

DATE: July 27, 2004

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 02-27177

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Edward W. Loughran, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's foreign family ties, specifically his parents and two sisters, and his desire to possibly return to Taiwan in the future, makes him vulnerable to foreign influence and raises a security concern that has not been mitigated. Clearance is denied.

**STATEMENT OF THE CASE**

On October 27, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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 and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on November 18, 2003, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on April 29, 2004. A notice of hearing was issued on May 28, 2004, scheduling the hearing for June 24, 2004. At the hearing the Government presented two exhibits. The Applicant presented two exhibits and he testified on his own behalf. The official transcript (Tr.) was received on July 13, 2004.

**FINDINGS OF FACT**

The following Findings of Fact are based on Applicant's Answer to the SOR, the exhibits and the testimony. The Applicant is 34 years of age, married and has a Master's Degree in Electrical Engineering. He is employed as an Engineer for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant was born in Taiwan in 1970. In 1984, at the age of fourteen, he came to the United States to pursue his education. He attended high school, and lived with his grandparents who were permanent residents of the United States. The Applicant ultimately attended college in the United States, and obtained his United States citizenship in 1990. The Applicant married his wife, who is also a naturalized United States citizen, in October 2001. The Applicant's grandmother is a citizen of Taiwan and a permanent resident of the United States. His grandfather is now deceased.

The Applicant's mother, father and sister are citizens of and reside in Taiwan. The Applicant contacts his family in Taiwan by telephone about once or twice a month. He also contacts his father by e-mail, as his father has dial up and is quite active on the e-mail and internet. (Tr. p. 33). One of his sisters was a college student in the United States for a while. She remained a Taiwanese citizen and returned to Taiwan. The other sister became a United States citizen and returned to live in Taiwan. The Applicant's parents are in the process of applying for a green card. None of her family in Taiwan is affiliated with the Taiwanese Government.

The Applicant testified that he is a Christian and depending on how he is spiritually directed, he may return to Taiwan for humanitarian purposes, to do missionary work or to spread his faith. He has not made any definite decisions as of yet, as he is waiting for guidance from God. He testified that if he is led to do missionary work, he will definitely do it in Taiwan. He feels more attached to Taiwan, as it is his place of birth. (Tr. p. 20). Sometimes he feels homesick for his first country and would like to have the option of returning if he wants to. (Tr. p. 22). He may also stay in the United States and bring his parents here when they are eligible.

The Applicant has traveled to Taiwan about once a year from 1980 until 2003. His most recent trip to Taiwan was in 2003. (Tr. p. 30).

The Applicant also traveled to the People's Republic of China in 2000 and 2002. Both trips were mission related. The Applicant went with a church in the United States. The Applicant stated that he has no future plans to go to the People's Republic of China to teach them the word of God because it is very dangerous, as he discovered on his second trip. (Tr. p. 32).

The Applicant is not currently sending money to help pay his father's debts in Taiwan, although he has in the past. At times he would send \$200.00, sometimes more than that. (Tr. p. 35).

### Mitigation.

A letter of recommendation from the Applicant's manager indicates that the Applicant is a dedicated employee of good character who demonstrates responsibility, trustworthiness and strong performance abilities in his field of expertise. (See Applicant's Exhibit A).

## **POLICIES**

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

### Foreign Influence

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: (1) not citizens of the United States or (2) 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.

Conditions that could raise a security concern:

1. An immediate family member, or person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country;
6. Conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government.

Conditions that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

The Government must make out a case under Guideline B (foreign influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. Foreign influence can raise questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

## **CONCLUSIONS**

Having considered the evidence in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR, and that Applicant's foreign contacts have a direct and negative impact on his suitability for access to classified information.

With respect to Guideline B, the evidence establishes that the Applicant may be vulnerable to foreign influence. The Applicant's parents and two sisters are citizens of and reside in Taiwan. His father-in-law and grandmother are a citizens of Taiwan. The Applicant travels to Taiwan at least once a year on average to visit his family in Taiwan. He maintains regular contact with his them by telephone and e-mail. He wants the option available to him to possibly return to Taiwan someday in the future to pursue missionary work. He indicates that on occasions he is homesick for his birth place. The Applicant, although he is a citizen of the United States, has strong emotional ties to Taiwan. Accordingly, I find that the Applicant's foreign contacts with his family in Taiwan are significant, and may be of a nature to influence his security worthiness. The Applicant's foreign ties raise a security concern and disqualifying conditions 1 and 6 apply. None of the mitigating factors under this guideline apply. Therefore, under the particular facts of this case, the Applicant has failed to meet his burden of demonstrating that he is not in a position to be exploited by Taiwan in a way that could force the Applicant to choose between loyalty to his family in Taiwan and loyalty to the United States. Based on the foregoing, this raises a security concern and Guideline B is found against the Applicant.

Considering all the evidence, the Applicant has not met the mitigating conditions of Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Guideline B.

## **FORMAL FINDINGS**

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: Against the Applicant

**DECISION**

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

Darlene Lokey Anderson

Administrative Judge