

DATE: May 14, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-06720

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Robert J. Tuider, Esq. , Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a naturalized American citizen seeking a security clearance. He has three older sisters in the Republic of China, Taiwan, and a mother-in-law, brother and sister-in-law there, all in non-governmental work positions. He has two younger sisters who live in the U.S. and are American citizens. Applicant has minimal annual or biennial contacts with his other sisters. Applicant has successfully mitigated any foreign influence concerns about a security risk by demonstrating the gravitas of his commitments are with the United States. Clearance is granted.

STATEMENT OF THE CASE

On September 19, 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 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, and 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 October 9, 2002, Applicant answered the SOR allegations. He requested his case be decided on the written record in lieu of a hearing.

On February 11, 2003, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM)⁽¹⁾ was provided to the Applicant, and he was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant filed a response to the FORM on March 22, 2003.⁽²⁾ The case was originally assigned to Judge Michael Leonard on April 1, 2003. The case was reassigned to me on April

17, 2003, because of caseload considerations.

FINDINGS OF FACT

Applicant admitted the SOR allegations in subparagraphs 1.a and 1.b. He admits his sisters and in-laws are citizens of the Republic of China (Taiwan) (RCT). Those admissions are incorporated herein as findings of fact. 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 is a 54 year old naturalized (1987) American citizen who seeks a security classification to maintain his employment with a defense contractor. He is married and has two children, a son and a daughter. He has lived in the same area for the past 25 years. Applicant arrived in the United States in 1974, and has returned to the RCT only occasionally over the past 29 years. While in the United States, Applicant earned two masters degrees, and has worked as an engineer for the defense industry since 1981. Applicant has two younger sisters who are U.S. naturalized citizens and live in the United States. His three older sisters are married and live in the RCT. Applicant's parents are deceased. His mother-in-law is 76 years old. (Item 2 at 1-2; Item 4 at 1-4; Response at 1-3)

Applicant's oldest sister is a print artist, and her husband manages a condominium in the RCT. His second oldest sister is an accounting supervisor at a junior high school and her husband is a retiree from a local government in the RCT. The third oldest sister teaches elementary school and her husband is a math teacher. His brother-in-law is a consultant with a British company which was hired to work on high speed trains in the RCT. (Item 2 at 1-2; Response Item 2, Item 3 at 1-2, Item 4 at 1-2, Item 5 at 1-2, and Item 6 at 1-3)

Applicant's spouse was naturalized in 1987 also. Applicant married her in 1980, and they were both naturalized in 1987. (Item 4 at 1-4)

Applicant's sisters visit him annually or every other year. His in-laws last visited in 1999 or 2000. His wife goes to visit them about every four years. His wife worked for a manufacturer in 1991 to 1996 who received financial assistance from the RCT government, which was a common situation. Applicant fulfilled his mandatory military service while still a Taiwanese resident. He was an officer in the RCT Navy. Applicant has no financial interest or property in the RCT. (Item 5 at 1-2)

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 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.

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:

The foreign influence alleged under Guideline B is based on Applicant's family and his wife's family continuing to live

in RCT, as they have all their lives (DC 1). Applicant has three sisters and their husbands, a mother-in-law, brother-in-law, and sister-in-law living and working in RCT where they have been living all their lives.

All of Applicant's relatives are in private business or working in their homes. The evidence is that none of them are employed by or are agents of the RCT, or in a position to be exploited by the RCT government to coerce Applicant to choose between the United States and RCT in loyalty. Applicant stated he was loyal to the United States and had abilities on the computers which benefit the United States. His family members are established in their communities and have their own lives. There is no evidence that their private industry positions or self-employment could be used to coerce Applicant to betray any trust. Therefore, MC 1 applies.

Applicant disclosed all of his family ties in his application. The presence of two younger sisters who are naturalized United States citizens, and his two children who were born in the United States, shows a counter-vailing force and interest which would offset any feeling he might have for the RCT. The totality of the evidence shows that Applicant would not be a security risk to the United States.

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 B: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: 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. The Government submitted five items in support of the SOR.
2. Applicant's Response consisted of a three page statement with five items attached.