



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-02049

**Appearances**

For Government: David Hayes, Esq., Department Counsel  
For Applicant: *Pro se*

08/31/2016

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**Decision**

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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 has mitigated the foreign preference concerns raised obtaining a Hong Kong identification card in 2013 as well as the foreign preference and personal conduct concerns raised by her relationship with a former high-school classmate who is a citizen and resident of Hong Kong. Clearance is granted.

**Statement of the Case**

On September 22, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under the foreign influence, foreign preference, and personal conduct guidelines.<sup>1</sup> DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue Applicant's

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<sup>1</sup> 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 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.

security clearance and recommended that the case be submitted to an administrative judge for a determination whether to revoke or deny Applicant's security clearance.

Applicant timely answered the SOR and requested a hearing.<sup>2</sup> On April 4, 2016, I issued a prehearing order to the parties regarding the exchange and submission of discovery, the filing of motions, and the disclosure of any witnesses.<sup>3</sup> The parties complied and submitted documents by the April 15, 2016 deadline. At the hearing convened on April 26, 2016, I admitted Government's Exhibits (GE) 1 through 3, and Applicant's Exhibits (AE) A through K, without objection. DOHA received the transcript (Tr.) on May 5, 2016.

## **Procedural Issues**

### **Request for Administrative Notice**

Department Counsel submitted a written request that I take administrative notice of certain facts about the People's Republic of China (PRC), including Hong Kong (HK). Applicant did not object to the request, and it was granted. The written summary, along with its attachments, is appended to the record as HE III.<sup>4</sup>

## **Findings of Fact**

Applicant, 49, has worked for her employer, a federal contractor, since 2008. She applied for a security clearance in November 2012 and was adjudicated favorably for access to classified information in March 2013. In December 2014, Applicant's employer filed an incident report in the Joint Personnel Adjudication System indicating that Applicant revealed a foreign contact not previously reported on her November 2012 security clearance application; and that she renewed her Hong Kong identification card in July 2013 after being granted access to classified information.<sup>5</sup>

Applicant's parents are Chinese and immigrated to Hong Kong (HK) soon after they married. Applicant and her siblings were born in Hong Kong while it was under British rule, which lasted from 1841 to 1997, when the province Hong Kong became a Special Administrative Region (SAR) of the People's Republic of China (PRC). 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

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<sup>2</sup> 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 Hearing Exhibit (HE) II.

<sup>3</sup> HE I.

<sup>4</sup> Tr. 18.

<sup>5</sup> Tr. 21-22; GE 1.

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 Nationality Law of the PRC defines who is considered a Chinese national and entitled to the benefits of Chinese citizenship. The law does not recognize dual citizenship. Foreign nationals seeking Chinese nationality must apply for naturalization. However, the nationality law was not applied in Hong Kong until July 1997.<sup>6</sup>

Applicant and her family immigrated to the United States in 1984. She became a U.S. naturalized citizen in 1991. As reported on her November 2012 security clearance application, Applicant considers herself a dual citizen of the United States and China. However, it does not appear that Applicant has taken steps to apply for Chinese citizenship. Applicant also acknowledges that she has not had any contact with the PRC government as her time in Hong Kong was as a British subject. In the years since she immigrated to the United States, she has returned to Hong Kong four times. Her most recent trip occurred in July 2013.<sup>7</sup>

Applicant reported her July 2013 trip to her employer's security department two months in advance. In June 2013, Applicant completed the foreign travel form as required by her employer. She disclosed her plans to travel to Hong Kong and Taiwan. Applicant also disclosed her plans to make contact with a foreign national, Ms. W., a citizen and resident of Hong Kong. While on the trip, Applicant exercised her right, based on her birth in Hong Kong, to renew her Hong Kong identification card. While the identification card did not entitle Applicant to any benefits from the HK government, it allowed her the convenience of entering Hong Kong and China using an expedited immigration and customs process. After the trip, Applicant completed another form required by her employer's security department and reported nothing of security significance happened on the trip.<sup>8</sup>

