

KEYWORD: Foreign Preference; Personal Conduct

DIGEST: In 1995, Applicant was employed as a visiting scholar/associate professor at a private university in Taiwan. While in Taiwan, he voted in an election. Applicant had a Taiwan passport which he used on three occasions. His foreign passport has now been destroyed. In 2004, Applicant completed a Security Clearance Application, Standard Form (SF) 86. When he completed his SF 86, he failed to indicate he had a foreign passport or had visited a foreign country during the prior seven years. Applicant's answers were not intentional falsifications. Applicant no longer has ties with Taiwan and has expressed a willingness to renounce his Taiwanese citizenship. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from foreign preference and personal conduct. Clearance is granted.

CASENO: 06-10090.h1

DATE: 09/14/2007

DATE: September 14, 2007

In re:)	
)	
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SSN: -----)	ISCR Case No. 06-10090
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
CLAUDE R. HEINY**

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Christopher J. Cafiero, Esq.

SYNOPSIS

In 1995, Applicant was employed as a visiting scholar/associate professor at a private university in Taiwan. While in Taiwan, he voted in an election. Applicant had a Taiwan passport which he used on three occasions. His foreign passport has now been destroyed. In 2004, Applicant completed a Security Clearance Application, Standard Form (SF) 86. When he completed his SF 86, he failed to indicate he had a foreign passport or had visited a foreign country during the prior seven years. Applicant's answers were not intentional falsifications. Applicant no longer has ties with Taiwan and has expressed a willingness to renounce his Taiwanese citizenship. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from foreign preference and personal conduct. Clearance is granted.

STATEMENT OF THE CASE

On March 30, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating that DOHA could not make the preliminary affirmative finding¹ it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR set forth reasons why a security clearance could not be granted or continued due to foreign preference and personal conduct security concerns.

On April 28, 2007, Applicant answered the SOR and requested a hearing. On June 14, 2007, I was assigned the case. On July 5, 2007, a Notice of Hearing was issued for the hearing held on July 24, 2007. At the hearing, Government presented five exhibits (Gov Ex). Applicant testified, as did one other witness. Applicant submitted no exhibits. Applicant's counsel asked that ISCR Case No. 00-0275 (Dated October 30, 2000) be considered. On August 1, 2007, DOHA received the transcript (Tr.).

FINDINGS OF FACT

The SOR alleges security concerns for foreign preference and personal conduct. Applicant admits: he was employed from August 1993 through June 1996 as a visiting scholar/associate professor at a university in Taiwan; he received grants while employed at the university; he voted in a 1995 Taiwanese election; in 1993 he traveled to Taiwan and in 1994 he traveled to Hong Kong; in 2002, he accompanied his father to Taiwan; and he had a Taiwanese passport that was destroyed in January 2007. The admissions are incorporated herein as findings of fact. After a thorough review of the record, I make the following findings of fact.

Applicant is a 48-year-old test engineer who has worked for a defense contractor since July 1997, and is seeking to maintain a security clearance issued in April 1998.

¹Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.

In November 1958, Applicant was born on Taiwan, Republic of China². Both of his parents were university professors. His parents were born in mainland China and in 1948 fled to Taiwan to escape the Communists. (Tr. 32) In 1981, his sister came to the U.S. to study for her master's degree. In July 1983, Applicant came to the U.S. to study physics. In 1986, his brother came to the U.S. to attend university. In 1990, Applicant obtained a Ph.D. in physics. In 1990, his mother retired as a university professor and came to the U.S. to live permanently. His mother, brother, and sister became naturalized U.S. citizens. (Tr. 47, 68) In December 1991, Applicant became a naturalized U.S. citizen and obtained a U.S. passport.

Following graduation from university, Applicant looked for a teaching position in academia. Finding a lack of jobs in the U.S., he obtained a position as a visiting scholar/associate professor at a private university in Taiwan. He was employed there from August 1993 through June 1996. As an associate professor, he taught general physics and obtained grants from a national science council to pay for equipment and the hiring of graduate assistants. (Gov Ex 5) Grants were necessary to run labs and conduct research projects. He did not have to be a Taiwanese citizen to obtain the grants. (Tr. 45) In February 1994, Applicant and his wife traveled on vacation to Hong Kong during Chinese New Year using his Taiwanese passport.

