

DATE: July 20, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-26945

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's dual citizenship, including possession of a valid foreign passport has been mitigated. Furthermore, the Applicant did not intentionally falsify a security clearance application. Clearance is granted.

**STATEMENT OF THE CASE**

On November 7, 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 January 2, 2004, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on April 6, 2004. A notice of hearing was issued on April 27, 2004, scheduling the hearing for June 9, 2004. At the hearing the Government presented eight exhibits. The Applicant presented nine exhibits. He also testified on his own behalf. The official transcript (Tr.) was received on June 25, 2004.

On August 16, 2000, a memorandum was issued by Mr. Arthur Money, Assistant Secretary of Defense for Command, Control, Communications and Intelligence, clarifying "the application of Guideline C to cases involving an Applicant's possession or use of a foreign passport." The Applicant received a copy of this memorandum. (See Government Exhibit 2).

**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 30 years of age and holds a master's Degree in Integrated Manufacturing Engineering. He is employed as a Engineer for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline C - Foreign Preference). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has acted in such a way as to show a preference for another country over the United States.

The Applicant is a dual citizen of Taiwan and the United States. He was born in Taipei, Taiwan in 1973. He immigrated with his family to the United States as a child in May 1981. He became a naturalized citizen of the United States in September 1995. He has enjoyed the privilege of being an American. In December 1999, after becoming a naturalized United States citizen, he renewed his Taiwanese passport. (*See* Government Exhibit 5).

On June 11, 2002, the Applicant was interviewed by a Special Agent of the Defense Security Service. At that time, the Applicant possessed his Taiwanese passport that was issued on December 6, 1999. (*See* Government Exhibit 3). The passport will not expire until December 6, 2005. (*See* Government Exhibit 5).

Since learning of the provisions of the Money Memorandum, the Applicant surrendered his passport to the Taiwan Economic and Cultural office. He received his Loss of Nationality Certificate from the Taiwanese Minister of Interior. (*See* Applicant's Exhibit D).

The Applicant does not consider himself to be a dual citizen. He considers himself to be an American exclusively. He explained that he listed his dual citizenship on his security clearance application because at that time he had an active Taiwanese passport, but for no other reason. (Tr. p. 32). He is planning his future in the United States and has no intentions to ever leave. He is married and they are expecting their first child soon. Both he and his wife are in the mainstream of American society.

Paragraph 2 (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 traveled to Taiwan in July 1995 and again in May 2000 for vacation only.

The Applicant's mother, father, sisters and brother all live in the United States. He does not maintain close contact with any of his extended relatives in Taiwan. There is no evidence in the record that any of the Applicant's family in the United States or those that reside in Taiwan have any affiliation with the Taiwanese Government whatsoever.

The Applicant has purchased a house in the United States and has a retirement plan established by his company. He has no assets of any kind in Taiwan.

Paragraph 3 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because he intentionally falsified material aspects of his personal background during the clearance screening process.

The Applicant completed a security clearance application dated April 16, 2001. Question 15 of the application asked him, "In the last seven years, have you had an active passport that was issued by a foreign government? The Applicant answered "NO". (*See* Government Item 1). This was a false answer. The Applicant was issued a Taiwanese passport on December 6, 1999. (*See* Government Item 5)

Question 16 of the same questionnaire asked the Applicant, "Have you traveled outside the United States on other than official United States Government orders in the last seven years?" The Applicant answered "NO". (*See* Government Item 1). This was a false answer. The Applicant actually traveled to Taiwan in July 1995 and May 2000. (*See* Government Exhibit 3).

The Applicant testified that his responses to both questions set forth above were simply careless mistakes. He attributes the wrong information to the company's security representative either entering the wrong information in the computer,

and/or his own failure to verify all of the information before signing the document. (Tr. p. -). The Applicant provided an excerpt of the original security clearance application that contained his handwritten answers. Both questions 15 and 16 were left blank on his handwritten application. (See Applicant Exhibit G). The Applicant testified that his only explanation for this was that at the time he was filling out the application, he did not have his passport, dates of travel, and other specific information he thought he needed to fill it out accurately. He stated that in the rush to complete the application he did not go back to review it. In failing to do that, he believes that the company security representative just entered whatever default information into the system just so that the system would let her continue. (Tr. pp. 36-37). He further stated that he was never asked by the company security representative to verify any information on his security clearance application.

