



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-10917
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Melvin A. Howry, Esquire, Department Counsel  
For Applicant: *Pro se*

05/08/2013

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**Decision**

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HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings and exhibits, Applicant’s eligibility for access to classified information is denied.

**Statement of the Case**

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on February 14, 2011. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on January 10, 2013, detailing security concerns under Guideline B, Foreign Influence. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines For Determining Eligibility for Access to Classified Information* (AG) implemented on September 1, 2006.

Applicant received the SOR. He submitted a notarized, written response to the SOR allegations dated February 5, 2013, and he requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a file of relevant material (FORM) and mailed Applicant a complete copy, which he received on March 19, 2013. He had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He did not submit a response. DOHA assigned this case to me on May 2, 2013. The Government submitted seven exhibits, which have been marked as Items 1-7 and admitted into the record. Applicant's response to the SOR has been marked and admitted as Item 3, and the SOR has been marked as Item 1.

### **Procedural Ruling**

#### **Request for Administrative Notice**

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to the People's Republic of China and Hong Kong. The request and the attached documents were not admitted into evidence, but were included in the record as Hearing Exhibit 1, I-XVI. The facts administratively noticed will be limited to matters of general knowledge and matters not subject to reasonable dispute, and are set out in the Findings of Fact below.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a - 1.e of the SOR. His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 36 years old, works as an electrical engineer for a Department of Defense contractor. He began his current employment in August 2007. He previously worked for a Department of Defense contractor and was granted a security clearance after an Office of Personnel Management investigation in 2004.<sup>1</sup>

Applicant was born in 1977 in Hong Kong. Because Hong Kong was under British rule, he was a British citizen by birth. Around the time Great Britain transferred the sovereignty of Hong Kong to the People's Republic of China in 1997, Applicant emigrated from Hong Kong to the United States with his family. He became a naturalized United States citizen in February 2003. Applicant's father and one sister are citizens and residents of the United States, although his father has resided in Hong Kong as recently as 2004. His mother is a citizen of Hong Kong and a permanent U.S. resident, living with Applicant. His second sister is a U.S. citizen, who began living in

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<sup>1</sup>Item 6.

Hong Kong in 2004 where she works as a social worker. He communicates with her about four times a year.<sup>2</sup>

Applicant attended college in the United States. He graduated from a major U.S. university with a bachelor's degree in electrical engineering in 2004. He registered for the U.S. Selective Service as required. He has never served in the United States military or a military of any other country.<sup>3</sup>

Applicant married in December 2010. His 27-year-old wife was born in the People's Republic of China (PRC) and lives with him in the United States. She has a permanent resident card. Her parents and sister are citizens and residents of the PRC. He communicates with his in-laws about four times a year. The frequency of his wife's communications with her family is unknown. He traveled to the PRC several times before he and his wife married, but he has not traveled to the PRC since his marriage.<sup>4</sup>

Applicant's father owns a piece of property in Hong Kong. The value of this property is unknown and any future rights of the Applicant to the property is unknown. Applicant estimates his net worth in the United States at approximately \$350,000. He has a small bank account in Hong Kong with an approximate value of \$2,800.

### **Administrative Notice**

#### **People's Republic of China (PRC)**

The PRC is an authoritarian, communist party-led state. Human rights violations continue to be problematic. Concerns regarding the PRC's weapons development, theft of classified technology information between 1979 and 1999, and industrial espionage activities remain. The PRC continues to have active intelligence operations in the United States, which seek to obtain military and industrial secrets through Americans of Chinese ancestry. On the other hand, the PRC supports the United State's anti-terrorism position and activities. The United States and the PRC have developed joint trade agreements, resulting in the sale of goods to each other, and work together on environmental issues. The PRC enjoys a most favored nation status in trading with the United States. The PRC has opened its doors to outside investment.

#### **Hong Kong**

In 1997, the PRC resumed the exercise of sovereignty over Hong Kong after 150 years of British Colonial rule. Hong Kong is a Special Administrative Region of the PRC. Hong Kong's defense and foreign relations are the responsibility of the PRC. Hong Kong

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<sup>2</sup>Items 5 - 7.

<sup>3</sup>Item 6.

<sup>4</sup>Item 6; Item 7.

is a customs territory and an economic entity separate from the rest of China. Hong Kong can enter into international agreements on its own behalf in commercial and economic matters. U.S. policy toward Hong Kong is set forth in the U.S.-Hong Kong Policy Act of 1992 and is grounded in the determination to promote Hong Kong's prosperity, autonomy, and way of life. The United States maintains substantial economic and political interests in Hong Kong and supports Hong Kong under the "One Country, Two Systems" framework by concluding and implementing bilateral agreements; promoting trade and investments; broadening law enforcement cooperation; bolstering educational, academic, and cultural links; supporting high-level visits of U.S. Officials; and serving the large community of U.S. citizens and visitors. Hong Kong actively works in counterterrorism efforts and is an important partner in efforts to eliminate funding for terrorist networks and combat money laundering. The United States and Hong Kong have substantial economic and social ties. Independent of the PRC, Hong Kong participates in several international economic organizations, such as the World Trade Organization, Asia-Pacific Economic Cooperation forum, and Financial Action Task Force.