Applicant has been married 19 years and has one son who was born in the U.S. Both his wife and son are U.S. citizens. (Tr. 33) He met his wife when he was in school. (Tr. 67)

In May 1995, he voted in an election in Taiwan. Applicant voted for the status quo party because he knew the U.S. government favored the status quo and did not favor independence for Taiwan. (Tr. 55)

In 1995, Applicant decided he did not want a teaching career in physics. In 1996, Applicant's father retired as a professor at a Taiwanese university and moved permanently to the U.S. In 1996, Applicant returned to the U.S. where he continued his studies for two additional semesters. In July 1997, he was hired by his current employer.

In June 1993, Applicant obtained a Taiwanese passport that expired in June 1999. (Gov Ex 3) Applicant had no intention of renewing his Taiwanese passport when it expired. (Tr. 60) In February 1998, Applicant stated he was willing to renounce his Taiwanese citizenship. (Gov Ex 5) In March 2002, his mother died and left some open bank retirement accounts in Taiwan that needed to be closed. Four days after his mother's death, Applicant renewed his expired Taiwanese passport. Applicant accompanied his 74-year-old, severely hearing-impaired father who suffers from Parkinson's disease to Taiwan to resolve the financial issues related to his mother's death. He was in Taiwan from April 14, 2002 through April 21, 2002. Following his return from Taiwan, Applicant never intended to use his Taiwanese passport again. (Tr. 37) In January 2007, the passport was destroyed by the company's security officer. (Gov Ex 2)

In his November 1997 sworn statement (Gov Ex 4) and in his February 1998 sworn statement (Gov Ex 5), Applicant fully explained his 1995 employment at the Taiwanese university. The sworn statements explain in detail Applicant's connection with Taiwan, his education, jobs, becoming a naturalized U.S. citizen, his relatives and where they lived, foreign travel, and his

²The SOR list the People's Republic of China which is different from Taiwan, even though the People's Republic of China insists there is only one China.

mandatory service in the Taiwanese military. In September 2004, Applicant completed a security clearance application, Standard Form (SF) 86. The SF 86 was completed by a person asking Applicant questions and the other individual would type out the answers. After the document was completed, Applicant was giving the opportunity to review the document. (Tr. 38) Applicant does not know the name of the interviewer nor does he know if the person was a company employee or a government employee. (Tr. 52) Department Counsel suggest the interview actually took place in 2005, a year after Applicant completed the SF 86. (Tr51)

Applicant answered “no” to question 13, which asked if he had ever been employed by a foreign government, firm, or agency. He answered “no” because his 1995 employment with the Taiwanese university was with a private university and did not involve government employment, employment by a foreign firm, or foreign agency.

Even though Applicant had fully disclosed his Taiwanese passport in his November 1997 sworn statement (Gov Ex 4) and in his February 1998 sworn statement (Gov Ex 5), his SF 86 contains a “no” answer to question 15, which asked if he had a foreign passport. Applicant said this was an oversight. His answer was “no” to question 16, which asked if he had traveled outside the U.S. during the previous seven years. He failed to disclose his one week trip to Taiwan in April 2002. Applicant stated he believed the trip to Taiwan was disclosed elsewhere on his SF 86. Applicant says it was a mistake not catching the wrong answers to questions 15 and 16. (Tr. 39) Applicant takes responsibility for failing to catch the mistakes on his SF 86. Applicant stated he thought he had disclosed this Taiwanese passport during an interview, which took place at his on-site work location in September 2004. During that interview, Applicant states he offered to surrender his passport, showed it to the investigator, and indicated the entry and departure date stamps for his trip to Taiwan in April 2002. (Tr. 40, 70) Applicant does not know the interviewer’s identity or if he was a company or government employee.

Applicant intends to live permanently in the U.S. He has no close relatives living outside of the U.S. He stated he was willing to renounce his Taiwanese citizenship. (Gov Ex 5, Tr. 61) Applicant considers himself a loyal U.S. citizen. (Gov Exs 4 and 5) Applicant appreciates everything that the U.S. offers him. (Tr. 67)

POLICIES

The Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, dated August 2006, sets forth Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in Section 6.3 of the Directive. The adjudicative guidelines are to be applied by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. The presence or absence of a particular condition or factor for or against clearance is not determinative of a conclusion for or against an applicant. However, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, I conclude the relevant guidelines to be applied here are Guideline C, foreign preference and Guideline E, personal conduct.

