



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



In the matter of:)
)
) ISCR Case No. 12-02778
)
Applicant for Security Clearance)

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

04/29/2014

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department’s intent to revoke her access to classified information. Applicant is a naturalized U.S. citizen originally from Hong Kong. She does not hold dual citizenship with any other country and does not exhibit preference for the People’s Republic of China (PRC) or the Hong Kong Special Administrative Region (HKSAR). Applicant has held a clearance, at various levels, since 2005 without incident. Her relationships with family members residing in the HKSAR have remained unchanged since she was initially granted access to classified information. Applicant’s continued access to classified information is granted.

Statement of the Case

On August 28, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under the foreign influence and foreign preference guidelines.¹ DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue Applicant’s security clearance.

¹ This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this

Applicant timely answered the SOR² and requested a hearing.³ At the hearing convened on March 26, 2014, I admitted Government's Exhibits (GE) 1 through 3, and Applicant's Exhibits (AE) A through C, without objection. After the hearing, Applicant submitted AE D through F, which are also admitted without objection. DOHA received the transcript (Tr.) on April 10, 2014.

Procedural Issues

Request for Administrative Notice

Department Counsel submitted a written request that I take administrative notice of certain facts about the PRC, including the HKSAR. Applicant did not object to the request, and it was granted. The written summary, along with its attachments, is appended to the record as Hearing Exhibit (HE) 1.⁴

Findings of Fact

Applicant, 63, is an employee of a federal contractor. She has worked as a translator since 2005. Before working as a translator, Applicant had a 25-year career in the information technology field unrelated to defense contracting or national security.⁵

Applicant was born in Hong Kong, while it was a British colony. In July 1997, Hong Kong reverted to Chinese sovereignty as a Special Administrative Region of the People's Republic of China. As an SAR, Hong Kong maintains some autonomy from the PRC, which the United States supports under the "one country, two systems" framework. However, the PRC maintains authority on foreign relations and national defense. The PRC has an authoritarian government, dominated by the Chinese Communist Party. The PRC has a poor record with respect to human rights, suppresses political dissent, and its practices include arbitrary arrest and detention, forced confessions, torture, and mistreatment of prisoners. The PRC actively engages in acts of industrial espionage against the United States. The PRC also defines, by statute, who is considered a Chinese national and entitled to the benefits of Chinese citizenship. Foreign nationals seeking Chinese nationality must apply for naturalization. However, the Chinese National Law (CNL) was not applied in the HKSAR until July 1997.

case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

² Applicant's answer as included in the administrative file was missing several attachments. Applicant submitted a complete copy of her answer after the hearing. I have treated the non-duplicative materials as a post-hearing submission.

³ The discover letter from Department Counsel and the letter from the Chief Administrative Judge regarding the Applicant's rights and obligations in a DOHA proceeding is appended to the record as Appellate Exhibit (AP E) III.

⁴ Tr. 18.

⁵ Tr. 22, 24, 48-49; GE 1; AE A.

Applicant has never considered herself a Chinese citizen or otherwise affiliated with the PRC.⁶

Applicant immigrated to the United States in 1974 and attended college. She married a U.S. citizen in 1978 and became a naturalized citizen in 1982. Widowed since 2008, Applicant has two adult children who are U.S. citizens by birth. Applicant's parents, now deceased, and her four siblings are also naturalized U.S. citizens, living in the United States. Applicant has been a homeowner since at least 1995. She currently has a net worth of approximately \$1 million.⁷

Between 1999 and 2013, Applicant traveled to Hong Kong to visit relatives: an elderly paternal aunt and three cousins. Applicant's aunt never worked outside the home. Her three cousins are retired civil servants. Two of her cousins worked as teachers and the other worked as a social worker. It is unclear from the record if Applicant's aunt and cousins are citizens of the PRC. Applicant also has a cousin, a physician, who is a citizen of Australia, who, at times, resides in Hong Kong. Applicant has not maintained contact with her aunt and cousins outside these visits. She does not provide any financial support to any of her relatives living in the HKSAR.⁸

