DATE: May 22, 2006

In Re:

SSN: ----------

Applicant for Security Clearance

ISCR Case No. 02-29005

ECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR GOVERNMENT

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FOR APPLICANT

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SYNOPSIS

The Applicant's admitted foreign connections have been mitigated by a strong showing of connections to the United States. His outside activities, which no longer exist, do not have current security significance. The Applicant did not falsify a statement to a Department of Defense (DoD) investigator. Clearance is granted.

STATEMENT OF THE CASE

On January 24, 2005, 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 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.[(1)]

The Applicant responded to the SOR in writing on February 8, 2005, and requested a hearing. The case was received by the undersigned on September 21, 2005, and a Notice of Hearing was issued on September 28, 2005.

A hearing was held on November 7, 2005, at which the Government presented 21 documentary exhibits. Testimony was taken from the Applicant, who called one additional witness and also submitted 23 exhibits. The transcript was received on November 22, 2005.

FINDINGS OF FACT

The Applicant is 56, married and has a Ph.D. in Meteorology. He is the President and Chief Technology Officer of a

defense contractor (Company A), and he seeks to obtain a DoD security clearance in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a security clearance, based upon the allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR. They are based on the Applicant's Answer to the SOR, the exhibits and the live testimony.

The Applicant was born in the Republic of China (Taiwan) in 1949. He attended college in Taiwan, graduating in 1972 with a degree in meteorology. The Applicant then served two years in the Taiwan Air Force. He emigrated from Taiwan in 1974, in order to continue his studies in the United States. The Applicant received Master's and Doctorate degrees from universities in the United States. After receiving his Ph.D. in 1981 the Applicant worked for NASA and a defense contractor until 1987. (Transcript at 27-34, Government Exhibit 2 at 4, Applicant's Exhibit S.)

The Applicant became a naturalized American citizen in August 1985. His wife was also born in Taiwan, and she became a naturalized American citizen in January 1981. They were married in 1981, and have one American born son and three American born daughters. (Government Exhibit 1, Transcript at 18-22.)

As stated above, the Applicant is the President and Chief Technology Officer of Company A, a closely held corporation. The shareholders are the Applicant, his wife and their four children. The Applicant's wife is the Chief Executive Officer and Treasurer. The primary clients for Company A are various Federal entities, both military and non-military. (Government Exhibit 2 at 4-5.) Company A was founded in 1987, currently has 200 employees and for the year 2005 has an estimated revenue of $17,000,000. (Transcript at 37, Applicant's Exhibits P, Q and R.) The Applicant's home is worth approximately $2,200,000. In addition to their house, the Applicant and his wife have a net worth of about $3,500,000. (Transcript at 39.)

Paragraph 1 (Guideline L - Outside Activities). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has engaged in outside activities which pose a conflict with his security responsibilities and may create an increased risk of unauthorized disclosure of classified information.

The product manufactured by Company A has medical as well as Defense related applications. In 1998, the Applicant created a spin-off company, Company C, to obtain Food and Drug Administration approval of a medical device based on Company A's product. (Transcript at 41-43, Government Exhibits 5 and 6.) Company C was also a closely held corporation. The initial shareholders were the Applicant individually-70%, Company A-10%, and a group of American investors organized by the Applicant's cousin-20%. In 2001/2002 a major American corporation became a shareholder. (Transcript at 74-81.) The Applicant in 2003 gave sole worldwide distribution rights to the medical device to the major American corporation. (Transcript at 46.)

Company C was sold to an investment group in 2004 for $20,000,000. (Transcript at 41-42, 117-118.) The General Counsel for Company A submitted a statement stating that she helped coordinate the sale. She further states, "[Company A, the Applicant and his wife] divested themselves of all [Company C] assets and currently have no connection to that company's assets, its personnel or its intellectual property." She further states that a renamed corporate shell "has no assets except the historical files and will be liquidated as soon as its 2004 income tax returns are completed." (Applicant's Exhibit B at 2.)

After the creation of Company C, the Applicant thought it "could be a good idea to have a company in Taiwan to help distribute." (Transcript at 45.) The Applicant's brother in Taiwan brought together a group of Taiwanese investors and formed Company D in 1999/2000. The Applicant received shares in Company D and was made chairman in exchange for a license deal to use the medical device pioneered by Company C. However, he never personally invested money in Company D. (Transcript at 47, 117.) In addition to his brother's involvement, his nephew also had a job with Company D. (Transcript at 97.)

The Applicant spoke with his major Federal customer before creating Company D. This customer, which is in a defense related field, was concerned whether the creation of Company D would affect Company A's ability to fulfill its obligations. That is one reason no money was directly invested in Company D by the Applicant or Company A. (Transcript at 115-117.)

