



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



In the matter of:)	
)	
XXXXXXXXXX, XXXXX)	ISCR Case No. 07-12997
SSN: XXX-XX-XXXX)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Gina Marine, Esq., Department Counsel
For Applicant: John O. Iweanoge, II, Esq.

September 10, 2008

Decision

TUIDER, Robert J., Administrative Judge:

Applicant has mitigated security concerns pertaining to Foreign Preference and Foreign Influence. Clearance is granted.

Statement of the Case

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on January 29, 2007. On December 17, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the Government's security concerns under Guidelines C (Foreign Preference) and B (Foreign Influence). The action was taken under 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) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

The SOR 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 him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. The case was originally assigned to DOHA's Western Hearing Office.

Applicant answered the SOR on December 22, 2007, and requested a hearing before an Administrative Judge. DOHA received Applicant's answer to SOR on December 28, 2007. Department Counsel was prepared to proceed on January 22, 2008, and an Administrative Judge from DOHA's Western Hearing Office received the case assignment on January 25, 2008. On January 29, 2008, Counsel for Applicant entered his notice of appearance, and requested the case be transferred to DOHA's Washington Hearing Office. On February 5, 2008, the Western Hearing Office transferred the case to the Washington Hearing Office. I received the case assignment on February 11, 2008. DOHA issued a notice of hearing on February 26, 2008, scheduling the case for March 26, 2008. The hearing was held as scheduled.

The Government offered Government Exhibits (GE) 1 through 3, which were received without objection. Applicant offered Applicant's Exhibits (AE) A through S, which were received without objection, and testified on his own behalf. DOHA received the hearing transcript (Tr.) on April 4, 2008.

PROCEDURAL RULINGS

Amendment of SOR

Department Counsel moved to amend the SOR to include Applicant's most recent 2008 travel to Hong Kong. Without objection from Applicant, I granted Department Counsel's motion. Tr. 133.

Request for Administrative Notice

Department Counsel submitted an "Updated" Request for Administrative Notice (Exhibit (Ex.) I(A)), requesting that I take administrative notice of the summary of facts contained in Ex. I(A) as well as those facts in Exs. I through VIII. Counsel for Applicant objected to Ex. I(A) through VIII by written objection (Ex. I(B) on the grounds of "[I]ate disclosure, cumulative, overly broad or general, opinion offered without basis, objectionable on other grounds, excludable in courts discretion, etc." After considering Exs. I(A), I through VIII and I(B), I overruled Counsel for Applicant's objection, and took administrative notice of the documents offered by Department Counsel, which pertained to Hong Kong, People's Republic of China (PRC) and Macau. Tr. 16-17.

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004)); *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). The most common basis for administrative

notice at ISCR proceedings, is to notice facts that are either well known or from government reports. See Stein, ADMINISTRATIVE LAW, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice). Various facts pertaining to Hong Kong, PRC and Macau were derived from Exs. I(A), and I through VIII as contained *infra* under the subheading “Hong Kong, PRC and Macau” of this decision.

Findings of Fact

As to the SOR's factual allegations, Applicant admitted the allegations in SOR ¶¶ 1.b., 2.a., 2.b., 2.d., and 2.e. with an explanation. He denied ¶¶ 1.a. and 2.c. with an explanation. His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is a 40-year-old Ariba Senior Consultant,¹ who has been employed by his Government contractor employer since January 2007. GE 1. He is a first time applicant for a security clearance. Tr. 20, 23-25, 126.

Applicant was born in December 1967 in the PRC, and when he was approximately seven years old, his family moved to Hong Kong in 1974. Tr. 41, 123. After moving to Hong Kong, he acquired Hong Kong citizenship. (SOR ¶ 1.a.) He was raised and educated in Hong Kong, and completed the equivalent of a high school education in Hong Kong in May 1987. From September 1987 to May 1988, he attended a U.S. college in Hong Kong. GE 1.

In August 1988 at age 20, Applicant came to the U.S. on an F-1 Student Visa. Tr. 73-74, 125. Upon arriving in the U.S., he attended two different colleges, and was awarded a bachelor of science degree in computer science in October 1992. GE 1. Applicant became a naturalized U.S. citizen in January 2006, and was issued a U.S. passport in July 2006. GE 1, Tr. 124-125.