In December 2013, Applicant submitted a foreign contact form to her security department. In the months after returning from her trip, Applicant and Ms. W., maintained regular contact, exchanging text messages at least twice per month. On the foreign contact form, Applicant disclosed that she and Ms. W. met when they were 15-year-old high school students in Hong Kong. Applicant reported that Ms. W. was self-employed as a tutor. Based on Applicant's disclosure, the security department filed the incident report the next day.<sup>9</sup>

Applicant was interviewed by a background investigator in April 2014. In a signed, sworn affidavit, Applicant explained that she did not list Ms. W. as an ongoing foreign contact on her 2012 security clearance application because they had not been in touch during the ten years before she completed the application. Applicant, who

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<sup>6</sup> Tr. 22, HE III.

<sup>7</sup> Tr. 23-24; AE K.

<sup>8</sup> Tr. 27, 29, 37, 41; AE E, K.

<sup>9</sup> Tr. 41-42; GE 3; GE F.

traveled to Hong Kong alone, contacted Ms. W. to see if she was interested in spending time together during her visit. As they made plans for Applicant's trip, Applicant reported the contact to her security office as she believed she was required to do. Aside from Ms. W., Applicant swore that she has no other friends, family members, or assets in Hong Kong or the PRC. She does not have any citizenship documents from the PRC.<sup>10</sup>

At hearing, Applicant testified that she believed she had taken all necessary steps to stay compliant with her employer's security policies. The security office, which reviewed her application before she submitted it in November 2012, did not inform her that her reported dual citizenship status raised a security concern. Likewise, after she reported her ongoing contact with Ms. W. and the renewal of her HK identification card to the security office, she was not told that either raised an issue. After receiving the SOR in September 2015, Applicant surrendered her HK identification card to her security office in February 2016. She provided a copy of the disposition form she received from her employer.<sup>11</sup>

Applicant also testified about her relationship with Ms. W. Although they have known each other since high school, Applicant did not describe the relationship as close or continuing. When Applicant first immigrated to the United States as an 18 year old, she and Ms. W. were in closer contact. They would exchange correspondence and Applicant would often send Ms. W. a small gift for her birthday. They drifted apart over time. Applicant saw Ms. W. on her trip to Hong Kong in 2001, but the two did not speak again until 2013. In December 2015, Applicant and Ms. W. had a falling out and have not spoken since then. Applicant has no desire to repair the relationship.<sup>12</sup>

Applicant has lived in the United States for 32 years. Her husband of 10 years was also born in Hong Kong and is a permanent resident of the United States. The other members of Applicant's immediate family, her mother and siblings, are naturalized U.S. citizens. Her father is deceased. Applicant has owned her home since 2004 and holds another \$200,000 in U.S.-based assets. Applicant's supervisor and several of her colleagues testified at hearing. Several others wrote character letters on her behalf. All describe Applicant as being diligent, reliable, trustworthy, and security conscious.<sup>13</sup>

## **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.

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<sup>10</sup> GE 2.

<sup>11</sup> Tr. 27, 38, 48-49.

<sup>12</sup> Tr. 28-29, 42-45; AE K.

<sup>13</sup> Tr. 45-46, 53-66; AE B-D, G-K.

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 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.<sup>14</sup> The SOR alleges that Applicant obtained a Chinese identification card after becoming a naturalized U.S. citizen. The allegation is not supported by the record. Applicant self-identifies as a dual U.S. – Chinese citizen, claiming Chinese citizenship by virtue of her

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<sup>14</sup> AG ¶ 9.

birth in Hong Kong in 1966. Applicant was born in Hong Kong while it was under British control. The Chinese Nationality Law did not apply in Hong Kong while it was under British control. She obtained U.S. citizenship before the province reverted to Chinese control. Applicant's assumption that she has Chinese citizenship is likely incorrect. As a naturalized U.S. citizen, the PRC would require Applicant to apply for Chinese citizenship. It does not appear that she has done so, making her ineligible for any type of citizenship documentation from the PRC government.