Company D, not the Applicant personally, underwent a screening process to gain access to a prestigious business park in Taiwan. This park is also used by other American companies. (Transcript at 50.) The Applicant, as chairman of the board, made the final presentation to a panel in Taiwan which was interested in the medical device. As a result of this analysis, it appears that Company D was also to receive a grant worth approximately $100,000. The Applicant stated he had no direct knowledge of this fact, but had heard it from his brother. (Transcript at 95.) There was also an agreement regarding a five year waiver of income tax. However, Company D never made any money, so the waiver was never used. (Transcript at 49-52, 96.)

The Applicant is keenly aware of the problems involving technology infringement involving Taiwan. He became uncomfortable over the possibility of improper reverse engineering of his proprietary medical device. (Transcript at 45-46, 86-88.) Eventually, as discussed above, Company C gave exclusive worldwide distribution rights to a major American corporation. As a result, Company D no longer had a reason for continuing in existence and was dissolved in 2003/2004.

The final capitalization of Company D was approximately $1,500,000. When Company D was dissolved, the shares had no value, since it no longer had rights to use the medical device. (Transcript at 52.) There was a great deal of strife between the Applicant and his brother concerning the dissolution of Company D. In order to try and mollify everyone, the Applicant distributed $500,000 of his own money to the Company D investors as partial recompense. However, the relationship between the Applicant and his brother is still strained and they have not spoken for several years. (Transcript at 91, 106-107, 117-120.) The Statement by Company A's General Counsel confirms that Company D has been dissolved, and that it was never an affiliate or subsidiary of Company C. (Applicant's Exhibit B at 2-3.)

Paragraph 2 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant may have foreign connections which potentially make him vulnerable to coercion, exploitation or pressure.

Since becoming an American citizen in 1985, the Applicant has traveled to Taiwan five times between 1992 and 2002. The Applicant has an older brother who is a resident and citizen of United States. He also has another brother and sister who are resident in and citizens of Taiwan. (Transcript at 22-27, Government Exhibit 2 at 2.) The Applicant contacts his sister once or twice a year. (Government Exhibit 4 at 3.) As described above, due to a business dispute concerning the dissolution of Company D, the Applicant has no current contact with his brother. (Transcript at 98.)

The Applicant's parents in law are residents and citizens of Taiwan. His father in law is 79, his mother in law is 77. The Applicant's father in law is a retired banker. When he was younger, he worked at the World Bank in Washington, D.C. He then returned to Taiwan and helped start the first private bank in that country. After a career which included stints as president and a member of the board of directors, he retired several years ago. (Transcript 53-54.) The Applicant's mother in law is a retired physician and acupuncturist. She also lived and worked in the United States. The Applicant's in-laws last visited the United States in 1999. The in-laws have a home in Australia, in addition to their house in Taiwan. The Applicant's wife testified that, to her knowledge, neither of her parents have been approached by the Taiwan government for information on the Applicant. (Transcript at 140.)

While the Applicant's mother in law was practicing medicine in Taiwan in the 1970s, one of her patients was a Taiwanese politician. He later became president of Taiwan. This politician attended the Applicant's wedding in 1981. This was the only time the Applicant or his wife ever saw this person. (Transcript at 55-57.) The Applicant's in laws have never asked about his work. (Transcript at 137-138, Applicant's Exhibit G.)

The Applicant had a classmate in college who went on to be a professor in Taiwan and also have a advisory post with the Taiwanese government. His classmate is currently retired and it has been approximately five years since the Applicant spoke to him. (Transcript at 66, Government Exhibit 4 at 2, and Government Exhibits 11 and 12.)

The Applicant's resume (Applicant's Exhibit S) shows that he is an expert in his fields of expertise, including meteorology. During the 1990s the Applicant gave two lectures in Taiwan concerning published articles of his. He received an honorarium in the amount of approximately $100 each time. The Applicant is very aware of his responsibility to safeguard sensitive information. (Transcript at 64-65, 106-107.)

The Applicant was asked what he would do if she was approached by members of his family or by acquaintances to obtain defense information. He stated in no uncertain terms that he is a proud American and would not respond to any attempt. (Transcript at 20-21, 68, 101-102.)

The allegations in subparagraphs 1.c., 1.d., 1.e., and 1.g., will be considered under Paragraph 2 as well. The allegation in subparagraph 2.j. will be discussed under Paragraph 3, below.

Paragraph 3 (Personal Conduct). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he made a false statement to a DoD investigator. The Applicant denied this allegation.