Applicant married his wife in August 1993. She was born in Hong Kong and held a green card when she married Applicant. She became a naturalized U.S. citizen in September 2000. Applicant and his wife have two U.S. born children, an 11-year-old son and an eight-year-old daughter. GE 1, Tr. 124-125. Applicant and his wife have been separated since February 2006. GE 1, Tr. 128.

Applicant has six immediate family members. Their relationship to Applicant/brief description follows:

Mother. She was born in April 1930 in Indonesia, and is now 78. At some point, she moved to the PRC, and as noted *supra*, she moved to Hong Kong in 1974. She is a resident citizen of Hong Kong. GE 1. She is a career housewife, and has never been employed by nor has she ever been associated with the Hong Kong government. GE 2,

¹ The President of Applicant's employer described Ariba as “a specialized software application focusing on requisition and procurement functions.” AE A.

AE E, Tr. 40. She has been suffering from poor health as a result of ongoing heart problems. Tr. 95-96. (SOR ¶ 2.a.)

Father. He was born in November 1930 in Indonesia, and is now 77. At some point, he moved to the PRC, and as noted *supra*, he moved to Hong Kong in 1974. He is a resident citizen of Hong Kong, and is a retired mechanic for a private company. He has never been employed by nor has he ever been associated with the Hong Kong government. GE 1, GE 2, AE E, Tr. 40. He suffers from high blood pressure. Tr. 95. (SOR ¶ 2.a.)

Sister. She was born in the PRC in April 1960, and is now 48. She along with her parents moved to Hong Kong in 1974. She is a resident citizen of Hong Kong, and is the owner of a private business. She has never been employed by nor has she ever been associated with the Hong Kong government. GE 1, GE 2, AE D, Tr. 38. She is divorced and lives with her parents. Tr. 93-94. (SOR ¶ 2.b.)

Applicant communicates with his parents by telephone on a monthly basis. Tr. 70-71, 85. He communicates with his sister on average six-to-seven times a year by telephone or e-mail on her birthday or major holidays. Tr. 71, 86-87.

Wife. She was born in Hong Kong, *supra*, in August 1967, and is now 41. At some point, she moved to the U.S. with her parents, and is now a U.S. citizen, *supra*. Her immediate family lives in the U.S. Tr. 99. She is employed as a registered nurse. Tr. 128.

Son. He was born in the U.S., *supra*, in May 1997, and is now 11. He is a U.S. citizen by birth. GE 1, AE L.

Daughter. She was born in the U.S., *supra*, in January 2000, and is now eight. She is a U.S. citizen by birth. GE 1, AE M.

Applicant's father-in-law and mother-in-law were born in Singapore and Malaysia, respectively. At some point, they immigrated to the U.S. His father-in-law became a naturalized U.S. citizen in February 2000, and his mother-in-law became a naturalized U.S. citizen in March 2003. GE 1. Applicant's father-in-law is a church pastor. His mother-in-law frequently baby sits his children. Applicant maintains contact with his in-laws and enjoys a good relationship with them. Tr. 127.

In conjunction with Applicant's background investigation, he was interviewed by an Office of Personnel Management (OPM) Investigator in May 2007. During that interview he indicated that he maintained his Hong Kong citizenship because it was his belief that Hong Kong law required him to be Hong Kong citizen in order to inherit his parents' flat estimated to be worth \$200,000. GE 2, Tr. 77-78. (SOR ¶¶ 1.c., 2.c.) Applicant credibly testified that he also informed the OPM Investigator that he was willing to give up his potential inheritance. Tr. 79-80. He added that he has no intention of ever living in Hong Kong or anywhere else other than the U.S. because his children and all of his assets are in the U.S. Tr. 78-79.

Also in conjunction with Applicant's background investigation, and in response to a DOHA Interrogatory, he indicated that he possessed a Hong Kong passport expiring in December 2009. (SOR ¶ 1.b.)

