



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



In the matter of:)	
)	
XXXXXXXXXXXXXXXXXX)	ISCR Case No.14-02792
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank, Jr., Esquire, Department Counsel
For Applicant: *Pro se*

06/07/2017

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,¹ Applicant's clearance is granted.

On 28 July 2014, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) raising security concerns under Guideline C, Foreign Preference, and Guideline B, Foreign Influence.² Applicant timely answered the SOR, requesting a

¹Consisting of the FORM, Items 1-5 and Official Notice (ON) items I-VIII. *Sua sponte*, I took official notice of the 2016 State Department Fact Sheet on U.S. Relations with Hong Kong (ON IX) and the 2016 Country Reports on Human Rights Practices–Hong Kong (ON X), as well as Chinese and British citizenship laws in effect during the dates encompassed by this case.

²DoD acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on 1 September 2006. On 10 December 2016, the Director of National Intelligence (DNI) signed Security Executive Agent Directive 4, implementing new AG, effective with any decision issued on or after 8 June 2017.

decision without hearing by the Defense Office of Hearings and Appeals (DOHA). The record in this case closed 30 July 2016, when Applicant's response to the FORM was due. Applicant provided no additional documents. DOHA assigned the case to me 1 June 2017.

Findings of Fact

Applicant admitted the Guideline C allegations. She admitted the Guideline B allegations, except for SOR 2.f. She is a 55-year-old engineering technician employed by a defense contractor since October 1988. She has not previously held a security clearance.

Applicant's father was born in February 1918, and her mother born in November 1920, in the Republic of China (ROC)(1912-1949). Their oldest son was born in the ROC in January 1943. They had a second son, born in November 1949, just after the formation of the People's Republic of China (PRC)(October 1949). A third son was born in the PRC in 1953. Sometime between November 1953 and January 1955, Applicant's parents moved to Hong Kong, then a Crown colony of the United Kingdom. Their first daughter was born in January 1955, in Hong Kong. Applicant was born in Hong Kong in February 1961.

Applicant and her sister were born subjects of the British Crown, which conferred Citizen of the United Kingdom and Colonies (CUKC) status. Both held this status until January 1983, when a new British nationality act reclassified them as British Dependent Territory Citizens (BTDC). Applicant immigrated to the United States (U.S.) in December 1985, along with her husband, whom she had married in Hong Kong in October 1984. Hong Kong, however, had become a Special Administrative Region (SAR) of the PRC in July 1997. Applicant listed herself as a dual citizen of Hong Kong in her October 2013 clearance application, reported that she had a Hong Kong passport,³ and she disclosed that she retained a Hong Kong identification card (Item 4). Nevertheless, it is unclear if she retains her U.K. citizenship.

Applicant and her husband immigrated to the U.S. in December 1985, when she was 24 years old. As required by U.S. immigration law, she retained a valid Hong Kong passport until her naturalization as a U.S. citizen in May 2010.⁴ She obtained her U.S. passport at the same time. Applicant and her husband have two U.S.-born children: a

³Because Applicant listed her foreign passport on her clearance application as being from Hong Kong, I will refer to it as such for convenience. However, the actual documents in play are not clear. When Applicant immigrated to the U.S. in December 1985, she would have done so on U.K.-issued documents. Any required renewals of those documents would have been U.K.-issued documents. After July 1997, unless she had taken steps to preserve any U.K. citizenship rights she possessed, any required renewals would have been issued by the Government of Hong Kong, technically a Hong Kong Special Administrative Region (HK-SAR) passport. Presumably, this is what she renewed in February 2012.

⁴Presumably, her husband did the same, although his naturalization date does not appear in the record.

daughter born in May 1987 and a son born in September 1992. She and her husband live in a house they have owned since November 1988.

Applicant's parents are both deceased.⁵ Applicant's next older brother lives with her permanently in the U.S. Her two oldest brothers are retired and live in the PRC. In 1993, she tried to sponsor them to immigrate to the U.S., but was unsuccessful. Her sister lives in Hong Kong. Applicant has contact with her siblings about twice a year. Applicant has no financial or business interests in the PRC or Hong Kong.

