



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



In the matter of:)	
)	
XXXXXXXXXX, XXXXX)	ISCR Case No. 08-04776
SSN: XXX-XX-XXXX)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

September 14, 2009

Decision

TUIDER, Robert J., Administrative Judge:

Applicant has mitigated security concerns pertaining to foreign influence. Clearance is granted.

Statement of the Case

Applicant submitted his Security Clearance Application (SF-86) on September 27, 2004. On December 22, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the government's security concerns under Guideline 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 it recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant answered the SOR on February 16, 2009, and requested a hearing before an administrative judge. DOHA received Applicant's answer to SOR on February 18, 2009. Department Counsel was prepared to proceed on March 20, 2009. The case was assigned to another administrative judge on April 2, 2009, and was reassigned to me on May 11, 2009, due to caseload considerations. Counsel for Applicant entered his notice of appearance on April 9, 2009. DOHA issued a notice of hearing on April 23, 2009, scheduling the case for May 19, 2009. The hearing was held as scheduled.

The government offered Government Exhibits (GE) 1 and 2, which were received without objection. Applicant offered Applicant's Exhibits (AE) A through U, which were received without objection, and he testified on his own behalf. DOHA received the hearing transcript (Tr.) on June 3, 2009.

PROCEDURAL RULINGS

Request for Administrative Notice

Department Counsel submitted a 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. Without objection from Applicant, I took administrative notice of the documents offered by Department Counsel, which pertained to Hong Kong and the People's Republic of China (PRC). Tr. 14-15.

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 and the PRC were derived from Exs. I(A), and I through VIII as contained *infra* under the subheading "Hong Kong and the PRC" in this decision.

Findings of Fact

As to the SOR's factual allegations, Applicant admitted the allegations in SOR ¶¶ 1.a., 1.d., 1.f., 1.g., and 1.h. with explanations. He denied ¶¶ 1.b., 1.c., and 1.e. with explanations. 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 26-year-old assistant engineer who has been employed by a defense contractor since August 2004. Tr. 42, GE 1. He successfully held an interim secret clearance from December 2004 to December 2008, which was revoked as a result of these proceedings. He seeks to reinstate his security clearance, which would allow him to work on additional assignments within his company. Tr. 43, 87.

Applicant was born in the U.S. in December 1982, and is a U.S. citizen by birth. He graduated from a U.S. high school in June 2000. He attended a prestigious university in the U.S., and was awarded a Bachelor of Science degree in Computer Science in May 2004. Applicant is currently attending graduate school part-time and pursuing a Master of Science Degree in Systems Engineering, with an anticipated graduation date of 2010. He estimates that he has completed 12 credit hours. Tr. 19-20, GE 1. Applicant maintains a valid U.S. passport, which is the only passport he has ever held. Tr. 41, 51.

Applicant met his wife while attending college, and married her in the U.S. in July 2007. His wife was born,¹ raised and educated in the U.S. Applicant's wife is employed as a marketing coordinator for a major book publishing company. Tr. 18, 41, 74.

Applicant has four immediate family members, excluding his spouse. Their relationship to Applicant/brief description follows:

Mother. She was born in June 1957 in Hong Kong, and is now 52. She became a U.S. naturalized citizen in September 2003. She does not hold citizenship with any other country other than the U.S. GE 1. Applicant's mother was awarded a Bachelor of Science in Applied Arts and Sciences, Business Administration (Accounting), from a U.S. university in August 1981. During her early working life, she worked as an accountant. She now works with Applicant's father in the missionary field in Hong Kong, discussed *infra*. Tr. 52, 65. AE O.

Father. He was born in July 1956 in Hong Kong, and is now 53. He became a U.S. naturalized citizen in September 2003. He does not hold citizenship with any other country other than the U.S. Tr. 63-64, GE 1. Applicant's father received all of his higher education in the U.S. to include a Bachelor of Science degree (summa cum laude) in June 1977, a Master of Science degree in Engineering in June 1978, the Degree of Engineer in December 1980, and a Ph.D. in Engineering in December 1981. Later, he attended a seminary and was awarded a Master of Arts in Missiology in December 1988. Tr. 53-55, AE P-T.

Upon completion of his education, Applicant's father worked in the engineering field in which he held positions in the U.S. and Canada. In 1992, he left engineering and entered the missionary field working for a U.S. based Christian organization. Tr. 55, 57-58. In 2002, Applicant's father was assigned to a missionary post in Singapore, and in 2004, he was assigned to a missionary post in Hong Kong, where he remains today.

¹ As such, she is a U.S. citizen by birth.

(SOR ¶ 1.a.) Applicant's parents regularly return to the U.S. for visits, typically every six months. Tr. 55, 58-59, 85-86.

Applicant's father holds the job title of Field Director in Hong Kong and is responsible for overseeing other missionaries in the field. He directs missionaries in their field work and ensures their families are adjusting to and settling in their new environments. His travels take him to countries in the Far East to include mainland China, Singapore, and Thailand. Tr. 61-63, 83-85.