Applicant submitted documentation that his parents are the sole owners of their Hong Kong flat and it is valued at approximately \$100,000 versus \$200,000. AE G. Tr. 42-45, 83. He submitted further documentation from his parents indicating they have not made a decision regarding disposition of their flat. AE F. Applicant also submitted documentation that his parents pay quarterly rate payments supporting the notion they do not own their flat outright. AE Q, Tr. 63-64.

To address security concerns raised surrounding Applicant's Hong Kong citizenship, possession of a Hong Kong passport, and potential inheritance rights, he traveled to Hong Kong at his own expense in December 2007/January 2008 for the sole purpose of renouncing his Hong Kong citizenship and surrendering his Hong Kong passport. Applicant submitted documentation from the Hong Kong government that he had in fact renounced his Hong Kong citizenship and surrendered his Hong Kong passport effective January 2008. Subsequent to this, he took the additional step of making an appointment with the U.S. Consulate in Hong Kong in January 2008, and provided an affidavit sworn to before a U.S. Consulate official declaring that he had renounced his Hong Kong citizenship and that he was a U.S. citizen. He also informed the U.S. Consulate that he had surrendered his Hong Kong passport. AE N, AE O, Tr. 60-63, 104-105.

Before this December 2007/January 2008 trip to Hong Kong, Applicant made three short trips to Hong Kong since he arrived in the U.S. in 1988. In December 2002/January 2003, Applicant traveled to Hong Kong for two weeks with his wife and two children for a family visit. GE 2, Tr. 51-52, 96-100. In September 2006, Applicant traveled to Hong Kong by himself for five days primarily to visit his mother, who was ill. GE 2, AE H, Tr. 47-48, 50-51, 100-102. In March, 2007, he traveled to Hong Kong for ten days accompanied by a friend for a family/tourist visit. During this visit, he and his friend traveled to Macau for a one-day trip on March 22, 2007. GE 2, AE C, AE H, Tr. 33, 36-37, 49-50, 39, 102-104. (SOR ¶¶ 2.d., 2.e.)

All of Applicant's assets are in the U.S. He and his wife own a home worth an estimated value of \$1 million. He has various bank accounts, life insurance policies, and a 401k retirement. His annual salary is \$250,000. He estimates his net worth to be "[a]bout \$750,000." AE R, Tr. 53, 66-70, 111, 114, 128-129. He is registered to vote in the U.S., and enjoys all rights and privileges of U.S. citizenship. AE J. Applicant's company president stated, "[Applicant] is considered a conscientious and energetic problem solver and has gained enormous respect from colleagues and the client. . . . We are very happy to have such an exemplary consultant working [for us] and look forward to his continued contributions." AE A.

Hong Kong, PRC and Macau²

Hong Kong became a Special Administrative Region of the PRC on July 1, 1997. Hong Kong has a population of 6.9 million and 95% of Hong Kong's population is of Chinese descent. China has given Hong Kong a high degree of autonomy, except the PRC has retained responsibility for defense and foreign policy. Recently, China has taken a more active oversight role of Hong Kong's control of political developments.

The Hong Kong government generally respects the human rights of its citizens, however, reported human rights problems include some political restrictions on the legislature's power, press self-censorship, violence and discrimination against women, and restrictions on workers' rights to organize and bargain collectively.

The PRC's Military Intelligence Department, First Bureau, is responsible for collecting military information about the U.S. The PRC's Ministry of State Security is the "preeminent civilian intelligence collection agency in China," and maintains intelligence operations in Hong Kong, and Macau, through a bureau utilizing PRC nationals with Hong Kong or Macau connections.

China has an authoritarian, Communist government. China has a poor human rights record, suppresses political dissent, and practices arbitrary arrest and detention, forced confessions, torture, and other prisoner mistreatment.

China is a nuclear power with a large Army. China is geographically vast, and has a population of over one billion people. It has significant resources, and an economy that in recent years has expanded about 10% per year. China aggressively competes with the United States in many areas. PRC's competitive relationship with the United States exacerbates the risk posed by Applicant's Hong Kong connections.

