

DATE: June 25, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-10215

## DECISION OF ADMINISTRATIVE JUDGE

**ELIZABETH M. MATCHINSKI**

### APPEARANCES

#### FOR GOVERNMENT

Rita C. O'Brien, Esq., Department Counsel

#### FOR APPLICANT

*Pro Se*

### SYNOPSIS

Applicant is a dual citizen of the United States (US) and the Republic of China (Taiwan) since his US naturalization in November 1998. He intends to pursue his life and career in the US, but remains close to his parents and brother, who are resident citizens of Taiwan. Applicant's parents have spent every summer with Applicant in the US since 1994, and he applied in October 2002 for US permanent residency for them. Applicant is well-regarded by his coworkers for his trustworthiness and moral character, but the Taiwanese residency and citizenship of immediate family members present an unacceptable risk of foreign influence. Clearance is denied.

### STATEMENT OF THE CASE

On December 18, 2002, 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. The SOR 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, continued, denied or revoked. The SOR was based on foreign influence (guideline B) concerns.

On January 9, 2003, Applicant executed an Answer to the SOR and requested a hearing before a DOHA Administrative Judge. The case was assigned to me on arch 14, 2003. Pursuant to formal notice dated March 28, 2003, a hearing was scheduled for April 15, 2003. At the hearing held as scheduled, the Government submitted three exhibits and Applicant four exhibits, all of which were admitted without objections. Testimony was entered from Applicant and Applicant's supervisor. At the Government's request, administrative notice was taken of extracts of two publications: *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage 2000*, and Section 1, *Operations Security Intelligence Threat Handbook*. A transcript of the hearing was received by DOHA on April 24, 2003.

## FINDINGS OF FACT

The SOR alleges foreign influence concerns related to the Taiwanese citizenship and residency of his parents and siblings, his travel to Taiwan on four occasions between January 1994 and March 1998, his father's employment as a doctor and shipyard technician in Taiwan, and Applicant's service as a lieutenant in the Taiwanese military from July 1991 to June 1993. In his Answer, Applicant admitted the Taiwanese citizenship and residency of his immediate family members, his travels to Taiwan to visit family, and his mandatory service in the foreign military for two years. Applicant denied the allegations pertaining to his father's employment, citing his father's retirement from his position at the national shipyard in December 1992 and practice as a Chinese herbal doctor, not a medical physician. Applicant's admissions are accepted, and incorporated as findings of fact. After a complete and thorough review of the evidence of record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is a 32-year-old mechanical engineer, who has been employed by a defense contractor since July 2000. He held an interim secret clearance for his duties until it was revoked on issuance of the SOR.

Applicant was born in Taiwan in June 1971 to resident citizens of that country. His father was employed as a ship technician (piping designer) for a then government-owned company that built commercial ships and he also practiced Chinese herbal medicine part-time. His mother stayed at home to care for the family. Raised in Taiwan with an older sister born in 1965 and a younger brother born in 1973, Applicant was educated in Taiwan through his bachelor's degree. In June 1991, Applicant was awarded a bachelor of science in mechanical engineering from a technical college in Taiwan. His parents financed his education.

The following month, he began two years of mandatory military service in the Taiwanese army, serving at the rank of lieutenant as a company leader in a tank troop. While Applicant was in the foreign military, his father retired in December 1992 from his employment with the shipbuilding company, which had been privatized in about 1988. At the completion of his military duty, Applicant in June 1993 married a United States native citizen in Taiwan. Applicant had met his wife in 1989 in Taiwan where she was studying Chinese culture and language. They dated for four years before they wed, during which time she spent her time between the United States and Taiwan.

Applicant and his spouse decided to make their home in the United States, and in October 1993, they came to the United States to live. Applicant entered the US on a Taiwanese passport issued to him in mid June 1993, valid for six years, and was admitted on a CR-1 visa pending processing for lawful admission for permanent residence. Applicant began working as a carpenter in October 1994. In 1994, Applicant and his spouse purchased a home for \$169,000.00 in the United States with \$150,000.00 from his parents.

