

DATE: October 14, 2003

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In re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 02-06547

## **DECISION OF ADMINISTRATIVE JUDGE**

**ROGER C. WESLEY**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Katherine A. Trowbridge, Department Counsel

#### **FOR APPLICANT**

V. Rock Grundman, Eq.

### **SYNOPSIS**

Applicant, a naturalized citizen of the US who has immediate family members who are citizens of Taiwan and reside there (save for Applicant's brother who resides in Australia), mitigates any potential risk to undue foreign influence concerns under Guideline B. Taiwan, while a country reported to gather economic and proprietary intelligence against the US and its companies, retains strong mutual strategic interests with the US and is a county with a history of democratic traditions and respect for human rights and the rule of law. Clearance is granted.

### **STATEMENT OF THE CASE**

On March 28, 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, 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 granted, continued, denied or revoked.

Applicant responded to the SOR on April 15, 2003, and requested a hearing. The case was re-assigned to me on July 3, 2003, and was scheduled for hearing. A hearing was convened on August 21, 2003, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny or revoke Applicant's security clearance. At hearing, the Government's case consisted of two exhibits; Applicant relied on thirteen witnesses (including himself) and five exhibits. The transcript (R.T.) of the proceedings was received on September 2, 2003.

### **PROCEDURAL ISSUES**

At hearing, the Government requested official notice be taken of the NACIC's Annual Report to Congress on Foreign Economic Collection and Industrial Espionage. The Government also requested official notice be taken of the OPSEC Intelligence Threat Handbook for Taiwan, which covers economic intelligence activities of Taiwan and other named

countries against the US. For good cause shown, official notice was taken of both the NACIC's Annual Report and OPSEC Intelligence handbook pursuant to Rule 201(b) of F.R.Evi.

Applicant, in turn, asked that official notice be taken of the Taiwan Relations Act (Public Law 96-8 96<sup>th</sup> Congress) of 1979, which authorizes the continuation of commercial, cultural, and other relations between the US and Taiwan. Applicant also requested official notice be taken of the US State Department's 2001 country report of Taiwan's economic policy and trade practices. For good cause shown, official notice was taken of both the Taiwan Relations Act and the State Department's 2001 country report of Taiwan pursuant to Rule 201(b) of F.R.Evi.

### **STATEMENT OF FACTS**

Applicant is a 62-year old senior engineer for a defense contractor who seeks to retain his security clearance, which he has retained since 1984.

#### **Summary of Allegations and Responses**

Under Guideline B, Applicant is alleged to have (a) a mother who is a citizen and resident of Taiwan (Republic of China), (b) two brothers who are citizens and residents of Taiwan and (c) a sister who is a Taiwan citizen who was born in the Peoples's Republic of China and resides in Taiwan.

For his response to the SOR, Applicant admitted each of the allegations of the SOR, but denies his mother and siblings are in any way subject to influence or pressure from the Taiwan Government or any other foreign entity. He claims his relatives have never expressed any interest in the details of any of his professional activities. Should they, he claims he would report the contact immediately to the appropriate security authorities as required by US regulations.

#### **Relevant and Material Findings**

The allegations covered in the SOR and admitted to by Applicant are incorporated herein by reference and adopted as relevant and material findings. Additional findings follow.

#### **Applicant's background**

Born and raised in Taiwan, Applicant served a year plus in the Taiwan military before immigrating to the US in 1966 on a student visa to attend college. While doing his graduate studies in the US, he became an academic instructor. In this role, he met his future spouse (W). Instead of returning to Taiwan after finishing his studies, he and W married and established permanent residence in the US. Together, they have reared two children (a son, aged 19 and a daughter, aged 20) as US citizens who are currently enrolled in a respected university in their home state (with their son a national merit scholar). Applicant earned his PhD degree in nuclear physics; while W earned hers in musical arts, both from prestigious American universities. Applicant became a naturalized US citizen in July 1983 (*see ex. 1; R.T., at 61*) and does not claim dual citizenship with Taiwan.

Applicant has been with his current defense contractor (successor by merger to his previous employer) since 1984. He provides analysis on missile target data on a company missile project for DoD. He is credited with developing means for perfecting targeting and timing requirements. In his design work, he takes advantage of both classified and unclassified information.