China actively collects military, economic and proprietary, industrial information about the United States because of the following circumstances: (1) its position as a global superpower; (2) its military, political, and economic investments in the Pacific Rim and Asia; (3) its leading role in development of advanced technology that China desires for economic growth; and (4) China considers the large number of Americans of Chinese ancestry as intelligence targets. China's active intelligence gathering programs focus on sensitive and protected U.S. technologies.

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.

²The contents of this section are taken in whole or in part from Exs. I(A), I-VIII.

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.

In the decision-making process, the Government has the initial burden of establishing controverted facts alleged in the SOR by "substantial evidence,"³ demonstrating, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to produce evidence "to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).⁴

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

³ See Directive ¶ E3.1.14. "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge's] finding from being supported by substantial evidence." *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620 (1966). "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

⁴ "The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant's past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15." ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

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* Executive Order 12968 (Aug. 2, 1995), Section 3.

Analysis

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

Guideline C, Foreign Preference

AG ¶ 9 explains the Government’s concern:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

AG ¶ 10 sets out one condition that could raise a security concern and may be disqualifying in this case:

(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to:

(1) possession of a current foreign passport.

At the time the SOR was issued, Applicant held dual citizenship with Hong Kong and the U.S., and held a valid Hong Kong passport because it was his belief that he was required to demonstrate he was a Hong Kong citizen in order to inherit property from his parents. AG ¶ 10(a)(1) has been raised by the evidence.

Three Foreign Preference Mitigating Conditions under AG ¶ 11 are potentially mitigating to this disqualifying condition:

(a) dual citizenship is based solely on parents’ citizenship or birth in a foreign country;

(b) the individual has expressed a willingness to renounce dual citizenship; and

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

Applicant's dual citizenship was derived from his parents and/or residence in Hong Kong. Applicant not only expressed a willingness to renounce his dual citizenship, he took the extraordinary step of flying to Hong Kong at his own expense in December 2007/January 2008 for the sole purpose of renouncing his Hong Kong citizenship and surrendering his Hong Kong passport. He also knew such action would also preclude him from inheriting property from his parents, discussed *infra*. After renouncing his Hong Kong citizenship and surrendering his Hong Kong passport to Hong Kong authorities, he took the additional step of reporting his actions to the U.S. Consulate in Hong Kong. It is difficult to imagine what further steps Applicant could take to mitigate this concern. This concern is deemed mitigated under AG ¶¶ 11(a), 11(b), and 11(e).

Guideline B, Foreign Influence

AG ¶ 6 explains the Government's concern about "foreign contacts and interests" stating:

[I]f the individual has divided loyalties or foreign financial interests, [he or she] 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 ¶ 7 indicates two conditions that could raise a security concern and may be disqualifying in this case, including:

(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

(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 only one 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). Applicant has frequent contact with his parents and sister. These close relationships create a potential risk of foreign exploitation, inducement, manipulation, pressure, or coercion meriting a close examination of all circumstances.

The Government produced substantial evidence of these two disqualifying conditions as a result of Applicant's admissions and evidence presented. The Government established Applicant's parents and sister are resident citizens of Hong Kong, and that Applicant maintains frequent contact with them by telephone/e-mail and travel. The Government also identified the concerns associated with Applicant's potential inheritance of his parents' home in Hong Kong. The burden shifted to Applicant to produce evidence and prove a mitigating condition. The burden of disproving a mitigating condition never shifts to the Government.

Three Foreign Influence Mitigating Conditions under Guideline ¶ 8 are potentially applicable to these disqualifying conditions:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;

(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; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

Applying common sense and life experience, there is a rebuttable presumption that a person has ties of affection for, and/or obligation to his immediate family. ISCR Case No. 04-07766 at 4 (App. Bd. Sept. 26, 2006); ISCR Case No. 01-03120 at 4 (App. Bd. Feb. 20, 2002). Applicant has demonstrated the indicia of ties of affection for/and or obligation to his parents and sister by telephone and e-mail contact as well as his travel to Hong Kong in 2002, 2006, 2007, and 2008. He made a one-day trip to Macau during his 2007 visit.

