

DATE: April 28, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-04049

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Juan J. Rivera, Esq., Department Counsel

FOR APPLICANT

Richard Murray, Esq., Applicant's Counsel

SYNOPSIS

Applicant immigrated to the United States in 1990 and became a U.S. citizen in 1998. Other

than his immediate family, all his relatives live on Taiwan. His spouse became a U.S. citizen in 1998 also. He and his spouse retained possession of their Taiwanese passports after becoming U.S. citizens, then obtaining and using U.S. passports for trips to Taiwan. Applicant seemed to hold dual citizenship, but formally renounced it and surrendered his passports when he discovered there was a problem with his current situation. Applicant successfully mitigated the foreign preference and influence concerns by showing his dedication to the United States and his preference for living in the United States. Clearance is granted.

STATEMENT OF THE CASE

On November 14, 2002, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, 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. The SOR detailed reasons under the personal security Guideline C (Foreign Preference) and Guideline B (Foreign Influence) 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. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

In a signed and sworn statement, dated December 4, 2002, Applicant responded to the SOR allegations. He requested a hearing. This case was originally assigned to Administrative Judge Roger Willmeth on February 5, 2003. It was reassigned to me on February 10, 2003 due to caseload considerations.

A Notice of Hearing was issued on February 12, 2003, setting the hearing for March 17, 2003. On that date, I convened

the hearing to consider whether it is clearly consistent with the national interest to grant Applicant's security clearance.

The Government presented two exhibits⁽¹⁾ which were admitted into evidence. The Government also offered for administrative notice four documents⁽²⁾. Applicant appeared and testified, presented two witnesses, and offered four exhibits⁽³⁾, all of which were admitted into evidence. I received the transcript (Tr.) of the hearing on March 25, 2003.

FINDINGS OF FACT

Applicant admitted the allegations in subparagraphs 1.a. and 1.b., and 2.a., 2.b., and 2.d. of the SOR. Those admissions are incorporated herein as findings of fact. Applicant denied the allegation in subparagraph 2.c. of the SOR, but at the hearing the Government amended the SOR to reflect the evidence presented about the country in which Applicant's mother-in-law lived, and Applicant's answer was changed on the record to an admission to the amended subparagraph. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant was born on Taiwan, the Republic of China (TRC) in 1957. Applicant graduated from college on TRC in 1980. He is married and has two children, ages 15 and 12. Applicant is employed in the computer field, and has worked for several companies in his career. He first came to the United States in 1987 when he worked for a large computer and technology company. He lived in California for one and a half years, and then returned to the TRC. He liked living in the United States and returned here in 1990. He liked California and wanted a good life for his children. He obtained a "green" (alien registration) card and became a citizen of the United States in May, 1998. Applicant owns a home and is otherwise invested in the United States. (Tr. 28-36, 51-54, 63)

Applicant had a TRC passport until he became a United States citizen, but kept physical possession of the TRC passport after he became a citizen. He kept it in a closet at his home, but he said he did not need it anymore, because the U.S. passport is better. His wife cut or tore off the cover of his passport and hers after they became U.S. citizens. He finally turned in the passport in 2002. He only used his U.S. passport to travel to TRC twice and to the Bahamas for vacation in 2000. Applicant renounced his TRC citizenship in 2003 to make certain there was no question that he was a U.S. citizen and turned in his TRC passport then. He said he would do whatever the United States needed him to do, including bearing arms against the TRC if called upon to do so. (Tr.35, 36, 38, 39-45, 49, 62, 65, 96; Applicant Exhibits A and B at all pages)

Applicant's spouse became a U.S. citizen in 1998. She works in the financial management area for a company which has a government contract. She kept her TRC passport after cutting off the cover in a house closet. She formally renounced her TRC citizenship on January 28, 2003. She surrendered her TRC passport when requested to do so by the TRC consular section as part of the renunciation process. Applicant's spouse has traveled to the TRC in the past three years to visit her father. Applicant's father-in-law is a citizen and resident of TRC, not the Peoples Republic of China on the mainland of China, as alleged in the SOR. Her mother died in 1997. She has two sisters and one brother who live in the TRC. (Tr.73, 74, 96-101, 112; Applicant Exhibit C and D at all pages)

Applicant's parents are elderly and live in the TRC. Applicant talks with them about every two weeks on the telephone. He made his last visit to them in 1999, but does not send them money. His father was a businessman who is now retired. Applicant has one brother living in TRC. Applicant does not own any property or have any bank accounts in the TRC. Applicant stated he would not inherit anything from his parents. (Tr.45-47, 59, 68-70)