W has been to Taiwan twice: once in 1981 to meet Applicant's parents, and a second time in 1994, accompanied by Applicant and their children. She maintains regular contact with her own family members living in Taiwan, but less frequent casual contacts with Applicant's sister and brothers in the same country: no more than every three or four months. Sometimes W gets letters from old Taiwanese classmates. None of W's family members residing in Taiwan work, or are affiliated, with the Taiwan Government: Her father is an interpreter and taught school for a number of years before becoming the president of a Baptist seminary in Taiwan. In Applicant's view, none of his own immediate family members, or W's family members, residing in Taiwan are in any danger of being subjected to undue influence to elicit classified economic or proprietary data.

Applicant currently has two brothers (one a high school teacher, age 60, and another in sales, age 55) and one sister (an elementary school teacher, age 63) residing in Taiwan.

Applicant has no property or financial interests in Taiwan. He maintains regular weekly contact with his mother and brothers by telephone. He has traveled to Taiwan on four occasions since 1966 to visit his immediate family. His last Taiwan visit was in 2000 to see his mother following her accident (*see ex. 2*). He does not provide financial assistance to his mother or any of his siblings, who own their own property and require no assistance. While he has applied to the US State Department for permits to bring both his mother and siblings to the US, each has declined for different reasons: his mother for health reasons and his siblings for economic and family reasons.

Applicant is very active with his local church, the membership of which is mostly of ethnic Chinese descent. He is highly regarded by other members of his church as a member who provides considerable support to his church's upkeep and activities (*see R.T.*, at 140-42).

Applicant is highly regarded by his management, supervisors and colleagues at work who value him as an integral contributor to their company's identified missile project for DoD and a very careful and capable engineer responsible for developing the means for determining optimum missile launching sequences. All of his managers, supervisors and colleagues recognize the extreme difficulty in finding technical talent like Applicant to develop and test design formulas for the missile project (*see exs. A through E; R.T.*, at 85-87, 91-93, 97-101, 104-05, 108-14, 117-22, 125-27, 130-33, 136-38). Others who know Applicant through his local church speak highly of him as a person who is hardworking, dedicated to helping others in his church, and a solid US citizen.

### **Taiwan's political and economic state**

Taiwan is a constitutionally created democracy with a sophisticated legal system whose core norms reflect a bidding respect for human rights and the rule of law. Its recently confirmed structural policies embrace privatization, floating exchange rates, investment barriers in certain industries, and high tariffs and pricing structures on some goods, to better facilitate exploitation of the country's foreign trade advantages. Taiwan is a beneficiary of the US' Taiwan Relations Act of 1979. Declared US policy of the Act is, *inter alia*, to help maintain, peace, security and stability in the Western Pacific; to consider any effort to determine the future of Taiwan by other than peaceful means, including by boycotts or embargoes, a threat to the peace and security of the Western Pacific area and of grave concern to the US; to provide Taiwan with arms of a defensive character; and to maintain the capacity of the US to resist any resort to force or other forms of coercion that would jeopardize the security, or the social or economic system of the people of Taiwan.

The Intelligence Threat handbook (OPSEC report published in April 1996) provides an in-depth analysis of economic intelligence collection activities directed against the US. In this report, Taiwan is listed as one of the countries that targets US companies for collection activities, fostered by the openness of American society and the huge investment of American industry in the development of advanced technology. NACIC's annual report to Congress also lists Taiwan among its list of countries who are the most active collectors of economic intelligence.

### **POLICIES**

The Adjudicative Guidelines of the Directive (Change 4) list "binding" policy considerations to be made by judges in the decision making process covering DOHA cases. The term "binding," as interpreted by the DOHA Appeal Board, requires the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued, or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E2.2 of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

### **Foreign Influence**

*Concern:* 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 are 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.

### **Disqualifying Conditions:**

DC 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.

### **Mitigating Conditions:**

MC 1: A determination that the immediate family members, co-habitant or associate 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 persons involved and the United States.

### **Burden of Proof**

By virtue of the precepts framed by the Directive, a decision to grant or continue an Applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of potential risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of proof shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

### **CONCLUSIONS**

Applicant immigrated to the US in 1966 on a student visa, and in 1983 became a naturalized US citizen. Both he and W (also a naturalized US citizen) received their advanced education in the US, raised children as natural born US citizens and are highly regarded in their chosen fields in the US. Each, though, has immediate family members in Taiwan, with whom they maintain regular, if not casual, contact.