The Applicant is alleged to have lied to a Defense Security Service investigator in 2000 by saying, "He did not know a [Mr. X]." (Government Exhibit 18 at 12.) For the following reasons, I do not find that the Applicant intentionally falsified information during this interview.

First, Government Exhibit 18 does not have sufficient indicia of reliability to find with any certainty exactly what the Applicant was asked and how he answered. It is a Defense Security Service Report of Investigation, not a signed statement by the Applicant. These documents are typed by one person based on the notes of the agent. The exhibit is also not a Certified Results of Interview, signed by the agent.

It appears that the particular question concerning Mr. X was in the context of information allegedly provided to the agent by another Government agency, most of which information is demonstrably false or for which corroborating evidence was not provided. The only partially true statement was that the Applicant's mother in law, at one time, had been the physician to the president of Taiwan. However, she was not his personal physician while president.

The other Governmental agency alleges that the Applicant is a close friend of the president of Taiwan and that they talk frequently, that the Applicant was given a gift of $5,000,000 by a Taiwanese political party for his assistance in getting a foreign firm to move to Taiwan. Finally, this other Governmental agency stated that Mr. X incorporated Company A, that Mr. X was the son of a Taiwanese general and that he had ties to a questionable organization. (Government Exhibit 18 at 1-2.) Regarding the last allegation, the Articles of Incorporation of Company A show only the Applicant and his wife as the directors. (Applicant's Exhibit Q.)

In addition, in the paragraph of the report concerning Mr. X, the Applicant was also allegedly asked if he was related to four other Asian-American men who have his same last name. He is not related to them, but they are also business owners in his state. (Transcript at 62-63.) Therefore, one is unclear as to whom the statements by the other Governmental agency were made about, the Applicant or the unrelated men with the same name.

Finally, the record does not prove that the Applicant had any intent to deceive the Government, assuming he actually denied knowing Mr. X. Evidence provided by both parties show a person named Mr. X to be a very well-respected Taiwanese-American businessman. In fact, Mr. X's company was sold to a major defense industry. (Government Exhibit 7-9, Applicant's Exhibit W.) In a subsequent interview the Applicant freely admitted knowing Mr. X, that he had asked Mr. X for a job in 1987 before starting Company A and that he had joined a Taiwanese-American business organization (Organization) of which Mr. X was also a member. (Transcript at 61-64, Government Exhibits 4 at 2, 19 at 3.)

Both parties submitted documentary evidence showing the Organization to be exactly what it says on its website, "an organization to promote entrepreneurial practices in science and technology." (Government Exhibit 10 at 1, Applicant's Exhibit X.) It does not appear to be in any way the "questionable organization" referred to in Government Exhibit 18. There is no other evidence that Mr. X's father is a Taiwanese general and it is my conclusion that the available evidence is insufficient to make such a finding. Accordingly, subparagraph 2.j. is found for the Applicant.

The Government's burden is two-fold. First, to show that the Applicant actually made a material misstatement of fact to a DoD investigator. Second, that the misstatement was an intentional falsification. In other words, that it was an act of malfeasance and not a mistake. The Government did not meet its burden under either prong. This Paragraph is found for the Applicant.

Mitigation.

The Applicant has been an important part of the company he helped form for almost 20 years. (Applicant's Exhibit S.) He has also helped raise a typical American family. His oldest child and only son volunteered for the United States Marine Corps after September 11, 2001, and participated in the invasion of Iraq. (Applicant's Exhibit E.) The Applicant and his wife are active in their community, as shown by the declaration of the County Executive of the county where they live and have their company. (Applicant's Exhibit F.) Other exhibits show that Company A is a very good corporate citizen. (Applicant's Exhibits H through M.)

The Director of an American university Sciences and Technology Center submitted a statement on the Applicant's behalf. He previously worked for the Unites States space program for almost thirty years. He states, "I have known [the Applicant] for more than 20 years, and I can say without hesitation that he is a man of character who has a great deal of personal integrity. . . . I know the choices he makes are very 'straight arrow' choices." He goes on to state, "[The Applicant's] patriotism is very strong. . . . He is extremely proud of his son, who enlisted in the Marine Corps and served in Iraq recently. [The Applicant] really believes in this country, and I cannot imagine him doing anything to hurt this country." (Applicant's Exhibit A at 2.)

The General Counsel for Company A submitted a statement on behalf of the Applicant. (Applicant's Exhibit B.) The Applicant is described as a person of "modesty and humility." The General Counsel, who is also the facility security officer, states, "There is nothing in the security files for [the Applicant or his wife] which would indicate any reason for government concern." (Applicant's Exhibit B at 2.) She concludes by saying, "[The Applicant and his wife] set the standard for integrity at [Company A]; they are very honest and hard working people. . . If anything, I believe [the Applicant and his wife] to be more patriotic and loyal than the typical native-born American, who takes this country's privileges for granted." (Applicant's Exhibit B at 3.)

