



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



In the matter of:)

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SSN: -----)

Applicant for Security Clearance)

ISCR Case No. 08-09336

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: *Pro Se*

June 3, 2009

Decision

WESLEY, Roger C., Administrative Judge:

History of Case

On January 5, 2009, 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 February 5, 2009, and requested a hearing. The case was assigned to another judge on March 3, 2009, and reassigned to me on March 31, 2009. The case was scheduled for hearing on April 14, 2009. A hearing was held on the scheduled date, 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 four exhibits; Applicant relied on one witness (herself) and three exhibits. The transcript (R.T.) was

received on April 22, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Besides its five exhibits, the Government requested administrative notice of eight documents: *Background Note: China*, U.S. Department of State (January 2009); *Country Specific Information: China*, U.S. Department of State (March 2009); *Country Reports on Human Rights Practices - 2008, China*, U.S. Department of State (February 2009); *Annual Report to Congress from the National Counterintelligence Executive on Economic Collection, 2005-2006* (August 2006); *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); *Background Note: Hong Kong*, U.S. Department of State (February 2008); *Country Specific Information: Hong Kong SAR*, U.S. Department of State (February 2009).

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. April 12, 2007); ISCR Case No. 02-24875, at 2 (App. Bd. Oct. 12, 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 supplement the record to provide a copy of an ISCR decision pertinent to Applicant's statute of limitation claims. For good cause shown, Applicant was granted seven days to supplement the record. The Government was afforded three days to respond. Within the time permitted, Applicant provided a copy of another judge's decision (ISCR Case No. 08-01122, Oct. 21, 2008). Department Counsel, in turn, provided a copy of an Appeal Board decision that reversed the trial judge's decision relative to the applicant's statute of limitations arguments. Applicant's post-hearing decision and Department Counsel's Appeal Board reversal are received for guidance purposes.

Summary of Pleadings

Under Guideline B, Applicant is alleged to have (a) parents who are citizens and residents of Hong Kong, (b) a brother who is a citizen and resident of Hong Kong, and (c) a sister who is a citizen of Hong Kong and resides in the U.S.

Under Guideline F, Applicant is alleged to have three debts totaling more than \$50,000.00. Allegedly, Applicant has not paid any of these debts.

For her answer, Applicant admitted each of the allegations in the SOR. She claimed that she has casual and infrequent contact with her parents. She claimed that she and her brother have become strangers for the past 15 years. She explained that her sister immigrated to the U.S when she was 20 years of age to pursue her education. She claimed her sister is a permanent U.S. resident who has applied for U.S. citizenship. With respect to her admitted debts, she claimed she accumulated them during her marriage and assumed responsibility for them as a part of her divorce settlement.

Findings of Fact

Applicant is a 47-year-old senior quality assurance engineer 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 the PRC to parents of Chinese descent (see ex. 1). She earned a bachelors degree from a PRC university in 1983 (R.T., at 51). She immigrated to Hong Kong with her father in 1985 (R.T., at 52-53).

Applicant immigrated to the U.S. on a student's visa in 1988 at the age of 27 to apply her engineering training and advance her education (R.T., at 44-46). Once in the U.S. she enrolled in a recognized U.S. university and was awarded a master of science degree in chemical engineering in 1992, and a second masters degree in statistics in July 2004 (see ex. 1; R.T., at 47-51). Applicant became a naturalized U.S. citizen in June 2001 (ex. 1). Upon becoming a U.S. citizen, Applicant surrendered her Chinese passport and renounced her Chinese citizenship (see ex. 2).

In October 1985, Applicant married H in the PRC (R.T., at 79). H was born in the PRC and immigrated to Hong Kong in 1985, where he met Applicant. He accompanied her on a spouse visa to the U.S. in 1988 (R.T., at 79-80). Applicant has no children from her marriage. H abandoned Applicant around 1994, and left with virtually all of the debts to administer (R.T., at 80-81). She filed for divorce against H in 1997 and received her final divorce decree in 1998 (R.T., at 80). She divorced H in July 1998 and maintains no contact with him (see ex. 1; R.T., at 62). She does not know whether or not H ever became a naturalized U.S. citizen (R.T., at 82).

