



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



In the matter of:)
)
-----) ISCR Case No. 09-03493
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Kathryn D. MacKinnon, Esquire, Department Counsel
For Applicant: William F. Savarino, Esquire

September 1, 2010

Decision

HARVEY, Mark, Administrative Judge:

In 1971, Applicant was born in Hong Kong. In 1991, she immigrated to the United States. In 1997, she became a U.S. citizen. Her husband and daughter are U.S. citizens. However, her mother-in-law lives in Hong Kong, and over the last two years her father-in-law has spent more than eight months in Hong Kong. Her parents-in-law currently live in Hong Kong as permanent residents. Her parents-in-law provided substantial financial support to Applicant's family. Applicant traveled to Hong Kong in 2005 and 2008. Foreign preference concerns are mitigated; however, foreign influence concerns are not fully mitigated at this time. Access to classified information is denied.

Statement of the Case

On August 29, 2008, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) (hereinafter SF-86) (Government Exhibit (GE) 1). On January 19, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to her, alleging security concerns under Guidelines C (foreign preference) and B (foreign influence) (Hearing Exhibit (HE) 2). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense Directive 5220.6, *Defense*

Industrial Personnel Security Clearance Review Program (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005. 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 her, and it recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On March 9, 2010, Applicant responded to the SOR. (HE 3) On April 1, 2010, Department Counsel was prepared to proceed. On April 5, 2010, the case was assigned to me. On May 13, 2010, DOHA issued a hearing notice setting the hearing for June 8, 2010. (HE 1) The hearing was held on June 8, 2010, as scheduled. At the hearing, Department Counsel offered three exhibits (GE 1-3) (Transcript (Tr.) 15), and Applicant offered six exhibits. (Tr. 75-85; AE A-F) There were no objections, and I admitted GE 1-3 and AE A-F. (Tr. 15, 84-85) Additionally, I admitted the SOR, response to the SOR, and the hearing notice. (HE 1-3) Applicant provided the decisions of Administrative Judge Roger Wesley in ISCR Case 08-09336 (A.J. June 3, 2009), ISCR Case No. 07-01191 (A.J. Mar. 23, 2009), and ISCR Case No. 07-15909 (A.J. Nov. 5, 2008). (HE 4-6) These three decisions discuss foreign influence and foreign preference concerns relating to relatives of those three Applicants who were living in Hong Kong. The three decisions conclude security concerns are mitigated. (HE 4-6) The decisions by administrative judges provide persuasive albeit non-binding authority. On June 16, 2010, I received the hearing transcript. After the hearing, I received two additional exhibits from Applicant, which were admitted without objection. (AE G, H)

Procedural Ruling

Department Counsel requested administrative notice of facts concerning the People's Republic of China (China or PRC) and Hong Kong. (Tr. 14; Administrative Notice Request, May 14, 2010) Department Counsel provided supporting documents to show "verification, detail and context" for these facts in the Administrative Notice request. *Id.* Applicant did not object to me taking administrative notice of all of the facts in all of the documents. (Tr. 14) See the China section of the Findings of Fact of this decision, *infra*, for the material facts from Department Counsel's submissions on China.

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) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). Usually administrative notice in ISCR proceedings is accorded to 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).

Findings of Fact¹

Applicant admitted some of the underlying facts alleged in the SOR; however, she denied that she has a foreign preference and that she was vulnerable to foreign influence in her response to the SOR. (HE 3) After a complete and thorough review of the evidence of record, I make the following findings of fact.

In 1971, Applicant was born in Hong Kong, and she received her education through high school in Hong Kong. (Tr. 29, 33; GE 1 at 6) Her parents were worried about the Communist takeover of Hong Kong, and in 1982, they applied to immigrate to the United States. (Tr. 18) They waited nine years for permission to live in the United States. (Tr. 18) After Applicant completed high school in Hong Kong, she was a student in Canada for 18 months. In 1991 when Applicant was 19 years old, Applicant, her parents, her brother, and her sister moved to the United States. (Tr. 17, 20, 34, 38) In 1997, she became a U.S. citizen. (GE 1 at 7) There is no derogatory information concerning Applicant's police or financial records. She has never been fired from a job. There is no evidence of record showing any U.S. arrests, illegal drug possession or use, or alcohol-related incidents.