After Applicant obtained U.S. citizenship, she was no longer required to maintain her Hong Kong passport and identity card, which were due to expire. However, she renewed both in February 2012 (SOR 1.a) to take advantage of a Hong Kong Government incentive program for renewing her Hong Kong passport, which paid her about \$773 in July 2012 (SOR 1.b)(Item 5).⁶ She spent that money on a December 2012-January 2013 trip to Hong Kong. She used her U.S. passport to travel to Hong Kong, but used her Hong Kong identity documents to enter Hong Kong because the immigration line for Hong Kong citizens was much shorter than the immigration line for foreign nationals.

During her subject interview, Applicant expressed a willingness to renounce her Hong Kong citizenship to preserve her job and obtain her clearance. She similarly expressed a willingness to surrender her Hong Kong passport and identity card to keep her job.

The PRC

The PRC is a large and economically powerful country, with a population of over a billion people. 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 engages in espionage against the United States and is one of the two most active collectors of U.S. economic intelligence and technology. The PRC's intelligence services, as well as private companies and other entities, frequently seek to exploit Chinese citizens or persons with family ties to China who can use their insider access to corporate networks to steal state secrets.

⁵Applicant's mother had died by the time of Applicant's August 2014 Answer to the SOR (Item 2). She had Alzheimer's Disease. At the time of her death, Applicant had been sending her \$200-300 per year in financial support.

⁶Although Applicant's December 2013 personal subject interview described this transaction in terms of renewing her Hong Kong citizenship, there is nothing in the record that indicates that renewing her passport was necessary for her to retain her Hong Kong citizenship. Certainly, she maintained her dual citizenship, which is not prohibited by U.S. law, and renewing her passport and identity card are exercises of dual citizenship.

Hong Kong

Hong Kong has been a Special Administrative Region (SAR) of the PRC since 1 July 1997, ending over 150 years of British colonial rule. Hong Kong has a high degree of autonomy, except in the areas of defense and foreign policy, which are the responsibility of the PRC. The Hong Kong SAR is headed by a Chief Executive voted on by an Election Committee made up of approximately 800 Hong Kong residents from four constituency groups, including the PRC's National People's Congress. While Hong Kong remains a free and open society where human rights are respected, courts are independent, and there is a well-established respect for the rule of law, concerns include the limited ability of residents to change their government, limitations on freedom of the press and expression, academic freedom, arbitrary arrest and detention, aggressive police tactics hampering freedom of assembly, trafficking in persons, and societal prejudice against certain ethnic minorities.

Policies

The adjudicative guidelines (AG) list factors to be used to evaluate an applicant's suitability for a security clearance. Administrative judges must assess both disqualifying and mitigating conditions under each issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). The presence or absence of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guidelines are Guideline C (Foreign Preference) and Guideline B (Foreign Influence).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.⁷

⁷See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

Analysis

The Government failed to establish a case for disqualification under Guideline C. The conduct which justified invocation of the September 2006 guidelines has been overtaken by the June 2017 guidelines. The focus of the new Guideline C is foreign involvement that raises concerns about an individual's judgment, reliability, and trustworthiness when it conflicts with national interests or when an individual tries to conceal it.⁸

By itself, the fact that a U.S. citizen is also a citizen of another country is not disqualifying without an objective showing of such conflict or attempt at concealment. The same is true for a U.S. citizen's exercise of any right or privilege of foreign citizenship and any action to acquire or obtain recognition of a foreign citizenship.⁹

Applicant's conduct implicates none of the new disqualifying conditions. She did not apply for or acquire a foreign citizenship.¹⁰ She fully disclosed her possession of a foreign passport and identity card, both on her clearance application and during her personal subject interview.¹¹ She also reported all her foreign family connections. She used her U.S. passport when exiting and entering the U.S.¹² She did not assume or attempt to assume any formal position with the Hong Kong Government, nor did she otherwise act to serve any foreign interests in a way that conflicts with national security interests.¹³ She did not use her foreign citizenship to protect financial or business interests in another country in violation of U.S. law.¹⁴ Finally, she has committed no act of expatriation from the U.S.,¹⁵

However, the mitigating conditions still provide support for Applicant. Several conditions would not apply. Her foreign citizenship potentially conflicts with national security interests, given the geopolitical competition between the U.S. and the PRC,¹⁶

⁸AG ¶ 9.

⁹AG ¶ 9.

¹⁰AG ¶ 10(a).

¹¹AG ¶ 10(b).

¹²AG ¶ 10(c).

¹³AG ¶ 10(d).

¹⁴AG ¶ 10(e).

¹⁵AG ¶ 10(f).