In September 1995, a son was born to Applicant and his spouse in the US. Applicant made no effort to acquire Taiwanese citizenship for his son. Applicant joined a local organization oriented toward instructing children in the Chinese language, art and music and he brought his son to Sunday school there for about two years commencing in the fall of 1999.

As a lawful permanent resident in the United States, Applicant traveled back to Taiwan on his Taiwanese passport to see his parents and brother in January 1994, January 1995, February 1996, and March 1998. He also took a vacation in Europe in 1994, traveling on his Taiwanese passport.

In November 1998, Applicant became a naturalized United States citizen, taking an oath to renounce all foreign allegiances, to support and defend the United States Constitution and its laws, and to bear arms or noncombatant service or civilian service on behalf of the United States if required. Applicant regarded his acquisition of United States citizenship as a renunciation of his Taiwanese citizenship, although he subsequently discovered that Taiwan recognizes him to be a citizen of their country. Nineteen days after he became a United States naturalized citizen, he was issued a United States passport, valid until November 2008. He has since used that passport exclusively when traveling abroad, including on a trip to continental Europe in May 1999 with his brother and to Scotland in October 2002. Applicant retained his Taiwanese passport as he was not asked to turn it in. Applicant had no intent to use his foreign passport. He did not take his Taiwanese passport with him when he went to Europe in 1999 and he made no effort to renew it on its expiration in June 1999.

Hoping to use his mechanical engineering degree, Applicant first applied for work with his present employer in about 1997. After responding to an interview letter from the company, he was hired in mid 2000. Before commencing work, Applicant executed a Questionnaire for National Security Positions (SF 86) on June 28, 2000. He disclosed thereon the Taiwanese citizenship and residency of his parents and siblings, his former service in the Taiwanese Army from July 1991 to June 1993, his foreign travel since 1996, including trips to Taiwan in 1996 and 1998, and his possession of a Taiwanese passport to November 1998 when he became a naturalized US citizen. In July 2000, Applicant began working for the company with an interim secret security clearance.

In late December 2001, Applicant and his spouse divorced. His ex-wife moved with their son to a distant state. On March 1, 2002, Applicant was interviewed by a Defense Security Service (DSS) special agent about his foreign relations and connections. Applicant admitted he still had possession of his expired Taiwanese passport, but denied any use of it after he became a US naturalized citizen in November 1998. Led to understand from the agent that he had to surrender his foreign passport for a security clearance, Applicant expressed his intent to forward his foreign passport to the Taiwanese Embassy as soon as possible. Applicant indicated he did not believe he was a dual citizen of the US and Taiwan, but he was not certain of the Taiwanese laws on retention of that nation's citizenship following acquisition of US citizenship. Applicant indicated he would support the US against any country, including Taiwan, and would not be willing to bear arms for any country against the US. Applicant denied acceptance of any benefit or privilege from Taiwan or exercise of any right of a Taiwanese citizen. Applicant denied any contact with foreign nationals apart from his parents and siblings in Taiwan, none of whom are agents or representatives of a foreign government or intelligence service.

Shortly after his interview, Applicant sent his expired Taiwanese passport to the Taiwanese embassy, indicating he wished to renounce his Taiwanese citizenship. (U) The embassy returned the passport to him with instructions as to the process for citizenship renunciation. As of April 2003, Applicant had not filed his application to renounce his foreign citizenship as he needs to travel to Taiwan to obtain the necessary documentation and approvals.

Known for his positive attitude, Applicant has given lectures on spirituality to Chinese and other Asian audiences in the United States on a weekly basis since late 1993. Most of these lectures have been in Chinese, although they have been in English on occasion. About five times per year, Applicant has given Chinese calligraphy demonstrations to the public, including at the local college. As of April 2003, Applicant was still a member of the Chinese cultural organization, although he has not been active of late.

