

DATE: August 28, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-07772

## **DECISION OF ADMINISTRATIVE JUDGE**

**ELIZABETH M. MATCHINSKI**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Rita C. O'Brien, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant, a dual citizen of Taiwan and the United States (US), has not exercised any right, benefit or privilege of his foreign citizenship since he acquired US citizenship in July 1992. Status as a dual citizen without active exercise of foreign citizenship does not raise security disqualifying foreign preference concerns. Foreign influence concerns presented by the Taiwanese citizenship and foreign residency of his in-laws and siblings are mitigated. Those relatives abroad are neither agents of a foreign power nor potentially vulnerable to undue foreign influence. Clearance is granted.

### **STATEMENT OF THE CASE**

On January 6, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4), issued a Statement of Reasons (SOR) to the Applicant. The SOR 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. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. The SOR was based on foreign preference (Guideline C) and foreign influence (guideline B) concerns.

On January 27, 2003, Applicant responded to the allegations in the SOR. By letter dated February 12, 2003, DOHA notified Applicant his Answer was not considered complete because he failed to indicate whether he wished to have a hearing or a determination without a hearing. On February 26, 2003, Applicant filed a new Answer in which he requested a hearing before a DOHA Administrative Judge. The case was assigned to me on April 22, 2003. On April 29, 2003, a formal notice was issued scheduling the hearing for May 14, 2003. With Applicant's agreement, the hearing was held on May 15, 2003, pursuant to amended notice issued on May 9, 2003. At the hearing, the Government's case consisted of one exhibit, admitted over Applicant's objection. Applicant's case consisted of 13 exhibits (Exs. A-M), exhibits F and G admitted over the Government's objections, and his own testimony. At the Government's request, administrative notice was taken of extracts of two publications--*Annual Report to Congress on Foreign Economic*

*Collection and Industrial Espionage 2000*, and Section 1, *Operations Security Intelligence Threat Handbook*--and of the US State Department's Consular Information Sheet on Taiwan dated March 10, 2003. A transcript of the hearing was received by DOHA on May 28, 2003.

## FINDINGS OF FACT

The SOR alleges foreign preference concerns related to Applicant's dual citizenship with the US and Taiwan, and foreign influence concerns because of the Taiwanese citizenship of his spouse, the Taiwanese citizenship and residency of his mother-in-law and father-in-law and three of his four siblings, and the Taiwanese citizenship and Australian residency of the fourth sibling. In his Answer, Applicant denied he remains a citizen of Taiwan, citing the oath of naturalization in the US where he "denounced" Taiwanese nationality. He admitted the Taiwanese citizenship of his spouse, but indicated she had passed the examination for US citizenship and was awaiting the formal naturalization ceremony. Applicant admitted the Taiwanese citizenship and residency of his in-laws, who are retired, and the Taiwanese citizenship and foreign residency of his siblings. He described his contact with these relatives abroad as casual and infrequent and indicated none were agents of a foreign power or in a position to be exploited. After a thorough review and consideration of the evidence of record, I make the following findings of fact:

Applicant is a 51-year-old senior computer software engineer employed by a defense contractor since November 2000. Applicant seeks a Secret security clearance for his duties developing training software to instruct the US military in the operation of a missile air defense system.

Applicant was born in Taiwan in 1952 to emigres from the People's Republic of China (PRC). His parents and elder siblings (brothers born in 1944 and 1948 and a sister born in 1946) fled the PRC with the Maoist takeover in 1949, leaving behind their financial assets. In 1956, Applicant's parents had another daughter.

Raised in Taiwan with his four siblings, Applicant attended schools through the undergraduate degree level in Taiwan and he completed two years of compulsory military service at the rank of second lieutenant for the Taiwanese army. With a bachelor of science degree in physics, Applicant worked as a science teacher in a public high school in Taiwan for four years. He voted in several elections in Taiwan.

In 1981, Applicant came to the US to pursue his graduate education at a public university. He financed his education through personal savings and financial assistance from his father and sister. In June 1984, he was awarded a master of science in computer engineering. He elected to pursue his career in the US, and that summer, before commencing employment in the US, Applicant traveled to Taiwan on his Taiwanese passport to visit his father, his mother having died some time ago.