¹⁶AG ¶ 11(a).

and her exercise of her foreign citizenship occurred after she became a U.S. citizen.¹⁷ Moreover, the foreign country involved does not pose a low national security risk.¹⁸

Nevertheless, her dual citizenship is based solely on parental citizenship and her birth in a foreign country, and the actions taken—renewal of her foreign passport and identity card to claim a token incentive payment—do not evince a foreign preference, particularly given her more than 30-year residence in the U.S. and her nearly-30-year employment with the same employer.¹⁹ Furthermore, she has stated a willingness to renounce her foreign citizenship.²⁰ Finally, the exercise of the entitlements or benefits of foreign citizenship do not present a national security concern.²¹ The two remaining mitigating conditions are inapplicable on their face. I resolve Guideline C for Applicant.

Under Guideline B (Foreign Influence), an applicant's foreign contacts and interests may raise security concerns if the individual 1) has divided loyalties or foreign financial interests, 2) may be manipulated or induced to help a foreign person, group, organization, or government in a way contrary to U.S. interests, or 3) is vulnerable to pressure or coercion by any foreign interest. Foreign influence adjudications 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, whether the country is known to target U.S. citizens to obtain protected information and/or is associated with a risk of terrorism.²² Evaluation of an individual's qualifications for access to protected information requires careful assessment of both the foreign entity's willingness and ability to target protected information, and to target ex-patriots who are U.S. citizens to obtain that information, and the individual's susceptibility to influence, whether negative or positive. More specifically, an individual's contacts with foreign family members (or other foreign entities or persons) raise security concerns only if those contacts create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.²³ In addition, security concerns may be raised by a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.²⁴

¹⁷AG ¶ 11(d).

¹⁸AG ¶ 11(f).

¹⁹AG ¶ 11(b).

²⁰AG ¶ 11(c).

²¹AG ¶ 11(e).

²²AG, ¶6.

²³AG, ¶ 7(a).

²⁴AG, ¶ 7(e).

In this case, the Government established that Applicant's contacts with her family in the PRC and Hong Kong created a potential heightened risk of exploitation, inducement, manipulation, pressure, or coercion. Although the U.S. and the PRC are global competitors, and the PRC is an active collector of protected U.S. information and commercial information, Applicant is not situated in a position where she is likely to be pressured. Given that Hong Kong generally respects the human rights of its citizens, the risk that it might seek protected information—or succeed in obtaining such information—from Applicant is low, if not non-existent.

The Government established a case for disqualification under Guideline B by demonstrating that her two retired brothers are resident citizens of the PRC (SOR 2.c,) and her sister is a resident citizen of Hong Kong, which also puts her within the reach of the PRC. However, Applicant mitigated the security concerns.

Applicant's husband is a resident citizen of the U.S., beyond the reach of the PRC notwithstanding his dual citizenship (SOR 2.a). Similarly, Applicant's next older brother is permanently resident in the U.S. (SOR1.d), also beyond the reach of the PRC. Applicant's mother died before Applicant answered the SOR (SOR 2.b). There is nothing in Applicant's 1993 sponsorship of her two oldest brothers—nearly 25 years ago—to raise any security concerns (SOR 2.f). What remains are Applicant's infrequent contacts with her siblings in the PRC and Hong Kong.

Examining Applicant's circumstances, the Government's evidence that there was a potential heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion because of Applicant's contacts with family in the PRC and Hong Kong has been overwhelmed by Applicant's connections to the U.S. Applicant has resided in the U.S. more than 30 years—more than half of her life—including all of her professional life. She has no financial interests in the PRC or Hong Kong. She has worked for the same company nearly 30 years, and has lived in the same home nearly 30 years. She has two adult children who possess only U.S. citizenship. Her financial interests are all in the U.S. She reported all her foreign connections as required. Her contacts with her siblings are routine, and infrequent. There is nothing in the circumstances of their being in the PRC or Hong Kong, or in Applicant's contacts with them, to heighten the risk that she could be impelled or compelled to provide protected information to the PRC or Hong Kong.²⁵ I find Guideline B for Applicant.

Formal Findings

Paragraph 1. Guideline C: FOR APPLICANT

Subparagraphs a-b: For Applicant

²⁵AG, ¶ 8(a), 8(b), 8(e)

Paragraph 2. Guideline B: FOR APPLICANT

Subparagraphs a-f: For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance granted.

JOHN GRATTAN METZ, JR
Administrative Judge