However, for the purpose of this foreign preference analysis, it is not necessary to resolve this question. What is of concern here is that Applicant used the fact of her birth in Hong Kong to obtain benefits from the HK government, specifically, obtaining a HK identification card in July 2013. While this action does not invoke a specific foreign preference disqualifying condition, it could indicate a preference for Hong Kong 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 conclusion that she does not have a preference for Hong Kong or China over the United States. Applicant did not realize the security implications of obtaining the HK identification card. Upon learning of the concern, she surrendered the identification of the card to her employer in February 2016. Other than the identification card, Applicant has not obtained or received any other benefits from a foreign country.<sup>15</sup>

## **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."<sup>16</sup> Applicant has one foreign contact in Hong Kong - a woman she has known since high school, more than 25 years. 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, this relationship may create heightened risk of foreign exploitation, inducement, manipulation, and coercion.<sup>17</sup>

Applicant presented sufficient information to mitigate the concerns raised by this relationship. The allegation is based on an incident report filed by Applicant's employer. The underlying assumption is that the length of time people have known each other directly correlates to the closeness of their relationship. Applicant presented evidence to support a conclusion that her relationship with Ms. W is casual and infrequent.<sup>18</sup> In the last 16 years Applicant and Ms. W. have seen each other twice. Each visit

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<sup>15</sup> AG ¶ 11(e).

<sup>16</sup> AG ¶ 6.

<sup>17</sup> AG ¶ 7(a).

<sup>18</sup> AG ¶ 8(c).

corresponding to Applicant's trips to Hong Kong. The majority of their correspondence is related to birthday wishes and since December 2015 they have ceased contact. Furthermore, Ms. W's occupation as a private tutor leaves little concern that she occupies a place in Hong Kong society that raises a security concern.<sup>19</sup> Given the minimal contact Applicant has had with Ms. W. over the past 16 years, it is unlikely that this relationship creates a risk of foreign influence or exploitation. Furthermore, the depth of Applicant's U.S. ties also makes it unlikely that the relationship with Ms. W. could create a conflict of interest. If any conflict was to arise, Applicant can be expected to resolve it favor of U.S. interests.<sup>20</sup>

## **Personal Conduct**

An applicant's personal conduct becomes a concern when her actions show questionable judgment, an unwillingness to comply with rules or regulations, or raises questions about an applicant's ability to protect classified information.<sup>21</sup> The SOR alleges that Applicant deliberately falsified her November 2012 security clearance application by failing to disclose a foreign contact, Ms. W. A statement is false when it is made deliberately (knowingly and willfully). An omission of relevant and material information is not deliberate if the person genuinely forgot about it, inadvertently overlooked it, misunderstood the question, or genuinely thought the information did not need to be reported.

I conclude that Applicant did not falsify her application. She credibly testified that because of the infrequent nature of her contact with Ms. W. in the 10 years before she completed her security clearance application that she did not believe the contact needed to be reported. She appropriately reported the contact when she resumed contact with Ms. W. in 2013.

## **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 Hong Kong or the PRC. Applicant was born in Hong Kong while it was still a British colony. She came to the United States and became a citizen before Hong Kong 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 2012, Applicant has made a conscientious effort to comply with her reporting responsibilities as a clearance holder. She has demonstrated a high level of security consciousness in the years she has been granted access to classified information.

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<sup>19</sup> AG ¶ 8(a).

<sup>20</sup> AG ¶ 8(b).

<sup>21</sup> See AG ¶ 15.

### **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.b:	For Applicant
Paragraph 2, Foreign Influence:	For Applicant
Subparagraph 2.a:	For Applicant
Paragraph 3, Personal Conduct:	For Applicant
Subparagraph 3.a:	For Applicant

### **Conclusion**

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

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Nichole L. Noel  
Administrative Judge