Applicant's mother was born in the PRC to parents of Chinese descent, and remains a citizen of the PRC and a resident of Hong Kong (ex. 1). She and Applicant's sister left the PRC for Hong Kong in 1989. Her mother earned a living as a school

teacher, while living in the PRC (R.T., at 55). She continued her teaching career after she returned to Hong Kong for a number of years, before her retirement in 1997 (R.T., at 54, 77-78). Upon arriving in Hong Kong, she never applied for Hong Kong citizenship.

Applicant's father was born in Hong Kong to parents of Chinese descent and became a citizen of Taiwan by birth. He returned to Hong Kong in 1985 (R.T., at 54), and was followed by her brother in 1987 (R.T., at 54). Applicant's father was an administrator when residing in the PRC. Upon returning to Hong Kong, he became a door man, and was later promoted to a manager (R.T., at 56-57). He never applied for Chinese citizenship. He is over 80 years of age

Together, Applicant's parents have a small but comfortable retirement income and enjoy a quiet and frugal life together in a small village located in Hong Kong. They own their own apartment and do not require or receive any financial assistance from Applicant (R.T., at 66-67).

Besides her parents, Applicant has a brother who was born in the PRC, but applied for and became a citizen of Hong Kong following his arrival in 1987. Her brother resides in Hong Kong, is unmarried, and is currently underemployed (R.T., at 57-59). Even though he still lives with her parents, she has had no contact with her brother for over 15 years (R.T., at 58).

Applicant's only sister was born in the PRC and applied for and became a citizen of Hong Kong following her arrival in 1989 (see ex. 2). Her sister immigrated to the U.S. in 1991 on a student's visa (at the age of 20) to pursue her studies (R.T., at 68-69, 76). She applied for U.S. citizenship and is a permanent resident of the U.S. (see ex. 1). Her sister is unmarried and has a son under 18 years of age (R.T., at 62). She earned several graduate degrees in the U.S. and currently teaches at an American university (R.T., at 61, 76-77). Applicant last spoke to her sister in January 2009 and does not know if or when her sister obtained her U.S. citizenship, or whether she has since renounced her Hong Kong/PRC citizenship (R.T., at 61-62, 75).

Applicant maintains some telephone contact with her parents (R.T., at 59). She last spoke to her mother in February 2009 (R.T., at 59), but maintains no e-mail or letter contact with either of her parents (R.T., at 60-61). She visited her parents in Hong Kong in 1995, and again in 2002, but not subsequently (R.T., at). Her mother last visited Applicant in the U.S. in 2003 (R.T., at 68).

Applicant's grandparents passed away. Before her grandfather's death in 1997, he was a prisoner of war in the PRC (ex. 2; R.T., at 65). Applicant does not know anything about her grandfather or other grandparents, to include her extended family members.

In addition to her sister, Applicant has several cousins who reside in the U.S. (R.T., at 74-75). She has little contact with any of them.

Applicant has not been involved in any embarrassing or compromising incidents overseas, and has not engaged in any illegal activities (see exs. 1 and 2). She provides no financial assistance to any of her family members (who are self-sufficient), or to anyone or any entity outside the U.S. She has never served in a foreign military; nor is she willing to do so (exs. 1 and 2). She has had no contact with any foreign government representatives or organizations since residing in the U.S. She has no financial interests or obligations in Hong Kong.

Applicant 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 exs. 1 and 2). She has never had any foreign property confiscated, and she has never sponsored any foreign nationals to the U.S. (see ex. 4).

Applicant has never 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. To the best of her knowledge, her family members residing in Hong Kong are free to travel outside of the country and are at no risk of coercion, compromise, or pressure by any members of the Hong Kong or PRC governing bodies (see ex. 2; R.T., at 83-84).