BURDEN OF PROOF

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, an applicant from being eligible for access to classified information. The burden of proof in a security clearance case is something less than a preponderance of evidence, although the government is required to present substantial evidence to meet its burden of proof. Substantial evidence is more than a scintilla, but less than a preponderance of the evidence. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Additionally, the government must prove controverted facts alleged in the SOR. Once the government has met its burden, the burden shifts to an applicant to present evidence to refute, extenuate or mitigate the government's case. Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.³

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), “no one has a ‘right’ to a security clearance.” A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access to classified information in favor of protecting national security. Security clearance determinations should err, if they must, on the side of denials.

CONCLUSIONS

The Government has satisfied its initial burden of proof under foreign preference. The concern arises when an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States. Conditions that could raise a security concern and may be disqualifying include: 10(a) “exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member.” This includes but is not limited to: (1) possession and/or use of a foreign passport and (7) voting in a foreign election.

In 1995, Applicant obtained a job with a Taiwanese university. Having a job in a foreign country in and of itself without more is not a condition that raises concern under foreign preference. It is the identity of the employer that may give rise to a security concern if that employer is a foreign government, agency, or firm. While so employed he obtained grants from the Taiwan National Science Council, but part of the duties of any university professor or associate professor is to seek grants so graduate students can be employed, equipment purchased, and research conducted. While in Taiwan, he did vote in a 1995 election, which is a condition that could raise a security concern. However, the voting occurred 12 years ago when Applicant was living in Taiwan, has not been repeated, and is unlikely to be repeated.

³ ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15

Applicant had a Taiwanese passport which he let expire in June 1999. It is likely the passport would not have been renewed but for his mother's death in March 2002. When his mother died she had financial matters to be attended to in Taiwan. Applicant accompanied his 76-year-old, hearing-impaired father to Taiwan. Applicant was in Taiwan one week. This was the only trip for which the renewed passport was used. The passport has since been destroyed by the company's security officer. Mitigating Condition (MC) 11(e) "the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated," applies. He has expressed a willingness to renounce his Taiwanese citizenship. MC 1(b) "individual has expressed a willingness to renounce dual citizenship," applies.

The security concern with personal conduct is conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. Conditions that could raise a security concern and may be disqualifying include 16(a) "deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities."

The Government has shown Applicant's answer to questions 15 and 16, which asked about his foreign passport and foreign travel, were incorrect. Applicant takes responsibility for failing to catch the mistakes on his SF 86. In November 1997, Applicant made a detailed statement discussing everything of relevance regarding his background in Taiwan. He discussed his foreign passport, foreign travel, his relatives, his education, and work at Taiwanese university in 1995. In February 1998, Applicant again gave a detailed sworn statement about his education, growing up in Taiwan, his employment as a visiting associate professor at the Taiwanese university, his travel to Hong Kong during the Chinese New Year, and his relatives. Having made such detailed sworn statements, it fails to follow that he would deliberately fail to disclose information about his foreign passport and foreign travel when he completed his September 2004 SF 86.

Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance is a security concern. But every inaccurate statement is not a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully. Applicant had previously made two, formal, sworn statements about his foreign passport and foreign travel. Applicant has denied intentional falsification. Applicant acknowledged his behavior and admitted he did not fill out the questionnaire properly. After hearing Applicant's testimony, observing his demeanor, and evaluating all the evidence of record, I found his testimony credible on the falsification issue. Having already informed the government of his previous foreign travel and possession of a Taiwanese passport, I find it unlikely Applicant would have intentionally withheld this information on his SF 86. I am satisfied the incorrect answers were not an intentional falsification of his SF 86.

When asked in question 13 if he had ever been employed by a foreign government, firm, or agency he answered "no" because his employment was with a private foreign university which he did not believe was a foreign government, firm, or agency. There was no deliberate falsification in response to this question.

Security clearance determinations involve a careful weighing of a number of variables known as the whole person concept. In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

All of Applicant's close family lives in the U.S. He has no remaining ties with Taiwan. He owns no property there nor does he have any financial accounts there. Applicant's son and wife are U.S. citizens. Applicant's loyalty is with the U.S. I find for Applicant as to foreign preference. I find Applicant did not intentionally falsify his SF 86 and find for him as to personal conduct.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7, of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 foreign preference: FOR APPLICANT

 Subparagraph 1.a: For Applicant

 Subparagraph 1.b: For Applicant

 Subparagraph 1.c: For Applicant

 Subparagraph 1.d: For Applicant

Paragraph 2 personal conduct: FOR APPLICANT

 Subparagraph 2.a: For Applicant

 Subparagraph 2.b: For Applicant

 Subparagraph 2.c: For Applicant

DECISION

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 is granted.

Claude R. Heiny
Administrative Judge