Applicant married in 1992. (Tr. 37) Her husband was born in Hong Kong and attended high school and college in Canada. (Tr. 87-90) Her daughter was born in the United States in 2006. (Tr. 52, 64) Her husband has been employed since 1995 repairing medical equipment, and he does not have a security clearance. (Tr. 52-53) Her husband does not have any affiliation with any foreign government. (Tr. 59) Applicant earned her bachelors and masters degrees in the United States. (Tr. 39) She is employed in information systems technologies. (Tr. 39) She began working as a database administrator for her current employer, a defense contractor, in 1998. (Tr. 40-41)

Applicant, her husband, and their two-year-old daughter went to Hong Kong in 2008 to visit his grandmother. (Tr. 21-22, 66) They stayed for three weeks with Applicant's parents-in-law on Hong Kong Island. (Tr. 66-67) They did not travel across the harbor into the PRC side of Hong Kong. (Tr. 68)

Applicant and her husband went to Hong Kong in 2005 and stayed for ten days with Applicant's aunt and uncle in Hong Kong. (Tr. 22, 68-69; SOR ¶ 2.d) In the last year, Applicant's parents and brother visited Hong Kong to conduct some business in relation to her grandparent's grave sites. (Tr. 22-23) Applicant did not visit the PRC after the age of 13. (Tr. 31) She has never been detained or questioned by the Honk Kong police. (Tr. 71)

¹The facts in this decision do not specifically describe employment, names of witnesses or locations in order to protect Applicant and her family's privacy. The cited sources contain more specific information. Unless stated otherwise, the sources for the facts in this section are Applicant's SF-86 (GE 1) or her Office of Personnel Management (OPM) personal subject interview (PSI) on October 8, 2008. (GE 3)

Applicant does not have any assets in Hong Kong. (Tr. 23, 42, 63) She has never voted in a foreign election or served in a foreign military. (Tr. 43) She has never had a foreign passport. (Tr. 43-44) She used her U.S. passport for her trips to Hong Kong in 2005 and 2008. (Tr. 70) She and her husband do not intend to move back to Hong Kong. (Tr. 25)

Applicant's equity in her home in the United States is about \$600,000. (Tr. 60, 93-94) She and her brother also have about \$370,000 in equity in the townhouse where her brother and parents live. (Tr. 61, 102-104)² She and her husband have about \$350,000 in U.S. financial accounts. (Tr. 62-63)

Applicant retained a Hong Kong identification card because she could use it to get through lines faster than a foreigner would be able to do. (Tr. 25) However, Applicant now uses her U.S. passport to ensure she has the protection of the U.S. Embassy. (Tr. 26)

Applicant's brother is 32-years-old, and he lives in the United States. (Tr. 56, 77) He is involved in computer programming for a U.S. Government agency. (Tr. 57) He holds a security clearance. (Tr. 58, 78) Applicant's sister lives in the United States, and she is married. (Tr. 57) Applicant's brother-in-law is a computer network technician for a major information technology company. (Tr. 58) Her brother-in-law holds a security clearance. (Tr. 58, 76)

Applicant's parents-in-law are permanent residents of Hong Kong. (Tr. 23; GE 3 at 2; SOR ¶¶ 2.a and 2.c) Currently she has contact with her parents-in-law every few months or so.³ (Tr. 53) When he lived in Hong Kong, her father-in-law ran a privately-owned textile company. (Tr. 91, 107-108) Her father-in-law now lives in the United States, and he is a U.S. citizen. (Tr. 44; GE 3 at 2) In 2008, her father-in-law spent about eight months in Hong Kong. (Tr. 23; GE 3 at 2) He spends more time in the United States than he does in Hong Kong. (Tr. 45) Applicant's mother-in-law is a Chinese citizen and resident of Hong Kong. (Tr. 44; GE 3 at 2; SOR ¶ 2.a) Applicant's father-in-law's mother is 95 years old, and she is ill. (Tr. 24) Applicant's parents-in-law recently (a few months ago) returned to Hong Kong to assist her father-in-law's mother. (Tr. 24, 107, 109) Applicant's parents-in-law and immediate family members have not visited the PRC. (Tr. 32) Applicant believes her parents-in-law will move to the United States when her father-in-law's mother passes away. (Tr. 107-108) She said that she most recently spoke to her mother-in-law in 2009 when her parents-in-law visited Applicant; however, on that occasion they had an argument. (Tr. 109)

