

DATE: November 30, 2001

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-04125

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Department Counsel

FOR APPLICANT

Richard Murray, Esq.

SYNOPSIS

Applicant, a naturalized citizen of the US who was a citizen of Taiwan solely by virtue of his birth and has not actively pursued his dual citizenship with Taiwan since becoming a US citizen, extenuates and mitigates security concerns associated with his maintenance of a dual citizenship between Taiwan and the US. Applicant's immediate family members who reside in Taiwan are not shown to be at any potential risk to pressure or coercion sufficient to pose continuing foreign influence concerns. Clearance is granted.

STATEMENT OF CASE

On July 12, 2001, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to 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 Applicant, and recommended referral to an administrative judge to determine whether clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR (undated) and requested a hearing. The case was assigned to this Administrative Judge on September 4, 2001 and was scheduled for hearing. A hearing was convened on October 17, 2001, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny or revoke Applicant's security clearance. At hearing, the Government's case consisted of six exhibits; Applicant relied on three witnesses (including himself) and three exhibits. The transcript (R.T.) of the proceedings was received on October 25, 2001.

STATEMENT OF FACTS

Applicant is a 36-year old senior professional analyst for a prominent research institution and defense contractor who seeks retention of his security clearance.

Summary of Allegations and Responses

Applicant is alleged to have (1) exercised dual citizenship with Taiwan, (2) possessed a Taiwanese passport (issued in March 1998), (3) served in the Taiwanese military between September 1987 and July 1989, (4) owned an apartment in Taipei, which his father uses as an office for his export company and (5) served as a member of a local Har Tien choir since 1997, whose approximately thirty members are predominantly Taiwanese.

Additionally, Applicant is alleged to have (a) Taiwanese parents who are citizens of Japan and Taiwan, respectively, and residents of Taiwan, (b) a mother in law, two sister in laws and a brother in law, all Taiwanese citizens residing in Taiwan, and ©) another sister in law, also a citizen of Taiwan, residing in the US as a permanent resident alien.

For his response to the SOR, Applicant admitted to most of the allegations, but denied exercising dual citizenship.

Relevant and Material Factual Findings

The allegations covered in the SOR and admitted to by Applicant are incorporated herein by reference and adopted as relevant and material findings. Additional findings follow.

Born and educated in Taiwan to Taiwanese parents, Applicant was a Taiwanese citizen by birth. He served in the Taiwanese military between September 1987 and July 1989, holding the rank of second lieutenant while assigned to his Army's airborne division. Altogether, Applicant served 24 months in the Taiwanese Army, fulfilling his military obligation to the Taiwanese government.

Applicant emigrated to the US in August 1989 under a student visa. He received an MS degree in electrical engineering in 1991 from a prestigious American university, using inheritance funds received from his father to finance his education. He continued his advanced engineering studies at a major university between September 1991 and August 1996 and received a PhD degree in electrical engineering. He used fellowship grants from his university and the National Science Foundation to finance these postgraduate studies.

After completing his PhD studies, Applicant gained employment as a research assistant at a local university before joining his current defense contractor in October 1997.

Applicant was granted permanent resident status in the US in November 1992 (having been sponsored by his father-in-law). He became a naturalized US citizen in May 1998. But before becoming a naturalized US citizen, he renewed his Taiwanese passport: in March 1998. The passport carried a March 2004 expiration date. Had he known his renewing his Taiwanese passport would create security concerns for him, he would not have not renewed it (*see* R.T., at 55).

In the only trip Applicant has taken to Taiwan since becoming a US citizen (in December 1998), he used his US passport (*see* exs.4, 5 and 6). Previously, he used his Taiwanese passport (issued in June 1989, expiring in April 1998) to travel to Taiwan on annual occasions between May 1990 and September 1997 to see his family (ex. 2). To satisfy security concerns, he has since renounced his Taiwanese citizenship by an affidavit he filed with the Taiwanese authorities in the US in October 2001 (*see* ex. A; R.T., at 69-70). As a part of his renunciation, he returned his Taiwan passport to Taiwanese authorities (*see* ex. C).

Applicant never belonged to any youth groups in Taiwan. Nor did he receive any political indoctrination or paramilitary training outside of his military service in the Taiwanese Army. As a Taiwanese citizen, he has never belonged to a Taiwanese professional organization or minority ethnic groups. Nor did his parents belong to any Taiwanese political parties, or Taiwanese military, police or intelligence organizations.

