

DATE: June 18, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ADP Case No. 01-10403

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Rita O'Brien, Department Counsel

Peregrine Russell-Hunter, Department Counsel

FOR APPLICANT

Dawn Li-Ming Han, Esquire

SYNOPSIS

The Applicant is a dual citizen of the U.S. and the Republic of China (R.O.C.). The Applicant's father, sister and two brothers are citizens of and living in a foreign country. The Applicant had an R.O.C. passport, but when informed of the requirements set forth in the ASDC³I memo, he applied to relinquish his R.O.C. citizenship which included returning his R.O.C. passport. After becoming a naturalized citizen he voted in two R.O.C. elections and had his attendance at a seminar in the R.O.C. paid by the R.O.C. government. Because the seminar and his most recent voting in a foreign election occurred after he made his application for a public trust position, his application is denied.

STATEMENT OF THE CASE

On August 15, 2001, 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 finding⁽¹⁾ it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On October 11, 2001, the Applicant answered the SOR and requested a hearing. The case was assigned to me on January 18, 2002. A Notice of Hearing was issued on February 8, 2002, scheduling the hearing which was held on February 26, 2002. The Government's case consisted of ten exhibits (Gov Ex). The Applicant relied on his own testimony and three exhibits (App Ex). On March 5, 2002, a single page submission with a cover letter was received. Department counsel having no objection to its admission, the submission was admitted as App. Ex. D. A transcript (tr.) of the hearing was received on March 5, 2002.

FINDINGS OF FACT

The SOR alleges foreign preference (Guideline C), foreign influence (Guideline B), and personal conduct (Guideline E). The Applicant denies the allegations concerning personal conduct and admits the other allegations except as to the country of her sister's dual citizenship.

The Applicant is 47-years-old, has worked for a federal contractor since October 1993, and is seeking a trustworthiness determination. His application for a position of trust commenced in February 1998. The Applicant is hard working, diligent, honest, dedicated, dependable employee with excellent technical skills and work ethic, well liked by peers, coworkers, and customers. He works very long hours, including weekends, when there is a project crunch. (tr. 34) He has volunteered every weekend for the past three years at the local senior center teaching English as a second language and teaching computer classes. (tr. 53) He is President of and active with a large Chinese community organization. (App Ex B) He is also very active in a large, independent organization of Chinese Americans, is on the board of directors of a consolidated benevolent association, and active in a political coalition of Asian Pacific Americans. None of these organizations or associations are in any way funded, endorsed, or supported by the Republic of China (R.O.C.). (tr. 55, 58)

The Applicant was born in Taiwan, R.O.C., where his father, one sister, and two brothers currently reside and are R.O.C. citizens. His father is a retired store keeper. His sister is a house keeper married to a business man, his younger brother owns an eye glasses store, and his other brother was also a store keeper before a recent business downturn. (tr. 100) His younger brother--at age 20--was required to complete 2 to 3 years of compulsory military service. The Applicant has a sister who lives near him who is a dual U.S. and R.O.C. citizen and a house keeper whom he talks with weekly. In 1991 or 1992, he was visited in the U.S. by his parents, sister, and younger brother. In 1996, his father visited him in the U.S. Two or three years ago his older brother visited him in the U.S. He calls his relatives in the R.O.C. once or twice a month, talking five to thirty minutes during each call. He does not sent cards or presents to his relatives in the R.O.C.

From 1979 until 1981, the Applicant served his mandatory service in the R.O.C. military. As a conscripted second lieutenant, he worked in personnel, finance, and logistics. Since leaving the R.O.C. air force in 1981, he has had no further contact with the R.O.C. military. In 1983, he came to the U.S. to pursue his education. In 1986, he received his master's degree. He stayed in the U.S. because of better living conditions and better opportunities. In May 1993, he became a naturalized U.S. citizen. (Gov Ex 3) After being naturalized, he did not renounce his R.O.C. citizenship because he had no indication it was necessary. In 1987, he married a woman who is a U.S. citizen (Gov Ex 1, page 5) originally from Malaysia where her family resides. (tr. 51) She calls them once a month and in November 1995, her mother, brother and sister-in-law visited the Applicant in the U.S. He has visited her relatives in Malaysia in 1990, 1991, and 1997. His contact with his wife's relatives is minimal.

In February 1983, he was issued a R.O.C. passport (Gov Ex 9) which expired in February 1986. In 1991, he was issued another R.O.C. passport (Gov Ex 8) which expired in 1997. In August 1993, he was issued a U.S. passport. The Between 1993 and 2000, on his yearly trips to the R.O.C., the Applicant used his U.S. passport, but carried his R.O.C. passport for self protection in case of hijacking. In October 1998, the Applicant was issued another R.O.C. passport (Gov Ex 7 and App Ex C) which expires in October 2004.

