



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-15909
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeffrey A. Nagel, Esquire, Department Counsel
For Applicant: James W. Green, Esquire

November 5, 2008

Decision

WESLEY, Roger C., Administrative Judge:

HISTORY OF CASE

On May 9, 2008, 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 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, and recommended referral to an administrative judge to determine whether clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on June 6, 2008, and requested a hearing. The case was assigned to me on July 10, 2008, and was scheduled for hearing on September 17, 2008. A hearing was held on September 17, 2008, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's security clearance. At hearing, the Government's case consisted of five exhibits; Applicant relied on five witnesses (including himself) and eight exhibits. The transcript (R.T.) was received on September 25, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility to access classified information is denied.

Besides its five exhibits, the Government requested administrative notice of six documents: *Background Note: China*, U.S. Department of State (January 2007); *Country Specific Information: China*, U.S. Department of State (December 2007); *Intelligence Threat Handbook* [Unclassified/For Official Use Only], Interagency OPSEC Support Staff (IOSS) (June 2004); *2007 Report to Congress*, U.S.-China Economic and Security Review Commission (November 2007); *Annual Report to Congress from the National Counterintelligence Executive on Economic Collection, 2005-2006* (August 2006); *Country Reports on Human Rights Practices - 2007, China*, U.S. Department of State (March 2008); *Background Note: Hong Kong*, U.S. Department of State (February 2008); *Country Specific Information: Hong Kong SAR*, U.S. Department of State (December 2007)

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 (App. Bd. April 2007); ISCR Case No. 02-24875 (App. Bd. October 2006). Administrative notice is appropriate for noticing facts or government reports that are well known. See *Stein*, Administrative Law, Sec. 25.01 (Bender & Co. 2006). For good cause shown, administrative notice was granted with respect to the above-named background reports addressing the geopolitical situation in Hong Kong. *Administrative notice was extended to the documents themselves*, consistent with the provisions of Rule 201 of Fed. R. Evid. This notice did not foreclose Applicant from challenging the accuracy and reliability of the information contained in the reports addressing Hong Kong's current state.

Procedural Rulings and Evidentiary Issues

Before the close of the hearing, Applicant requested leave to consider retention of his British identity card and passport and document their surrender should he make the decision to do so. For good cause shown, Applicant was granted 14 days, to October 1, 2008 to supplement the record. The Government was afforded seven days to respond. Within the time permitted, Applicant supplemented the record with faxed and posted cover letters to the British Embassy in Washington, D.C. relinquishing his permanent identity card and requesting renunciation of his British citizenship and relinquishing his British passport. Department counsel did not object to these post-hearing submissions. Applicant's post-hearing exhibits were admitted and considered as exhibits M and N.

SUMMARY OF PLEADINGS

Under Guideline B, Applicant is alleged to have a father who is a citizen of the United Kingdom who resides in Hong Kong.

Under Guideline C, Applicant is alleged to have (a) exercised dual citizenship with the U.S. and Hong Kong, (b) maintained a valid British (.U.K.) passport (expiration date in September 2013), (c) maintained a valid Hong Kong personal identity card, allowing

him the right of abode in Hong Kong, and (d) declined to have relinquished his U.K. passport due to increased travel flexibility when traveling in Hong Kong.

For his answer, Applicant denied each of the allegations in the SOR without explanations.

FINDINGS OF FACT

Applicant is a 37-year-old employee of a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Applicant's background

Applicant was born and raised in Hong Kong to parents of Chinese descent. He immigrated to the U.S. in 1989 at the age of 16 to pursue his education (see ex. 4). At the time of his emigration, he and his family members were citizens of the British Colony of Hong Kong, before it reverted to the PRC. British culture and capitalism were major influences on Applicant in his formative years. Mainland China and the Communist Party played no part in his family upbringing.

After completing his high school education in the U.S., Applicant enrolled in a local university. Applicant obtained B.S. degrees in mechanical engineering and mathematics in 1995 and 1996, respectively, an M.S. degree in engineering in 1998, and an M.B.A. in 2003, all from the same local university (see exs. 1 and 4)). Since 1998, Applicant has worked as a lecturer and net manager for the university where he earned his degrees (ex. 1). He was naturalized as a U.S. citizen in April 2006 and received his U.S. passport in May 2006 (see exs. 1 and 3).

