

DATE: June 16, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-22652

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Suzanne D. Reifman, Esquire

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SYNOPSIS

The Applicant has renounced his Taiwanese citizenship and surrendered his Taiwanese passport. He never used the Taiwanese passport after becoming an American citizen. His parents, siblings, and in-laws are Taiwanese citizens. There is no evidence that any of them are agents of a foreign power or in a position to pressure or coerce the Applicant. Adverse inference is overcome. Clearance is granted.

STATEMENT OF THE CASE

On January 8, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on January 21, 2003, and requested a hearing. The case was received by the undersigned on February 12, 2003, and a Notice of Hearing was issued on March 5, 2003.

A hearing was held on March 26, 2003, at which the Government presented two documentary exhibits. Testimony was taken from the Applicant, who also submitted nine hearing exhibits and one post-hearing exhibit (Applicant's Exhibit J, documents concerning the Applicant's Application to Renounce Taiwanese Citizenship). The transcript was received on April 15, 2003.

FINDINGS OF FACT

The Applicant is 45, married and has a Ph.D. He is employed by a defense contractor as a manager, and he seeks to obtain a DoD security clearance in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a security clearance, based upon the allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR. They are based on the Applicant's Answer to the SOR, the exhibits and the live testimony.

Paragraph 1 (Guideline C - Foreign Preference). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has acted in such a way as to show a preference for another country over the United States.

The Applicant was born in Taiwan in 1957. He attended undergraduate and graduate school in Taiwan. From 1981 to 1983 he served as an officer in the Taiwanese Navy after receiving his master's degree. The Applicant moved to the United States permanently in 1985 to attend post-graduate school. He received his doctorate in 1990. The Applicant became an American citizen on July 15, 2000. (Government Exhibit 1, question 3.) His wife is also a naturalized American citizen, originally from Taiwan.

The Applicant obtained a Taiwanese passport in November 1995, before he became an American citizen. He used that passport to travel to Taiwan in 1995 and 1996. He did not use this passport after he became an American citizen. The passport expired on November 8, 2001. (Applicant's Exhibit F.)

The Applicant received his American passport in November 2000. This passport indicates that in 2001 the Applicant traveled to Taiwan using his American passport. (Applicant's Exhibit G at 6.)

The record shows that the Applicant was provided with a copy of the Memorandum dated August 16, 2000, from Arthur L. Money, Assistant Secretary of Defense for Command, Control, Communications and Intelligence. The Subject of this Memorandum is, "Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Adjudicative Guideline." After receiving the Memorandum, the Applicant began to take steps to cure the problem caused by his continued possession of a Taiwanese passport. (Transcript at 44-52.)

On March 20, 2003, the Applicant destroyed his Taiwanese passport by cutting it up and surrendered the pieces to the Taipei (Taiwan) Economic and Cultural Office (TECO). (Applicant's Exhibits C, D and E, Transcript at 51-52.) He subsequently submitted his "Application to Renounce (Taiwanese) Citizenship" to the TECO on April 15, 2003. (Applicant's Exhibit J.)

Paragraph 2 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has family members, and persons to whom he is bound by affection, who are not citizens of the United States or may be subject to duress.

The Applicant's parents and his two sisters still live in Taiwan. His father is a retired banker and his mother is a housewife. Both of his sisters are teachers, one of them lives with his parents. None of them work for the Taiwanese government in any capacity. He talks to his parents and one sister on a monthly basis. The Applicant speaks to the other sister about twice a year. He does not send money to them. (Transcript at 37-39.)

The parents of the Applicant's spouse also live in Taiwan. Her 81 year old father is a retired junior officer in the Nationalist Chinese Army. Her mother retired from the teaching profession. According to the Applicant, neither had an official position with the Taiwanese government. He talks to them by telephone approximately four times a year. His wife talks to them about every other week. Her parents visit the United States approximately every other year. (Transcript at 41-42, 69-71.)

The Applicant does not discuss his job with any of his relatives. (Transcript at 38.) He stated, "Everything that is most important to me - my wife, my friends, my job, my home, my financial security - is in the U.S. Since becoming a U.S. citizen, I have never accepted any right, privilege or benefit as a result of my dual citizenship. I would consider it immoral to act against the best interest of the U.S. I am willing to defend the Constitution. I would not use my position of trust to serve the interests of Taiwan or any other country." (Applicant's Exhibit A at 4.)

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Guideline C (Foreign preference)

Conditions that could raise a security concern:

- (2) Possession and/or use of a foreign passport;
- (3) Military service or a willingness to bear arms for a foreign country.

Conditions that could mitigate security concerns include:

- (1) Dual citizenship is based solely on parents' citizenship or birth in a foreign country;
- (2) Indicators of possible foreign preference (e.g., foreign military service) occurred before obtaining United States citizenship;
- (4) Individual has expressed a willingness to renounce dual citizenship.

Guideline B (Foreign influence)

Condition that could raise a security concern:

- (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.

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;
- (3) Contact and correspondence with foreign citizens are casual and infrequent.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct

- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence."

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may have shown a foreign preference or be subject to foreign influence in a way that demonstrates untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the granting of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant possessed a Taiwanese passport after becoming a citizen of the United States, and that he served in the Taiwanese Army in the early 1980s (Guideline C); and that his parents, siblings and in-laws are not American citizens (Guideline B).

The Applicant, on the other hand, has successfully mitigated the Government's case. Turning first to his possession of a Taiwanese passport. The Applicant did not use this passport after becoming an American citizen. His American passport contains Taiwanese visas for a trip to Taiwan. Once he was informed that he could no longer possess this passport, he destroyed it and submitted the remnants to the Taiwanese Economic and Cultural Office, along with his "Application to Revoke Taiwanese Citizenship." He is awaiting the granting of his application. His military service occurred before entering the United States. He has more than fulfilled the mitigating conditions for this allegation and Guideline C is found for the Applicant.

The Applicant's parents and in-laws are retired. The Applicant's contact with them, and his sisters, is mainly over the telephone. There are no indicators that any of them are agents of a foreign power or in a position to be exploited by a foreign power. I have weighed the fact that these people continue to be Taiwanese citizens against the relatively infrequent contact by the Applicant with them. I have also considered the fact that Taiwan is on friendly relations with the United States, is dependent on the United States for its defense, and that it would not be in the best interest of

Taiwan to attempt to exploit American citizens of Taiwanese descent. The Applicant understands his security responsibilities and expressed a credible intent to fulfill them. He has also persuasively shown that he is not subject to coercion or pressure because of his foreign connections. Guideline B is found for the Applicant.

On balance, it is concluded that the Applicant has successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the Government's Statement of Reasons.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1: For the Applicant.

Subparagraph 1.a.: For the Applicant.

Subparagraph 1.b.: For the Applicant.

Subparagraph 1.c.: For the Applicant.

Paragraph 2: For the Applicant.

Subparagraph 2.a.: For the Applicant.

Subparagraph 2.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 the Applicant.

Wilford H. Ross

Administrative Judge