²Applicant and her brother purchased the townhouse for \$220,000, and they took out a mortgage for about \$80,000. (Tr. 102) They received the remainder or about \$130,000 from her parents. (Tr. 102-103) Applicant and her brother split the mortgage payments and they are both listed as owners on the property's title. (Tr. 104)

³ Applicant's August 8, 2008 PSI states she has contact with her parents-in-law about once a month. (GE 3 at 2)

Applicant respects her parents-in-law and feels an obligation to care for their health; however, she does not have a close emotional tie to them. (Tr. 28) Her husband is not close to his parents because his grandmother raised him. (Tr. 46-47) Her parents-in-law do not have employment in Hong Kong. (Tr. 49) In 1996, Applicant and her husband bought a house, and her parents-in-law provided about \$220,000 towards the purchase. (Tr. 99) The money was transferred from Hong Kong when her parents-in-law came to the United States. (Tr. 112-113) She did not know the extent of her parents-in-law's assets in Hong Kong, and her relationship was not close enough for her to have that kind of information. (Tr. 114-115) She believes that her parents-in-law own a house in Hong Kong. (Tr. 115) She and her husband still owe his parents the \$220,000 that they received in 1996. (Tr. 101) They have not asked for repayment; however, they suggested repayment if Applicant and her husband could afford it. (Tr. 110) There is no contract requiring repayment of the \$220,000. (Tr. 112-114)

In 2007, Applicant's parents-in-law provided \$20,000 as a gift for Applicant's daughter's college fund. (Tr. 51-52) They feel a strong affection for their granddaughter. (Tr. 51-52, 92) The funds are in an educational trust fund, which contains \$36,201. (Tr. 78-80; AE D) Applicant contributed \$16,000 to the educational trust fund. (Tr. 80) Applicant's parents-in-law are aware that she applied for a security clearance. (Tr. 54-55) Applicant's sister-in-law moved from Hong Kong to the United States, and she is a permanent resident of the United States. (Tr. 55-56)

On May 5, 2010, Applicant sent in the forms to declare the termination of her and her husband's Hong Kong and Chinese nationality along with two checks for \$40. (Tr. 80-82; AE E, F) Her forms were returned because she sent her payment in U.S. dollars instead of Hong Kong dollars. (Tr. 83)

Applicant's October 8, 2008 PSI includes the statement at 1, which reads:

The subject feels that her allegiance and loyalty lies both with Hong Kong and with the United States. The subject feels this way due to the fact that she spent the first part of her life there, however she does not want, or intend, to move back to Hong Kong. The subject has never felt any personal conflict between her allegiance between the United States and her allegiance to Hong Kong.

She offered to renounce her permanent residence status as part of the same OPM PSI where she made the statement about allegiance and loyalty to Hong Kong.

On July 20, 2009, Applicant responded to DOHA interrogatories and adopted the PSI. (Tr. 26; GE 3) At her hearing, Applicant said she had good memories of Hong Kong, but she did not feel loyalty to the Hong Kong Government. (Tr. 27) She did not feel any obligation to defend or protect Hong Kong. (Tr. 27) She supports the United States "100 percent." (Tr. 106) She is "100 percent loyal to the United States." (Tr. 117) She is grateful for what the United States has provided to her, including her education. (Tr. 106) She would safeguard the United States' information and her company's information. (Tr. 106)

Character Evidence

A friend (F), who is employed as a senior programmer and analyst, has known Applicant since 1994. (AE A) F advises that Applicant is loyal, trustworthy, reliable, dependable, and proud to be an American. (AE A) F supports approval of a security clearance for Applicant. (AE A)

Applicant's brother-in-law (W) is employed as a network consulting engineer. (AE B) Applicant's brother (K) is employed as a computer scientist. (AE C) W and K each hold a secret security clearance. (AE B, C) They describe Applicant as loyal to her family and the United States as well as trustworthy, reliable and dependable. (AE B, C) W and K support approval of a security clearance for Applicant. (AE B, C)

China⁴

On July 1, 1997, Hong Kong became a Special Administrative Region of the PRC. Hong Kong has a population of 6.9 million, 95% of which are Chinese. Hong Kong has a high degree of autonomy, except in the areas of defense and foreign policy, which are China's responsibility. In the last year or so, China has taken on a more active role in overseeing the Hong Kong government's management of political developments. Under Chinese nationality law, persons who are of Chinese descent and who were born in the mainland of China or Hong Kong are citizens of the PRC.