In April 1999, he attended a five-day seminar, with 60 other individuals, held annually in the R.O.C. by an organization which provides educational and cultural services to overseas Chinese. Because of his involvement with various social organizations, the R.O.C. paid the Applicant's seminar and transportation costs. The Applicant was not invited because he was a R.O.C. citizen, but due to his involvement in the Chinese community. (tr. 66) The Applicant attendance at the seminar occurred a little more than one year after he completed his application (Questionnaire for Public Trust Position, Standard Form 85-P) for a trustworthiness position. (Gov Ex 1)

In January 2001, the Applicant was asked (Gov Ex 2) by a special agent of the Defense Security Service (DSS) when the Applicant had acquired his R.O.C. passport and when it would expire. Initially, the Applicant's response was his R.O.C. passport was obtained (renewed) in October 1998 and would expire in October 2004 and had been originally issued in February 1983. (Answer to SOR) After discussing the response with the special agent the response was changed to read, "My ROC passport was obtained 9 Feb 83 and will expire on October 1, 2004." At the interview, the Applicant presented the special agent with all three of his R.O.C. passports. The Government stated it would not proceed on the allegations of alleged falsifications listed in SOR paragraph 3, Guideline E, (Personal Conduct). (tr. 74 120)

On August 16, 2000, the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence

issued guidance clarifying the application of the Foreign Preference adjudicative guideline. The ASDC3I memo states any clearance must be denied or revoked unless the applicant surrenders the foreign passport or obtains approval for its use from the appropriate agency of the United States government. In January 2002, after becoming aware of the ASDC3I memo, the Applicant went to the Taipei Economic and Cultural Representative Office⁽²⁾ (TECRO) to start the process to renounce his R.O.C. citizenship. As part of the renunciation process, the Applicant had to surrendered his current R.O.C. passport. Thereafter, he determined the passport might be important at his hearing, so he retrieved it so it would be available at the hearing and so it could be surrendered at the hearing, if that were possible. (tr. 115) Following the hearing, the R.O.C. passport was returned to the TECRO and the processing of the renunciation of his R.O.C. citizenship continues. (App Ex D) The process may take five or six months before renunciation is final.

In 1986, his father--now age 75--purchased a house in the R.O.C. worth approximately \$150,000.00, which his father placed in the Applicant's name and the Applicant's brother's name. This occurred when the Applicant was a college student. The Applicant and his brother are the two eldest of the children. The Applicant had no input into his father's decision and did not know about it before it occurred. This is his father's home, occupied by his father and his brother. The Applicant does not believe he will inherit any portion of the house upon his father's death. Should he receive part of it as an inheritance with his four siblings, his share would not exceed 20% of the value of the house. If the house were to be sold, the proceeds would belong to his father. The Applicant owns a house in the U.S. worth approximately \$260,000.00. The Applicant's 401(k) retirement plan is located in the U.S. and is valued at approximately \$265,000.00. He also has bank accounts in the U.S. The Applicant has a bank account in the R.O.C. which was opened more than 20 years ago when he lived there. The amount in the account is insignificant. The Applicant has no other foreign assets or investments.

He is willing to bear arms for the U.S. and is willing to bear arms against the R.O.C. (tr. 65) He has voted in R.O.C. elections twice--in 1996 and March 2000--which occurred after his 1993 naturalization as a U.S. citizen. In presidential elections overseas R.O.C. citizens are allowed to vote. Voting in the R.O.C. elections entitled him to a "very deep discount" on the airline ticket to the R.O.C. (tr. 68) The primary purpose of the trips to the R.O.C. was to visit relatives and not to vote in the elections. His March 2000 voting occurred after his application for a public trust position. The Applicant has voted in every U.S. election, including primaries, since being naturalized because he cares about the issues. He has lived in the U.S. for 18 years and loves it here and loves the U.S.

POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead, they 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. In making overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive as well. In that vein, the government not only has the burden of proving any controverted fact(s) alleged in the SOR, it must also demonstrate the facts proven have a nexus to an Applicant's lack of security worthiness.

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. 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.

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

Foreign Preference (Guideline C)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.

Conditions that could raise a security concern and may be disqualifying include: E2.A3.1.2.

1. The exercise of dual citizenship. E2.A3.1.2.1.
2. Possession and/or use of a foreign passport. E2.A3.1.2.2.
3. Military service or a willingness to bear arms for a foreign country. E2.A3.1.2.3.
4. Accepting educational, medical, or other benefits, such as retirement and social welfare, from a foreign country. E2.A3.1.2.4.
8. Voting in foreign elections. E2.A3.1.2.8.

