

DATE: May 15, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-23873

## **DECISION OF ADMINISTRATIVE JUDGE**

**CHARLES D. ABLARD**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Peregrine D. Russell-Hunter, Esq., Chief Department Counsel

Nygina Mills, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant, a naturalized U.S. citizen born in Taiwan with parents who are citizens and residents of Taiwan and a grandmother who is a citizen and resident of the Peoples Republic of China (PRC) and a U.S. citizen wife and U.S. born children, has successfully mitigated the foreign preference and influence concerns of the Government. His failure to state prior military service on his Questionnaire for National Security Positions (SF 86) was based on erroneous advice. His use of his Taiwan passport occurred before he became a U.S. citizen and is of no current security significance. Clearance is granted.

### **STATEMENT OF THE CASE**

On December 31, 2002, the Defense Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, *Safeguarding Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, 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. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated February 27, 2003, Applicant responded to the allegations set forth in the SOR, and requested a hearing. The case was assigned to another administrative judge and set for hearing on April 22, 2003. That administrative judge could not hold the hearing because of illness and it was re-assigned to me on April 21, 2003. A hearing was held on the date originally set. The Government introduced four exhibits at the hearing marked as Exhibits 1-4 and another, Exhibit 5, after the hearing. The Applicant introduced seven exhibits marked as Exhibits A-G which were accepted into evidence. The transcript was received on April 29, 2003.

## FINDINGS OF FACT

Applicant has admitted all of the factual allegations in subparagraphs 1.a., 1.b., and 1.c. of the SOR pertaining to foreign preference under Guideline C and subparagraphs 1.a., 1.b., and 1.c. pertaining to foreign influence under Guideline B. Those admissions are incorporated herein as findings of fact. Applicant denied the allegations in subparagraph 3.a. pertaining to personal conduct under Guideline E.

After a complete review of the evidence in the record and upon due consideration of the record the following additional findings of fact are made.

Applicant was born on Taiwan, the Republic of China, in 1962. He came to the United States in 1984 and became a naturalized citizen of the U.S. in 1994. He possessed a Taiwan passport when he came to the U.S. and it remained valid until 1996 after he became a U.S. citizen.

Applicant remains a dual citizen of both the U.S. and Taiwan and is gathering information with the help of his parents to renounce his citizenship in Taiwan. The requirements to do so are complicated and Applicant was not familiar with the requirements until recently.

Applicant is married to a native of Hong Kong who is a U.S. citizen and has two daughters of school age who are also citizens of the U.S. His parents-in-law are U.S. citizens who are also natives of Hong Kong.

Applicant came to the U.S. to obtain a master's degree in computer sciences intending to return to Taiwan. His wife convinced him to stay in U.S. after he obtained his degree since she believed they would have a better life here than in Taiwan and because all of her family was living in the U.S.

After completing his schooling in Taiwan, he served in the army of Taiwan for two years pursuant to Taiwan mandatory military service requirement. His assignment in the army was as an archivist.

His mother and father are citizens of Taiwan and live there. His father is a retired general officer in the Taiwan Air Force who taught at a military academy and his mother is a retired elementary school teacher. The family is financially sound and does not need help from Applicant. His father now works as a consultant to Taiwan Air Force occasionally lecturing on strategy.

Applicant could inherit the assets of his parents but has no interest in doing so. He has no foreign financial assets or interests. He used Taiwan medical facilities on one of his trips to visit his parents when he became ill.

He communicates weekly by telephone with his parents and has visited three times since 1984 the most recent visit being in 2001. His parents have visited his family several times since coming to the United States. He has occasional contact with the Taiwan Economic and Cultural Representative Office in the U.S. for visa applications.

Applicant's brother is a citizen of Taiwan who lives in California and has a green card intending to become a citizen. His grandmother is a citizen of the People's Republic of China (PRC) and lives there. She is now over ninety years old. He visited her once in 1991 when he was engaged to be married. On that trip he used his Taiwan passport to travel to the PRC, his only visit to the PRC.

Applicant gave a negative answer on his SF 86 questionnaire relating to his service in the military believing that the question related only to service in the U.S. military. The question states that foreign military service should be included. Applicant consulted with his company security office and was advised that they did not interpret it to include military service prior to coming to the U.S.

Applicant is regarded by four friends and colleagues at his work and church as a person of good reputation who is truthful and can be relied upon in both his employment and his personal relationships. Applicant's minister regards him as a valuable and reliable member of the governing board of elders of his church who has a reputation for integrity and truthfulness. Applicant has a strong religious faith and relies on religious teachings in his life.

## POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position that will give that person access to such information." *Id.* at 527.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b)

"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." Directive, ¶ E2.A3.1. 1. The possession of a foreign passport is a strong indicator of such a preference.

The applicable Guidelines cited in the SOR concern the following Disqualifying Conditions (DC):

### 1. Foreign Preference, Guideline C

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:

1. The exercise of dual citizenship;
2. Possession and/or use of a foreign passport;
3. Military service or a willingness to bear arms for a foreign country;
4. Accepting educational, medical, or other benefits, such as retirement and social welfare, from a foreign country;

### 2. Foreign Influence- Guideline B

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 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;

### 3. Personal Conduct -Guideline E

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.

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

2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

## CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors and conditions above, I conclude the following with respect to all allegations set forth in the SOR.

Based on the evidence of record, including Applicant's admissions, the Government has stated reasons to deny him a security clearance because of foreign influence, foreign preference, and personal conduct. Having established such reasons, the Applicant has the burden to establish security

suitability through evidence which refutes, mitigates, or extenuates the disqualification and demonstrates that it is clearly consistent with the national interest to grant a security clearance. ISCR Case No. 99-0424, 2001 DOHA LEXIS 59 at 33-34 (App. Bd. Feb. 8, 2001) Mitigating factors are applicable and evidence was offered in mitigation to both admitted and denied allegations.

Concerning Guideline C pertaining to foreign preference, the Disqualifying Conditions (DC) 1 and 2 are applicable. Applicant still holds dual citizenship and held a passport of Taiwan until it expired in 1996. He used that passport to travel to the PRC on the only visit he made to that country. That trip was before becoming a U.S. citizen and obtaining his U.S. passport. DC 1 requires the "exercise" of dual citizenship and the evidence does not show that Applicant ever engaged in any conduct that would show an indicia of dual citizenship.

Applicant's contacts with the U.S. based economic and consular office of Taiwan is no more than that of any naturalized citizen of the U.S who wants to return to his country of origin occasionally. His use of Taiwan government medical facilities was a random event occasioned by illness and resulted in no obligation to that government.

The evidence clearly shows that Applicant and his wife prefer living in the U.S. and enjoy the benefits of U.S. citizenship for themselves and their daughters. Applicant possessed a Taiwan passport only because of his birth in that country. He has not exercised dual citizenship and has taken appropriate steps to abandon his citizenship in Taiwan. Mitigating Conditions (MC) 1 and 4 clearly apply in that he derived his citizenship in Taiwan solely by his birth and he has expressed a willingness to renounce that citizenship and taken steps to do so.

The foreign influence alleged under Guideline B is based on Applicant's family living in Taiwan, and his grandmother living in the PRC as they have all their lives (DC 1) The parents are both over 70 and the grandmother is over 90 so could not be expected to move to another country. Although the Applicant's father is a retired general he has no connections with the intelligence community. He served in an air force trained and supplied in Taiwan by the U.S. since 1948 when the Nationalist Government in China, our allies in World War II, moved their government to Taiwan. Although the government of Taiwan has been known to target the U.S. for economic and technical information, Government Exhibit 2 from the Congressional Research Service notes that President Bush recently stated that the United States will do "whatever it takes" to help Taiwan's defense. The report describes this as "unprecedented" in the history of U.S.-Taiwan relations.

None of Applicant's relatives are employed by or are agents of Taiwan or in a position to be exploited by Taiwan

government to coerce Applicant to choose between the United States and Taiwan in loyalty. Therefore MC 1 applies in that immediate family members do not constitute and unacceptable security risk. Applicant has no financial interest in Taiwan, so MC 5 regarding minimal financial interest is applicable.

The personal conduct alleged under Guideline E is based on Applicant's negative answer on his SF 86 to the question concerning prior military service (DC 2). Applicant notes that Taiwan has a long standing policy of universal military service for all citizens so it would be known that any person of his age coming to the U.S. from Taiwan would have served in the military for the required term of years.

Applicant provided convincing testimony as to his misunderstanding and misreading of the question and the fact that he consulted with a security officer in his company about the required answer. The guideline requires that the omission or concealment be "deliberate." I cannot so find. Mitigating Conditions are therefore inapplicable.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude it is clearly consistent with the national interest to grant clearance to Applicant.

### **FORMAL FINDINGS**

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline C: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.b.: For Applicant

Paragraph 2 Guideline B: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Paragraph 3 Guideline E: FOR APPLICANT

Subparagraph 1.a.: For Applicant

### **DECISION**

In light of all the circumstances and facts presented by the record in this case, it is clearly consistent with the national interest to grant a security clearance for Applicant.

Charles D. Ablard

Administrative Judge