While Applicant was working for a computer firm in the US in 1990, a coworker introduced Applicant to a Taiwanese national who this coworker felt would be a good match for him. Applicant went to Taiwan twice to see her in 1990, and corresponded by mail. Applicant married this Taiwanese citizen in 1991. <sup>(1)</sup> That December, Applicant and his spouse had a son born to them in the US.

In July 1992, Applicant became a naturalized US citizen, taking an oath to renounce all foreign allegiances, to support and defend the US Constitution and its laws, and to bear arms or noncombatant service or civilian service on behalf of the US if required. Applicant regarded his acquisition of US citizenship as a renunciation of his Taiwanese citizenship and was unaware that he was still considered by Taiwan to be a citizen of that nation. He neither used nor renewed his Taiwanese passport after he became a US citizen.

In late July 1993, Applicant was issued his US passport, valid to July 2003. Applicant traveled on his US passport to Taiwan in January 1994 for pleasure and in February 1997 to see his father who was ill. Applicant's father died during Applicant's visit in 1997. Applicant stayed with his younger sister and father in 1994 and 1997 and saw his eldest brother and sister during these visits. Applicant saw his other brother as well in 1997 when he came home to Taiwan from Australia for their father's funeral.

As of May 2003, Applicant's four siblings are resident citizens of Taiwan. The elder of his brothers was trained as a scientist at a military academy in Taiwan. After working as an engineer for a government research institute, this brother

went to work in the private sector until his retirement more than ten years ago. He visited Applicant in the US two to three times in the last ten years when his daughter was studying at a university in the US. Applicant contacts this brother by telephone once every two to three months.

Applicant's other brother served in the Taiwanese air force as a mechanic for twenty years. Following his retirement, this brother moved to New Zealand and acquired that nation's citizenship. After a few years, Applicant's brother moved his family to Australia for a better education for his children. With his children in college, Applicant's brother returned to Taiwan to live in late 2002. Currently unemployed, he has not visited Applicant in the US. Applicant has contact with this brother less than once or twice per year.

Applicant's older sister has worked in the payroll department for Taiwan's highway bureau for 20-22 years. For the last ten years or so, her spouse has also worked for the same government department, having transferred there from an airport job. Prior to his government employment, Applicant's brother-in-law served on active duty in an entertainment unit for the Taiwanese military. Applicant estimates his contact with his sister to be roughly once every three or four months.

Applicant's younger sister is employed by a firm which monitors the Taiwanese government's investments in private businesses. Unmarried, she has her own apartment in Taiwan. Applicant telephones her on average once every two or three months. She visited Applicant in the US in February 2003, staying with Applicant and his family for one week.

Applicant's father-in-law and mother in-law are also resident citizens of Taiwan. Before his retirement, Applicant's father-in-law worked for Taiwan's telephone company, which was government-run but has since been privatized. Applicant's mother-in-law gave up her career as a nurse to stay at home after the birth of her three children. Applicant's spouse telephones her parents once per month to once every two months. Applicant does not routinely speak to his in-laws when she calls.

A continuous resident of the US since 1981, Applicant has been a member of a Chinese Christian church in his local area for more than 20 years. Applicant has shown himself to be a faithful congregant who has devoted his time to church activities. Applicant's son attends public school in their town and Chinese language school. Applicant's spouse became a naturalized US citizen in March 2003.

Applicant is regarded as an industrious, collegial employee by his managers and coworkers at the defense contracting firm where he has worked since November 2000. A hard worker, Applicant "graciously" accepts all assignments and meets his commitments on schedule. In addition to executing his own assignments, Applicant has mentored some junior engineers, earning the appreciation of his management team. He has given his department manager no reason to question his integrity, work ethic, or commitment.

Applicant is willing to renounce his Taiwanese citizenship, although he has made no effort to determine what is required to do so. He has no financial assets in Taiwan.

## **POLICIES**

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, favorable and unfavorable, 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 which must be carefully considered according to the pertinent criterion in making the overall common sense determination required. Each adjudicative decision must also include an assessment of the nature, extent, and seriousness of the conduct and surrounding circumstances; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the motivation of the individual applicant and extent to which the conduct was negligent, willful, voluntary or undertaken with knowledge of the consequences involved; the absence or presence of rehabilitation and other pertinent behavioral changes; the potential for coercion, exploitation and duress; and the probability that the circumstances or conduct will continue or recur in the future. *See* Directive 5220.6, Section 6.3 and Enclosure 2, Section E2.2. 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 criterion 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 emotionally unstable behavior. See Directive 5220.6, Enclosure 2, Section E2.2.4.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

### **Foreign Preference**

E2.A3.1.1. 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.

