

DATE: April 16, 2003

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 02-04362

## **DECISION OF ADMINISTRATIVE JUDGE**

**JAMES A. YOUNG**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Kathryn D. MacKinnon, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant, a 55-year-old naturalized U.S. citizen, has immediate family members who are citizens and residents of Taiwan. He worked for the Taiwan Government for six months while possessing a U.S. security clearance. He failed to notify his security officer of his move to Taiwan and harbors deep concerns for the future of Taiwan. Applicant failed to sufficiently mitigate foreign preference and foreign influence personnel security concerns, or to demonstrate it is in the national interest to grant him a clearance. Clearance is denied.

### **STATEMENT OF THE CASE**

Applicant, an employee of a defense contractor, applied for a security clearance. The Defense Office of Hearings and Appeals (DOHA), the federal agency tasked with determining an applicant's eligibility for access to classified information, declined to grant Applicant a clearance. In accordance with the applicable Executive Order<sup>(1)</sup> and Department of Defense Directive,<sup>(2)</sup> DOHA issued a Statement of Reasons (SOR) on 19 December 2002 detailing why a clearance was not granted and recommending Applicant's case be referred to an administrative judge to determine whether the clearance should be denied/revoked. In the SOR, DOHA alleged Applicant failed to meet the foreign preference (Guideline C), foreign influence (Guideline B), and outside activities (Guideline L) personnel security guidelines.

Applicant answered the SOR in writing on 11 January 2003, admitting each of the security concerns alleged. The case was assigned to me on 21 January 2003. A hearing was originally scheduled on 19 February 2003. Due to severe weather, the hearing had to be delayed. On 20 March 2003, I convened a hearing to consider whether it is clearly consistent with the national interest to grant Applicant's security clearance. The Government's case consisted of two exhibits. Applicant testified on his own behalf and submitted no exhibits. A transcript (Tr.) of the proceeding was received on 26 March 2003.

### **FINDINGS OF FACT**

Applicant is a 55-year-old naturalized U.S. citizen who is employed by a defense contractor as a lead member of the engineering staff. Ex. 1 at 1, 2. He immigrated to the U.S. from Taiwan (Republic of China) in 1971 to attend graduate school. *Id.*; Tr. 21. He became a U.S. citizen in 1981. Ex. 1 at 1. His Taiwanese passport has expired, and he travels on his U.S. passport. Tr. 81. Applicant owns a home in the U.S. and all of his bank accounts and investments are in the U.S. He has no financial ties outside the U.S. Tr. 81-82. He does not expect to participate in the estates of his parents. Tr. 75. He possessed a secret security clearance from 1980 until 1994, when his job activities no longer required a security clearance. Answer; Tr. 30-31.

Applicant's wife was also born in Taiwan and is a naturalized U.S. citizen. Ex. 1 at 3, 4. He does not know if she still possesses a valid Taiwanese passport. Applicant has one child, a daughter, who was born in the U.S. and is not a citizen of Taiwan. Ex. 1 at 4; Tr. 93.

Applicant's parents, sister, and brother are citizens and residents of Taiwan. His father is a retired county councilman. Answer. His brother is involved in electronic banking, while his sister is a professor of agriculture at a public university. Tr. 76-77. Applicant's sister-in-law is a U.S. citizen who resides with her physician husband in Taiwan. She visits her children in the U.S. three to four times a year. Answer.

In 1992, the Taiwan representative in the U.S. contacted Applicant about working for a high-tech program in the Taiwan Government. The contact was initiated by one of Applicant's undergraduate professors, who was serving as a director of a Taiwan Government agency, and a former member of the defense contractor's staff, who had taken a position as the deputy director of the high-tech program. Tr. 34, 45. Applicant went to the office of the Taiwan Representative in New York once to discuss the offer. *Id.* Applicant traveled to Taiwan while considering the offer. Tr. 41. Applicant did not report these contacts or foreign travel to his facility security officer in the three to four months between the initial contact and Applicant's resignation. Tr. 37-38.

Applicant worked for the Taiwan Government from February through August 1993. Ex. 1 at 5. His activities focused on writing and translating preliminary hardware performance requirements, specifications, and requests for proposals for a small, scientific research spacecraft. Answer. He tried to help develop language necessary to translate technical space concepts from English to Chinese. Tr. 50-51. His work was primarily based on public domain information published by U.S. Government agencies. Answer. He left the program because he did not think it was capable of becoming viable. Tr. 52. Since leaving the program and returning to the U.S., Applicant has maintained limited contact with the Deputy Director. He sends him a card at Christmas and sent him a copy of the book Applicant had published in 2000. Tr. 72.

In 2000, Applicant returned to Taiwan to speak to a scientific technology group of the Taiwan Department of Defense. Tr. 62. Applicant for the trip himself and stayed with his brother while in Taiwan. Tr. 64. The lecture "was a mathematical expansion" of a book he published in June 1997. The book's manuscript had been approved by his employer, a defense contractor, and presented material that was in the public domain. Answer. He reported the trip on his security clearance application as a pleasure trip. Tr. 67; *see* Ex. 1 at 5. He did advise the agent conducting the security clearance interview of his invitation to address the group. Tr. 69.

The Taiwan Representative telephones Applicant on occasions, such as the New Year. Tr. 70. A subgroup of the scientific technology group telephoned Applicant to advise him that the U.S. Government is inviting it to tour his employer's facility. Tr. 70-72. He did not mention to his employer that he had been contacted by the Taiwan Representative. Tr. 73.