Applicant is unmarried and has no children. For the first 10 years of his residency in the U.S., he lived alone. His mother joined him in 1999 and currently resides with him as a permanent resident (see ex. 4), and has lived with him ever since. He has been self-sufficient since 2000 (ex. 4).

Applicant's immediate family members include his mother who became a naturalized U.S. citizen in August 2002, and has resided with Applicant since 1999 (see ex. 1; R.T., at 25). His father is a dual citizen of Great Britain and the PRC by virtue of his birth in Hong Kong and unilateral declaration by the PRC that persons who are of Chinese descent and who were born in the mainland China or Hong Kong are PRC citizens (see *Country Specific Information: Hong Kong SAR*, U.S. Department of State (December 2007)). His father owns and operates a herbal business in Hong Kong and has no known ties to the PRC government (see ex. 4).

Applicant maintains weekly telephone contact with his father. He visited him in Hong Kong in August 2003, and saw him again in July 2004, when he and his father

united with his sister in Great Britain for his sister's college graduation (see ex. R.T., at 107-08). Applicant's father visited him on three or four occasions before 2000.

Applicant has one sister who resides in Britain (R.T., at 110-11). She has British citizenship by birth and now PRC citizenship by virtue of the PRC's unilateral declaration (R.T., at 111-12). She earned a doctorate degree in international relations and resides in Britain. She holds an academic position in economics at a British university (ex. 4; R.T., at 25). Applicant keeps regular telephone contact with her, once or twice a week (see ex. 4). She comes to visit Applicant, her mother, and other family members every year (R.T., at 112-13)

Applicant has not been involved in any embarrassing or compromising incidents overseas, and has not engaged in any illegal activities (ex. 4). He provides no financial assistance to any of his family members (who are self-sufficient), or to anyone or any entity outside the U.S. He has never served in a foreign military; nor he is willing to do so (ex. 4). He has had no contact with any foreign government representatives or organizations since residing in the U.S. He has no financial interests or obligations in Hong Kong. He has no property ownership, no foreign bank accounts, no retirement, medical, or education benefits in Hong Kong, and no social security or any other received government benefit from Hong Kong or any other foreign country (see ex. 4). He has never had any foreign property confiscated, and he has never sponsored any foreign nationals to the U.S. (see ex. 4). Nor has he ever voted or sought political office in Hong Kong or any foreign country, and has not performed or attempted to perform duties that could serve the interests of Hong Kong or any foreign government.

By contrast, Applicant has held jobs in the U.S. and maintains brokerage accounts with U.S. banks. He owns the home he resides in. He considers himself a fully assimilated U.S. citizen (see ex. 4; R.T., at 26), and professes no allegiance, preference, sympathies or alliances with any person or entity or government in the PRC, or anywhere else (see ex. 4). He fully understands the importance of reporting any all foreign travel to his employer's security officials.

Applicant retained his valid British permanent identity card and passport after becoming a naturalized U.S. citizen and receiving his U.S. passport. His passport carried a September 8, 2013 expiration date (see exs. 3). He also retained a Hong Kong permanent identity card that entitled him to claim Hong Kong as his permanent abode (see ex. 3). Prior to the hearing, Applicant had declined to relinquish either his British passport or his permanent identity card, citing the flexibility it affords him and the lack of any furnished reason why he should relinquish it (R.T., at 104-05). Informed of the nature of the Government's concerns over dual citizens holding foreign passports and using them to travel abroad, Applicant acknowledged his understanding of the reasons and expressed a desire to reconsider his retention of his British passport (R.T., at 113-16).

In his post-hearing submissions, Applicant documented relinquishing his Hong Kong permanent identity card (see ex. M), and renouncing his British citizenship and

relinquishing his British passport (see ex. N). In the package materials he mailed to the British Embassy in the U.S., he enclosed his original British passport and identity card and asked for certified statements of receipt of his identity card and passport and a certificate of citizenship renunciation (see exs. M and N). Although the PRC's nationality law imposed unilateral Chinese citizenship on Hong Kong citizens before the 1997 reversion, this provision of the law would not appear to apply to Applicant who had become a permanent resident of the U.S. before 1997 and a U.S. citizen in 2006. Neither the SOR nor the Government's proofs claim Applicant exercised any dual citizenship with the PRC and the U.S. following the reversion. Because Applicant's British passport and identity card entitled him to entry/exit and abode privileges, though, they create some cross links with the PRC that carried over even after the reversion.