Applicant's Exhibit C is a statement from the President of a wholly-owned subsidiary of Company A, Company B. Company B was formed in approximately 2003, "[Company B] is organizationally separate from [Company A] so that we can maintain our facility clearance and personnel security clearances and operate at a higher classified level than that of the parent corporation." (Applicant's Exhibit C at 2.) This person goes on to describe the Applicant as, "a scientist running a business."

Concerning security in particular, the President states that Company B has had no incidents during his time as president. He also discussed the system for proprietary and sensitive information in use at both Company A and Company B. "We have a very tight program and have passed all of our inspections." (Applicant's Exhibit C at 2.)

Finally, he states, "[The Applicant and his wife] have never attempted to get any information out of this subsidiary that they were not entitled and authorized to have. They want information on what we are doing in contract performance, and how we are performing as a business, but nothing more. [Company A] has never breached any security protocol when asking for information from [Company B]." (Applicant's Exhibit C at 3.)

Appellant's Exhibit D is a statement from a Site Manager for Company A. He states:

I have also observed [the Applicant and his wife] to be of the highest ethics. [Company A] has established numerous rules and procedures for the safeguarding of classified or otherwise sensitive information, as well as, ethical rules of conduct. Further, [the Applicant and his wife] encourage all employees to take an active role in reviewing and improving of [Company A's] policies and procedures. Employees are encouraged to identify any holes in existing procedures and to bring forward solutions to more effectively safeguard sensitive information. (Applicant's Exhibit D at 2.)

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the

world, in making a reasoned decision. 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 will be set forth under CONCLUSIONS, below.

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 factors [General Factors]:

a. The nature, extent and seriousness of the conduct

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 guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may have foreign connections that could lead to the exercise of poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a 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."

CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the granting of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant had engaged

in outside activities which might have affected his ability to safeguard classified information (Guideline L); and the he has foreign connections which could cause a security concern (Guideline B).

The Applicant, on the other hand, has successfully mitigated the Government's case. As stated above, the Government did not meet its burden under Guideline E, and Paragraph 3 is found for the Applicant.

The Applicant has been an American citizen for 20 years. He and his wife, who is also a long-time American citizen, have deep roots in the United States. They have established a very successful firm that provides important services to the Federal government. The Applicant's children and his older brother are American citizens, in fact the Applicant's son is a Marine veteran of Operation Iraqi Freedom. The Applicant and his wife, in addition to their closely held corporation, have significant financial assets in the United States. From all the evidence, he is a successful entrepreneur, scientist and fine corporate citizen. Finally, evidence from the President, General Counsel and Site Manager (Applicant's Exhibits A, B and C), confirm that the Applicant and his wife work hard at protecting sensitive and proprietary information.

Turning first to the allegations under Paragraph 1. The Applicant developed a proprietary scientific process which could be used for medical as well as scientific purposes. In the late 1990s, the Applicant decided to see if he could develop this process into a specific medical device. In order to protect Company A from any financial downside to the development process, he started Company C, an American corporation. A year or so later, he decided to see if it would be possible to market the medical device directly into the Asian market. To do so, his brother brought together a consortium of Taiwanese backers and created Company D. The Applicant, in exchange for the rights to the device, was given 10% of the stock.

As described in detail in the record, the Applicant is keenly aware of the potential for improper technology transfer involving Taiwan. The situations described in Government Exhibits 16 and 17, and Applicant's Exhibit U, are of real-life concern to him as a scientist and American business owner. He gave much thought to how to prevent such a transfer of his proprietary medical device. It appears that his concerns severely limited the ability of Company D to function. In fact, his concerns became so great that, in 2003, he elected to transfer worldwide rights to the medical device to a major American corporation and sold Company C to American investors in 2004.

As a result of the transfer of worldwide rights, and the sale of Company C, the purpose for Company D no longer existed. That foreign corporation was dissolved in 2004, at a loss to the investors of $1,000,000. The Applicant, in an attempt to placate his brother and the other investors, personally covered their initial financial investment of $500,000.

Guideline L states, *Conditions that could raise a security concern and may be disqualifying include any service, whether compensated, volunteer, or employment with: A foreign country; Any foreign national; and A representative of any foreign interest*. (Paragraph E2.A12.1.2.) All of those technically apply to the facts of this case.

