

DATE: May 27, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-02688

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Alice Shih, Personal Representative

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 wife and in-laws are Taiwanese citizens. His wife, however, has applied for naturalization and there is no evidence that the three of them are agents of a foreign power or in a position to pressure or coerce the Applicant. The Applicant's contact with his half-brother is casual and infrequent. Adverse inference is overcome. Clearance is granted.

STATEMENT OF THE CASE

On October 10, 2002, 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 November 7, 2002, and requested a hearing. The case was received by the undersigned on January 14, 2003, and a Notice of Hearing was issued on February 19, 2003.

A hearing was held on February 27, 2003, at which the Government presented four documentary exhibits. Testimony was taken from the Applicant, who also called two additional witnesses, and submitted 17 hearing exhibits and one Post-Hearing Exhibit (Certificate renouncing Taiwanese citizenship). The transcript was received on March 13, 2003.

FINDINGS OF FACT

The Applicant is 42, married and has a Doctorate in Mechanical Engineering. He is employed by a defense contractor as a Senior Engineer, 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 1961. From 1983 to 1985 he served as an officer in the Taiwanese Army. He first moved to the United States in 1986 to attend school. He returned to Taiwan to work in 1989. The Applicant moved to the United States permanently in May 1991. He became an American citizen on August 30, 1996. (Applicant's Exhibit B.)

After he became an American citizen, but before he was issued his United States passport, the Applicant obtained a Taiwanese passport in September 1996. (Government Exhibit 4.) According to the Applicant, he obtained this passport in case he had to travel to Taiwan in an emergency before receiving his US passport. (Transcript at 70.) The Applicant never used this Taiwanese passport. The passport expired in 2002.

The Applicant received his American passport in April 1997. This passport indicates that in 1999 and 2001 the Applicant traveled to Taiwan using his American passport. (Applicant's Exhibit C at 4-5.)

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." (Government Exhibit 2.)

On February 21, 2003, the Applicant submitted his "Application to Renounce (Taiwanese) Citizenship" to the Taipei (Taiwan) Economic and Cultural Office. (Applicant's Exhibit F.) As part of this application, the Applicant surrendered his expired Taiwanese passport. (Applicant's Exhibit F at 16-17.) The Application was accepted and, on April 11, 2003, a "Certificate of Renouncing (Taiwanese) Citizenship" was issued to the Applicant. (Applicant's Post-Hearing Exhibit.)

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 moved to the United States in 1988. The Applicant's father, now deceased, became an American citizen in 1995. (Applicant's Exhibit H.) His mother became an American citizen in April 2002. (Applicant's Exhibit I.) The Applicant's younger sister is also an American citizen. (Applicant's Exhibit K.)

At the time the Applicant's sworn statement was made in November 2001, his older sister lived in South Africa. (Government Exhibit 3 at 2.) This sister, also an American citizen, returned to the United States permanently in November 2002. In a written statement she said that she and her husband have no plans to travel outside the United States. (Applicant's Exhibits J and P.)

The Applicant's spouse is a citizen of Taiwan, but a permanent resident of the United States. She has a degree in Finance, but acts right now as a wife and mother. She submitted her Application for Naturalization in November 2002. The application has been accepted, and she is continuing the process to become an American citizen. (Applicant's Exhibit L, Transcript at 77.)

The Applicant has a half-brother who lives in the People's Republic of China. He has never met this half-brother. During the last year or so of his father's life, he spoke to his half-brother on a monthly basis to discuss his father's failing health. Since then, they speak on less than a quarterly basis. (Transcript at 58-59, 63-64.)

The parents of the Applicant's spouse continue to live in Taiwan. They are both 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. He and his wife visit Taiwan every other year. (Transcript at 59-60, 73-75.)

Mitigation.

The Applicant's supervisor testified at the hearing and provided two statements. He states, "In my opinion, [the Applicant] is an honest and trustworthy person. Based upon the attributes he has shown in the way he has protected unclassified NOFORN data and his approach to his work, he has not demonstrated any reason to me to keep him from obtaining a classified clearance." (Applicant's Exhibit M at 1.)

A coworker of the Applicant also submitted a statement in which he states, "I have not received any indications that [the Applicant] was adhering to anything but the highest standards of citizenship and business ethics. For this reason and because of the conscientious manner in which [the Applicant] performs his tasks, I see no reason why he should not receive his security clearance." (Applicant's Exhibit O.)

The Applicant testified about his life in the United States. "So I get married here. I have my two sons born here. And I got my job here. I finished my advanced study here. And now I have my home here. So I think I'm rooted here, so my life is very satisfying." (Transcript at 57.)

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:

- (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.

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 foreign connections or show a preference for another country over the United States. These situations may be evidence of 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 wife, in-laws and half-brother 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 two trips to Taiwan. Once he was informed that she could no longer possess this passport, he submitted the passport to the Taiwanese Economic and Cultural Office, along with his "Application to Revoke Taiwanese Citizenship." The Application has been granted and the Applicant is no longer a dual citizen. 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 in-laws are retired. The Applicant's contact with them is minimal, and primarily through his wife. The Applicant's wife has taken the proper steps to become an American citizen herself. There are no indicators that they are agents of a foreign power. I have weighed the fact that these three people continue to be Taiwanese citizens against the relatively infrequent contact by the Applicant with his in-laws, and his wife's application for citizenship. Their conduct, and the Applicant's, has mitigated the security significance of their citizenship.

His sister is a naturalized American citizen and resides in the United States. With regards to his half-brother, the Applicant has never met him. It is clear from the record that contact with the half-brother was at the father's insistence and has slowed considerably since his death. Under no circumstance can this contact be called anything more than casual and infrequent. 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.

Subparagraphs 1.a. through 1.d.: For the Applicant.

Paragraph 2: For the Applicant.

Subparagraphs 2.a. through 2.e.: 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