Applicant is highly regarded by close friends, family members, college professors, and colleagues. A close friend from college who has kept in touch and is familiar with Applicant's background describes him as honest, selfless, and ever-generous, and one who was instrumental in their joint start-up of a non-profit end-to-end encrypted email product (see ex. G; R.T., at 26-28). A cousin whose family sheltered Applicant after he arrived from Hong Kong described him as very trustworthy (ex. I). And a former college professor described Applicant as a serious, hard-working, and reliable student (see ex. F).

Applicant's professional associates characterize his work as excellent in quality and credit his honesty and cite his important contributions to his team's soft-ware projects (see ex. D; R.T., at 34). His direct supervisor and senior engineer of his project team describe Applicant as an excellent performer who possesses sound judgment and is honest and trustworthy in all of his work relationships (see ex. C; R.T., at 43-47). Applicant's group leader who hired him in 2006 describes him as an excellent performer who he considers to be honest and trustworthy. He credits Applicant with developing all of his project's computer models and software design, and supporting other project operations in important troubleshooter roles (see ex. B; R.T., at 53-55).

Applicant documents excellent performance reviews for his past two years of service to his employer (see exs. K and L). He was credited by his supervisor with consistently high ratings in all of the pertinent assessment criteria.

Hong Kong's historical background

Hong Kong's history dates back over five millennia. It developed strong trading relationships with Britain in 1842 (following the First Opium War) under the Treaty of Nanking (see *Background Note: Hong Kong, supra*, at 2). Britain was granted a perpetual lease on the Kowloon Peninsula under the 1860 Convention of Beijing, and expanded its control over the surrounding area under a 99-year lease of the New Territories in 1898 (*id.*).

In the late 19th and early 20th centuries, Hong Kong developed as a warehousing and distribution center for British trade with southern China (see *Background Note: Hong Kong, supra*). Heavy migration to Hong Kong occurred after the Communist takeover of mainland China in 1949. Hong Kong achieved considerable economic success as a British colony in the post-1949 period as a manufacturing, commercial, finance, and tourism center. High life expectancies, literacy, per capita income, and a confluence of other socioeconomic indicators serve to illustrate Hong Kong's measurable socioeconomic achievements.

Hong Kong's reversion

Since July 1, 1997, Hong Kong has been a Special Administrative Region (SAR) of the PRC. This is important to note because of the generally recognized heightened risks that are associated with the PRC, and the unilaterally imposed citizenship and residency status on Applicant and his father as birth residents and citizens of Hong Kong before the reversion (see *Country Specific Information: Hong Kong SAR, supra*, at 2). Dual national Americans like Applicant and his mother (who became naturalized U.S. citizens after the reversion) who use their non-U.S. passports are at risk to denials of U.S. consular protections by the PRC government (*id.*) This does not mean that the U.S. Government will not offer consular services to dual nationals who use their non-U.S. passports in Hong Kong and other sectors of the PRC. But because the PRC does not recognize dual citizenship under its nationality law, use of other than a U.S. passport to enter China can simply increase the difficulties of consular assistance for any dual national who is arrested under such circumstances (*id.*).

Hong Kong today has a population of 6.92 million (95 per cent of which are Chinese), and is one of the most densely populated regions of the world. China has given Hong Kong considerable autonomy over its domestic affairs. The PRC has retained responsibility and control over foreign and defense affairs. State Department records confirm that the PRC has taken an increasingly active oversight role over Hong Kong's political developments.

Still, both the Sino-British joint declaration (1984) and the basic Law provide political safeguards to ensure that Hong Kong retains its own political, economic, and judicial systems and unique status for at least 50 years after reversion and continue to participate in international conventions and organizations under the name of "Hong Kong, China" (see *Background Note: Hong Kong, supra*, at 2). Hong Kong, with its quasi autonomy, remains a free and open society where human rights are respected, courts are independent, and there are established traditions of respect for the rule of law (see *id.*, at 3).

