

KEYWORD: Foreign Influence

DIGEST: Applicant is a native born, United States citizen. His mother, father, three sisters, and two of his children were born in the United States and are U.S. citizens. Applicant's wife's family, including her mother, father, three sisters, and one brother are citizens and residents of Taiwan. None of these family members, belong to, participate in, or are active with any government agency of Taiwan. They are not in a position to be exploited by Taiwan in a way that could force Applicant to choose between loyalty to these family members and his loyalty to the United States. Applicant's strong attachment to the United States makes it highly unlikely that he would respond favorably to any efforts to act against United States interests. Mitigation has been shown. Clearance is granted.

CASENO: 06-21931.h1

DATE: 06/06/2007

DATE: June 6, 2007

In Re:

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SSN: -----

Applicant for Security Clearance

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**DECISION OF ADMINISTRATIVE JUDGE  
MARTIN H. MOGUL**

**APPEARANCES**

**FOR GOVERNMENT**

Melvin A. Howry, Esq., Department Counsel

**FOR APPLICANT**

William F. Savarino, Esq.

## **SYNOPSIS**

Applicant is a native born, United States citizen. His mother, father, three sisters, and two of his children were born in the United States and are U.S. citizens. Applicant's wife's family, including her mother, father, three sisters, and one brother are citizens and residents of Taiwan. None of these family members, belong to, participate in, or are active with any government agency of Taiwan. They are not in a position to be exploited by Taiwan in a way that could force Applicant to choose between loyalty to these family members and his loyalty to the United States. Applicant's strong attachment to the United States makes it highly unlikely that he would respond favorably to any efforts to act against United States interests. Mitigation has been shown. Clearance is granted.

## **STATEMENT OF THE CASE**

On November 27, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4), issued a Statement of Reasons (SOR) to the Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted or denied. The SOR was based on Foreign Influence (Guideline B) concerns because of the foreign residency and/or citizenship of close family members.

Applicant filed a notarized response, dated December 8, 2006, to the allegations set forth in the SOR, and requested a hearing before a DOHA Administrative Judge. On February 8, 2007, the case was initially assigned to another Administrative Judge to conduct a hearing and issue a written decision, but on February 20, 2007, the case was reassigned to this Administrative Judge. Pursuant to formal Notice of Hearing, dated March 21, 2007, a hearing was held on March 29, 2007.

At the hearing, Department Counsel offered 13 documentary exhibits (Government Exhibits 1-13) and no witnesses were called. Applicant offered nine documentary exhibits (Exhibits A-I) and offered his own testimony and that of four other witnesses. The transcript (Tr) was received on April 13, 2007.

## **FINDINGS OF FACT**

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline B (Foreign Influence) of the Directive. The SOR contains five allegations, i.e., through i.e., under Guideline B. Applicant admitted all of the allegations in the SOR. The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the admitted documents, and the testimony of Applicant and the witnesses, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 47 years old. He is employed as a Principal Systems Engineer by a United States defense contractor, and he seeks to retain a security clearance that he has held without interruption since 1978.

Applicant was born in the United States and is a U. S. citizen. He served in the United States Navy from 1977 to 1981, and he received an Honorable Discharge. Applicant's mother, father, three sisters, and one brother-in-law are also citizens and residents of the United States.

Applicant's wife of 14 years was born in Taiwan and is still a citizen of Taiwan. She became a permanent resident in the United States in 1993, but because she moved back to Taiwan with her husband for eight years, and has now been back for less than 3 years, she has not yet qualified to apply for United States citizenship. She intends to apply for U.S. citizenship when she is eligible. She received a Master's Degree in United States law from a U. S. university. Applicant and his wife have three children; two were born in the United States and one in Taiwan, but they are all United States citizens.

#### **Guideline B (Foreign Influence)**

Applicant's wife's family, including her mother, father, three sisters, and one brother are citizens and residents of Taiwan. They all work together as owners and operators of two restaurants in Taiwan. None of these family members, belong to, participate in, or are active with any national government agency of Taiwan. His wife remains very close to her family, and travels to Taiwan every summer with her children to visit them. She communicates with some members of her family on a regular basis, averaging three or four times a week. Applicant talks to his wife's family approximately every two months, and he has seen them for a week in 2005 and 2006.

From 1996 to 2004, Applicant and his wife resided in Taiwan. Applicant worked on a Department of Defense contract; specifically he was an operations and maintenance person for a training system sold with the approval of the United States Government to the Taiwanese Air Force. During that period he continued to maintain his U. S. security clearance, and he also had a Taiwanese security clearance. He traveled back to the United States each year that he lived in Taiwan.