Applicant is involved in a Christian congregation in his local area, attending worship services "pretty much weekly," and participating in fund raising activities for the church. Applicant became involved in the church when he was still married, as he and his spouse provided transportation to services for two elderly ladies. Interested in Scottish culture as well as in preserving Chinese culture, Applicant plays bagpipes in a local Highland pipe band. Applicant's association with the Scottish pipe band has given him an appreciation for American society and its acceptance of diverse ethnic groups.

Applicant maintains weekly contact by telephone with his parents in Taiwan. Since 1994, they have spent about two months every summer with Applicant, staying at his home in the US. In October 2002, Applicant applied for US permanent residency status for his parents. As of April 2003, he was awaiting US government action on their applications.

Applicant's brother is a portrait photographer for a commercial studio in Taiwan. Applicant telephones him weekly as well. Applicant shares a close relationship with his brother, who has visited him twice in the United States, staying for two months and one month, respectively. On his trips to Taiwan, Applicant visited with his brother as well as his parents. This brother served in the Taiwanese army at the rank of sergeant from about 1993 to 1995.

Applicant's sister, a homemaker, is married to a policeman in a small town in Taiwan. They have two children. Applicant's contact with his sister is limited to twice per year by telephone and a Christmas card. He does not consider his relationship with her to be a close one.

Applicant provides no financial support to his relations in Taiwan.

Applicant has proven to be a diligent, capable worker for his defense contractor employer. He has displayed good judgment and maturity regarding technical matters, and has been eager to accept new challenges. Allowed supervised access to confidential classified information while he held an interim secret clearance, Applicant handled the material appropriately. Since the revocation of his interim clearance, Applicant's work tasks have been screened. Applicant is regarded as a person of sound integrity and moral character by his coworkers, including the present technical lead who directly supervised Applicant's work from July 2000 to February 2002. Applicant has gone out of his way to help others outside of the office, offering his carpentry (handyman) services to coworkers on numerous occasions. Applicant has not given those who work closely with him any reason to doubt his character or trustworthiness. A coworker familiar with Applicant socially and from mutual attendance at monthly fellowship meetings at lunch, has never heard Applicant express any anti-American sentiment. To the contrary, Applicant has always impressed this coworker as being thankful for the privilege of being a US citizen.

## **POLICIES**

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, favorable and unfavorable, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines which must be carefully considered according to the pertinent criterion in making the overall common sense determination required. Each adjudicative decision must also include an assessment of the nature, extent, and seriousness of the conduct and surrounding circumstances; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the motivation of the individual applicant and extent to which the conduct was negligent, willful, voluntary or undertaken with knowledge of the consequences involved; the absence or presence of rehabilitation and other pertinent behavioral changes; the potential for coercion, exploitation and duress; and the probability that the circumstances or conduct will continue or recur in the future. *See* Directive 5220.6, Section 6.3 and Enclosure 2, Section E2.2. Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility or emotionally unstable behavior. *See* Directive 5220.6, Enclosure 2, Section E2.2.4.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

### **Foreign Influence**

E2.A2.1.1. The Concern: A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation or pressure.

E2.A2.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A2.1.2.1. An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country

E2.A2.1.3. Conditions that could mitigate security concerns include:

E2.A2.1.3.1. A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States.

E2.A2.1.3.3. Contact and correspondence with foreign citizens are casual and infrequent

Under the provisions of Executive Order 10865 as amended and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses. Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

### Burden of Proof

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets its burden and establishes conduct cognizable as a security concern under the Directive, the burden of persuasion then shifts to the applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of criterion conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the 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 is nonetheless security worthy. As noted by the United States Supreme Court in *Department of 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." Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. *See* Enclosure 2 to the Directive, Section E2.2.2.

### CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of those who testified, I conclude the Government has established its case under Guideline B because Applicant has close ties of affection and obligation to immediate family members who are resident citizens of Taiwan, and Applicant has not met his burden of proving he is not vulnerable to foreign influence through these foreign relations.