Citizens of Hong Kong are limited, however, in their ability to change their government, and the legislature is limited in its power to change government policies (*id.*). And the PRC still retains oversight and ultimate veto authority over all of Hong Kong's economic and political decision making. Any changes in Hong Kong's Basic Law (such

as to achieve full universal suffrage) will require approval by Hong Kong's chief executive (currently Donald Tsang), at least a two thirds approval by the Legislative Council (Legco), and then the PRC's National People's Congress Standing Committee (NPSCS), which is by no means assured (*see id*, at 3).

Because Applicant's father is still a citizen and resident of Hong Kong with unilaterally imposed Chinese citizenship by the PRC's immigration law, the PRC's system, its respect for human rights and the rule of law, and its collection activities that extend throughout its maintained intelligence operations in Hong Kong and Macau, become quite relevant to evaluating any potential security risks associated with Applicant and his father.

The PRC's country status

Established in 1949, the Peoples Republic of China (PRC) with over 1.3 billion people is the world's most populous country. Today it continues to undergo rapid economic and social change. Political power, however, remains centralized in the Chinese Communist Party (CCP) with little indication of any change in the foreseeable future. China's 70.8 million country is authoritarian in structure and ideology and possesses increasingly sophisticated military forces which continues to transform itself from a land-based military power to a smaller, more mobile, high tech military that eventually will be capable of mounting limited operations beyond its coastal waters (*see Background Note: China, supra*, at 14-16).

While not a country acclaimed to be hostile to U.S. persons and interests, the PRC maintains a relationship that is more competitive than cooperative. The PRC operates a large and sophisticated intelligence bureau, entitled the Ministry of State Security (MSS) (*see Intelligence Threat Handbook, supra*, at 17 (June 2004)). These operations use clandestine agents to collect intelligence on Western consortia investing in the PRC who are suspected of involvement in attempts to democratize the PRC, as well as other pro-democracy groups thought to be engaging in anti-communist activities (*see Intelligence Threat Handbook, supra*, at 72).

Based on past reports to Congress, the PRC is considered one of the most active collectors of U.S. economic and proprietary information (*see Annual Report to Congress from the National Counterintelligence Executive on Economic Collection, 2005-2006, supra*). The PRC is known especially to use its intelligence services to gather information about the US and to obtain advanced technologies (*see Intelligence Threat Handbook, supra*, at 17). The PRC actively monitors international communications satellites from maintained intercept facilities, in addition to collecting information on US military operations and exercises. Examples of PRC economic espionage are cited in the *Annual Report to Congress from the National Counterintelligence Executive on Economic Collection, 2005-2006, supra*, at 10-12. Most of the examples of illegally exported technology to the PRC involved high tech equipment and devices used in missile and

aircraft guidance systems, highly sensitive weapons parts, infrared cameras and missile microchips.

As a corollary of its authoritarian roots, the PRC has never been known for a positive human rights record among Western nations and international human rights groups. Part of this can be explained in terms of the PRC's lack of any cognizable tradition for respect for developing democracies and the rule of law. State Department country reports on the PRC cite the country's poor human rights record. Its noted historical abuses include the suppression of political dissent, arbitrary arrest and detention, forced confessions, torture, and mistreatment of prisoners (see *Country Reports on Human Rights Practices - 2007, China, supra*, at 2-9).

Of growing concern to U.S. security interests are State Department's latest reports of increased high profile cases in the PRC involving the monitoring, harassment, detention, arrest, and imprisonment of journalists, writers, activists, and defense lawyers seeking to exercise their law-protected rights (see *Country Reports on Human Rights Practices - 2007, supra*). The State Department cites a comprehensive, credible accounting of all those killed, missing, or detained, reported incidents of deaths in custody, disappearance, torture, and other cruel, inhuman, or degrading treatment or punishment (see *id.*, at 2-3). While the PRC officially denies holding any political prisoners, Western non-government organizations estimate that approximately 500 persons remained in prison in 2006 for the repealed crime of counterrevolution, and thousands of others were either serving sentences or were being detained for counter-revolutionary offenses (*id.*, at 8).