During her trips to Hong Kong in 1999 and 2002, Applicant traveled to mainland China for tourist purposes. She does not have any relatives or any other ties to mainland China. In order to obtain a visa to enter mainland China for those trips, Applicant sent her U.S. passport to the nearest Chinese consulate. This process made Applicant uncomfortable. In 2004, Applicant's sister, who was living in Hong Kong, advised her to apply for a 10-year travel visa card. The visa card would allow Applicant to enter China without having to send her U.S. passport to the Chinese consulate. Applicant was eligible for the visa card because she was born in Hong Kong. In order to receive the 10-year visa card, Applicant had to have an updated Hong Kong identification card. For the sole purpose of obtaining the visa card, Applicant, for the first and only time since becoming a naturalized citizen, renewed her Hong Kong identification card. She then used the identification card to obtain the 10-year travel visa from the PRC government. Both documents expire in April 2014. On her subsequent trips to HKSAR, Applicant has entered the region only using her U.S. passport. She has not taken any trips to China since receiving the 10-year visa.⁹

Applicant received an interim secret security clearance in June 2005. She completed another security clearance application in February 2006 as part of a single scope background investigation (SSBI). Applicant disclosed her travel to Hong Kong and China, as well as her foreign relatives and contacts. She also disclosed the fact she obtained the 10-year Chinese travel visa card. She was subsequently granted a top

⁶ GE 1; HE 1.

⁷ Tr. 22, 50; GE 1-2.

⁸ Tr. 28-29, 35, 38-41; GE 1-3.

⁹ Tr. 26-27-44-48; GE 1-2; AE A.

secret clearance. In 2008, Applicant completed a SSBI with a full-scope polygraph and was granted access to sensitive compartmented information.¹⁰

Applicant completed her most recent security clearance application in October 2011. She disclosed the same information about her foreign relatives and contacts as on her 2006 application. She updated her foreign travel, disclosing trips to Hong Kong in 2007, 2009, and 2011. She also disclosed that she opened a bank account in Hong Kong in May 2011. The bank account allowed her access to spending money without having to borrow from her sister. Applicant also reported that she applied for a one-time payment from the Hong Kong government for HK\$ 6,000 (USD \$750). The payment was deposited into her Hong Kong bank account. Applicant qualified for the payment by virtue of her birth in Hong Kong.¹¹

Since being granted access to classified information, Applicant has reported each of her trips to Hong Kong to her facility security officer (FSO) and completed all required security briefings before and after her trips. In September 2013, Applicant surrendered her Hong Kong identification card and the Chinese visa card to her FSO, who agreed to hold the documents until Applicant no longer requires or possesses a security clearance. Applicant closed the bank account, which had a nominal balance, in 2013. She donated the money she received from the HKSAR government to charity.¹²

Applicant traveled to Hong Kong for a final time in September 2013 to visit her 102-year-old aunt, who died shortly after the hearing. Applicant did not attend the funeral and has no plans to return to Hong Kong in the future.¹³

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 to be 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, administrative judges apply the guidelines 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

¹⁰ Tr. 24-25, 66; GE 1-2.

¹¹ Tr. 27-28; GE 2-3; AE A.

¹² Tr. 22, 31-34, 52-53; AE A-B, D.

¹³ Tr. 35-37; AE B, F.

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.