Conditions that could mitigate security concerns include:

2. Indicators of possible foreign preference (e.g., foreign military service) occurred before obtaining United States citizenship. E2.A3.1.3.2.

4. Individual has expressed a willingness to renounce dual citizenship. E2.A3.1.3.4.

Foreign Influence (Guideline B) 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.

Conditions that could raise a security concern and may be disqualifying include:

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.A2.1.2.1.

Conditions that could mitigate security concerns include:

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.A2.1.3.1.

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

Personal Conduct (Guideline E) The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

Conditions that could raise a security concern and may be disqualifying also include:

None Apply.

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 that burden, the burden of persuasion then shifts to the Applicant who must remove that doubt and establish his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline 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." As this Administrative Judge understands the Court's rationale, doubts are to be resolved against the applicant.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline C, Foreign Preference. Under Guideline C, the security eligibility of an applicant is placed into question when an individual acts in such a way as to indicate a preference for a foreign country over the United States; he may then be prone to provide information or make decisions that are harmful to the interests of the United States.

The Applicant has exercised dual U.S. and R.O.C citizenship. Mitigating Condition (MC) 1 ⁽³⁾ applies to his initial citizenship because he was born in the R.O.C. However, the Applicant took steps to obtain, renew, and possess an R.O.C. passport, and his last renewal occurred in October 1998-- after becoming a naturalized U.S. citizen and after receiving a U.S. passport. There is no evidence the Applicant's possession of the foreign passport was officially approved by the U.S. Government. The Applicant used his U.S. passport for travel, but carried his R.O.C. passport with him for safety reason. Safety concerns are not a mitigating factor listed in the ASDC³I memo. Disqualifying Conditions (DC) 1 ⁽⁴⁾ and 2 ⁽⁵⁾ apply.

Although the Applicant did at one time have an R.O.C. passport, he no longer possesses one. In January 2002, when the Applicant became aware of the significance of the ASDC³I memo, he followed the direction set forth in the ASDC³I memo and went to the TECRO and began the process to renounce his R.O.C. citizenship, surrendering his R.O.C.

passport at that time. The Applicant retrieved the R.O.C. passport thinking it might be required at the hearing. Following the hearing, he returned the R.O.C. passport to the TECRO and his renunciation process continues. (App Ex D) Since the Applicant has initiated the process to renounce his R.O.C. citizenship, which is stronger than merely expressing a willingness to do so, MC 4⁽⁶⁾ applies. I find for the Applicant as to SOR subparagraphs 1.a., 1.b., and 1.c.

Between 1979 and 1981, the Applicant served his mandatory service in the R.O.C. military, therefore DC 3⁽⁷⁾ applies. However, this service occurred before the Applicant left the R.O.C. and before he became a U.S. citizen. Therefore, MC 2⁽⁸⁾ applies. Additionally, the Applicant would no longer bear arms for the R.O.C., would bear arms for the U.S., even against the R.O.C.⁽⁹⁾ I find for the Applicant as to SOR subparagraph 1.d.

In April 1999, the Applicant attended a five-day seminar in the R.O.C. paid for by the R.O.C. The purpose of the seminar was better understanding and utilize services provided by the R.O.C. overseas affairs commission. DC 4⁽¹⁰⁾ applies because the Applicant did accept the benefit of the seminar and travel costs from a foreign government. However, the benefit was extended to the Applicant not because of his citizenship but because he was president of a large Chinese community organization. Although, the benefit was a one time event and not similar to the other benefits listed in DC 4, which include educational, medical, retirement, or welfare, his attendance at the seminar occurred after he had made an application for a public trust position. I find against the Applicant as to SOR subparagraph 1.e.

Since becoming a U.S. citizen, the Applicant has voted in two foreign elections. He voted in the R.O.C. election in order to get lower air fares to visit his relatives in the R.O.C., which was for his personal convenience. DC 8⁽¹¹⁾ applies. By voting in the foreign election he was exercising the rights and privileges of that foreign country and by doing so was holding himself out to others as a citizen of that country. The Applicant's March 2000 voting occurred after his application for a public trust position. I find against the Applicant as to SOR subparagraph 1.f.

The Applicant's father has a house worth approximately \$150,000.00 in the R.O.C. which he occupies with the Applicant's brother. His father chose to put the Applicant's name on the title, but the house does not belong to the Applicant. His father's decision was made without the Applicant's input nor did he know about it before it occurred. This is his father's home, and the Applicant does not believe he will inherit any portion of the house when his father dies. If the house were to be sold, the proceeds would belong to his father. If the Applicant was half owner of the house, his share would be valued at \$75,000.00, which is much less than the value of his U.S. assets--his home and 401(k) pension--worth approximately \$500,000.00. The Applicant's only foreign property is a small bank account. His foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities. E2.A2.1.3.5.