Applicant's parents are retired and are not associated with or affiliated with the Hong Kong government. His sister owns a private company and also is not associated with or affiliated with the Hong Kong government. The record does not identify what influence, if any, the Hong Kong or Chinese government could exert on Applicant's parents and sister as a result of their being resident citizens of Hong Kong. However,

their presence in Hong Kong, which is now part of the PRC, and Applicant's foreign travel creates concerns under this Guideline. As such, the burden shifted to Applicant to show his relatives in Hong Kong and travel there does not create security risks.

"[T]he nature of the foreign government involved in the case, and the intelligence-gathering history of that government are important evidence that provides context for all the other evidence of the record . . ." See, e.g., ISCR Case No. 04-0776 at 3 (App. Bd. Sept. 26, 2006); see also ISCR Case No. 02-07772 at 7 (App. Bd. Aug. 28, 2003). As noted *supra* under the subheading "Hong Kong, PRC and Macau," Hong Kong is a part of the PRC, which is ruled by a communist government that actively engages in intelligence gathering against the U.S. The PRC also has a poor human rights record.

Applicant denies having "divided loyalties" between the U.S. and any foreign country. It should be noted Applicant's allegiance to the U.S. was not challenged in this proceeding. The issue is rather a positional one.

[Guideline B] hinges not on what choice Applicant might make if he is forced to choose between his loyalty to his family and the United States, but rather hinges on the concept that Applicant should not be placed in a position where he is forced to make such a choice. ISCR Case No. 03-15205 at 3-4 (App. Bd. Jan. 21, 2005).

On balance, Applicant has not met his burden of showing there is "little likelihood that [his relationship with his in-laws] could create a risk for foreign influence or exploitation." The nature of the PRC's government and its ongoing intelligence gathering activities against the U.S. places Applicant in just this position, given his close relationship with his family and their continued presence and connection with Hong Kong and the PRC. Accordingly, Mitigating Conditions 8(a) and 8(b) do not apply. On the other hand, given the affirmative steps Applicant has taken by renouncing his Hong Kong citizenship and surrendering his Hong Kong passport to Hong Kong authorities effectively precludes him from inheriting property from his parents. When compared with having no assets in Hong Kong and having little or no likelihood of acquiring property in Hong Kong through inheritance and his substantial assets in the U.S., application of Mitigating Condition 8(f) is appropriate for SOR ¶ 2.c..

Whole Person Concept

In addition to the enumerated disqualifying and mitigating conditions as discussed previously, I have considered the general adjudicative guidelines related to the whole person concept under Directive ¶ E2.2.1. "Under the whole person concept, the Administrative Judge must not consider and weigh incidents in an applicant's life separately, in a piecemeal manner. Rather, the Judge must evaluate an applicant's security eligibility by considering the totality of an applicant's conduct and circumstances."⁵ The directive lists nine adjudicative process factors (APF) which are

⁵ ISCR Case No. 03-04147 at 3 (App. Bd. Nov. 4, 2005) (quoting ISCR Case No. 02-01093 at 4 (App. Bd. Dec. 11, 2003)); ISCR Case No. 05-02833 at 2 (App. Bd. Mar. 19, 2007) (citing *Raffone v.*

used for “whole person” analysis. Because foreign influence does not involve misconduct, voluntariness of participation, rehabilitation and behavior changes, etc., the eighth APF, “the potential for pressure, coercion, exploitation, or duress,” Directive ¶ E2.2.1.8, is the most relevant of the nine APFs to this adjudication.⁶ In addition to the eighth APF, other “[a]vailable, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.” Directive ¶ E2.2.1. Ultimately, the clearance decision is “an overall common sense determination.” Directive ¶ E2.2.3.

The Appeal Board requires the whole person analysis address “evidence of an applicant’s personal loyalties; the nature and extent of an applicant’s family’s ties to the U.S. relative to his [or her] ties to a foreign country; his or her ties social ties within the U.S.; and many others raised by the facts of a given case.” ISCR Case No. 04-00540 at 7 (App. Bd. Jan. 5, 2007).

