

KEYWORD: Foreign Influence

DIGEST: Applicant's failure to offer any evidence concerning his numerous in-laws who are citizens and residents of Taiwan precludes the required affirmative finding that it is clearly consistent with the national interest for applicant to hold a sensitive Information Systems Position. Determination of Trustworthiness is denied.

CASENO: 05-10843.h1

DATE: 06/28/2007

DATE: June 28, 2007

In Re:	)	
	)	
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SSN: -----	)	ADP Case No. 05-10843
	)	
Applicant for Trustworthiness Determination	)	
	)	

**DECISION OF ADMINISTRATIVE JUDGE  
JOSEPH TESTAN**

**APPEARANCES**

**FOR GOVERNMENT**

Jeff A. Nagel, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's failure to offer any evidence concerning his numerous in-laws who are citizens and residents of Taiwan precludes the required affirmative finding that it is clearly consistent with

the national interest for applicant to hold a sensitive Information Systems Position. Determination of Trustworthiness is denied.

### **STATEMENT OF THE CASE**

On April 9, 1993, the Composite Health Care System Program Office (CHCSPO), the Defense Office of Hearings and Appeals (DOHA), and the Assistant Secretary of Defense for Command, Control, Communications and Intelligence (ASDC3I), entered into a Memorandum of Agreement which gave DOHA the responsibility to provide trustworthiness determinations for contractor personnel employed in Information Systems Positions as defined in DoD Regulation 5200.2R, *Personnel Security Program*, dated January 1987.

On December 29, 2006, DOHA issued a Statement of Reasons (SOR) to applicant which detailed reasons why DOHA could not make the preliminary affirmative finding that it is clearly consistent with the national interest to make or continue a determination of trustworthiness, suitability, and eligibility for applicant to hold a sensitive Information Systems Position (ADP-I/II/III).

Applicant responded to the SOR in writing on January 10, 2007, and elected to have his case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's written case (FORM) on or about February 20, 2007. Applicant filed a response to the FORM on or about March 26, 2007. The case was assigned to me on May 2, 2007.

### **FINDINGS OF FACT**

Applicant is 31 years of age. He and his wife, a dual citizen of the United States and Taiwan, have resided in South Korea since 2004. They moved to South Korea so applicant could work on a United States government contract. When the contract ends, they intend to return to the United States.

Applicant was born in South Korea. It is not clear when, but at some point he moved to the United States. He became a United States citizen in 1999.

Applicant's mother is a dual citizen of the United States and Taiwan. She is recently widowed and lives with applicant, who supports her, in South Korea. She will move back to the United States with applicant and his wife.

Applicant's older brother is a United States citizen residing and working in South Korea. According to applicant, he too is working on a government contract, and when it ends, he will return to the United States. His other brother is a United States citizen residing and working in Taiwan.

Applicant's mother-in-law, father-in-law, two sisters-in-law, and two brothers-in-law are

citizens and residents of Taiwan.

Applicant has traveled to Taiwan on at least eight occasions since moving to South Korea in 2004. His most recent trip was in July 2006. In his response to the SOR, he stated he travels to Taiwan to visit his brother and his spouse's family.

In his response to the FORM, applicant stated he is "a loyal American citizen who would never compromise sensitive information to anyone."

### CONCLUSIONS

The evidence establishes that applicant's (1) mother and spouse are citizens of Taiwan currently residing in South Korea with applicant, (2) mother-in-law, father-in-law, two sisters-in-law, and two brothers-in-law are citizens and residents of Taiwan, (3) older brother resides in South Korea, and (4) other brother resides in Taiwan. The evidence further establishes that since moving to South Korea in 2004, applicant has made at least eight trips to Taiwan to visit his brother and his spouse's family. Applicant's contacts with these family members, particularly when he travels to Taiwan, create a heightened risk of foreign exploitation. Accordingly, Disqualifying Conditions 7.a (*contact with a foreign family member . . . 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 7.i (*conduct, especially while traveling outside the U.S., which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country*) are applicable.

The foreign influence concerns raised by the foreign citizenship and/or residency of an applicant's family member may be mitigated when it can be determined that "*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*" (Mitigation Condition 8.a). Applicant has the burden to produce evidence sufficient to make this determination. He did not meet his burden.

Even if it is assumed he mitigated the concerns raised by his immediate family members (i.e., mother, spouse, brothers), applicant failed to mitigate the concerns raised by his in-laws,<sup>1</sup> and thus does not qualify for Mitigating Condition 8.a, because (1) he presented no information about the nature of the relationships he has with them, (2) Taiwan, although an ally of the United States, is an active collector of United States technology secrets, and (3) he presented no information about the positions and activities of his in-laws.

I have considered applicant's statement that he is "a loyal American who would never compromise sensitive information to anyone." This may very well be a sincere statement. However, without the information discussed above, and without other information that would enable me to determine, among other things, (1) when exactly applicant came to the United States, (2) if he has

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<sup>1</sup>There is a rebuttable presumption that a person has ties of affection for, or obligation to, immediate family members of his spouse. ISCR Case No. 01-03120 (App. Bd. Feb. 20, 2002).

any current long-standing, close relationships with anyone in the United States, (3) whether he has any close relatives currently living in the United States, and (4) whether he currently has any assets in the United States, I cannot make the required affirmative finding that it is clearly consistent with the national interest for applicant to hold a sensitive Information Systems Position.

Based on the foregoing, and after consideration of the factors set forth in Enclosure 2, Paragraph 2 of the Directive.<sup>2</sup> of Guideline B is found against applicant.

### **FORMAL FINDINGS**

#### PARAGRAPH 1: AGAINST THE APPLICANT

### **DECISION**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to make or continue a determination of trustworthiness, suitability and eligibility for applicant to hold a sensitive Information Systems Position.

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Joseph Testan  
Administrative Judge

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<sup>2</sup>Pages 18-19.