In its November 2007 Report to Congress, the Security Review Commission describes the PRC as a country intent on acquiring and exploiting the knowledge developed by multiples of collection agents: legally, if possible, and otherwise illegally by espionage (see *2007 Report to Congress, U.S.-China Economic and Security Review Commission, supra*, at 104-06). The PRC's concerted efforts to acquire sensitive technology poses a considerable challenge to U.S. counterintelligence measures. Recent indictments of Chinese citizens for espionage have served to highlight the PRC's spying activities in the U.S. (see *id.*). Violating its own 2004 U.S.-China agreement, the PRC oft-fails to schedule timely end-use inspection visits of dual-use items licensed for export to the PRC. Better export controls can be effective only if they are multilateral in scope (see *id.*). Without effective dual use export controls in place, the PRC can be expected to acquire dual use technologies with military potential through the U.S. and other source countries.

Policies

The revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (effective September 2006) list Guidelines to be considered by administrative judges in the decision-making process covering DOHA cases. These Guidelines require the administrative judge to consider all of the "Conditions that could

raise a security concern and may be disqualifying” (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the administrative judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the administrative judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Foreign Influence

The Concern: 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. See revised Adjudicative Guidelines (AG), ¶ 6.

Foreign Preference

The Concern: When an individual acts in such a way as to indicate 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. See AG, ¶ 9.

Burden of Proof

By virtue of the precepts framed by the Directive, a decision to grant or continued Applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: It must prove any controverted fact[s] alleged in the Statement of Reasons, and it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of proof shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

Analysis

Applicant was born in Hong Kong to parents of Chinese descent and traces his British heritage through Hong Kong's historical colonial links with Britain. He immigrated to the U.S. in 1989 for educational reasons. He completed his high school and college curricula in the U.S. and became a U.S. citizen in 2006. Applicant is a highly regarded engineer for a U.S. defense contractor. Security issues of concern to the Government focus on his past exercise of dual citizenship with Hong Kong and the U.S. through his post-naturalization possession of his British identity card and passport and the citizenship and residence of an immediate family member (his father) in Hong Kong following its reversion to the PRC in 1997, a country known for its poor human rights record and its engagement in economic data collection in Hong Kong and the U.S.

Foreign influence concerns

Government urges security concerns over risks that Applicant's immediate family member (his father) that resides in Hong Kong (which has since reverted to the PRC) might be subject to undue foreign influence by PRC authorities to access classified information in Applicant's possession or control. Because Applicant and his father who have PRC citizenship by virtue of Hong Kong's reversion to the PRC in 1997, they present potential heightened security risks covered by Disqualifying Condition (DC) ¶ 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," of the Adjudication Guidelines for foreign influence.

The citizenship/residence status of Applicant's father in what is now the PRC poses some potential concerns for Applicant because of the risks of undue foreign influence that could compromise classified information under Applicant's possession and/or control. DC ¶ 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," has possible application due to the presence of Applicant's father in the PRC. Although, Applicant has not seen his father since his last visit to Hong Kong in 2003, and has no financial interests in China that could create potential conflicts of interest.

Born and raised in Hong Kong, Applicant immigrated to the U.S. in 1989 and became a naturalized U.S. citizen in 2006. Likewise, his mother immigrated to the U.S. and became a naturalized U.S. citizen (in 2002). His only sister has retained her British passport (albeit now a citizen of the PRC by virtue of Hong Kong's reversion) and resides in Britain. All of Applicant's assets and financial interests are situate in the U.S.

Applicant and his family have deep roots in Hong Kong (for years a British colony) and are steeped in British culture, free markets, democratic government, human rights protections, and respect for the rule of law. Applicant has no contacts with or interests in the PRC.

From what is known from the presented evidence, none of Applicant's immediate family residing in Hong Kong (with only his father identified as such an immediate family member residing in the country) have any political affiliations with the Hong Kong or PRC governing bodies. Nor does his father have any history to date of being subjected to any coercion or influence, or appear to be vulnerable to the same.

The citizenship status and presence in Hong Kong of Applicant's father poses some risk because of Hong Kong's reversion to the PRC' and the latter's sovereign oversight powers over all of Hong Kong's domestic affairs, and plenary responsibility over its external affairs. The risks are manageable, though, and reconcilable with U.S. security interests. Applicant's contacts with his father (while regular) are more than neutralized by the former's had demonstrated strong loyalties to the U.S. and manifest commitments to protect this country's security interests and resist any family pressures that could weaken his fiducial duties to protecting classified information.