The Hong Kong government generally respects the human rights of its citizens. However, reported human rights problems include limitations on residents' ability to change their government and on the power of the legislature to affect government policies, continuing concerns about self-censorship, violence and discrimination against women, and restrictions on workers' rights to organize and bargain collectively. The increasing influence of the PRC on Hong Kong is likely to reduce human rights in Hong Kong.

The PRC has powerful military forces, including strategic nuclear missiles. China is geographically vast, and has a population of over a billion people. It has significant resources and an economy that in recent years has expanded about 10% per year. China aggressively competes with the United States in many areas. China's competitive relationship with the United States exacerbates the risk posed by an applicant's connections to family members living in the China, including those living in Hong Kong.

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 also monitors communications devices, such as telephones, telefaxes, and internet servers.

⁴The facts in the section concerning Hong Kong and the PRC are from the Department Counsel's documents submitted for Administrative Notice and are primarily derived from Department Counsel's summary as well as U.S. Department of State, *Background Note, China*, October 2009 (25 pages) and, *China—Country Specific Information*, December 31, 2009 (9 pages) (Enclosures I and II).

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

The 2009 Report of the U.S.-China Economic and Security Review Commission noted the following about China's enterprise-directed industrial espionage:

Enterprise-directed espionage may also be growing in importance and taking on less random and more targeted form. The 2008 unclassified report of the Defense Security Service cited a rise in efforts undertaken by commercial entities to target restricted technologies, speculating that this likely represents "a purposeful attempt to make contacts seem more innocuous by using non-governmental entities as surrogate collectors for interested government or government-affiliated entities. . .

Chinese intelligence personnel are more inclined [than Russian intelligence personnel] to make use of sympathetic people willing to act as a "friend of China." While this most clearly has been seen in PRC-targeted recruitment of Chinese-Americans, PRC agents also have used as sources U.S. citizens of other ethnic backgrounds.

In cases resulting in federal prosecutions during fiscal years 2007 and 2008, China was ranked second only to Iran as the leading destination for illegal exports of restricted U.S. technology.

China's espionage and industrial theft activities are a threat to the security of U.S. technology. Department Counsel's summary provides additional details of China's aggressive intelligence efforts directed towards acquiring U.S. secrets and proprietary technologies as well as nine examples of criminal cases in 2007 to 2009 involving people and organizations connected to the PRC. *Id.* at 4-5.

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 that, "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 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 meeting the criteria contained in the 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. Adverse clearance decisions are made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the [a]pplicant 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 or her] 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, I conclude the relevant security

concerns are under Guidelines C (foreign preference) and B (foreign influence) with respect to the allegations set forth in the SOR.

Foreign Preference

AG ¶ 9 describes the foreign preference security concern stating, “when an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.”

AG ¶ 10 describes conditions that could raise a security concern and may be disqualifying in Applicant’s case:

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

- (1) possession of a current foreign passport;
- (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;

(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen;

(c) performing or attempting to perform duties, or otherwise acting, so as to serve the interests of a foreign person, group, organization, or government in conflict with the national security interest; and

(d) any statement or action that shows allegiance to a country other than the United States: for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship.

Applicant maintained permanent resident status in Hong Kong after becoming a citizen and resident of the United States. (SOR ¶ 1.a(1)) On October 8, 2008, during her

OPM PSI she stated, that she “feels that her allegiance and loyalty lies both with Hong Kong and with the United States.” (SOR ¶ 1.a(2)) AG ¶ 10(d) applies.

AG ¶ 11 provides conditions that could mitigate security concerns:

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

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

(c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;

(d) use of a foreign passport is approved by the cognizant security authority;

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

(f) the vote in a foreign election was encouraged by the United States Government.

Applicant's received very minor benefits as a result of holding permanent resident status, because she only went to Hong Kong twice, and this status only allowed her to choose the non-foreigner lines when going through customs. Her statement about having some “allegiance and loyalty” to Hong Kong was more an expression of sympathy or empathy towards her Hong Kong heritage and was not an expression of loyalty or allegiance to the PRC's Communist Government or the Hong Kong political authorities. She offered to renounce her permanent residence status as part of the same OPM PSI where she made the statement about allegiance and loyalty to Hong Kong. She subsequently sent in the form to renounce her permanent residence status. AG ¶ 11(b) applies and foreign preference concerns are mitigated.