Applicant's two children have TRC passports. The children have not used the TRC passport since they got to the United States. Applicant's spouse testified she never thought about the children's passports, so she just left them where they were, which was also in the home hall closet. The children travel on her passport because they are minors and have not traveled on a TRC passport. Applicant's spouse testified she would be willing to renounce her children's citizenship in the TRC if that action were necessary. (Tr.55-57, 96, 97, 105)

Applicant has some difficulty expressing himself fully in English because it is a second language for him. While Applicant may be an excellent computer software engineer, he is obviously not an expert on immigration law and practices to know when and how to renounce his TRC citizenship and how to dispose of his TRC passport. Applicant's explanation of what he and his spouse did, and that he had to consult with his spouse on these procedures, is very credible and supports his contention that he did what he honestly thought was the correct thing to do about terminating his TRC citizenship and passport. (Tr. 28-88)

POLICIES

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines that must be carefully considered according to the pertinent Guideline in making the overall common sense determination required.

Each adjudicative decision must also include an assessment of: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 pertinent 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 (See Directive, Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

GUIDELINE C: Foreign Preference:

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. Directive ¶ E2.A3 .1.1.

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

The exercise of dual citizenship. Directive ¶ E2.A3.1.2.1.

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

Conditions that could mitigate security concerns include:

Dual citizenship is based solely on parents' citizenship or birth in a foreign country. Directive ¶ E2.A3.1.3.1.

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

GUIDELINE B: 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. Directive ¶ E2.A2.1.1.

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

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. Directive ¶ E2.A2.1.2.1.

Conditions that could mitigate security concerns include:

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. Directive ¶ E2.A2.1.3.1.

Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities. Directive ¶ E2.A2.1.3.5.

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 each allegation set forth in the SOR:

Regarding Guideline C (foreign preference), the Disqualifying Conditions (DC) 1 and 2 are applicable to this case. Applicant possessed dual citizenship with TRC, and he had physical possession of a TRC passport. However, the DC 1 requires "exercise" of dual citizenship, and the evidence establishes that Applicant never exercised any indicia of dual citizenship.

It is clear from the evidence at the hearing that he and his wife vastly preferred living in the United States, primarily for the educational opportunities for their children. They merely possessed the passports as a result of their immigration to the United States. Applicant willingly renounced the TRC citizenship with his wife when it became an issue, and complied with the U.S. requirements under the Directive and the TRC documentary requirements for renunciation. The TRC passport was surrendered with the renunciation documents, and was not used after Applicant became a U.S. citizen. As he testified, the TRC passport was not worth much because he could go anywhere in the world with a U.S. passport and almost nowhere with the TRC passport. Therefore, Mitigating Conditions (MC) 1 and 4 clearly apply.

The foreign influence alleged under Guideline B is based on Applicant's family and his wife's family continuing to live in TRC, as they have all their lives (DC 1). Both sets of parents are elderly, and could not be expected to move from the country in which they lived all their lives. Applicant and his wife have siblings living and working in TRC where they also have been living all their lives. But all of them are in private business or working in the home. The evidence is that none of them are employed by or are agents of the TRC, or in a position to be exploited by the TRC government to coerce Applicant to choose between the United States and TRC in loyalty. Applicant stated he would report any improper contacts to his security officer. Therefore, MC 1 clearly applies. Applicant does not have any financial interest in TRC which could cause concern, so MC 5 does apply here.

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 a 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

Paragraph 2 Guideline B: FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

Subparagraph 2.d.: 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 or continue a security clearance for Applicant.

Philip S. Howe

Administrative Judge

1. Government Exhibit 1: Applicant's security clearance application; Government Exhibit 2: Applicant's sworn statement of October 15, 2001.
2. DOD Memorandum of August 16, 2000 clarifying the application of Guideline C (Foreign Preference); Federation of American Scientists Foreign Economic and Industrial Espionage 1999 Threats; Intelligence Threat Handbook; 2000 Annual Report to Congress on Foreign Economic Collection and Industrial Espionage.
3. Applicant Exhibit A: Documents for denationalization in the Republic of China pertaining to Applicant; Applicant Exhibit B: Certificate of Renunciation of Nationality with translation into English, 2003, pertaining to Applicant; Applicant Exhibit C: Documents for denationalization in the Republic of China pertaining to Applicant's spouse; Applicant Exhibit D: Certificate of Renunciation of Nationality with translation in to English, 2003, pertaining to Applicant's spouse.