The Adjudicative Guidelines governing collateral clearances do not dictate *per se* results or mandate particular outcomes for applicants with relatives who are citizens/residents of foreign countries in general. What is considered to be an acceptable risk in one foreign country may not be in another. While foreign influence cases must by practical necessity be weighed on a case-by-case basis, guidelines are available for referencing in the supplied materials and country information about Hong Kong.

The new AGs do take into account the country's demonstrated relations with the U.S. as an important consideration in gauging whether the particular relatives with citizenship and residency elsewhere create a heightened security risk. The geopolitical aims and policies of the particular foreign regime involved do matter.

As for security concerns associated with the presence of Applicant's father in Hong Kong (a Chinese sector that continues in a semi-autonomous way despite its reversion to the PRC), any potential heightened risk of a hostage situation or undue foreign influence brought in the hopes of eliciting either classified information or economic or proprietary data out of Applicant through his family members residing in Hong Kong is a manageable one.

Applicant, accordingly, may take advantage of one important mitigating condition: MC ¶ 8(a), “the nature of the relationships with foreign persons, the country in which these persons are located, or the persons or activities of these 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 a foreign individual, group, organization, or government and the interests of the U.S.”

For Hong Kong, with its quasi autonomy, remains a free and open society where human rights are respected, courts are independent, and there are established traditions of respect for the rule of law (*see id.*, at 3). True, citizens of Hong Kong are limited in their ability to change their government, and the legislature is limited in its power to change government policies (*id.*). Further, the PRC still retains oversight and ultimate veto authority over all of Hong Kong’s economic and political decision making. Since reversion, though, the PRC has essentially left Hong Kong to manage its own internal affairs without any interference from PRC authorities. This deference is not expected to change in the foreseeable future.

Applicant, accordingly, may take partial advantage of mitigating condition: MC ¶ 8(a), “the nature of the relationships with foreign persons, the country in which these persons are located, or the persons or activities of these 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 a foreign individual, group, organization, or government and the interests of the U.S.” Further, in the hypothetical situation where Applicant’s father or any of his family members residing in Hong Kong, Britain, or the U.S. were to be pressured, Applicant’s strong loyalties and security commitments to the U.S. make it very unlikely that he would permit himself to be pressured into compromising classified information.

Of full benefit to Applicant is 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.” Applicant’s demonstrated loyalty, patriotism, and professional commitments to the U.S., are well demonstrated and enough under these circumstances to neutralize all potential conflicts that are implicit in his relationships with his immediate family members and college.

Whole person assessment also serves to minimize Applicant's exposure to conflict of interests with his father in Hong Kong. Not only has Applicant become a naturalized U.S. citizen and received his advanced degrees in the U.S., but he has made every effort to work, save, and pursue his financial interests exclusively in the U.S. Applicant is highly regarded and trusted by his friends, former university professors, co-workers and supervisors who regularly interface with him. None of these character references is aware of any risks of coercion, pressure, or influence that any of his family members might be exposed to.

In Applicant's case, any likelihood of coercion, pressure, or influence being brought to bear on his father or any of his immediate family members would appear to be minimal. By all reasonable accounts of the presented record, Applicant has no visible conflicts of interest with Hong Kong and the PRC or property interests in China that could be at risk to exploitation or compromise by Hong Kong government authorities or PRC military or intelligence officials.

Overall, any potential security concerns attributable to Applicant's father residing in Hong Kong are sufficiently mitigated to permit safe predictive judgments about Applicant's ability to withstand risks of undue influence attributable to his familial relationships in Hong Kong (now part of the PRC). His demonstrated loyalties and commitments to protecting U.S. security interests, make it highly unlikely he would succumb to any foreign influence brought to bear on himself or his father by PRC government or military officials. Favorable conclusions warrant with respect to the allegations covered by Guideline B.

Foreign preference concerns

Dual citizenship concerns necessarily entail allegiance assessments and invite critical considerations over acts indicating a preference or not for the interests of the foreign country over the interests of the U.S. The issues, as such, raise concerns over Applicant's preference for a foreign country over the U.S.