Since emigrating to the US, Applicant has not served in the US military. Nor has he belonged to any friendship groups, cultural groups, or other groups composed of fellow emigres, save for his membership in a local Hai Tien choir since moving to this local area in 1997. The choir has approximately 30 members, the majority of which are Taiwanese citizens who have never become naturalized US citizens (ex. 2). The choir convenes to rehearse once a week and publicly performs once a year (ex. 2). Applicant has yet to develop any close relationships with any of the choir

members.

Besides his association with Taiwanese members of his local Hai Tien choir, Applicant had a brief encounter with a former co-student (Mr. X) from his PhD program. He and his spouse hosted this former colleague in their home for several days in 1995. During his stay he advised Applicant that he was going over to his academic advisor's office (located at Applicant's former university) to work on an article. Later that evening, Mr. X called Applicant and his spouse from the local university's campus police station to inform Applicant that "something bad happened," and proceeded to tell him what he was caught copying in his advisor's office (*see* R.T., at 84-87). Upon hearing this from Mr. X, and believing Mr. X's action to be inappropriate, Applicant and his spouse asked him to leave their home, which he did (R.T., at 65). In an ensuing interview with the FBI a week later, Applicant learned that this former colleague was being investigated by the FBI for alleged copying of his advisor's research proposal onto a computer disc. Applicant informed the FBI he was had learned from Mr. X, he knew nothing of the former colleague's actions and so advised the FBI. Since hosting his former colleague, he has had just one contact: an e-mail from him a month later following his return to Taiwan, in which he apologized for any difficulty he put Applicant to (*see* R.T., at 59, 93-94). Applicant has heard nothing further from the FBI.

The only property Applicant owns in Taiwan is an apartment his father uses for his export company: worth around \$200,000.00 (*see* R.T., at 57-58). His father had purchased this property himself in 1994 and signed it over to Applicant as a gift the same year. Applicant has no involvement in his father's export company (*see* ex. 2). To the best of his knowledge, he has no benefit entitlements by virtue of his previous Taiwan citizenship and has no intention of ever returning to reside in Taiwan.

Applicant is highly regarded by his supervisors for his technical skills and his good judgment, reliability and trustworthiness. His immediate supervisor (Dr. A) is himself a graduate of a US military academy with substantial experience in Army intelligence, as well as the classified programs he administers for Applicant's defense employer (*see* R.T., at 101-104).

Applicant's parents, step-parents siblings and in-laws live who live in Taiwan have no relationships with the government of Taiwan. He talks to his mother monthly, and to his father and siblings every two to three months (*see* R.T., at 62-63), and rarely talks to his step-parents. He maintains telephone contact with his siblings as well, albeit less frequently than does his spouse. However, Applicant has not had any face-to-face contact with any of his family members in the past five years (R.T., at 61). Applicant has no reason to believe that any of his Taiwan relatives can be pressured, coerced or influenced into divulging any classified information (*see* R.T., at 67).

POLICIES

The Adjudicative Guidelines of the Directive (Change 4) list "binding" policy considerations to be made by Judges in the decision making process covering DOHA cases. The term "binding," as interpreted by the DOHA Appeal Board, requires the Judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the Judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E2.2 of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Foreign Preference

The Concern: 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.

Disqualifying Conditions:

DC 1: The exercise of dual citizenship

DC 3: Military service or a willingness to bear arms for a foreign country.

DC 2: Possession and/or use of a foreign passport.

Mitigating Conditions:

MC 1: Dual citizenship is based solely on parents' citizenship or birth in a foreign country.

MC 2: Indicators of possible preference (e.g., foreign military service) occurred before obtaining US citizenship.

MC 4: Individual has expressed a willingness to renounce dual citizenship.

Foreign Influence

The Concern: A security risk may exist when an individual's immediate family, including co-habitants, and other persons to whom he or she may be bound by affection, influence, or are 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.

Disqualifying Conditions:

DC 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.

DC 8: A substantial financial interest in a country, or in any foreign-owned or-operated business that could make the individual vulnerable to foreign influence.

Mitigating Conditions:

MC 1: A determination that the immediate family members 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 persons involved and the United States.

MC 5: Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.

Burden of Proof

By dint of the precepts framed by the Directive, a decision to grant or continue an Applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make

a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a nexus to the applicant's eligibility to obtain or maintain a security clearance. The required showing of nexus however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of accessible risks that an applicant may deliberately or

inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of proof shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

CONCLUSIONS

Applicant is a naturalized US citizen who after being born and raised in Taiwan, completed his undergraduate education and military service in Taiwan before emigrating to the US in 1989 on a student visa. In accepting US citizenship in May 1998, he did not renounce his Taiwan citizenship. US law did not mandate renouncement of his Taiwanese citizenship under Taiwan law when he took his oath, and Taiwanese law did not require it either. Unaware of any security implications from his holding a Taiwanese passport, he applied for and obtained a renewal of his expiring Taiwanese passport (in March 1998) just two months prior to his taking the oath of US citizenship and renunciation of all foreign allegiance under US law. When he was made aware of the security implications of holding dual citizenship and a foreign passport (albeit never used since becoming a US citizen), he renounced his Taiwanese citizenship and surrendered his passport: both actions taken in October 2001 after his receipt of the SOR.

