 7(b) “connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual’s obligation to protect sensitive information or technology and the individual’s desire to help a foreign person, group, or country by providing that information.”

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if a relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb.15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

A family connection can create a potential conflict of interest when the relationships are sufficiently close in nature to raise a security concern over one’s desire to help their family. 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 PRC is an authoritarian state controlled by the Chinese Communist Party with a poor record of protecting human rights. Its interests are hostile to the United States. The government of Hong Kong generally respects the human rights of its residents. 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. Hong Kong remains a free society, and its citizens have rights protected by law. 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 PRC.

In every case where relatives live overseas, there is a risk of pressure on this relative and through them upon the holder of a security clearance. Under the facts of this case, a heightened risk for exploitation, inducement, manipulation pressure, or coercion is not substantiated. Applicant has lived in the U.S. since 1993, when he was 13. His grandmother and uncle live in Hong Kong. However, since his father’s death, Applicant’s relationship with his uncle has become distant. His contact with these two relatives consists of calls made at holidays when his mother initiates the calls. The calls are short and restricted to greetings and exchanges about health.

Applicant has mitigated the concern over his grandmother’s and uncle’s residence in Hong Kong. Under MC ¶ 8(b) “there is no conflict of interest, either because the individual’s sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.” Neither relative is in a position connected with the Chinese government or engaged in activities that would likely cause

Applicant to be exploited or placed in a position of having to choose between them and the U.S. His contacts with these two relatives appear to be infrequent and so casual as not to create a risk of foreign influence.

Applicant has not lived in Hong Kong since 1993. Applicant's ties to Hong Kong have become minimal over the years. His ties with the U.S. are much stronger than his ties with Hong Kong.

Applicant's closer relatives, his mother and sisters, and his fiancée all live in the U.S. His mother and sisters are U.S. citizens. His youngest sister was born in the U.S. and has lived nowhere other than the U.S. His other sister and mother are naturalized U.S. citizens. His mother and sister have solid connections with the U.S. His sister obtained her education in the U.S. and works in the U.S. His mother's job and home are in the U.S. Applicant and his mother have a joint account, but he sees the money as his mother's until she dies. Currently, he feels no entitlement to the money. It is speculative whether there will be any money in the account upon his mother's death. Applicant lives with his fiancée in a home they purchased together in the U.S. His fiancée is a legal resident of the U.S. who has lived in the U.S. since 2000, but is a citizen of Hong Kong.

None of Applicant's relatives have ever worked for the Chinese or Hong Kong government. There is no evidence any of them are involved with organizations which seek to harm the U.S.

Whole Person Concept

Protection of our national security is of paramount concern. Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the adjudicative process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. In reaching this decision, I have considered the whole person concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I considered the totality of Applicant's family ties to Hong Kong and the PRC and the heavy burden an Applicant carries when he has family members in the PRC.

Under the whole person concept, the Administrative Judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

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) extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

While certain danger exists for all living in Hong Kong, Applicant's grandmother and uncle are in no greater danger than any other individual living and working in Hong Kong. Applicant is a mature person. He has lived in the U.S. for 15 years, and has been a naturalized citizen for three. Applicant's fiancée has been living in the U.S. since 2000 and is a legal resident. Applicant completed middle school and high school in the U.S. and earned his degree from U.S. institutions. His ties to the U.S. are much stronger than his ties to two relatives living in Hong Kong. There is no evidence he has ever taken any action that could cause potential harm to the U.S. After taking his U.S. oath of citizenship he surrendered his UK/Hong Kong passport, which subsequently expired.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the foreign influence security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B: FOR APPLICANT

Subparagraph 1.a – 1.f: For Applicant

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

CLAUDE R. HEINY II
Administrative Judge