By contrast, Applicant has held jobs in the U.S. and maintains brokerage accounts with U.S. banks. She owns the home she resides in. She considers herself 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). She fully understands the importance of reporting any all foreign travel to his employer's security officials.

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 her family members who are birth residents and citizens of Hong Kong before the reversion (see *Country Specific Information: Hong Kong SAR, supra*, at 5).

Hong Kong today has a population of 7.00 million (95 per cent of which are Chinese), and is one of the most densely populated regions of the world (see *Background Note: Hong Kong, supra*, at 1-2). 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 2-3). 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 3-5).

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 (see *Background Note: Hong Kong, supra*, at 3). 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 (NPCSC), which is by no means assured (see *id.*, at 3).

Because Applicant's parents and brother are still citizens and residents 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's parents and brother, and to some extent her sister who remains a Hong Kong citizen and resident of the U.S. Despite her more limited contacts with her parents and

siblings in recent years, she still retains her strong affections for her immediate family members, which is unlikely to change in the foreseeable future.

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, as well as one of the world's fastest growing economies (see Background Note: China, *supra*, at 1-2). Today it continues to undergo rapid economic and social change (growing its economy at a rate of about 11.4 per cent per year). 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 square mile country is authoritarian in structure and ideology. The PRC possesses increasingly sophisticated military forces and continues to modernize itself from a land-based military power to a smaller, more mobile, high tech military that eventually will be more capable of mounting limited operations beyond its coastal waters (see *id.*, at 15-17).

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 17-22). 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 *id.*, at 71-74).

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 and uses Hong Kong to further its collection purposes (see *Intelligence Threat Handbook, supra*, at 24, 27, 71-72). 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, forced relocations, and mistreatment of prisoners (see *Country Reports on Human Rights Practices - 2008, China, supra*, at 2-12).

Of growing concern to U.S. security interests are the 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 - 2008, China, supra*). The State Department cites a comprehensive, credible accounting of all those killed, missing, or detained, reported incidents of deaths in custody, disappearance, torture, forced locations, and other cruel, inhuman, or degrading treatment or punishment (see *id.*, at 4-12). While the PRC officially denies holding any political prisoners, Western non-government organizations estimate that several hundred 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 9).

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 its many 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 (*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.

Applicant's finances

Applicant and her ex-husband owned a home in the U.S. during their marriage and accumulated considerable credit card debt (R.T., at 37-41). After their divorce in 1998, Applicant continued to live in the home, suffered from depression, and struggled to pay her bills without any financial support from H (see ex. 2; R.T., at 40-41).

In December 2007, Applicant moved to her current state of residence and put her old home up for sale. Before the house was sold in December 2008, Applicant did not have much left over for paying her bills (R.T., at 70-71).

Records show that she accumulated three delinquent debts totaling more than \$50,000 during her marriage., and assumed responsibility for these debts as a part of her divorce settlement in 1998 (see exs. 2, 3 and 4). She explored both bankruptcy and

credit counseling following divorce, but elected not to pursue either option due to uncertainties in her employment and concerns about the credit consequences from a bankruptcy filing (see ex. 2; R.T., at 38-39, 71-72).

To date, Applicant has made no payments on the three delinquent debts listed in the SOR. Records show that her debt to creditor 1.a was closed in 2001 with a delinquent balance of \$28,685.00 (see exs. 3 and 4; R.T., at 42). She has made no effort to contact or otherwise address this debt. In December 2008, she received a cancellation of debt notice from creditor 1.a that presumably was filed by the issuing creditor with the IRS. Whether this debt is treated as income to Applicant by the IRS is unclear at this time.

Applicant has a delinquent debt with creditor 1.b in the amount of \$10,677.00 (see exs. 3 and 4). Reportedly, this account was opened before 2001, became delinquent in 2001, and was charged off by the creditor in June 2005 with a delinquent balance of \$10,677.00 (exs. 3 and 4). Applicant has made no concerted attempts to pay or otherwise discharge this account since at least 2001.