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. Applicant's parents, brother, and sister and her family are resident citizens of Taiwan. Applicant shares an especially close relationship with his parents, traveling to Taiwan to see them in 1996 and 1998, having them spend the summers with him in the United States annually since 1994, and contacting them by telephone weekly. He admits to a personal bond with his brother as well, which is evident in his weekly telephone calls, travel with his brother to Europe in 1999, and hosting his brother in the US twice. Applicant's relationship with his sister is more distant--contact is limited to twice per year by telephone and Christmas greetings, but her foreign citizenship and residency present the potential for foreign influence. Disqualifying condition E2.A2.1.2.1., an immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country, must be considered in assessing whether there is an unacceptable risk of foreign influence because of the Taiwanese citizenship and residency of his parents and siblings.

The security concerns engendered by the foreign citizenship of close family members may be mitigated where it can be determined that the immediate family members, cohabitant, or associates in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States (*see* E2.A2.1.3.1.). Neither Applicant's parents or his siblings are, or have ever been, agents of a foreign government. Applicant's mother was a homemaker who never worked in Taiwan. Applicant's father was employed as a piping designer for a shipbuilding company, which was government-owned up until the last four years of his employ when it was privatized. There is no indication Applicant's father was in a position of governmental influence or authority, although he earned sufficient funds from his job to provide Applicant \$150,000.00 to purchase a home in the US. Applicant's brother, who is unmarried, is a portrait photographer for a

commercial studio. Applicant's sister does not work outside the home. Although her husband is a policeman, which is a governmental job, he works for a small municipality. Not every person who has a connection to a foreign government is an agent of a foreign power.

The inquiry is not limited to whether foreign relations are agents of a foreign power. Immediate family members must also not be in a position to be exploited by a foreign power in a way that could force Applicant to choose between loyalty to his family member(s) and the United States (*see* mitigating condition E2.A3.2.3.1.). As articulated by the DOHA Appeal Board in ISCR Case No. 00-0317 decided on March 29, 2002:

Under Guideline B, the presence of family members in a foreign country must be evaluated both in terms of (I) possible vulnerability to coercive pressure or influence being brought to bear on, or through an applicant's family members in a foreign country, and (ii) possible vulnerability to noncoercive means of influence being brought to bear on, or through, an applicant's family members in a foreign country.

With respect to the potential for foreign influence being brought to bear on Applicant's sister because of her spouse's law enforcement position, Applicant testified credibly he does not have a close relationship with his sister and her family. His contacts with her are sufficiently casual and infrequent to where her Taiwanese citizenship and residency raise little security concern.<sup>(2)</sup> In contrast, Applicant does not deny--and the regularity of his contacts confirm--the close bonds shared with his parents and brother. Applicant's father has been retired from his employ since 1992, but the record is largely silent as to what he does with his time as well as with whom he presently associates. Applicant's brother served his mandatory two years of military service for the Taiwanese army at the rank of sergeant. There is nothing of record to suggest that his military service was noticed by foreign authorities, but the burden is on the Applicant to prove his brother's service was unremarkable. Other than being quick to deny that his brother had any contact with government officials and indicating his brother is a commercial photographer, Applicant provided little detail as to his brother's life or activities. Taiwan is one of the countries known to have significant intelligence operations targeting the United States. Whereas Applicant's parents and brother remain within reach of, and subject to the jurisdiction of, foreign authorities, there is always a possibility of coercive or especially noncoercive means of influence being brought to bear against these family members.

There are no allegations of foreign preference, but Applicant's respective ties and attitudes toward his native and his adopted countries are relevant in assessing whether Applicant is in a position where he could be forced to choose between his close family members and his obligations to the United States. Applicant emigrated to the US because of his marriage to a US citizen rather than to any long-held appreciation of the American culture, environment, or institutions. Asked why they elected to make their home in the US rather than Taiwan, Applicant responded, "Try something different and explore a new world and see how it goes." (Tr. p. 79). Through his active involvement in a Scottish Highland pipe band, Applicant subsequently came to prefer the US, where diversity is not only respected but encouraged. In November 1998, Applicant became a US naturalized citizen, knowing and accepting of the obligations of that citizenship. Indeed, he no longer considered himself a citizen of Taiwan, and presented himself as a US citizen when traveling to Europe in May 1999 on a US passport. Although his Taiwanese passport was still valid at that time, Applicant did not consider using it. On learning that Taiwan still considers him to be a citizen, Applicant attempted to relinquish his Taiwanese citizenship by sending his passport to the Taiwanese embassy. Although he has yet to file the documentation for renunciation, he has demonstrated a willingness to do so. While the US Government does not encourage its citizens to remain dual nationals because of the complications that might ensue from obligations owed to the country of second nationality, the Department of Defense does not require the renunciation of foreign citizenship in order to gain access. Applicant has also indicated without reservation that he would not bear arms against the US.