Foreign Influence

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such

considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 indicates three conditions that could raise a security concern and may be disqualifying in this case:

(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;

(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; and

(d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

AG ¶¶ 7(a) and 7(b) do not apply; however, 7(d) applies to her spouse's and daughter's relationships with her parents-in-law, who are living in Hong Kong. Applicant, her spouse, and parents-in-law were born in Hong Kong. At the time of her hearing, her parents-in-law were living in Hong Kong in a home they owned. She shares living quarters with her spouse.

Applicant's communications with her parents-in-law are currently not frequent. However, she frequently communicated with her parents-in-law at the time she completed her PSI in 2008. "[T]here is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse." ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at *8 (App. Bd. Feb. 20, 2002). Applicant has not fully rebutted this presumption. Applicant's relationship with her husband and daughter as well as their relationships with her parents-in-law living in Hong Kong are sufficient to create "a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion." These relationships with residents of Hong Kong create a concern about Applicant's "obligation to protect sensitive information or technology" and her desire to help her husband and daughter, and through them her parents-in-law who are in Hong Kong. For example, if the Chinese Government wanted to expose Applicant to coercion, it could exert pressure on her parents-in-law. Applicant would then be subject to potential, indirect coercion through her spouse and daughter's relationship with her parents-in-law.

The mere possession of close family ties with a family member living in Hong Kong is not, as a matter of law, disqualifying under Guideline B. However, if an applicant has a close relationship with even one relative living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially

result in the compromise of classified information. See *Generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an Applicant's family members are vulnerable to government coercion or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence collection operations against the United States. The relationship of China with the United States places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that her indirect relationships with her parents-in-law living in Hong Kong do not pose a security risk. Applicant should not be placed in a position where she might be forced to choose between loyalty to the United States and a desire to assist her parents-in-law living in Hong Kong, or to assist her spouse, who might be coerced through her parents-in-law living in Hong Kong.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002).

While there is no evidence that intelligence operatives from China seek or have sought classified or economic information from or through Applicant, her spouse, or her parents-in-law living in Hong Kong, it is not possible to rule out such a possibility in the future. Although Applicant's communications with her parents-in-law living in Hong Kong are currently not frequent, she stated she continues to feel an obligation to care for their health. Applicant's concern for the welfare of her in-law is a positive character trait that increases her trustworthiness; however, it also increases the concern about potential foreign influence. Department Counsel produced substantial evidence to raise the issue of potential foreign pressure or attempted exploitation. AG ¶ 7(d) applies, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

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

individual, group, organization, or government and the interests of the U.S.;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

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

AG ¶¶ 8(a), 8(b), 8(c), and 8(f) have limited applicability. Applicant traveled to Hong Kong in 2005 and 2008. In 1996, her parents-in-law provided Applicant and her husband \$220,000 to purchase a house and did not specify terms of repayment.⁵ This money has not been repaid. After Applicant's daughter was born in 2006, her parents-in-law provided \$20,000 for her daughter's college trust fund. Applicant has frequent contact with her spouse and daughter, who live with her, and currently she has almost no contact with her parents-in-law, who live in Hong Kong. Her spouse currently has quite limited contacts with his parents because of an argument. The amount of contacts between an Applicant and relatives living in a foreign country are not the only test for determining whether someone could be coerced through their relatives. Because of her connections to her husband and daughter, and their connections to his parents,

⁵In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

(a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

(citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). I have considered the non-SOR information about a financial connection between Applicant and her parents-in-law for purposes of (b) and (e), and have not considered this information for any other purpose.

Applicant is not able to fully meet her burden of showing there is “little likelihood that [he and his spouse’s relationships with relatives who are residents of Hong Kong] could create a risk for foreign influence or exploitation.” She admitted that she feels an obligation to care for her parents-in-law’s health.

Applicant has “deep and longstanding relationships and loyalties in the U.S.” She has strong family connections to the United States. Her spouse, daughter, and several other relatives are U.S. citizens and live in the United States. Applicant owns a house in the United States and has substantial investments in the United States.

