

DATE: August 22, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-14862

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR GOVERNMENT

Matthew E. Malone, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's renewal of his foreign passport after his naturalization as a U.S. citizen--an active exercise of dual citizenship and an act demonstrating foreign preference--was mitigated where Applicant had never used the passport, had renewed it only out of deference for his aged mother, had attempted to surrender it to the DSS agent when interviewed for his clearance, and did surrender it in accordance with the "Money Memo" once he became aware of its provisions. Applicant's prospective foreign influence was mitigated where his contacts with his siblings was limited and where there was nothing in his relationship with his mother--including his financial support--to suggest that he would be subject to pressure on her behalf. Clearance granted.

STATEMENT OF THE CASE

On 18 January 2002, 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⁾ that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On 6 February 2002, Applicant answered the SOR and requested a hearing. The case was assigned to me on 11 March 2002, and I received the case the same day. I issued a notice of hearing on 21 March 2002 for a hearing on 9 April 2002.

At the hearing, the Government presented three exhibits--admitted without objection--and no witnesses; Applicant presented thirteen exhibits, and the testimony of one witness, himself. DOHA received the transcript on 24 April 2002.

PROCEDURAL ISSUES

At the hearing, Department Counsel moved to amend the SOR by deleting Subparagraphs 1.d., e., f., and Paragraph 2. I granted the motion (Tr. 57-60).

On 8 April 2002, while traveling to the hearing site, I received in my office, but was otherwise unaware of, an

unsolicited facsimile transmission from a social acquaintance of Applicant who had briefly been Applicant's counsel on the case until Applicant decided that he wanted to proceed to hearing on the previously-scheduled date without counsel rather than continue the hearing to a different date. (Tr. 5-6, 12-13). The facsimile was styled as a character reference for Applicant. I learned of the facsimile after my return to the office, and after the record closed in the case. I subsequently notified both parties about the existence of the facsimile, solicited their views about what evidentiary status, if any, to accord the document, and disclosed my own inclination to exclude it from the record. The parties exchanged memoranda as directed; Applicant favored inclusion of the document while Department Counsel opposed it. I see nothing in Applicant's arguments to dissuade me from my initial reaction that the document is not part of the evidentiary record in this case and should not become so because of the circumstances of its submission. Accordingly, I exclude the document without identifying it for the record. The document, my order, and the parties' respective responses are included in the case correspondence file.

FINDINGS OF FACT

Applicant admitted the allegations of the SOR, except for the allegations of Subparagraph 1.a.; accordingly I incorporate those admissions as findings of fact.

Applicant--a one-day-shy-of-48-year old employee of a defense contractor--seeks access to classified information. He has not previously held a clearance.

Applicant--an ethnic Chinese--was born in Taiwan in 1954, making him a citizen of the Republic of China (R.O.C.). Applicant was educated in Taiwan, completed secondary school there, and received his undergraduate degree from a university in Taiwan. After college, he served his mandatory two-years military service. He later received his first master's degree from a university in Taiwan. In 1980, Applicant applied for a graduate scholarship which brought him to the U.S., where he obtained a second master's degree in 1982. The same year, he began a doctoral program at a different university in the U.S., which he completed in 1993. While at this university, he applied for permanent resident alien status (in approximately 1986). He got a job with a U.S. company in 1988. He became a naturalized citizen of the United States in April 1993.

Applicant possesses a U.S. passport issued in April 1993, which he has used to travel to the R.O.C. to visit his mother (G.E. 13). Applicant also possessed a R.O.C. passport re-issued in April 1998 (after Applicant's naturalization). This passport does not expire until April 2004. Applicant has never used this passport (A.E. F.).

On 4 May 2001, Applicant gave a sworn statement to a Special Agent of the Defense Security Service (DSS) (G.E. 2), in which he described his possession of a foreign passport:

I currently maintain a Taiwan passport and a U.S. passport. The reason I maintain a Taiwanese passport is to or was to indulge my mother in the idea of my returning to Taiwan someday to live. Since I am the eldest son I hold many responsibilities and loyalties to our family and my mother is of the belief that one day I will return to Taiwan and be head of the household. Maintaining a Taiwan passport is out of respect and honor for my mother's wishes and somewhat part of a family Taiwanese tradition. However, at present I have no intentions of renewing my Taiwanese passport and I have never traveled outside the U.S. on my Taiwanese passport. I have only used my U.S. passport to travel outside the U.S. and it is documented by the stamps imposed on it by the Government of Taiwan. . . I only travel on my U.S. passport and have no intentions of renewing my Taiwan passport once it expires. I have no other use for my Taiwan passport than making my mother happy and will continue to travel on my U.S. passport.

Applicant's spouse and first-born son, both naturalized U.S. citizens, possess a U.S. passport which they use for travel and a R.O.C. passport which they maintain for the same reason as Applicant; Applicant's U.S. born son possesses only a U.S. passport. Applicant first son is a first-year medical student in a U.S. university; Applicant's second son is a junior in an NROTC program at a U.S. university.

