



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



In the matter of:	)	
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	)	ISCR Case No. 10-07340
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff A. Nagel, Esquire, Department Counsel  
For Applicant: *Pro se*

June 21, 2011

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**Decision**

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MOGUL, Martin H., Administrative Judge:

On November 17, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B for Applicant. 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 adjudicative guidelines (AG), effective after September 1, 2006.

On December 10, 2010, Applicant replied to the SOR (RSOR) in writing, and she requested a decision based on the written record. Department Counsel thereafter requested a hearing before an Administrative Judge. I received the case assignment on March 7, 2011. DOHA issued a notice of hearing on March 7, 2011, and I convened the hearing as scheduled on March 31, 2011. The Government offered Exhibits 1 through 3, which were received without objection. Applicant testified on her own behalf and submitted Exhibits A and B, which were also admitted without objection. DOHA received the transcript of the hearing (Tr) on April 8, 2011. I granted Applicant's request to keep the record open until April 15, 2011, to submit additional documents, but Applicant

submitted a letter indicating that she would be offering no additional evidence. Based upon a review of the pleadings, exhibits, and the testimony of Applicant, eligibility for access to classified information is granted.

### **Request for Administrative Notice**

Department Counsel requested that I take administrative notice of certain facts relating to the People's Republic of China (PRC) and Hong Kong. The request and the attached documents were admitted into evidence as Exhibit 3. Applicant also submitted documents regarding Hong Kong in Exhibit A. The facts administratively noticed are set out in the Findings of Fact, below.

### **Findings of Fact**

In her RSOR, Applicant admitted all of the SOR allegations 1.a. through 1.g. The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, the admitted documents, and the testimony of Applicant, and upon due consideration of that evidence, I make the following additional findings of fact:

Applicant is 32 years old. She is unmarried, and she has no children. She is employed by a defense contractor, and she seeks a DoD security clearance in connection with her employment in the defense sector.

Applicant was born in Ontario, Canada in 1978. She lived there approximately two or three years and then moved to the United States. Applicant became a United States citizen in 1991. She has lived in the United States since she emigrated here, except for 1995 and 1996, when she resided in Hong Kong while completing her high school education. She lived in Hong Kong with her father during those years, but before that, she had resided with her mother. (Tr at 45.) Applicant had been a Canadian citizen and held a Canadian passport, but she renounced her Canadian citizenship when she became a United States citizen. In 2006, she received a Ph.D. degree from a United States university. She also received a Master's degree and a Bachelor's degree from United States universities. Applicant has only been employed in the United States. (Tr at 36-37.)

Applicant does not own any property in Hong Kong or the United States, but she hopes to purchase a home in the United States. (Tr at 40.) In her current position, Applicant earns \$135,000 a year, and she has approximately \$60,000 in her retirement account. She estimated that her net assets in the United States were \$200,000, and she has no assets in Hong Kong. (Tr at 41-42.)

Applicant's mother is a citizen and resident of the United States, and is a deputy director at another Federal agency. She also has four aunts who live in the United States. Applicant testified that she feels no loyalties to Canada or to Hong Kong. (Tr at 47.)

Finally, Applicant has voted in United States election, but never in elections in Hong Kong or Canada. (Tr at 42.) She has been active a several different organizations in the United States in an effort to give back to the community, including volunteering for homeless people in the city where she resides. (Tr at 43.)

**(Guideline B - Foreign Influence)**

The SOR lists seven allegations, regarding Foreign Influence, under Adjudicative Guideline B, which will be reviewed in the same order as they were listed on the SOR. As stated above, Applicant has admitted all of the allegations listed:

1.a. Applicant's father is a United States citizen residing in Hong Kong. He was born in Hong Kong, and he lived in the United States in the 1980s and 1990s for approximately 20 years. He returned to Hong Kong in 1995, and has resided there since then. Applicant testified that she is closer to her mother who resides in the United States than to her father in Hong Kong. She communicates with her father every few months by emails, and she speaks to her mother by telephone every week. (Tr at 46-49.)

1.b. Applicant's father is employed as a professor at a Hong Kong university. She did not know if it was a private or a public university.

1.c. Applicant's mother-in-law is a citizen and resident of Hong Kong. She became Applicant's father's wife after he and Applicant's mother divorced. She is a homemaker. Applicant has very little contact with her, only when she is in Hong Kong. (Tr at 49.)

1.d. Applicant's half-brother is a United States citizen residing in Hong Kong, and he is the son of Applicant's father and step-mother. He is 10 years old. Applicant's only contact with him is when she is in Hong Kong. (Tr at 50.)

1.e. Applicant's aunt and uncle are citizens and residents of Hong Kong. Her aunt is a school teacher, and her uncle works for an independent organization against corruption. Applicant speaks to her aunt by telephone one or two times a year, and with her uncle only when she is in Hong Kong. (Tr at 51.)

