

DATE: May 26, 2004

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 02-28447

DECISION OF ADMINISTRATIVE JUDGE

MARTIN H. MOGUL

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, born in the Republic of China (Taiwan), became a United States citizen in 1999. He has four siblings, who are citizens of Taiwan and reside in Taiwan. He has close and continuing contact with his brother, who has been a career soldier for the Taiwanese army, and since his retirement, continues to be employed by the Government of Taiwan. The evidence establishes that Applicant is vulnerable to foreign influence. Additionally, in a Security Clearance Application (SCA) supplied to the Government, Applicant gave incorrect information regarding his military service and his employment in Taiwan . Mitigation has not been shown. Clearance is denied.

STATEMENT OF THE CASE

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), dated October 20, 2003, to the 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 the Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, or denied. The SOR was based on Foreign Influence (Guideline B) concerns because of the foreign residency and/or citizenship of close family members and Personal Conduct (Guideline E) concerns regarding false information provided to the Government.

Applicant filed a notarized response dated November 18, 2003, to the allegations set forth in the SOR, and requested a hearing before a DOHA Administrative Judge. On January 29, 2004, the case was assigned to me to conduct a hearing, and pursuant to formal notice dated February 2, 2004, a hearing was held on arch 11, 2004.

At the hearing, Department Counsel offered two documentary exhibits (Government Exhibits 1 and 2) and no witnesses were called. Applicant offered four documentary exhibits (Exhibits A-D) and offered his own testimony. The transcript (TR) was received on March 30, 2004.

FINDINGS OF FACT

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline B (Foreign Influence) and Guideline E (Personal Conduct) of the Directive. The SOR contains seven allegations, 1.a., through 1.g., under Guideline B and two allegations, 2.a. and 2.b., under Guideline E. Applicant admitted SOR allegations 1.a. through 1.g. and denied 2. a. and 2.b. The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the admitted documents, and testimony of Applicant, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 47 years old. He is employed as a senior engineer by a United States defense contractor that wants him to have a security clearance.

Applicant was born in Taiwan. He came to the United States in 1984. He became a naturalized United States citizen in 1994. He is married and has two daughters. Both children were born in the United States and are United States citizens. He received a Masters degree in Electrical Engineering in 1985 from a United States university.

Paragraph 1 Guideline B (Foreign Influence)

Applicant has three sisters and one brother, who are citizens of and reside in Taiwan. His brother and one sister are employed by the Government of Taiwan. His brother was in the Taiwanese army for at least twenty years, and he retired as a colonel in 1998. His current employment for the Government of Taiwan involves attempting to aid veterans in finding employment (Tr at 39-41). Applicant communicates with his brother through email on a monthly basis. He indicated that his brother plans to retire and eventually move to the United States (Response to SOR). Applicant's contact with his three sisters is infrequent (Tr at 57-59).

Applicant has traveled to Taiwan in the years 1995, 1997, 1999, and 2002. These trips were primarily family related.

From 1978 to 1980 Applicant served as a lieutenant in the Navy of Taiwan. He also was employed by two different companies in Taiwan, the first in 1979, and the second from approximately 1980 to 1983.

Paragraph 2 Guideline E (Personal Conduct)

Applicant completed a signed, sworn SCA on April 25, 2002. Question #11 asks, "Have you ever served in the military? (If yes, provide in chronological order your military history: begin with the most recent period and include in chronological order your military history: begin with the most recent period and include Reserves, National Guard, Merchant Marines, and Foreign Military Service.)" He answered "No" to this question. As discussed above, Applicant served in the Navy of Taiwan from 1978 to 1980, and the correct answer should have been yes.

Question #13 asks, "Are you now or have you ever been employed by or acted as a consultant for a foreign government, firm or agency?" Applicant also answered "No" to this question. Clearly, since Applicant had worked for two separate Taiwanese companies, he should have answered yes to this question.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines that must be carefully considered in evaluating an individual's security eligibility and making the overall common sense determination required. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

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.

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, Section E2.2.1. of Enclosure 2).

Based upon a consideration of the evidence as a whole, I find the following guidelines and concerns most pertinent to an evaluation of the facts of this case:

FOREIGN INFLUENCE (GUIDELINE B)

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 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.

PERSONAL CONDUCT (GUIDELINE E)

E2.A5.1.1. The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

BURDEN OF PROOF

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance. Assessment of an applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of rehabilitation.

A person who seeks access to classified information enters into a fiduciary relationship with

the U.S. Government that is predicated upon trust and confidence. Where 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 or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the 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."

CONCLUSIONS

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. Based on the evidence of record, the Government has established a reason to deny Applicant a security clearance because of Guideline B (Foreign Influence). Applicant has four siblings, who are citizens of and reside in Taiwan. His brother has been a career soldier for the Taiwanese army, and since his retirement he continues to be employed by the Government of Taiwan. The Taiwan citizenship and residency of Applicant's family members create the potential for foreign influence that could result in the compromise of classified information because it makes Applicant potentially vulnerable to coercion, exploitation, or pressure. The possession of such ties raises a security concern sufficient to require Applicant to present evidence in rebuttal, extenuation, or mitigation sufficient to meet his burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him.

The evidence of existence of immediate family members, who are citizens of and reside in Taiwan comes within Disqualifying Condition (DC) E2.A2.1.2.1, immediate family members, or persons to whom the individual has close ties of affection or obligation, who are citizens of, or resident in, a foreign country. DC E2.A2.1.2.3 also applies because two of Applicant's siblings are connected with the Government of Taiwan.

I cannot conclude that any Mitigating Condition (MC) applies under Guideline B.

With respect to Guideline E, the evidence establishes that Applicant failed to provide complete information to the Government in response to questions # 11 and 13, on the SCA that he executed on April 25, 2002. Applicant's explanation for his failure to include information about his military service and employment history in Taiwan is that his English language skills were not very strong, and as a result he thought the questions only were asking him about the period after he became a United States citizen, which in this case was in 1994 (Tr at 50-53).

I cannot conclude that Applicant's explanation is reasonable. While English is Applicant's second language, at the time he completed his SCA in 2002, he had lived in the United States for eighteen years, and during that time he had received an advanced degree from a United States university. The wording of both questions was unambiguous, and there was nothing in either question that indicated the Government was only interested in the period after Applicant became a citizen of the United States.

Therefore, I find that when Applicant answered the SCA, he knew or should have known that the Government was interested in his entire history, not only the time since he became a United States citizen.

In reviewing the DCs under Guideline E, I conclude that DC E2.A5.1.2.2. applies, because Applicant provided information in his SCA that he knew or should have known was not correct. I find that no MC applies. I resolve Guideline E against Applicant.

On balance, it is concluded that Applicant has failed to overcome the Government's information opposing his request for a security clearance.

FORMAL FINDINGS

Paragraph 1. Guideline B: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

DECISION

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

Martin H. Mogul

Administrative Judge