While the PRC is known to be an active collector of U.S. economic and military intelligence and proprietary information, there is no evidence that Hong Kong does. Likewise, there is no evidence Hong Kong uses coercive measures to gain access to such information. While there have been a number of incidents involving individuals, companies, and PRC intelligence officers improperly acquiring U.S. economic and military intelligence and proprietary information, there is no direct or indirect connection to, or involvement with, Applicant.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used 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 overarching 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” An applicant has the ultimate burden of persuasion for 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 an 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 the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

(a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign

country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information.

Applicant's father and one sister are citizens and residents of the United States. His mother is a permanent U.S. resident, who lives with Applicant. Thus, no security concern is raised by these family members. Applicant's wife is a citizen of the PRC, living with him in the United States. Applicant's other sister is a U.S. citizen, who works and resides in the Hong Kong. His wife's parents and sister are citizens and residents of the PRC. Applicant maintains a normal familial relationship with his sister in Hong Kong and with his in-laws in the PRC. He communicates with them about four times a year. His father owns property in Hong Kong, which his father has used as a residence in the past. His family relationships are not *per se* a reason to deny Applicant a security clearance, but his contacts with his family members must be considered in deciding whether to grant Applicant a clearance. The Government must establish that these family relationships create a risk of foreign exploitation, inducement, manipulation, pressure, or coercion or would create a potential conflict of interest between his obligations to protect sensitive information and his desire to help his family members.

In determining if such a risk exists, I must look at Applicant's relationships and contacts with his family, as well as the activities of the governments of Hong Kong and PRC. The risk that an applicant could be targeted for manipulation or induced into compromising classified information is real, not theoretical. Applicant's relationship and contacts with his family in Hong Kong and the PRC raise a heightened risk and a security concern because the monitoring and surveillance activities of the PRC government intrude upon the privacy of its citizens. The evidence of record fails to show that the government of Hong Kong targets U.S. citizens in the United States or in Hong Kong by exploiting, manipulating, pressuring, or coercing them to obtain protected information. Thus, the concern that the Hong Kong government will seek classified information is moderate. The same cannot be said of the PRC government, which actively engages in espionage activities in the United States and targets American-Chinese citizens for classified information.

Under the guideline, the potentially conflicting loyalties must be weighed to determine if an applicant can be expected to resolve any conflict in favor of U.S. interests. In determining if Applicant's contacts in Hong Kong and the PRC cause security concerns, I considered that Hong Kong, the PRC, and the United States have a relationship, which includes working together on international security issues and trade. There is no evidence that the Hong Kong government targets U.S. citizens for protected information, but there is evidence that the PRC does. The human rights issues in the PRC continue to be a concern, but are not a concern with the Hong Kong government. While none of these considerations by themselves dispose of the issue, they are all

factors to be considered in determining Applicant's vulnerability to pressure or coercion because of his family in Hong Kong and the PRC. Applicant's contacts with his family raise a heightened risk under AG ¶¶ 7(a) and (b). However, since Applicant's mother resides in the U.S., she does not raise a heightened risk under AG ¶¶ 7(a) and (b).

The foreign influence guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 8(a) through 8(f), and the following are potentially applicable:

(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; and

(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.

Applicant's communication with his sister in Hong Kong is limited and creates little likelihood for foreign influence or exploitation. It is unlikely that the government of Hong Kong, on its own, would target her to pressure Applicant for classified information, and thus, Applicant would not be placed in a position of having to choose between the interests of Hong Kong and the interests of the United States. Applicant's inheritance rights to his father's property in Hong Kong is unknown, but he would most likely share the inheritance with his mother and sister. Outside of this possible inheritance and a small bank account, Applicant does not have any other assets in Hong Kong. He does not receive any benefits from Hong Kong or the PRC government. His contacts in Hong Kong do not show that he would chose the interests of Hong Kong over the interests of the United States. In reviewing all the evidence of record, there is little likelihood that Applicant's sister in Hong Kong is a security risk. Applicant has mitigated the security concerns about his sister in Hong Kong under AG ¶¶ 8(a)-8(c).

Concerning his in-laws in the PRC, a security concern remains because of the activities of the PRC government towards its citizens in the country and in the United States. The PRC actively seeks U.S. classified information, using any method it can to obtain it. Because his in-laws live in the PRC, he is vulnerable to pressure from the PRC government through them and his wife. Applicant has not mitigated the security concerns related to his father-in-law, mother-in-law and sister-in-law living in the PRC under AG ¶ 8.

## 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 an applicant's conduct and all 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant immigrated to the United States in 1997 when the British Colonial rule of Hong Kong ceased and the PRC resumed sovereignty over Hong Kong. He became a U.S. citizen and graduated from a major U.S. university with an electrical engineering degree. He registered with the U.S. Selective Service. His loyalty to the United States is not questioned. However, he chose to court and marry a citizen of the PRC, whose family members remain in the PRC. Their continued residence in the PRC places them in a position of potential pressure from the PRC government to coerce and exploit Applicant through his wife to provide classified information to the PRC. Given the aggressive activities of the PRC government to obtain classified U.S. military documents, his wife's family in the PRC remains a security concern.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising under Guideline B.



## Formal Findings

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

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant

## Conclusion

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

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MARY E. HENRY  
Administrative Judge