1.f. Applicant's cousin is a citizen and resident of Hong Kong. This is Applicant's uncle's daughter, who is in her late 20s, and she is employed by an Ameerican accounting firm in Hong Kong.

1.g. Applicant has traveled to Hong Kong in at least 1997, 1998, 1999, 2001, and 2004. Applicant testified that she also went to Hong Kong in 2007 and 2011. All of her trips were to visit her father and for sightseeing. and they each were around two weeks in duration. (Tr at 34-35.) During all of her travels she has used her United States passport, which is the only one she has maintained since she became a United States citizen. (Tr at 39-40.)

## **Mitigation**

Applicant submitted seven extremely positive character letters. (Exhibit B.) A Ph.D. and chief engineer, who is a co-worker of Applicant, described her as “a responsible, trustworthy, and intelligent person who makes leadership decisions. Our organization has trusted her in the past and continues to trust her.” A systems engineering manager for her employer wrote that Applicant “has performed in the utmost professional manner and has created a well respected reputation for producing high quality work.”

## **Current Status of the PRC and Hong Kong**

The PRC, the most populous country in the world, is economically powerful, and is an important trading partner of the United States. It is run by the Communist Party which controls all aspects of the PRC government. It has strong military forces, and has its own foreign-policy. Although there has been some cooperation, there has been much more conflict with the United States in the past. The PRC has an extremely large army, a sophisticated defense establishment, and space capability. The PRC has launched satellites, has ballistic missiles, has nuclear arms, and nuclear bombs. Its diplomatic and military dispute with the Republic of China (Taiwan), foreshadows a possible military conflict, which the United States opposes as a resolution of the conflict. The PRC has an abysmal human rights record, which includes arbitrary killings; detention or incarceration without notice in mental facilities; torture; arbitrary arrest, detention or exile; no right to a public, fair trial; a politically controlled judiciary; lack of due process; restrictions on free speech, on religious freedom, on freedom of travel, on freedom of assembly; and no rights of privacy - family, home or correspondence.

The PRC engages in espionage against the United States through an extensive network of businesses, personnel, and specific programs designed to acquire advanced U.S. military technology. One approach is to covertly conduct espionage by personnel from government ministries, commissions, institutes, and military industries, independently of the PRC intelligence services. This is believed to be the major method of PRC intelligence activity in the United States. It also tries to identify ethnic Chinese in the United States who have access to sensitive information, and sometimes is able to enlist their cooperation in illegal technology information transfers.

Applicant submitted a document with a summary of information furnished from the United States Government about Hong Kong. (Exhibit A.) In a web posting from the U.S. Department of State, it stated among other things: “Hong Kong remains a free and open society where human rights are respected, courts are independent, and there is well-established respect for the rule of law.” Also, “Every major religion is practiced freely in Hong Kong.” Under another web posting from the U.S. Department of State, it was written, “Under a Sino-British declaration of September 1984, Hong Kong reverted to Chinese control on July 1, 1997. It is now a semi-autonomous entity that exists pursuant to international agreement and maintains its own government apart from the People’s Republic of China.”

## Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## Analysis

### Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern regarding Foreign Influence:

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 describes conditions that could raise a security concern and may be disqualifying. Those that could be applicable in this case include the following: AG ¶ 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.” Applicant’s relatives who are citizens and residents of Hong Kong, primarily her father who resides in Hong Kong, make AG ¶ 7(a) a concern to the Government. I find that AG ¶ 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 . . . and the individual’s desire to help a foreign person, group, or country by providing that information” is also applicable in this case.

AG ¶ 8 provides conditions that could mitigate security concerns. I find that AG ¶ 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,” is applicable to this Applicant and controlling for the following reasons:

Applicant moved to the United States when she was two or three years of age, and has lived in the United States since then, with the exception of 1995 and 1996. Applicant became a United States citizen in 1991. Applicant has received all of her college education in the United States, including a Ph.D. degree, and been employed only in the United States. In her current position, Applicant earns \$135,000 a year, and her net assets in the United States total \$200,000. She has no assets in Hong Kong

Applicant’s mother is a citizen and resident of the United States, and has a senior position with a United States government agency. Applicant also has four aunts who live in the United States. Applicant is far closer to her mother than to any relatives in Hong

Kong, including her father, who is also a United States citizen. I therefore conclude Guideline B for Applicant.

### **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 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 considered the potentially Disqualifying and Mitigating conditions in light of all the facts and circumstances surrounding this case. Based on all of the reasons cited above as to why the Mitigating Conditions apply, considered together with the positive character letters on behalf of Applicant, I find that the record evidence leaves me with no significant questions or doubts as to Applicant's eligibility and suitability for a security clearance under the whole-person concept. For all these reasons, I conclude Applicant has mitigated the security concerns.

### **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 F: FOR APPLICANT

Subparagraphs 1.a through 1.g.: For Applicant

## **Conclusion**

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

Martin H. Mogul  
Administrative Judge