By virtue of his birth in Hong Kong to parents of Chinese ancestry, Applicant became entitled to a British identity card and passport which he continued to hold even after becoming a U.S. citizen. He was free to relinquish these documents at any time of his choosing. Until this hearing, he consistently declined to relinquish his British identity card and passport out of respect for his parents and his desire for flexibility. Since becoming a naturalized U.S. citizen, Applicant has taken no actions and exercised no British or PRC privileges that can be fairly characterized as active indicia of dual citizenship, save for his retention of his British identity card and passport. He holds no assets in Hong Kong, retains no Hong Kong privileges, and has never performed or attempted to perform duties, or otherwise acted so as to serve the interests of Hong Kong or the PRC in preference to the interests of the U.S. since becoming a U.S. citizen.

Because Applicant continued to possess his British passport after becoming a naturalized U.S. citizen, the Government may apply disqualifying condition (DC) ¶ 10(a) of AG ¶ 9, “exercise of any right, privilege or obligations 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;
- (2) military service or a willingness to bear arms for a foreign country;
- (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;
- (4) residence in a foreign country to meet citizenship requirements;
- (5) using foreign citizenship to protect financial or business interests in another country;
- (6) seeking or holding political office in a foreign country; and
- (7) voting in a foreign election.

However, Applicant claims no intention to return to Hong Kong to live, has no financial interests in Hong Kong, and has never used his British/PRC citizenship to protect his financial or business interests. By relinquishing his British identity card and passport, Applicant has complied with the mitigation requirements of MC ¶ 11 (e), “the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated,” of AG ¶ 918. He satisfies the mitigation requirements of MC ¶ 11 (b), “the individual has expressed a willingness to renounce dual citizenship.” Accordingly, each of these mitigating conditions has application to Applicant’s situation.

Failure to satisfy a mitigating condition may be taken into account when assessing an applicant’s overall claim of extenuation, mitigation, or changed circumstances, but may not be turned into a disqualifying condition. See ISCR Case No. 01-02270 (Appeal Bd. Aug. 29, 2003). That Applicant herein may have initially wished to keep his dual British citizenship and retain his British identity card and passport out of respect for his parents and his desired flexibility is not sufficient reason to preclude him from mitigating security concerns over his holding dual citizenship and retaining his British identity card and passport, if those rights did not entail his exacting preferential retirement privileges from Hong Kong or the PRC.

Whole person precepts favor Applicant’s preference for the U.S. over Britain and indirectly the PRC by virtue of the reversion. He is a U.S. citizen by naturalization and has consistently demonstrated his loyalty for the U.S. All of his financial interests are situated in the U.S. He is highly regarded by his friends and university professors that

he has impressed with his academic achievements and trusted personal relationships, and with his coworkers and supervisors who credit him with sound judgment, reliability and trustworthiness in executing his team project responsibilities. Renouncing his British citizenship and relinquishing his British identity card and passport document his undivided loyalty and preference for U.S. institutions and its way of life over those of his birth country (Hong Kong/Britain), and indirectly the PRC.

Overall, Applicant persuades that his preference is with the U.S. He satisfies his proof burden in several ways: demonstrated lack of any exercise of any privileges associated with his British citizenship, save for his possession of his British identity card and passport after his naturalization as a U.S. citizen in 2006. Applicant absolves himself of foreign preference concerns and carries his evidentiary burden on the presented issue of whether his preference lies with his adopted country (U.S.) or the country (Hong Kong/Britain) where he was born and raised as a minor through his parents' British citizenship. Favorable conclusions warrant with respect to the allegations covered by subparagraphs 2.a through 2.d of Guideline C.

In reaching my recommended decision, I have considered the evidence as a whole, including each of the factors and conditions enumerated in E2.2.2 of the Adjudicative Process of Enclosure 2 of the Directive.

Formal Findings

In reviewing the allegations of the SOR in the context of the findings of fact, conclusions, and the factors and conditions listed above, I make the following separate formal findings with respect to Applicant's eligibility for a security clearance.

GUIDELINE B: (FOREIGN INFLUENCE): FOR APPLICANT

Sub-para 1.a: For Applicant

GUIDELINE C: (FOREIGN PREFERENCE): FOR APPLICANT

Sub-para. 2.a : For Applicant

Sub-para. 2.b : For Applicant

Sub-para. 2.c : For Applicant

Sub-para. 2.d : For Applicant

Conclusions

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 Applicant's security clearance. Clearance is granted.

Roger C. Wesley
Administrative Judge