

DATE: June 11, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-23263

**DECISION OF ADMINISTRATIVE JUDGE**

**JOSEPH TESTAN**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Department Counsel

**FOR APPLICANT**

John H. Messing, Esq.

**SYNOPSIS**

Applicant became a naturalized United States citizen in 2000. He formally relinquished his Taiwanese citizenship in 2002. His three immediate family members remaining in Taiwan are not in a position to be exploited by Taiwan in a way that could force applicant to choose between loyalty to these family members and his loyalty to the United States. Clearance is granted.

**STATEMENT OF THE CASE**

On January 22, 2003, 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, (as administratively reissued on April 20, 1999), 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 denied or revoked.

Applicant responded to the SOR in writing on February 18, 2003. The case was assigned to the undersigned on March 14, 2003. A Notice of Hearing was issued on March 26, 2003, and the hearing was held on May 1, 2003. The transcript was received on May 9, 2003.

**FINDINGS OF FACT**

Applicant is 36 years of age. He is employed as an engineer by a defense contractor.

Applicant was born and raised in Taiwan. After earning an undergraduate degree at a Taiwanese university, he served two years of mandatory service in the Taiwanese military. In 1991, following his completion of military service, he moved to the United States to attend graduate school. He became a permanent United States resident in 1996, and became a United States citizen in 2000. Applicant thought that when he became a United States citizen, he

automatically lost his Taiwanese citizenship. When he learned that this was not true, he took affirmative steps to relinquish his Taiwanese citizenship. Exhibit A establishes that he relinquished it in July 2002.

Applicant is married and has two children, both of whom were born in the United States. Applicant is in the process of divorcing his wife, a naturalized United States citizen. All of applicant's wife's immediate family members have become United States citizens and are residing in the United States. Applicant believes that his wife and children will remain in the United States after their divorce.

Applicant's mother, as well as a brother and sister, are citizens and residents of Taiwan. His mother is a retired housewife who lives with applicant's brother in Taiwan. Applicant speaks with them once every two weeks (TR at 44). Applicant has filed a petition with the United States authorities seeking permission to bring his mother to the United States. United States authorities acknowledged receipt of the petition, but indicated there is a long waiting period before they can act on it. Applicant's brother works for a private company in Taiwan. Applicant's sister is a housewife. Since moving to the United States, applicant has visited his family in Taiwan in 1994, 1997, 2000, and 2002.

Applicant has a friend from high school who is a citizen and resident of Taiwan. Applicant speaks with him by telephone two to three times a year. The friend visited applicant in the United States in 2000. During that visit they traveled to Canada for two or three days. This friend does not work for the Taiwanese government.

Applicant's oldest brother is a citizen of Taiwan and a permanent resident of Canada.

Applicant testified, credibly, that his allegiance is to the United States, and if he were ever asked to compromise classified information he would decline to do so, and would report the request to the proper authorities (TR at 38).

## **POLICIES**

Enclosure 2 of the Directive sets forth Guidelines (divided into Conditions that could raise a security concern and conditions that could mitigate security concerns) which must be followed by the Administrative Judge. Based on the foregoing Findings of Fact, the following Disqualifying Factors and Mitigating Factors are applicable:

### **Foreign Influence**

**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:

1. E2.A2.1.2.1: An immediate family member is a citizen or resident of a foreign country.

#### Conditions that could mitigate security concerns:

1. E2.A2.1.3.1: The immediate family member in question is not an agent of the foreign power or in a position to be exploited by the foreign power in a way that could force applicant to choose between loyalty to the immediate family member and the United States.

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

(high school friend).

## **CONCLUSIONS**

**The Government established a *prima facie* case.**

Neither the fact applicant has a high school friend in Taiwan, nor the fact his oldest brother is a Taiwanese citizen living in Canada, raise a significant security concern. However, the fact that applicant's mother, sister and a second brother are citizens and residents of Taiwan does raise a security concern. Accordingly, the Government has established a *prima facie* case under Guideline B.

**Applicant rebutted the Government's *prima facie* case.**

Based upon the evidence presented, I conclude that applicant's immediate family members in Taiwan are not agents of Taiwan, or in a position to be exploited by Taiwan in a way that could force applicant to choose between loyalty to his Taiwanese family members and loyalty to the United States.<sup>(1)</sup> I reach this conclusion for at least three reasons: First, there is no evidence that any of applicant's immediate family members are connected with the Taiwanese government, or any of the Taiwanese intelligence services. Second, it is highly unlikely that Taiwan, a close United States ally which is highly dependent on the United States for its defense, would risk threatening this relationship by exploiting/threatening its private citizens for the purpose of forcing a United States citizen to betray the United States. Third, since coming to the United States, applicant's conduct, including the affirmative act of relinquishing his Taiwanese citizenship, has indicated that, as he testified, his allegiance is to the United States. This leads me to conclude that, even in the unlikely event pressure was exerted upon him to compromise classified information, he would resist it, and would report the incident to the proper authorities.

**FORMAL FINDINGS**

**GUIDELINE 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.

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Joseph Testan

Administrative Judge

1. Accordingly, Mitigating Condition 1 is applicable to this case.