Guideline B, MC 5⁽¹²⁾ applies. I find for the Applicant as to SOR subparagraph 1.g.

The Applicant may inherit some property on his father's death, but that is mere speculation. At some future date should he receive an inheritance--even if it is located in a foreign country--does not show the Applicant has acted in a way to show a preference for the foreign country. The Applicant does not maintain his foreign citizenship to protect this foreign property or any foreign financial interest. Owning foreign property could raise a concern under Guideline B, Foreign Preference, DC 8,⁽¹³⁾ but the mere possibility of inheritance does not show a concern under Guideline C, Foreign Preference.

The Government has satisfied its initial burden of proof under Guideline B, (Foreign Influence). Under Guideline B, a security risk may exist where the Applicant is bound by affection, influence, or obligation to individuals who are not citizens of the United States or may be subject to duress. The burden is on the Applicant to demonstrate those close family members are not in a position to be exploited by a foreign power.

The Applicant's father, sister, and two brothers are R.O.C. citizens, all living in R.O.C. He also has a sister living in the U.S. who is a dual U.S. and R.O.C. citizen. Between 1991 and 2000, the Applicant made yearly visits to his relatives in R.O.C. His father is a retired store keeper, his two brothers are store keepers, and his two sisters house keepers. None of his siblings work for a foreign government.

The Applicant makes short telephone calls to his relatives in the R.O.C., once or twice a month. He does not send his relatives cards or presents. Although his father and siblings are close family, they are not agents of a foreign power nor

are they 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 1-[\(14\)](#) applies. Although the security significance of an applicant's family ties in a foreign country extends beyond whether the foreign relatives have official ties with a foreign government, based on this record, I conclude her family ties in R.O.C. present an acceptable security risk. I find for the Applicant as to SOR subparagraphs 2.a. and 2.b.

The Applicant's wife calls her relatives in Malaysia once a month. As to the Applicant's contact with his wife's relatives, I find MC 3-[\(15\)](#) applies.

The Government stated it would not proceed on the allegations listed in SOR paragraph 3, Guideline E, (Personal Conduct). (tr. 74) The Government has not satisfied its initial burden of proof under Guideline E. There being no misrepresentation of material facts by the Applicant, I find for the Applicant as to SOR subparagraph 3.a.

The awarding of a position of trust is not a once in a life time occurrence, but is based on current disqualifying and mitigating conditions. Under the Applicant's current circumstances a position of trust is not recommended, but this decision should not be construed as a determination that the Applicant's conduct could never justify the award of a DoD position of trust. Should the Applicant be afforded an opportunity to reapply for a security clearance, in the future, he may well demonstrate persuasive evidence of his security worthiness. A position of trust at this time is not warranted.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the 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.

FORMAL FINDINGS

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

Paragraph 1 Guideline C (Foreign Preference): AGAINST THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: For the Applicant

Paragraph 2 Guideline B (Foreign Influence): FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: For the Applicant

Paragraph 3 Guideline E (Personal Conduct): FOR THE APPLICANT

Subparagraph 3.a.: 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 a position of trust to the Applicant.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, as amended and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 as amended.
2. The R.O.C. does not have an embassy and the TECRO fulfills the function of an embassy.
3. MC 1. Dual citizenship is based solely on parents' citizenship or birth in a foreign country. E2.A3.1.3.1.
4. DC 1. The exercise of dual citizenship. E2.A3.1.2.1.
5. DC 2. Possession and/or use of a foreign passport. E2.A3.1.2.2.
6. MC 4. Individual has expressed a willingness to renounce dual citizenship. E2.A3.1.3.4.
7. DC 3. Military service or a willingness to bear arms for a foreign country. E2.A3.1.2.3.
8. MC 2. Indicators of possible foreign preference (e.g., foreign military service) occurred before obtaining United States citizenship. E2.A3.1.3.2.
9. The Applicant has stated he would be willing to bear arms against the R.O.C. Statements by the Applicant about what he might do in the future is merely a statement of intention that is not entitled to much weight, unless there is record evidence that the Applicant has acted in an identical or similar manner in the past under identical or similar circumstances.
10. DC 4. Accepting educational, medical, or other benefits, such as retirement and social welfare, from a foreign country. E2.A3.1.2.4.
11. DC 8. Voting in foreign elections. E2.A3.1.2.8.
12. MC 5. Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities. E2.A2.1.3.5.
13. DC8. A substantial financial interest in a country, or in any foreign-owned or -operated business that could make the individual vulnerable to foreign influence. E2.A2.1.2.8.
14. MC 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.A2.1.3.1.
15. MC 3. Contact and correspondence with foreign citizens are casual and infrequent. E2.A2.1.3.3.