Applicant’s relationship with the United States must be weighed against the potential conflict of interest created by her relationships with her family members who either live in Hong Kong or spend extended periods of time visiting Hong Kong. There is no evidence that terrorists, criminals, the Chinese Government, or those conducting espionage have approached or threatened Applicant or her parents-in-law in Hong Kong to coerce Applicant or her parents-in-law for classified or sensitive information. As such, there is a reduced possibility that Applicant or Applicant’s family would be specifically selected as targets for improper coercion or exploitation. While the government does not have any burden to prove the presence of such evidence, if such record evidence was present, Applicant would have a heavy evidentiary burden to overcome to mitigate foreign influence security concerns. It is important to be mindful of the United States’ recent relationship with China, and especially China’s systematic human rights violations and economic espionage. China’s conduct makes it more likely that China would attempt to coerce Applicant through her parents-in-law living in Hong Kong, if China determined it was advantageous to do so.

AG ¶¶ 8(d) and 8(e) do not apply. The U.S. Government has not encouraged Applicant’s involvement with her parents-in-law living in Hong Kong. Applicant is not required to report her contacts with her parents-in-law living in Hong Kong.

AG ¶ 8(f) has some applicability. Applicant has substantial property interests in the United States, which include her employment in the United States, and the value of her home and investments in the United States. However, this mitigating condition can only fully mitigate security concerns raised under AG ¶ 7(e), and AG ¶ 7(e) is not raised in this case. Applicant does not own any property or have any investments in Hong Kong or elsewhere in China. Her very substantial investments in the United States reduce the relevance of the approximately \$260,000 provided by her parents-in-law.

In sum, the primary security concern is Applicant’s close relationship with her husband and daughter, as well as their relationships with her parents-in-law, who live in Hong Kong. Her parents-in-law live in Hong Kong and are readily available for coercion. The Chinese Government’s history of espionage (especially industrial espionage) against the United States and its failure to follow the rule of law further increase the risk of coercion. The concern about her visits to Hong Kong in 2005 and 2008 are mitigated. But for her parents-in-law living in Hong Kong, all foreign influence security concerns would be mitigated.

Whole-Person Concept

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

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guidelines C and B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under this guideline, but some warrant additional comment.

There are some facts supporting mitigation of security concerns. A friend of many years, her brother, and brother-in-law lauded her reliability, trustworthiness, and loyalty and recommended approval of her security clearance. In 1991, Applicant immigrated to the United States from Hong Kong. She earned her bachelor's and master's degrees in the United States. In 1997, Applicant became a U.S. citizen. Her daughter and her husband are U.S. citizens. She owns a home in the United States, and her employment is in the United States. She has a U.S. passport. She offered to renounce her Chinese permanent residence status during her 2008 PSI, and she sent documentation to the Chinese Government seeking to renounce her Chinese residency.

There is no derogatory information concerning Applicant's police or financial records. She has never been fired from a job. There is no evidence of record showing any U.S. arrests, illegal drug possession or use, or alcohol-related incidents. She is loyal to the United States one hundred percent. She considers the United States to be her home. Applicant's demeanor, sincerity, and honesty at her hearing are important factors militating towards approval of her access to classified information.

The circumstances tending to support denial of Applicant's clearance are more significant than the factors weighing towards approval of her clearance at this time. Applicant's parents-in-law live in Hong Kong. The PRC has control of Hong Kong for national security purposes, and PRC's intelligence agents have access to residents of Hong Kong. Applicant had frequent contact with her parents-in-law when she completed her PSI in 2008. At her hearing, she said she has an obligation to care for her parents-in-law's health. In 1996, her parents-in-law provided \$229,000 to Applicant and her spouse. In 2006, her parents-in-law provided \$20,000 for Applicant's daughter's college

fund. She traveled to Hong Kong in 2005 and 2008. Applicant's parents-in-law visited Applicant in 2009. Applicant had an argument with her parents-in-law in 2009, and they are not currently communicating with each other.

A Guideline B decision concerning Hong Kong must take into consideration the geopolitical situation in China, as well as the dangers existing in China.⁶ The danger of coercion from the Chinese government is more likely than in many other countries. China competes with the United States militarily, diplomatically, and through trade. China has a history of espionage targeting U.S. military and industrial secrets.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude she has mitigated the foreign preference concerns; however, she has not fully mitigated the foreign influence security concerns resulting from her parents-in-law's continued residence in Hong Kong.

Formal Findings

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

Paragraph 1, Guideline C:	FOR APPLICANT
Subparagraph 1.a(1) and (2):	For Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	Against Applicant
Subparagraph 2.d:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Mark Harvey
Administrative Judge

⁶ See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole person discussion).