E2.A3.1.2. Conditions that could raise a security concern and may be disqualifying also include:

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

E2.A3.1.2.3. Military service . . . for a foreign country

E2.A3.1.3. Conditions that could mitigate security concerns include:

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

E2.A3.1.3.2. Indicators of possible foreign preference (e.g., foreign military service) occurred before obtaining United States citizenship

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

### **Foreign Influence**

E2.A2.1.1. 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.

E2.A2.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A2.1.2.1. 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;

E2.A2.1.2.2. Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists;

E2.A2.1.2.3. Relatives, cohabitants, or associates who are connected with any foreign government.

E2.A2.1.3. Conditions that could mitigate security concerns include:

E2.A2.1.3.1. 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.

Under Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge can only draw those

inferences and conclusions which have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses. Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

### Burden of Proof

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets its burden and establishes conduct cognizable as a security concern under the Directive, the burden of persuasion then shifts to the applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of criterion conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. See Enclosure 2 to the Directive, Section E2.2.2.

### CONCLUSIONS

Having considered the evidence in light of the appropriate legal precepts and factors, and having assessed the credibility of the Applicant, I conclude the following with respect to guidelines C and B:

Guideline C is based on actions taken by an individual that indicate a preference for a foreign country over the United States. (2) A citizen of Taiwan from birth and of the US since 1992, Applicant's status as a dual national is not necessarily indicative of a foreign preference (*see* E2.A3.1.3.1., dual citizenship based on birth in a foreign country as mitigating of foreign preference concerns). Applicant's service in the Taiwanese army as a second lieutenant, as well as his possession and use of a Taiwanese passport prior to his US naturalization in 1992, do not fall within E2.A3.1.2.1. (exercise of dual citizenship) and do not raise security disqualifying foreign preference concerns (*see* E2.A3.1.3.2. indicators of possible foreign preference occurred before obtaining US citizenship). Applicant took his oath of US citizenship to operate as a renunciation of his Taiwanese citizenship. Consistent with his understanding (albeit mistaken) that he was no longer a citizen of Taiwan, Applicant sought no right, benefit or privilege of Taiwanese citizenship after he acquired US citizenship in 1992. He made no effort to renew or use his Taiwanese passport, traveling to Taiwan on his US passport in 1994 and 1997. On learning that Taiwan still considers him to be its citizen, Applicant expressed a willingness to renounce his Taiwanese citizenship (*see* E2.A3.1.3.4. individual has expressed a willingness to renounce dual citizenship). While he has not taken any action in that regard, and the US Government does not encourage its citizens to remain dual nationals because of the complications that might ensue from obligations owed to the country of second nationality, the Department of Defense does not require the renunciation of foreign citizenship to gain access. At the hearing, Department Counsel indicated in closing the Government was no longer seeking to deny Applicant's clearance under Guideline C. The absence of acts indicative of foreign preference warrant a favorable outcome with respect to subparagraph 1.a. of the SOR.

Under Guideline B, a security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he is bound by affection, influence or obligation are not citizens of the United States or may be subject to duress. Although Applicant's spouse became a US citizen in March 2003, his four siblings and his in-laws are resident citizens of Taiwan. One of his brothers may well be a dual citizen of Taiwan and New Zealand. While the frequency of his contact with his siblings is not regular because of the cost, Applicant clearly has an ongoing relationship with especially his two sisters and his eldest brother. Both his younger sister and his eldest brother visited him in the US, his sister as recently as February 2003. Applicant telephones his other sister in Taiwan roughly once every three or four months. Disqualifying condition E2.A2.1.2.1., 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 must be considered in

evaluating Applicant's security suitability. E2.A2.1.2.3. (relatives who are connected to any foreign government) is pertinent as well, since his older sister is a longtime employee of the state-run highway department, her spouse works there as well, and his younger sister is actively engaged in monitoring Taiwanese government loans to businesses for what Applicant termed as a "half-official" entity.