Applicant's parents work for and derive their salaries from a U.S. based Christian Order, a 501(C)(4) organization. The Christian Order is a non-profit organization and is registered in Hong Kong and with the State Administration of Foreign Experts Affairs of the PRC. As such, their work is recognized by the local Chinese government. Applicant is not aware of his parents ever being harassed by the authorities while posted in Hong Kong. (SOR ¶ 1.c.) Response to SOR, Tr. 11, 37, 39, 64-65, 75-76.

Applicant's father is pending reassignment in 2010. He anticipates retiring and returning to the U.S. Tr. 59, 85-86. Applicant's parents own a home in the U.S. Brother (1), discussed *infra*, currently lives in that home while his parents are abroad. Tr. 37.

Brother (1). He was born in February 1984 in the U.S., and is now 25. He is a U.S. citizen by birth. He lives in the U.S., and is employed as a web developer for a major television network. Applicant communicates with him typically by e-mail "every two to three months." GE 1, Tr. 38, 79.

Brother (2). He was born in August 1990 in Canada, and is now 19. He became a U.S. naturalized citizen in September 2003. GE 1. Brother (2) recently began college in the U.S. (class of 2012) and resides with his parents in Hong Kong during summer break. Brother (2) was a minor when he accompanied his parents to Hong Kong and attended international schools while there. He has never participated in his parents' work. (SOR ¶¶ 1.b., 1.e.) Response to SOR. Applicant communicates with him by a combination of e-mail or telephone "every one to two months." Tr. 38, 49-50, 81-82.

Applicant communicates with his parents typically by telephone "every two to three months." (SOR ¶ 1.f.) Response to SOR, Tr. 48, 68. His parents visit him and his brothers during their periodic visits to the U.S. Tr. 56. Applicant does not provide any support to his parents. He does not have any future plans to visit them in Hong Kong. Tr. 41, 88.

Applicant's travel to Hong Kong has been limited. He went there in 1999, and more recently for two weeks in December 2006 and January 2007. During his visit to Hong Kong, he visited the PRC for several days. His most recent trip consisted of sightseeing with his family in various locations in Southeastern PRC, and spending the holidays with his family and then fiancée. Response to SOR. (SOR ¶ 1.h.) Applicant informed and discussed this trip with his Facility Security Officer. Tr. 48, 70, 73-74.

Applicant stated he is sensitive and discreet about his parents' religious activities in the PRC. He believes all work by foreigners is sensitive in the PRC. This, he believes, even applies to non-profit organizations whose work is recognized and supported by the local government. It is also his belief that his parents need to be sensitive in all aspects of their work in order to avoid any misunderstandings with the Chinese authorities. GE 2, Response to SOR, Tr. 40, 70-71. (SOR ¶ 1.d.) Applicant does not feel that he is subject to any type of threat or coercion as a result of his parents' work. He added that if such a threat or coercion ever surfaced, he would report it to his Facility Security Office. Tr. 40-41.

Applicant's paternal aunt and uncle are residents and citizens of Hong Kong. Applicant last saw his paternal uncle while vacationing in Hong Kong when visiting his parents during December 2006 through January 2007. His paternal uncle also attended his wedding in July 2007 in the U.S. Applicant has not seen his paternal aunt in the last seven years. He communicated with both his paternal aunt and uncle around the time of his wedding regarding their attendance at his wedding. Applicant believes his uncle works for a privately owned shipping company and his aunt is a housewife. Tr. 47-48, 81-82. Response to SOR. (SOR ¶ 1.g.)

Applicant's father-in-law and mother-in-law are U.S. born citizens and live in the U.S. His father-in-law is an electrical engineer and his mother-in-law is a housewife and church secretary. His father-in-law served in the Army Reserve as an engineer. His brother-in-law and sister-in-law live at home with his in-laws. Applicant maintains frequent contact with his in-laws and enjoys a good relationship with them. Tr. 46-47.

Religion and church attendance was a significant component in Applicant's upbringing and remains so today. Tr. 55-56. He regularly volunteers for church-sponsored events. Applicant made presentations at job fairs on the use of Excel and Word, and critiqued resumes for job seekers. He organized social events for younger members and outings with the Habitat for Humanity. He has also worked with community-related programs to include the local food bank and homeless shelter. He also enjoys watching television. Tr. 72-73.

Applicant's pastor testified on his behalf. He has known Applicant's parents for 25 years and officiated at Applicant's wedding in July 2007. The pastor sees Applicant on a weekly basis since his wedding and has socialized with the Applicant and his wife. He holds the opinion that Applicant is honest and trustworthy. The pastor also holds a very high opinion of Applicant's father and believes him to be a very trustworthy and honorable person. The pastor is familiar with the work Applicant's father performs in Hong Kong and the PRC. Tr. 21-35.