Applicant is actively involved in fostering Chinese culture in his local area in the US, presenting calligraphy demonstrations about five times per year. On a regular basis, he gives lectures on spirituality, primarily to Chinese and other Asian audiences. For the most part, these lectures have been in the Chinese language. Before his divorce, Applicant participated in the activities of a local Chinese cultural organization which promoted Chinese language instruction for children. Yet Applicant appears to be equally committed to his local religious congregation and to the Scottish pipe band, activities not Asian or Chinese related. Applicant's former military service for Taiwan is regarded as presenting little risk of foreign influence, as it was mandatory and there has been no contact since 1993 with foreign military or government authorities (other than the embassy in an effort to surrender his expired passport). However, with

his divorce in December 2001, Applicant's close ties to his parents and brother become even more significant. There is no evidence that Applicant has personal bonds with United States citizens of the strength and degree he has with his relatives in Taiwan.<sup>(3)</sup> Although he has filed for US permanent residency for his parents, no official action has yet been taken on their applications. The DOHA Appeal Board recently articulated in ISCR 01-26893:

Evidence of good character and personal integrity are relevant and material under the whole person concept. See Directive, Section 6.3 and Item E2.2.1.1. However, a finding that an applicant possesses good character and integrity does not preclude the government from considering whether the applicant's facts and circumstances still pose a security risk. Stated otherwise, the government need not prove an applicant is a bad person before it can deny or revoke access to classified information. Even good people can pose a security risk because of facts and circumstances not under their control. (See ISCR Case No. 01-26893, October 16, 2002, at pp. 9-10).

Even in the absence of a preference for Taiwan, the strength of his family ties to Taiwanese resident citizens can raise sufficient concern to be security disqualifying. While Applicant's close relationships with his parents and brother are understandable, and Applicant possesses personal integrity and high moral character, the Taiwanese residency and citizenship of immediate family members present an unacceptable security risk, warranting an adverse finding as to subparagraph 1.a. of the SOR. Whereas Applicant's travels to Taiwan affirm the closeness of his bonds with these foreign relations, subparagraph 1.b. is also resolved against him. With respect to subparagraph 1.c., the Government's allegation is inaccurate in that Applicant's father retired from his position as a shipyard technician in December 1992 and he was a practitioner in Chinese herbal medicine rather than a doctor. Yet his father's past employment, especially for the government-run shipbuilding company, engenders foreign influence concerns that were inadequately rebutted by Applicant, so 1.c. is likewise resolved against him. The mandatory nature of Applicant's former military service for the Taiwanese army, and the absence of any subsequent contact with foreign military authorities lead me to find for Applicant as to 1.d. of the SOR.

### **FORMAL FINDINGS**

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

Paragraph 1. Guideline B: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: For 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 grant or continue a security clearance for Applicant.

**Elizabeth M. Matchinski**

**Administrative Judge**

1. Applicant testified he sent the passport to the embassy twice. (Transcript pp. 54-55).
2. Nothing in the plain language of E2.A2.1.3.3. (contacts and correspondence with foreign citizens are casual and infrequent) precludes the application of this mitigating factor to family members, although contacts with an immediate family member (which includes sister under the Directive) raise a rebuttable presumption that those contacts are not casual in nature.

3. The record is silent as to the reasons for his divorce, or of the extent of Applicant's contact with his minor son since December 2001.