Applicant's third and final listed debt is a delinquent debt owed to creditor 1.c in the reported amount \$11,718.00 (see exs. 2, 3 and 4). This account was placed in collection and charged off in February 2008 with a reported balance of \$11,718.00 (see exs. 3 and 4). Applicant failed to make any manifest attempts to resolve this debt since at least 2001.

Applicant considers all of her listed credit card debts to be barred by relevant statutes of limitation and are no longer collectible (R.T., at 43-44, 71-72). She cites to her most recent credit report for proof that she no longer has any negative accounts and has regained financial control of her life (R.T., at 44).

Applicant has a net monthly income of \$5,015.00 from her work (see ex. 2). She claims net monthly expenses of \$1,490.00 and a mortgage debt of \$1,779.00 a month (ex. 2). Her personal financial statement reflects a net monthly remainder of \$1,746.00 (ex. 2). This monthly remainder is a little more than she reported after the sale of her home in 2007, but not by much.

Applicant provides no evidence of her performance evaluations, endorsement from her supervisors and colleagues, or contributions to her community. She provides no evidence of assessments from her friends and acquaintances in her community or civic and charitable contributions.

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 E2(a) 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.

Financial Considerations

The Concern: Failure or inability to live within one's means, satisfy debts and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts. Adjudication Guidelines (AG), ¶ 18.

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 facts 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 the PRC to parents of Chinese descent and traces some of her British family roots from her father through Hong Kong's historical colonial links with Britain. She immigrated to the U.S. in 1991 for educational reasons. She completed her graduate curricula in the U.S. and became a U.S. citizen in 2001. Applicant is an experienced engineer with a U.S. defense contractor. Security issues of concern to the Government focus on the citizenship and residence of her parents and brother 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. Additional security concerns are raised over the Hong Kong citizenship of Applicant's sister, who resides in the U.S. And security concerns are raised over Applicant's three delinquent debts that have since been written off without any tangible effort expended by Applicant in paying or otherwise resolving the debts.

Foreign influence concerns

The Government urges security concerns over risks that Applicant's immediate family members (her parents and brother) who are citizens and residents of 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. Lesser concerns are also raised over Applicant's sister who is a citizen of Hong Kong and a resident of the U.S.

Because Applicant and her immediate family members 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 family members 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 her mother since 2003; nor has she seen her father since 2007, she talks to her parents on a regular basis. Such contacts could create potential conflicts of interest; even though she has no voting or financial interests in China (inclusive of Hong Kong).

Applicant and her family have 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 have any political affiliations with the Hong Kong or PRC governing bodies. Her parents or siblings do not have any history to date of being subjected to any coercion or influence. Nor do any of her immediate family members 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 her parents are more than neutralized by the former's 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 her 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. To be

sure, friendly nations can have profound disagreements with the U.S. over matters they view to be of strategic importance to their own vital interests. We know that even friendly nations have engaged in espionage against the U.S. (see ISCR Case No. 00-0317 (App. Bd. March 29, 2002)).

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 parents and brother 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 her family members residing in Hong Kong is a manageable one. None of these family members have any relationships or demonstrated connections with any officials or agents of the Hong Kong and PRC governments that could create the basis for potential conflicts.

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 significant 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 parents or any of her family members residing in Hong Kong or the U.S. were to be pressured, Applicant's strong loyalties and security commitments to the U.S. make it very unlikely that she 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 her relationships with her immediate family members.

Whole person assessment also serves to minimize Applicant's exposure to conflict of interests with her parents and brother who continue to reside in Hong Kong. Not only has Applicant become a naturalized U.S. citizen and received her advanced engineering degree in the U.S., but she has made every effort to work, save, and pursue her financial interests exclusively in the U.S.

In Applicant's case, any likelihood of coercion, pressure, or influence being brought to bear on her parents and siblings, or any other 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 parents and brother residing in Hong Kong are sufficiently mitigated to permit safe predictive judgments about Applicant's ability to withstand risks of undue influence attributable to her familial relationships in Hong Kong (now part of the PRC). Her demonstrated loyalties and commitments to protecting U.S. security interests, make it highly unlikely she would succumb to any foreign influence brought to bear on herself or her parents by PRC government or military officials. Favorable conclusions warrant with respect to the allegations covered by Guideline B.