Applicant's mother and two siblings live in Taiwan; a third sibling lives in the U.S. Applicant has little contact with his two siblings in Taiwan. He travels to Taiwan to visit his mother, and sends her approximately \$4,000.00 per year in financial support. This he does because his father is dead, his mother is a retired housewife, and Taiwan has no social security system. His mother is nearly 69 years old, has only an elementary school education, speaks little or no English,

and has no desire to emigrate to the U.S.; she resides with one of Applicant's siblings. Applicant's financial support is an outgrowth of Chinese custom, which places the responsibility for supporting retired parents upon the first-born son (G.E. 2, Tr. 44-46). Applicant does not believe any of his family members in Taiwan is in a position to be subject to pressure or coercion.

At the hearing, Applicant testified consistently with his sworn statement about his reasons for renewing his Taiwanese passport. He also testified that he considers himself a citizen of the U.S. only. He testified that when the interviewing agent informed him that he could not have two passports, he offered to surrender the passport to her on the spot, however she informed him that she was not authorized to take it (Tr. 40, 42). It was not until he received the SOR (at which point he was provided a copy of the "Money Memo") that he got an idea of how he might dispose of the Taiwanese passport (Tr. 43), which he did on 25 arch 2002 (A.E. D).

Applicant has been recognized as an outstanding employee in his company's in-house newsletter (A.E. B).

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section F.3. and in Enclosure (2) of the Directive. 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.*

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

FOREIGN PREFERENCE (GUIDELINE C)

E2.A3.1.1 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.

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

E2.A3.1.2.1. The exercise of dual citizenship:

E2.A3.1.2.2. Possession and/or use of a foreign passport;

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

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

FOREIGN INFLUENCE (CRITERION B)

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 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 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) . . . 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.

On 16 August 2000, the Assistant Secretary of Defense, Command, Control, Communications, and Intelligence (ASD, C³I) issued a memorandum(the "Money memo") to clarify the application of Guideline C., Foreign Preference, to cases involving possession and/or use of a foreign passport. In pertinent part, the ASD, C³I memorandum **"requires that any clearance be denied or revoked unless the applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United States Government."**(Emphasis added).

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

Although Applicant has been a dual citizen of a foreign country and the United States since his naturalization in 1995, his foreign citizenship possesses little security significance if based solely on his birth in a foreign country. For Applicant's conduct to fall within the security concerns of Guideline C, Foreign Preference, he must have acted in a way to indicate a preference for a foreign nation over the United States. However, inimical intent or detrimental impact on the interests of the United States is not required before the Government can seek to deny access under Guideline C. The Government has a compelling interest in ensuring those entrusted with this Nation's secrets will make decisions free of concerns for the foreign country of which they may also be a citizen. Under this assessment, I conclude the Government has established its case under Guideline C. Nevertheless, I conclude that Applicant has mitigated the security concerns.

Applicant convincingly asserts that he prefers his U.S. citizenship. The single instance of conduct to the contrary--renewing his Taiwanese passport in April 1998--is mitigated by a number of factors. First, he only renewed his passport out of respect for his mother's feelings, despite that fact that he never intended to return to live in Taiwan. Second, he never used the passport; even when traveling to the R.O.C. he used his U.S. passport. Third, even before becoming aware of the specifics of the "Money Memo," he intended to let the renewed passport expire without renewing it, and offered to surrender the passport to the DSS agent when he learned that possessing the foreign passport could jeopardize his security clearance. Finally, when he became aware of the requirements of the "Money Memo," he surrendered his Taiwan passport to the Taiwanese Foreign Ministry, despite his understanding of what that will mean to his mother when he tells her.

Applicant has resided in the U.S. since 1980. He has been a permanent resident since 1986 and a citizen since 1993. His wife and children are U.S. citizens; his employment and property are in the U.S. He has no property interest in Taiwan. His national preference seems overwhelmingly for the U.S. Although Applicant has not precisely indicated a willingness to renounce his Taiwanese citizenship, he correctly points out that his citizenship oath renounced allegiance

to other countries. While Applicant's renewal of his Taiwanese passport undercut that oath, Applicant has effectively reasserted his willingness to abandon his Taiwanese citizenship by surrendering his Taiwanese passport. In addition, I found Applicant's testimony that he considers himself a citizen of the U.S. only to be credible. Accordingly, I resolve Guideline C. for Applicant.

In a similar fashion, the Government has established its case under Guideline B., but I consider the security concerns mitigated. Applicant's mother and two of his siblings are citizens of the R.O.C., living in Taiwan; Applicant supplies substantial financial support for his mother. However, Applicant's contacts with his siblings appears to be minimal, and there is nothing in the record to suggest that their relationship with Applicant is such that Applicant would be forced to chose between his duty to his sibling and his duty to the U.S.

However, Applicant's mother presents a different initial question. His ties of affection and obligation to her are much clearer and stronger, as evidenced by his financial support (consistent with Chinese custom for the first-born son) and the fact that he renewed his Taiwanese passport out of deference for her feelings. Nevertheless, I conclude that Applicant's contacts with his mother, and his financial support, are no more than the minimum required by conscience and decency. At her age and state in life, it seems unlikely that she would travel to live in the U.S., but it also seems unlikely that she can be put in a position where Applicant could be forced to choose between his duty to her and his duty to the U.S. Accordingly, I resolve Guideline B. for Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline C: FOR THE APPLICANT

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: For the Applicant

Paragraph 2. Criterion B: FOR THE APPLICANT

Subparagraph a: For the Applicant

Subparagraph b: For the 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.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated 2 January 1992--amended by Change 3 dated 16 February 1996 and by Change 4 dated 20 April 1999 (Directive).