



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



In the matter of:

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ISCR Case No. 24-00750

Applicant for Security Clearance)

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel

For Applicant: Alan Edmunds, Esq., Applicant's Counsel

Grant Couch, Esq., Applicant's Counsel

02/24/2025

Decision

CEFOLA, Richard A., Administrative Judge:

Statement of the Case

On June 24, 2024, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline B. The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant answered the SOR (Answer) on September 13, 2024, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on November 13, 2024. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 19, 2024, scheduling the hearing for December 13, 2024. The hearing was convened as scheduled. The Government offered Exhibits (GX) 1 and 2, which were admitted without objection, and Hearing Exhibits (HXs) I and II for Administrative Notice. Applicant testified on his own behalf. Applicant presented five

packets of documents, one included in his Answer, one at his hearing, and three post-hearing, which I marked Applicant's Exhibits (AppXs) A through R, and Post Hearing Exhibits (PHXs) Q through U, which were admitted without objection. DOHA received the transcript of the hearing (TR) on December 23, 2024.

Procedural Rulings

At the hearing, the Government requested I take administrative notice of certain facts relating to the Hong Kong Special Administrative Region, and the People's Republic of China. (HEs I and II.) Applicant also submitted the "U.S. State Department 2024 Hong Kong Policy Act Report." (AppX U, Attachment B.) The documents provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

Findings of Fact

Applicant admitted to both allegations in SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 28-year-old employee of a defense contractor. (TR at page 13 lines 1~2.) He has been employed with the defense contractor since May of 2022. (GX 1 at page 16.) He is not married, and has no children. Applicant emigrated from Hong Kong, became a U.S. citizen in 2014, and served in the U.S. Army for eight years, achieving the rank of sergeant. (TR at page 12 line 23 to page 14 line 7, at page 18 lines 4~20, and at page 25 line 24 to page 26 line 5.)

Guideline B - Foreign Influence

1.a. Applicant's 60-year-old mother and 61-year-old father are British Nationals Overseas (BNOs), as evidenced by their "United Kingdom of Great Britain and Northern Ireland" passports. (PHXs S and T.) If they ever decide to reside in the U.K., "BNO's may become British citizens by registration, rather than naturalization." (PHX R at page 1.) His mother is a nurse and his father an entrepreneur. They reside in Hong Kong, but have no connection with the Hong Kong or British governments. Applicant does not discuss his employment with his parents. (TR at page 14 line 8 to page 16 line 14, at page 17 line 13 to page 18 line 20, at page 20 lines 9~15, at page 24 lines 19~25, and at page 29 line 18 to page 31 line 9.)

1.b. Upon her death, Applicant's 89-year-old grandmother (his grandfather is deceased) has gifted Applicant her Hong Kong residence worth \$350,000. (TR at page 23 line 18 to page 24 line 4, and AppX R the last two pages.) Once Applicant obtains ownership, he plans to sell the property and invest in real-estate in the United States. (TR at page 31 line 21 to page 32 line 8.) Applicant's annual income is about \$100,000. He has about \$50,000 in his bank accounts, and about \$30,000 in his retirement account. (TR at page 26 line 20 to page 27 line 14.)

Notice

I take administrative notice of the following facts regarding the Hong Kong Special Administrative Region of the People's Republic of China (HK of PRC). In 1997, China resumed the exercise of sovereignty over Hong Kong, ending 150 years of British colonial rule. Since 2019, the PRC has repeatedly taken actions inconsistent with the Basic Law of HK of PRC. (HX I.)

The PRC seeks to become a world science and technology superpower and use this technological superiority for economic, political, and military gain. The PRC remains the most active and persistent cyber threat to U.S. Government networks. It will continue to expand its global intelligence posture to advance PRC ambitions, challenging U.S. national security and global influence. The U.S. Department of State has reported significant human rights issues in the PRC. (HX II.)

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 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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 national security eligibility will be resolved in favor of the 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, 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person who applies for access to classified information seeks to enter 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 (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

Guideline B - Foreign Influence

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Three are potentially applicable in this case:

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

(f) substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest

Applicant's parents reside in Hong Kong; and in the future, Applicant will inherit a property worth about \$350,000. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 including:

(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 United States;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;

(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; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

As British nationals living overseas, Applicant's parents are free to depart Hong Kong for the United Kingdom. They also have no connection with the Government of the PRC. As to Applicant's potential, future inheritance, this U.S. Army Veteran plans to sell the property once he gains possession, and reinvest in the U.S., where the vast majority of his financial interests reside. Foreign Influence is found 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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment. Applicant is well respected by those who served with him in the U.S. Army, and in the defense industry. (AppXs N~P.)

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the Foreign Influence security concern.

Formal Findings

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

Paragraph 1, Guideline B: FOR APPLICANT

Subparagraphs 1.a. and 1.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 national security eligibility and a security clearance. Eligibility for access to classified information is granted.

Richard A. Cefola
Administrative Judge