Since the Applicant started with the company, the security process has been revised which now allows the applicant to key-in or enter the information in the system themselves instead of someone else doing it. This was done to streamline the process as well as to minimize the potential for errors. (See Tr. p. 36 and Applicant Exhibit F).

The Applicant indicated that during his interview with DSS, he discovered that there was wrong information on his security clearance application in response to questions 15 and 16. (Tr. P. 38). He did not ever attempt to falsify any information on his security clearance application. (Tr. p. 38).

### Mitigation.

Three character references from the Applicant's professional colleagues and a long time friend collectively indicate that the Applicant is considered dependable, honest, forthright, competent, conscientious and dedicated to his job and family. He would never knowingly misrepresent himself to anyone. (See Applicant's Exhibit H).

## **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 Preference

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.

### Conditions that could raise a security concern:

1. The exercise of dual citizenship;
2. Possession and/or use of a foreign passport;

### Conditions that could mitigate security concerns:

1. Dual citizenship is based solely on parent's citizenship or birth in a foreign country;
4. Individual has expressed a willingness to renounce dual citizenship.

### 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.

Condition 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;

Condition that could mitigate security concerns:

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 the loyalty of the person(s) involved and the United States.

Guideline E (Personal Conduct)

Conditions that could raise a security concern:

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 C (foreign preference) Guideline B (foreign influence) and Guideline E (personal conduct) 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 demonstrates a foreign preference and has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The mere possession of a foreign passport raises legitimate 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 connections have a direct and negative impact on his suitability for access to classified information.

The Applicant was born in Taiwan, but was raised in the United States. He became a naturalized citizen of the United States. Although he obtained a Taiwanese passport after becoming a United States citizen, he used it for no purpose at all. He traveled to Taiwan on two occasions and always used his United States passport. Since learning that possession of a foreign passport is not permitted when holding a security clearance, in compliance with the provisions of the Money Memorandum, he surrendered his Taiwanese passport to the appropriate legal authorities, and it has been cancelled. With respect to his Taiwanese citizenship, the Applicant has renounced it. Under the circumstances, the Applicant has done everything possible to be in compliance with the requirements of the directive and the Money Memorandum. Accordingly, he has clearly demonstrated an unequivocal preference for the United States. Under the circumstances of this case, I find for the Applicant under Guideline C.

With respect to Guideline B, the evidence establishes that he is not vulnerable to foreign influence. All of the Applicant's immediate family reside in the United States. The Applicant's contacts with his foreign relatives are not of a nature to influence his security worthiness. There is no evidence in the record that any of his family or friends have any connection with the Taiwanese Government, or are in a position to be exploited by the Taiwanese Government in a way that could force the Applicant to choose between loyalty to them and loyalty to the United States. Based on the foregoing, this does not raise a security concern and Guideline B is found for the Applicant.

The Applicant did not intend to falsify his security clearance application in response to questions 15 and 16. He was careless and should have reviewed the source document before submitting it to the security representative for her entering of information into the computer. However, the mistake could also have been made by her. The Applicant did not pass the blame but credibly testified that he was at fault for failing to review this important document. He stated that in no way did he attempt to falsify it. Furthermore, during his interview with DSS, the Applicant was the one to bring to the attention of the investigator these two specific errors in the application. Accordingly, I find for the Applicant under Guideline E.

Considering all the evidence, the Applicant has met the mitigating conditions of Guideline C, B and Guideline E of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guidelines C, B and E.

## **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: For the Applicant.

Subparas. 1.a.: For the Applicant

1.b.: For the Applicant

1.c.: For the Applicant

Paragraph 2: For the Applicant.

Subparas. 2.a.: For the Applicant

Paragraph 3: For the Applicant.

Subparas. 3.a.: For the Applicant

Subparas. 3.b.: For the Applicant

## **DECISION**

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson

Administrative Judge