On the other hand, neither of the Mitigating Conditions, as written, exactly fit the facts of this case, but that is not fatal. First, it is unclear who would evaluate the Applicant's outside activities under Mitigating Condition E2.A12.1.3.1. to decide whether it is in conflict with his security responsibilities. While I do not believe that his prior activities with Company D were in conflict with his security responsibilities, I am not a security or counterintelligence official. There is some evidence that another Government agency with security responsibilities discussed the creation of Company D with the Applicant. Mitigating Condition E2.A12.1.3.2. states that the Applicant has terminated the employment or discontinued the activity *upon being notified* that it is in conflict with his security responsibilities. Here, as described above, the activity with Company D was terminated *before* the Applicant had any specific notice (the SOR) that his involvement was deemed of security significance.

"[A] Judge is not limited to Adjudicated Guidelines mitigating conditions when deciding whether an applicant has demonstrated extenuation or mitigation."[(2)] The application of the Directives General Factors to the Applicant's outside activities also supports a finding for the Applicant. General Factor a concerns, "The nature, extent and seriousness of the conduct." General Factor b discusses, "The circumstances surrounding the conduct." Here, the Applicant was acting as a American businessman in a foreign country. His conduct was always correct and above-board. Indeed, the record shows that the Applicant acted with considerable prudence. Paragraph 1 is found for the Applicant.

The Applicant's brother, sister and in laws continue to live in Taiwan, which despite being a democracy has a history of attempting to wrongfully appropriate technology. (Government Exhibits 14, 15, 16 and 17, Applicant's Exhibit U.) In contrast to the specific examples set forth in Government Exhibit 17, the Congressional Research Service stated in 2003 that the Taiwanese government, "responded to U.S. complaints by taking stronger measures to protect U.S. copyrights and other intellectual property rights." (Government Exhibit 15 at 11.) As described above, the Applicant is very aware of these concerns and, indeed, acted upon them in a proper and intelligent manner.

On the other hand, there is little or no information that the Taiwanese government has threatened or attempted to intimidate it's citizens to force Americans to reveal technological information or trade secrets. The Applicant's family members, and those of his wife, are not agents of the Taiwanese government. His father in law and mother in law are successful professional people. It would not be appropriate in this case to hold their personal success against their son in law. As for the Applicant's mother in law's connection to a former president of Taiwan, the available evidence shows that the relationship was strictly that of doctor and patient and occurred over 25 years ago. There is no current security significance to the relationship.

On two occasions, the Applicant was asked to give lectures about one of his fields of expertise, meteorology, to Taiwanese groups. He was given a small honorarium for making the presentations. Such activities are not at all unusual for a person of the Applicant's proven abilities. Under the particular circumstances of this case, there is no current security significance to his giving such lectures over ten years ago.

Finally, a classmate of the Applicant's had a policy position in the Taiwanese government. The Applicant's relationship with this man was friendly, but not close. Based on the evidence presented, there is no present security significance to this relationship.

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*) is the only one which applies on its face. Under the particular facts of this case, the following Mitigating Condition applies: 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*).

As stated above, the Applicant is also eligible for clearance under relevant General Factor h. Assuming, for sake of argument, that the position of the Applicant's foreign family members is significant and precludes application of Mitigating Condition E2.A2.1.3.1., the totality of this Applicant's conduct and circumstances, as set forth at length above, including the virtually non-existent potential for exploitation, still warrants a favorable finding under the whole person standard.

The record shows that he has been an American citizen for many years, his substantial financial assets are in the United States, as are almost all of his immediate family (especially his wife and children), he has favorable character references, and he is now alert to the security concerns presented by his particular circumstances and the responsibilities incumbent upon him.

The evidence shows that the Applicant is a patriotic American citizen. The Applicant eloquently testified about the importance of his family in the United States, and his pride in being an American citizen and owner of a defense industry. He is knowledgeable about security and understands his responsibility. Using any standard, the Applicant has mitigated the security significance of his foreign connections and his prior outside activities and is eligible for a security clearance.

On balance, it is concluded that the Applicant has successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1, 2 and 3 of the Government's Statement of Reasons.

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.

Subparagraphs 1.a. through 1g.: For the Applicant.

Paragraph 2: For the Applicant.

Subparagraphs 2.a. through 2.k.: For the Applicant.

Paragraph 3: For the Applicant.

Subparagraph 3.a.: 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 the Applicant.

Wilford H. Ross

Administrative Judge

1. The Applicant's case was heard in conjunction with that of his wife, ISCR Case. No. 02-31403. The Decision in that case was also issued on May 22, 2006.

2. ISCR Case No. 03-17620 at 4 (App. Bd. Apr. 17, 2006).