Government urges security concerns over risks that Applicant's parents and siblings (citizens and residents of Taiwan) might be subject to undue foreign influence by Taiwanese authorities to access classified information in Applicant's possession or control. Because Applicant's mother and siblings reside in Taiwan, they present potential security risks covered by disqualifying condition 1 (DC 1) of the Adjudication Guidelines for foreign influence. The citizenship/residence status of these relatives in Taiwan pose some potential concerns for Applicant because of the risks of undue foreign influence that could compromise classified information under Applicant's possession and/or control.

From what is known from Applicant's own statement and testimony, none of Applicant's immediate family residing in Taiwan have any financial or political affiliations with Taiwan's government, have any history to date of being subjected to any coercion or influence, or appear to be vulnerable to the same. Taking Applicant's explanations about his

immediate family at face value, any risk of undue foreign influence on Applicant and/or his immediate family would appear to be insubstantial and clearly manageable. Taiwan, although a country reported to have targeted US economic and proprietary interests in the past, enjoys a special protective relationship with the US through the Taiwan Relations Act of 1979 and is a democratic government with a history of respect for human rights and the rule of law.

The Adjudicative Guidelines governing collateral clearances do not dictate *per se* results or mandate particular outcomes for applicants with relatives who are citizens/residents of foreign countries in general. What is considered to be an acceptable risk in one foreign country may not be in another. While foreign influence cases must by practical necessity be weighed on a case-by-case basis, guidelines are available for referencing in the supplied materials and country information about Taiwan available under the Adjudication Desk reference (as here).

The special relationship that has existed between the US and Taiwan over the past half-century been one marked by mutually reconcilable political and economic interests. Reports of Taiwan intelligence gathering against US companies are counterbalanced by Taiwan's history of friendship and partnership in a defense pact formalized in 1979. The mutually supportive bonds that have linked Taiwan's special relationship with the US have not been weakened by either the Taiwan Relations Act, or the geopolitical forces that have shaped the US's evolving relationship with the People's Republic. Whatever potential security risks arise as the result of Applicant's having immediate family with citizenship and residency in Taiwan are by every reasonable measure mitigated.

Taiwan remains a friend of the US and is a country whose democratic institutions are not incompatible with our own traditions and respect for human rights and the rule of law. While the foreign influence provisions of the Adjudicative Guidelines are ostensibly neutral as to the nature of the subject country, they should not be construed to ignore the geopolitical aims and policies of the particular foreign regime involved. Taiwan, while reported to target the US and its companies in the past for economic and proprietary information, is still a country with no known recent history of hostage taking or disposition for exerting undue influence against family members to obtain either classified information, or unclassified economic and proprietary data.

As for security concerns associated with the presence of Applicant's immediate and extended family members in Taiwan (a country whose interests have recently been and continue to be friendly to those of the US), any potential risk of a hostage situation or undue foreign influence brought in the hopes of eliciting either classified information or economic or proprietary data out of Applicant becomes an acceptable one. Mitigation benefits set forth in MC 1 (presence of immediate family in host country poses no unacceptable security risk) of the Adjudicative Guidelines are fully available to Applicant. Overall, any potential security concerns attributable to Applicant's family members in Taiwan are sufficiently mitigated to permit safe predictive judgments about Applicant's ability to withstand risks of undue influence attributable to his familial relationships in Taiwan. Favorable conclusions warrant with respect to the allegations covered by Guideline B.

In reaching my recommended decision, I have considered the evidence as a whole, including each of the factors and conditions enumerated in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive.

### **FORMAL FINDINGS**

In reviewing the allegations of the SOR in the context of the FINDINGS OF FACT, CONCLUSIONS and the FACTORS and CONDITIONS listed above, I make the following separate FORMAL FINDINGS with respect to Applicant's eligibility for a security clearance.

**GUIDELINE B: (FOREIGN INFLUENCE): FOR APPLICANT**

Sub-para. 2.a: FOR APPLICANT

Sub-para. 2.b: FOR APPLICANT

Sub-para. 2.c: FOR 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 Applicant's security clearance.

Roger C. Wesley

Administrative Judge