Financial issues

Security concerns are raised under the financial considerations guideline of the revised Adjudicative Guidelines where the individual applicant is so financially overextended as to indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, which can raise questions about the individual's reliability, trustworthiness and ability to protect classified information, and place the person at risk of having to engage in illegal acts to generate funds. Applicant's accumulation of delinquent debts and her past inability to pay these debts warrant the application of two of the disqualifying conditions (DC) of the Guidelines DC ¶ 19(a), inability or unwillingness to satisfy debts, and ¶19(c) "a history of not meeting financial obligations."

Applicant's debts are attributable in part to the limited resources following her divorce in 1998 and ensuing extra burdens imposed on her meeting her mortgage and other debt responsibilities without assistance from her ex-husband. Faced with mortgage

demands, symptoms of depression and limited income, she let some of the old consumer debts she inherited from her marriage become delinquent. She still has not addressed three major debts and provides no indications of her willingness to do so. Applicant's progress to date in regaining control of her finances is insufficient to mitigate security concerns over the state of her financial situation.

To demonstrate her good-faith intentions in addressing her listed debts, Applicant essentially relies on the availability of governing statutes of limitation in her current and former state to render her listed debts non-enforceable. She cites to a DOHA decision (ISCR Case No. 08-01122 (Oct. 21, 2008)) to sustain her claims that statute of limitations bars render debts unenforceable and to that extent should mitigate any security concerns over outstanding debts. However, this decision was reversed by the Appeal Board (see ISCR Case No. 08-1122 (App. Bd. Feb 9, 2009, and for all of the reasons advanced by the Board, Applicant's reliance on statutes of limitations bars in her current and former states is not sufficient to overcome judgment and trust concerns that relate to her past failures to address her valid debts.

Based on her evidentiary showing, Applicant's proofs are sufficient to establish some extenuating circumstances associated with her debt accumulations. As a result, MC ¶ 20(b) of the financial considerations guideline, "the conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation, and the individual acted responsibly," has some application to Applicant's circumstances.

Full mitigation credit is not available to Applicant, however, based on the facts of this case. Neither Applicant's oral nor written evidence reflect any initiated voluntary repayment efforts on her behalf on her three listed debts. Her past unwillingness to address these debts with her positive income sources preclude her taking advantage at this time application of any of the mitigating conditions covered in the financial guideline.

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance. While the principal concern of a clearance holder's demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in financial cases (as here).

Whole person assessment does not enable Applicant to surmount the judgment questions raised by her accumulation of delinquent debt. She is not able to demonstrate enough tangible effort in addressing her covered debts to mitigate her debt delinquencies, or establish control over her finances. Without more evidence of her overall contributions in her work and community and her progress in stabilizing her finances, it is still too soon to credit her with restoring her finances to levels compatible with minimum levels of judgment and trustworthiness. In balance, whole person assessment does not enable Applicant to establish judgment and trust levels sufficient to

enable her to overcome appraised security concerns arising out her accumulation of delinquent debts.

Taking into account all of the extenuating facts and circumstances surrounding Applicant's debt accumulations, the limited resources she had to address them with following her 1998 divorce, and the absence of corrective steps to address her old debts, it is still too soon to make safe predictive judgments about Applicant's ability to repay her debts and restore her finances to stable levels commensurate with her holding a security clearance. Unfavorable conclusions warrant with respect to the allegations covered by subparagraphs 2.a through 2.c.

In reaching my decision, I have considered the evidence as a whole, including each of the factors and conditions enumerated in AG E2(a) 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-paras 1.a through 1.d:	For Applicant
GUIDELINE F (FINANCIAL CONSIDERATIONS):	AGAINST APPLICANT
Sub-paras 2.a through 2.c:	Against Applicant

Conclusions

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is denied.

Roger C. Wesley
Administrative Judge