Foreign Preference

Dual citizenship concerns necessarily entail allegiance assessments and invite critical considerations over acts indicating a preference for the interests of the foreign country over the interests of the US. In a different vein, the continued residence of his mother and in-laws in Taiwan raise some potential concerns about their being vulnerable to future pressure or duress that could result in the compromise of classified information. The issues, as such, raise concerns over Applicant's preference for a foreign country over the US and the potential for members of Applicant's immediate family being placed at risk to pressure or duress to induce Applicant to divulge classified information.

The primary issue is whether Applicant by renewing his Taiwanese passport in 1998 (two months before his becoming a naturalized US citizen manifested a preference for his birthplace (Taiwan) over his adopted country (the US). Disqualifying conditions under the Adjudicative Guidelines for foreign preference having some relevance to Applicant's situation encompass DC 1 (exercise of dual citizenship) based on Applicant's renewal of his Taiwanese passport in 1998, DC 2 (possession of a foreign passport) and DC 3 (military service). Each of these disqualifying conditions has only technical application, however, since it is clear that Applicant never actually used his renewed Taiwanese passport or served in the Taiwanese military after emigrating to the US and applying for US citizenship.

Without denying continuing affections for his birthplace, as well as the current place of residence of his mother and in-laws, Applicant insists his preference remains for his adopted country (US), which he would never compromise under any circumstances, should competing geopolitical interests develop between the two countries. No question but that Applicant manifested his support for the US in several important ways since taking his oath of allegiance in May 1998: He has completed his graduate studies in the US and has maintained a highly regarded technical relationship with a prominent US research institution and defense contractor. His brief 1995 innocent sheltering of a former Taiwanese student acquaintance being sought for questioning by the FBI reflected nothing adverse about Applicant or his spouse, and is no indicator, as such, of any conflicting Applicant preference for Taiwan. The same holds for his membership in the Hai Tien Choir, which is comprised of many members with Taiwanese ancestral roots.

Having complied with the minimum requirements of the Money Memorandum (issued by the Assistant Secretary of Defense for Command, Control, Communications and Intelligence on August 16, 2000, entitled "Guidance to DoD Central Adjudication Facilities Clarifying the Application of Foreign Preference Adjudicative Guidelines") by surrendering his unused Taiwanese passport, and by his renouncing his Taiwanese citizenship, Applicant has taken considerable concrete steps to reinforce his preference for the US. He may take advantage of several mitigating conditions: MC 1 (dual citizenship based solely on parents' citizenship or birth in foreign country), MC 2 (service in foreign military prior to obtaining US citizenship) and MC 4 (individual has expressed willingness to renounce dual citizenship). To be sure, Applicant's claim to MC 4 is even stronger: For he has officially renounced his Taiwanese citizenship.

Taking into account all of the evidence presented in the record, Applicant absolves himself of the security concerns raised by his essentially passive holding of dual citizenship with another country (Taiwan), averts any risk of recurrent dual citizenship questions by his renouncement of his Taiwanese citizenship and surrender of his Taiwan passport and convinces that his maintenance of dual citizenship with Taiwan over the past three years does not expose him to future risks of providing information that could be harmful to the security interests of the US. His essentially passive holding of dual citizenship over this three-year span since 1998 creates no competing allegiance concerns such as may exist for clearance holders that manifest in active dual citizenship exercise cases. Favorable conclusions warrant with respect to the allegations covered by Guideline C.

Foreign Influence

Besides preference concerns, Government concerns over the risk of Applicant's parents and siblings (each a citizen and permanent resident of Taiwan) and in-laws who reside in Taiwan might be subject to coercion or pressure. Because Applicant's father, siblings and in-laws remain citizens and residents of Taiwan, along with his mother (a Japanese citizen) who is also a Taiwanese resident, his immediate family members present potential security risks covered by disqualifying condition 1 (DC 1) of the Adjudication Guidelines for foreign influence. The citizenship/residence status of these relatives in Taiwan pose some potential concerns for Applicant because of the risks of coercion or influence that could compromise classified information under Applicant's possession and/or control. But while Applicant does have a property interest in Taiwan, he has nothing to do with his father's export business and no tangible reason to believe this interest could leave him in any visible way vulnerable to coercion or influence. Any application of DC 8 (financial interests in foreign country) would be minimal on the facts presented.