I have carefully considered Applicant’s family connections and personal connections to Hong Kong. Several circumstances weigh against Applicant in the whole person analysis. First, the PRC is a nuclear power and PRC’s government is a rival of the United States. The PRC is an authoritarian, Communist state. More importantly for security purposes, PRC actively seeks classified and industrial/economic information. The PRC may attempt to use Applicant’s parents and sister who live in Hong Kong to obtain such information. Also, Applicant spent his formative years in Hong Kong. Applicant has visited Hong Kong four times recently, i.e. 2002, 2006, 2007 and 2008. His one-day trip to Macau occurred during his 2007 visit to Hong Kong and can hardly be viewed as significant. Applicant did not rule out visiting Hong Kong in the future. Applicant also maintains frequent contact with his parents and sister in Hong Kong. These contacts and visits are manifestations of strong affection and regard Applicant has for family members in Hong Kong.

There is mitigating evidence that weighs towards grant of Applicant’s security clearance. Applicant immigrated to the U.S. when he was 20 years old, and received his college education in the U.S. He has lived in the U.S. for the past 20 years, was married in the U.S., and has two U.S. born children in the U.S. His assets in the U.S. are substantial in contrast to having no assets in Hong Kong. He is a U.S. citizen and U.S. passport holder. His wife is a U.S. citizen and his in-laws are U.S. citizens. His ties to the United States are stronger than his ties to his parents and sister in Hong Kong. There is no evidence Applicant has ever taken any action which could cause potential harm to the United States. He takes his loyalty to the United States very seriously, and

Adams, 468 F.2d 860 (2nd Cir. 1972) (taken together, separate events may have a significance that is missing when each event is viewed in isolation).

⁶ See ISCR Case No. 02-24566 at 3 (App. Bd. July 17, 2006) (stating that an analysis under the eighth APF apparently without discussion of the other APFs was sustainable); ISCR Case No. 03-10954 at 5 (App. Bd. Mar. 8, 2006) (sole APF mentioned is eighth APF); ISCR Case No. 03-17620 at 4 (App. Bd. Apr. 17, 2006) (remanding grant of clearance because Judge did not assess “the realistic potential for exploitation”), *but see* ISCR Case No. 04-00540 at 6 (App. Bd. Jan. 5, 2007) (rejecting contention that eighth APF is exclusive circumstance in whole person analysis in foreign influence cases).

he has worked diligently for a Government contractor since January 2007. The evidence contains no derogatory record evidence about the Applicant.

I considered the totality of Applicant's family ties to Hong Kong. Hong Kong is no longer a British colony. Hong Kong remains a free and open society where human rights are generally respected. It has some autonomy, but remains connected to the PRC. The PRC has an authoritarian government, a less than stellar human rights record, and has a very aggressive espionage program. The PRC conducts intelligence operations in Hong Kong and Macau.

In the unlikely event that Applicant's family in Hong Kong were subjected to coercion or duress from the Hong Kong government in an attempt to obtain sensitive information, I find that because of his deep and longstanding relationships and loyalties in the U.S., that Applicant would resolve any attempt to exert pressure, coercion, exploitation, or duress in favor of the United States. Noteworthy is Applicant's most recent visit to Hong Kong at his own expense for the sole purpose of renouncing his Hong Kong citizenship, surrendering his Hong Kong passport, and declaring his allegiance to the U.S.

This case must be adjudged on his own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. This Analysis must answer the question whether there is a legitimate concern under the facts presented that the Hong Kong Government or its agents might exploit or attempt to exploit Applicant's family members in such a way that this U.S. citizen would have to choose between his pledged loyalty to the U.S. and those family members. After weighing the disqualifying and mitigating conditions, all the facts and circumstances, in the context of the whole person, I conclude Applicant has mitigated the security concerns pertaining to foreign influence and preference.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my "careful consideration of the whole person factors"⁷ and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has mitigated or overcome the government's case. For the reasons stated, I conclude he is eligible for access to classified information.

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 C:	FOR APPLICANT
Subparagraphs 1.a - 1.d:	For Applicant

⁷See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).

Paragraph 2, Guideline B: FOR APPLICANT
Subparagraphs 2.a. – 2.e.: For Applicant

Conclusion

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

ROBERT J. TUIDER
Administrative Judge