Applicant does not share the same closeness with his in-laws, as he rarely speaks with them when his spouse calls. However, his spouse has feelings of affection and/or obligation for her parents, as evidenced by her telephone contact with them as frequent as once per month. In its decision in ISCR 01-02452, decided on November 21, 2002, the DOHA Appeal Board held it was reasonable for the Administrative Judge to consider the significance of an applicant's spouse's ties to a foreign country and the possible effect they may have on an applicant's conduct under Guideline B. The possibility of undue foreign influence through his spouse must therefore also be considered.

The security concerns engendered by the foreign citizenship of close family members and associates may be mitigated where it can be determined that the immediate family member(s), 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 (*see* E2.A2.1.3.1.). Evidence of record does not indicate that Applicant's relatives have ever been agents of a foreign power. Although Applicant's older sister is a government employee and his younger sister, if not a direct employee of the Taiwanese government, performs work in the interest of that foreign government, not every person who has a connection to a foreign government is an agent of a foreign power.

Applicant also has the burden of demonstrating that his immediate family members and close associates are not in a position to be exploited by a foreign power. The risk of undue foreign influence must be evaluated in terms of the possible vulnerability to both coercive and non coercive means of influence being brought to bear on, or through, the foreign relations and associates. There is no indication that either sister has contact with persons actively engaged in information collection or economic espionage targeting the US, and there is nothing untoward about their respective duties in payroll and monitoring private businesses. Applicant's brothers had some connection to the Taiwanese military in the past. Applicant's eldest brother was trained as a scientist in a military academy and served as an engineer for a government research institute, yet he left that position for the private sector. Applicant's other brother retired after 20 years of active duty service as an airplane mechanic. Given this brother moved to New Zealand and then Australia in search of educational opportunities for his children, his ties to Taiwan are not as strong as would be expected after 20 years of military service for Taiwan. Applicant's father-in-law worked for the government-run telephone company in Taiwan. As with Applicant's brothers, the risk for foreign influence is lessened considerably with his retirement.

The likelihood of pressure or coercion being placed on family members depends, in part, on the nature of the country involved (whether it respects democratic principles and human rights, has friendly relations with the US, etc.). Taiwan is known to have significant intelligence operations targeting the US, but it is also a stable democracy with significant commercial trade with the US. The risk of undue foreign influence being placed on Applicant's relations is regarded as minimal. Furthermore, after evaluating the strength of Applicant's commitment to the US, and his ties to this country, he is not likely to be vulnerable should any undue foreign influence be placed on his siblings or in-laws abroad. Applicant testified credibly that in his culture, siblings have less influence than parents, and his siblings do not have much influence on his behavior. Clearly, Applicant, who has been a continuous resident of the same area in the US since 1981, has chosen to make his life and home here. His affiliation with the Chinese Christian church does not detract from his intent to live solely as a US citizen. While Applicant's son takes Chinese language lessons, he also attends public school in his local community in the US. Applicant's spouse recently acquired her US citizenship. Applicant is not likely to jeopardize the security of those closest to him (spouse and son) by succumbing to any foreign pressure. Applicant is regarded as a person of integrity and reliability by those who have had the opportunity to observe and assess his dedication to his job and to his church. Favorable findings are warranted as to subparagraphs 2.a., 2.b., and 2.c. as well.

### **FORMAL FINDINGS**

Formal Findings as required by Section 3. Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

Paragraph 1. Guideline C: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Paragraph 2. Guideline B: FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: For the Applicant

Subparagraph 2.c.: 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 Applicant.

**Elizabeth M. Matchinski**

**Administrative Judge**

1. On his SF 86, their marriage is reported to have taken place in the US in March 1991. (Ex. 1). At his hearing, Applicant testified he went to back to Taiwan "to get married." (Tr. pp. 55-56). In discussing his specific visits to Taiwan, Applicant testified, "Oh, maybe '90, I went back twice to meet my wife because somebody introduced me and my wife. And then we communicated. And then after six months, I think, then we get married." (Tr. p. 55). He was not specific about where the actual marriage ceremony took place.
2. Dual citizenship is recognized by the United States, and a decision to deny or revoke security clearance based solely on one's status as a dual citizen would raise constitutional issues. As the DOHA Appeal Board articulated (ISCR Case No. 99-0454, October 17, 2000), dual citizenship in and of itself is not sufficient to warrant an adverse security clearance decision. Under Guideline C, the issue is whether an applicant has shown a preference through his actions for the foreign country of which he is also a citizen.