From what is known from Applicant's own statement and testimony, none of Applicant's immediate family residing in Taiwan have current working/non-working relationships with Taiwan's government or have any history of being subjected to any coercion or influence to date, or appear to be vulnerable to the same. Taking Applicant's explanations about his parents, siblings and in-laws at face value, any risk of foreign duress or influence on Applicant and/or his immediate family would appear to be insubstantial and clearly manageable. Taiwan enjoys special country relations with the US through the Taiwan Relations Act and is a democratic government and a history of respect for the rule of law.

The Adjudicative Guidelines governing collateral clearances do not dictate *per se* results or mandate particular outcomes for applicants with relatives who are citizens/residents of foreign countries in general. What is considered to be an acceptable risk in one foreign country may not be in another. While foreign influence cases must by practical necessity be weighed on a case-by-case basis, guidelines are available for referencing. Personnel security investigations continue to be governed by the same Change 3 requirements of DoD Regulation 5200.2-R for appraising the security risks associated with the individual's having family abroad: These investigatory requirements of the Regulation as they pertain to hostage situations were never deleted or replaced and retain their applicability according to the dictates of individual cases. *See* 32 C.F.R. Sec. 154.8 (1998) (corresponds to DoD Regulation 5200.2-R, Sec. 2-403. Section 6.1 of the Directive (*i.e.*, under procedures) provides that industrial security clearance applicants be investigated in accordance with the standards in the governing DoD regulation.

So, under these investigatory guidelines, while an applicant with family members of demonstrated affections in an unfriendly country might not be able to neutralize material risks of exploitation of these family members residing in that country, another hypothetical applicant might be able to do so if the subject family members were domiciled in a friendly country that poses no risks of a hostage situation. Taiwan can be classed as a friendly country who is not currently known to pose unacceptable hostage risks.

Whatever potential security risks arise as the result of Applicant's having immediate and extended family of demonstrated affection in Taiwan, they are by every reasonable measure mitigated. Applicant's situation is in marked contrast to a situation extant in a country where an applicant's family have interests inimical to those of the US. Taiwan is not a hostile country or a country whose democratic institutions are incompatible with our own traditions and respect for human rights and the rule of law. While the foreign influence provisions of the Adjudicative Guidelines are ostensibly neutral as to the nature of the subject country, they should not be construed to ignore the geopolitical aims and policies of the particular foreign regime involved. And in Applicant's case, Taiwan is a country with no known

recent history of hostage taking or disposition for exerting pressure or influence to obtain classified information.

Because of the presence of Applicant's immediate and extended family members in Taiwan (a country whose interests have recently been and continue to be friendly to those of the US), any potential risk of a hostage situation becomes an acceptable one, for which the mitigation benefits of C 1 (presence of immediate family in host country poses no unacceptable security risk) of the Adjudicative Guidelines are fully available to Applicant. Applicant may also claim the mitigation benefits of MC 5 (minimal foreign financial interests). Overall, any potential security concerns attributable to Applicant's having family members in Italy are sufficiently mitigated to permit safe predictive judgments about Applicant's ability to withstand risks of exploitation and pressure attributable to his familial relationships in Italy. Favorable conclusions warrant with respect to the allegations covered by Guideline B.

In reaching my recommended decision, I have considered the evidence as a whole, including each of the factors and conditions enumerated in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive.

FORMAL FINDINGS

In reviewing the allegations of the SOR in the context of the FINDINGS OF FACT, CONCLUSIONS and the FACTORS and CONDITIONS listed above, this Administrative Judge makes the following separate FORMAL FINDINGS with respect to Appellant's eligibility for a security clearance.

GUIDELINE C (FOREIGN PREFERENCE): FOR APPLICANT

Sub-para. 1.a: FOR APPLICANT

Sub-para. 1.b: FOR APPLICANT

Sub-para. 1.c: FOR APPLICANT

Sub-para. 1.d: FOR APPLICANT

Sub-para. 1.e: FOR APPLICANT

Sub-para. 1.f: FOR APPLICANT

GUIDELINE B: (FOREIGN INFLUENCE): FOR APPLICANT

Sub-para. 2.a: FOR APPLICANT

Sub-para. 2.b: FOR APPLICANT

Sub-para. 2.c: FOR APPLICANT

Sub-para. 2.d: 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 Applicant's security clearance.

Roger C. Wesley

Administrative Judge