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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

Foreign Preference

Security concerns involving foreign preference arise when an individual acts in such a way as to indicate a preference for a foreign country over the United States.¹⁴ Typically, foreign preference concerns revolve around the exercise of dual citizenship with another country, but that is not the case here. Applicant does not hold dual citizenship with any other country. She was born a British subject. In 1982, 15 years before Hong Kong reverted to Chinese sovereignty, she became a naturalized U.S. citizen. Applicant has never held Chinese citizenship and has not applied for naturalization as required under the CNL to obtain it. Applicant has never considered herself affiliated with PRC in any way. However, Applicant has used the fact of her birth in Hong Kong to obtain benefits from the HKSAR government, specifically, obtaining a Hong Kong identification card, which allowed her to obtain a 10-year travel visa to

¹⁴ AG ¶ 9.

mainland China. She also applied for and received a birthright payment from the HKSAR government. These actions, while they do not invoke a specific foreign preference disqualifying condition, could indicate a preference for the HKSAR over the United States. Accordingly, a general foreign preference security concern under AG ¶ 9 has been raised, even without the applicability of a specific disqualifying condition.

However, Applicant has presented sufficient information to support a finding that she does not have a preference for HKSAR or the PRC over the United States. Applicant used her Hong Kong birthright in an attempt to avoid direct contact with the PRC government if she chose to enter mainland China in the future. Applicant never used the documents, which she obtained before working as a federal contractor, to enter either the HKSAR or mainland China. Applicant has also eliminated any foreign preference concerns by divesting herself of any potential ties to the HKSAR. She has surrendered her identification card and visa, which expire in April 2014, to her FSO. She has closed her Hong Kong bank account and donated the funds she received from the HKSAR government to charity.

Foreign Influence

“[F]oreign contacts and interest may be a security concern if the individual has divided loyalties or 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.”¹⁵ Applicant has four cousins who are residents of the HKSAR. One cousin is a citizen of Australia. The citizenship of the other three cousins is not established by the record. Given the treatment of the PRC toward its residents, as well as the country’s reputation for being an active collector of U.S. economic intelligence, these relationships create heightened risk of foreign exploitation, inducement, manipulation, and coercion.¹⁶

Although, a prior grant of a security clearance does not preclude the federal government from considering whether to revoke it at a future date,¹⁷ it is worth noting that the foreign influence concerns raised in the present adjudication are based on the same information favorably adjudicated in 2005, 2006, and 2008. There has been no appreciable change in Applicant’s relationships with her cousins. She continues to maintain infrequent and limited contact with them.¹⁸ Their circumstances as residents of the HKSAR seem unchanged since Applicant’s 2008 background investigation. There is no evidence to suggest that any of Applicant’s family members are in positions that raise a conflict of interest or serve as a source of exploitation or vulnerability for her.¹⁹

¹⁵ AG ¶ 6.

¹⁶ AG ¶ 7(a).

¹⁷ See, e.g., ISCR Case No. 99-0-0511 (App. Bd. Dec. 19, 2000) at 8; ISCR Case No. 99-0481 (App. Bd. Nov. 29, 2000) at 5.

¹⁸ AG ¶ 8(c).

¹⁹ AG ¶ 8(a), (b).

Applicant has resided in the United States for 39 years. Her siblings and children are all U.S. citizens. Applicant's life is rooted in the United States. As such, Applicant is expected to resolve any potential conflict of interest in favor of the United States.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. In doing so, I have also considered the whole-person concept as described in AG ¶ 2(a). Applicant does not have divided loyalties between the United States and HKSAR or the PRC. Applicant was born in Hong Kong while it was still a British colony. She came to the U.S. and became a citizen before it reverted to the PRC in 1997. British culture and capitalism influenced her as a youth, not the Chinese mainland dominated by the Communist Party. Since applying for eligibility for access to classified information in 2005, Applicant has consistently reported her foreign contacts, any potential foreign interests, and all of her foreign travel. She has demonstrated a high level of security consciousness in the almost 10 years she has been granted access to classified information.

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, Foreign Preference:	For Applicant
Subparagraphs 1.a - 1.d:	For Applicant
Paragraph 2, Foreign Influence	For Applicant
Subparagraphs 2.a – 2.b:	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.

Nichole L. Noel
Administrative Judge