## 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. The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use,

handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

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." Exec. Or. 10865 § 2. *See* Exec. Or. 12968 § 3.1(b).

Initially, the Government must establish, by substantial 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. All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at \*\*6-8 (App. Bd. May 9, 2001). "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the Government establishes a prima facie case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "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* Exec. Or. 12968 § 3.1(b).

### CONCLUSIONS

The decision to deny an individual a security clearance is in no sense a determination as to the loyalty of the applicant. Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

#### **Guideline C-Foreign Preference**

In the SOR, DOHA alleged under Guideline C that Applicant worked at the Taiwan ----- Office for six months in 1993 and was invited to lecture on electrical switching at the -----, Taiwan.

Under Guideline C, an individual who acts in such a way as to indicate a preference for a foreign country over the United States may be prone to provide information or make decisions that are harmful to the interests of the United States. Directive ¶ E2.A3 .1.1. Performing or attempting to perform duties, or otherwise acting, so as to serve the interests of another government in preference to the interests of the United States is a condition that raises security concerns and may be disqualifying. Directive ¶ E2.A3.1.2.9. None of the mitigating conditions listed under Guideline C are relevant or applicable to Applicant's case.

The Government established by substantial evidence, through Applicant's admissions and the record, that Applicant performed duties and services to help a foreign government. He only returned to the U.S. because he did not think the program was capable of becoming a "full blown" viable industry. Tr. 52. Applicant also expressed an abiding concern for the future of Taiwan. Applicant has not sufficiently mitigated the security concerns or demonstrated that it is in the national interest to grant him a clearance. Finding is against Applicant.

#### **Guideline B-Foreign Influence**

In the SOR, DOHA alleged Applicant's parents, sister, and mother are citizens of and reside in Taiwan; his sister-in-law is a U.S. citizen who resides in Taiwan; he has contact with the Director of the scientific program who resides in Taiwan; Applicant worked for the scientific program; and he was invited to lecture a scientific technology group of the Taiwan Government.

Under Guideline B, a security risk may exist when an applicant's immediate family, and other persons to whom he 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.

The following applicable conditions raise a security concern and may be disqualifying:

- (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. Directive ¶ E2.A2.1.2.1.
- (2) Associates who are connected with any foreign government. Directive ¶ E2.A2.1.2.3.
- (3) Failing to report, where required, associations with foreign nationals. Directive ¶ E2.A2.1.2.4.

The following conditions may be applicable in mitigation of those security concerns:

- (1) A determination that the immediate family members and associates 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 involved and the United States. Directive ¶ E2.A2.1.3.1.
- (2) Contact and correspondence with foreign citizens are casual and infrequent. Directive ¶ E2.A2.1.3.3.

The Government established by substantial evidence the disqualifying conditions alleged in the SOR. Applicant has family members who are citizens of and reside in Taiwan. He worked for an agency of the Taiwan government. Furthermore, although he possessed a U.S. security clearance at the time, Applicant failed to notify his security officer of his contacts with representatives of a foreign government.

The strength of this foreign influence is evident in his decision to accept the position in Taiwan. Although he mentions wanting to spend some time with his mother, Applicant's decision to work for the Taiwan Government agency seems to be a result of cultural obligation. "And in the Orient when, you know-when the college professor or a teacher asks his student to help, it's extremely difficult to refuse." Tr. 13. He further professes great concern for the future of Taiwan because of the threat of communism. Tr. 78. Under the circumstances, Applicant has not sufficiently mitigated the foreign influence security concerns nor demonstrated that it is in the national interest to grant him a clearance. Finding is against Applicant.

### **Guideline L-Outside Activities**

In the SOR, DOHA alleged Applicant's outside employment with the Taiwan Government agency and his speaking engagement with the scientific technology group were conflicts of interest that posed security risks.

Under Guideline L, involvement in certain types of outside employment or activities is of security concern if it poses a conflict with an individual's security responsibilities and could create an increased risk of unauthorized disclosure of classified information. Directive ¶ E2.A12.1.1. Any service, whether compensated, volunteer, or employment with the following pose an applicable security concern and may be disqualifying:

- (1) A foreign country. Directive ¶ E2.A12.1.2.1.
- (2) Any foreign national. Directive ¶ E2.A12.1.2.2.

These security concerns could be mitigated by the individual terminating the offending employment. Directive ¶ E2.A12.1.3.2.

The Government established by substantial evidence that Applicant negotiated a job with the Taiwan Government agency, and worked for it for six months, while possessing a U.S. security clearance and without notifying his security officer. However, the employment has been terminated and there is little likelihood of recurrence. Finding is for Applicant.

### **FORMAL FINDINGS**

Conclusions as to each of the allegations in the SOR as required by Executive Order No. 10865 § 3, ¶ 7 and the Directive ¶ E3.1.25, are as follows:

Paragraph 1. Guideline C: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Paragraph 2. Guideline B: Against APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Subparagraph 2.d.: Against Applicant

Subparagraph 2.e.: Against Applicant

Paragraph 3. Guideline L: FOR APPLICANT

Subparagraph 3.a.: For Applicant

Subparagraph 3.b.: For Applicant

### **DECISION**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

**James A. Young**

**Administrative Judge**

1. Exec. Or. 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.