During the period he worked in Taiwan, Applicant made some friendships with three Taiwanese Air Force personnel, now retired. He continues contact with them on a casual basis, by email every other month.

Applicant does not have any financial interest in Taiwan. All of his significant financial holdings are in the United States. His wife, as one of five siblings, has a potential interest in the two restaurants in Taiwan, but the value is unknown.

#### **Mitigation**

Four individuals testified on Applicant's behalf. All of them work for the same company as Applicant, and all have known him for many years. They all spoke extremely positively about Applicant as an honest, trustworthy, and hardworking individual.

## **Current Status of Taiwan**

Since Applicant's wife's family members are citizens and residents of Taiwan, and he has had other contacts there as well, it is important to consider the status of Taiwan at this time.

Taiwan has an elected democratic government. It has the 17<sup>th</sup> largest economy in the world, and it is a leading producer of high-technology goods. It engages in industrial and economic espionage. Proprietary information technology is high on the Taiwanese list of targeted information to be acquired by their agents from foreign governments and businesses. There are 23 million Taiwanese citizens. Their per capita income in 2005 was \$15,000, cited by their president in a speech that he presented as economic progress under his administration. Although the United States now recognizes Taiwan as part of the PRC as "one-China" it continues to maintain strong unofficial relations with Taiwan.

## **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines that must be carefully considered in evaluating an individual's security eligibility and making the overall common sense determination required. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, etc.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk.

Each adjudicative decision must also include an assessment of: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent 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 (*See Directive, Section E2.2.1. of Enclosure 2*).

## **BURDEN OF PROOF**

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly

consistent with the national interest to grant or continue the security clearance. Assessment of an applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of rehabilitation.

A person who seeks access to classified information enters into a fiduciary relationship with the U.S. Government that is predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability, or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

### **CONCLUSIONS**

Under Guideline B, a security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he is bound by affection, influence or obligation, are not citizens of the United States or may be subject to duress. Based on the evidence of record, the Government has established an initial reason to deny Applicant a security clearance because of Guideline B (Foreign Influence).

Applicant's wife's mother, father, three sisters and brother are citizens and residents of Taiwan. The Taiwanese citizenship and residency of Applicant's family create the potential for foreign influence that could result in the compromise of classified information because it makes Applicant potentially vulnerable to coercion, exploitation, or pressure. The possession of such ties raises a security concern sufficient to require Applicant to present evidence in rebuttal, extenuation, or mitigation sufficient to meet his burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him. This Applicant has done.

The evidence of Applicant's wife's family, who are citizens and residents of Taiwan, comes within Disqualifying Condition (DC) 7(a) contact with foreign family members, who are citizens and residents in a foreign country, if that contact creates heightened risk of foreign exploitation, pressure or coercion.

The primary factors in mitigation that I have considered include: Applicant is a native-born United States citizen; all his blood relatives, including his mother, father, three sisters, and two children were born in the United States and are U.S. citizens; his third child was born in Taiwan but is also a United States citizen; Applicant served honorably in the United States Navy for four years, and he has held a security clearance since 1978; there is no government involvement of Applicant's wife's family in Taiwan; finally, Applicant expressed strong feelings concerning the United States. While Applicant's wife is still a citizen of Taiwan, she plans to apply for United States citizenship when eligible. After considering all of these factors, I conclude that Applicant has mitigated any previous security concerns, thereby demonstrating that it is clearly consistent with national security to grant him a security clearance.

Based on the nature of the overall record and the totality of the evidence, I have determined that Applicant's wife's family in Taiwan does not constitute an unacceptable security risk, and Mitigating Condition (MC) 8 (b) applies, there is no conflict of interest because Applicant has such deep and longstanding relationships and loyalties in the U.S., that he can be expected to resolve any conflict of interest in favor of the U.S.

After considering all of the evidence of record on these issues, I conclude that the mitigating evidence substantially outweighs the evidence supporting the SOR and even in the unlikely event pressure was exerted upon Applicant to compromise classified information, he would resist it and would report the incident to the proper authorities.

On balance, it is concluded that Applicant has overcome the Government's evidence opposing his request for a security clearance.

### **FORMAL FINDINGS**

#### **Paragraph 1. Guideline B: FOR APPLICANT**

Subparagraph 1.a.: For Applicant  
Subparagraph 1.b.: For Applicant  
Subparagraph 1.c.: For Applicant  
Subparagraph 1.d.: For Applicant  
Subparagraph 1.e.: 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.

Martin H. Mogul  
Administrative Judge