All of Applicant's assets are in the U.S. He pays U.S. and state taxes. His annual salary is \$78,000. He has \$150,000 in savings accounts, and \$140,000 invested in his 401(k) account, for a combined total of \$290,000. His automobiles are paid for. Tr. 41-45. Applicant stated his loyalty lies with the U.S. He would be loyal to the U.S. should it ever engage in an armed conflict with another country. He has registered for the selective service, as required. Applicant fully supports the U.S. Constitution and

missions of the Department of Defense whether those missions are offensive or defensive in nature. He knows of nothing that he could be coerced or pressured about, and he responded that should any such situation arise, "national security trumps over any embarrassment I might suffer." GE 2.

Applicant submitted ten reference letters. The authors of these letters cover a wide spectrum of individuals to include a former supervisor, an active duty Air Force intelligence officer (in-law), pastor, father's church friends, senior company managers, and college friend. The consistent and overriding sense these letters convey is that Applicant is a trustworthy, loyal, hardworking, and honorable person.

The senior company managers spoke of the significant contribution Applicant has made to the national defense and of his potential for future service. They also noted that Applicant successfully held an interim clearance for four years without incident. They collectively support reinstatement of Applicant's security clearance. AE A-K. Applicant submitted three years (2005-2007) of employee evaluations that document above average performance and further substantiate the positive comments contained in senior management letters. AE K-N.

Hong Kong and the PRC²

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

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

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

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the revised adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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. Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. See *also* Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “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). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). 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). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

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 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 to a lesser extent with his younger brother when he is in Hong Kong during summer breaks. 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 that Applicant's parents currently are residents of Hong Kong, and that Applicant maintains frequent contact with them by e-mail and travel. 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.

Two 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.; and

(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.

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 demonstrated the indicia of ties of affection for/and or obligation to his parents and brother by telephone and e-mail contact as well as his travel to Hong Kong and the PRC in December 2006 to January 2007.

Applicant's parents are currently working for a non-profit Christian organization registered in Hong Kong and with the State Administration of Foreign Experts Affairs of the PRC. As such, their work is recognized by the local Chinese government. Applicant's younger brother's time in Hong Kong is limited to summer break when not attending college. Applicant's parents have not had any conflicts with the local Chinese government since their arrival in Hong Kong in 2004. Applicant's contact with his paternal aunt and uncle is very limited. Their presence in Hong Kong, which is now part of the PRC, and Applicant's infrequent foreign travel, creates concerns under this Guideline. As such, the burden shifted to Applicant to show that the presence of his relatives in Hong Kong and his travel there do 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 and the PRC," 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 parents] 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 condition 8(a) does not apply. However, Applicant's deep and longstanding relationships with and within the U.S. warrant application of mitigating condition 8(b).

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.”³ The directive lists nine adjudicative process factors (APF) which are 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.⁴ 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 to 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 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 and economic information. The PRC may attempt to use Applicant’s parents and family members who live in Hong Kong to obtain such information. Also, Applicant visited his parents in Hong Kong from December 2006 to January 2007. Although Applicant has no immediate plans to visit Hong Kong, he did not rule out visiting Hong Kong in the future. Applicant also maintains frequent contact with his parents and his younger brother when on school break in Hong Kong. These contacts and visits are manifestations of the strong affection and regard Applicant has for family members in Hong Kong.

There is mitigating evidence that weighs towards granting Applicant’s security clearance. Applicant is a U.S. born citizen and the U.S. is the only country for whom he claims allegiance. He received his high school and college education in the U.S. Apart from brief times when his father was posted outside the U.S., he has lived in the U.S. He was married in the U.S., and Brother (1) lives in the U.S. and Brother (2) lives in the U.S. attending college the majority of the year. 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

³ 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. 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).

⁴ 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).

holder. His wife is a U.S. citizen and his in-laws are U.S. citizens. His parents are U.S. citizens and his two brothers are U.S. citizens. His parents own a home in the U.S., to which they intend to return upon completion of their missionary work in Hong Kong.

Applicant's ties to the United States are stronger than his ties to his parents and limited extended family 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 he has worked diligently for a defense contractor since August 2004. Notably, Applicant successfully held an interim secret security clearance for four years. He also has the overwhelming support of senior company management. His character evidence and demeanor strongly support the notion he is a very trustworthy and honest person. 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.

I conclude that in the unlikely event that Applicant's family in Hong Kong would be subject to coercion or duress from the Hong Kong government in an attempt to obtain sensitive information, Applicant because of his deep and longstanding relationships and loyalties in the U.S., would resolve any attempt to exert pressure, coercion, exploitation, or duress in favor of the United States.

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 his family members. After weighing the disqualifying and mitigating conditions and all the facts and circumstances in the context of the whole person, I conclude Applicant has mitigated the security concerns pertaining to foreign influence.

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"⁵ 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.

⁵ See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).

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
Subparagraphs 1.a. – 1.h.:	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