

DATE: May 9, 2005

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-29818

## **DECISION OF ADMINISTRATIVE JUDGE**

**JACQUELINE T. WILLIAMS**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Sabrina E. Redd, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant is a 43-year old man born in Taiwan. Since 1999, he is a naturalized U.S. citizen. He currently works as a lead senior engineer for a defense contractor and has been there since 2001. His wife is a permanent resident of the U.S. and a citizen of Taiwan; their son is a U.S. citizen and resident. None of Applicant's family in Taiwan are involved with the government. He is not vulnerable to foreign influence because of his strong attachment to the U.S. and because his family in Taiwan is not in a position to be exploited in a way that could force Applicant to choose between loyalty to these family members and his loyalty to the U.S. His extensive personal, professional, and economic ties to the U.S. mitigate possible security concerns. Clearance is granted.

### **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant under Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (the "Directive"). On August 18, 2004, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision: security concerns under Guideline B (Foreign Influence).

Applicant answered the SOR by letter on September 24, 2004. He elected to have a hearing before an administrative judge. This case was assigned to another administrative judge on November 10, 2004 but reassigned to me on February 1, 2005 due to caseload considerations. A Notice of Hearing was issued on February 9, 2005 scheduling the hearing for March 1, 2005. Applicant appeared and the hearing took place as scheduled. I received the transcript (Tr.) on arch 11, 2005.

### **FINDINGS OF FACT**

Applicant admitted the factual allegations in part, and offered mitigating circumstances. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, I make the

following findings of fact:

Applicant is 43-year-old married man and a citizen of Taiwan (Republic of China). Since 1999, he is a naturalized U.S. citizen. He lived in Taiwan from 1961 to 1985 and June 1999 to October 1999. In 1985 he immigrated to the U.S. to pursue his graduate education.

Applicant received both his master's degree and doctoral degree (Ph.D.) in electrical engineering from a major university in the U.S. Since February 2001, he is employed as lead communications engineer for a defense contractor. Previously, he worked for other companies in the telecommunications field in the U.S. He currently also teaches at a college in the U.S. He holds two U.S. patents. He has never had a security clearance.

Applicant married in Taiwan and his wife is a permanent resident of the U.S. and she too is a citizen of Taiwan. She will become a U.S. citizen when she is eligible. Currently, she works as a registered nurse. His son is a U.S. citizen and resident.

Applicants' parents, his mother-in-law, and his father-in-law are citizens and residents of Taiwan, although his mother is also a permanent U.S. resident. Both his father and father-in-law are retired police officers. He visits his parents on occasion and has telephone contact with them about once a week. He speaks to his in-laws by telephone at least once a year. He does not financially support either his parents or his in-laws.

Applicant's parents gave him two homes in Taiwan; the value of both houses is about \$400,000. His parents live in one house and they rent out the other home and keep the profits for upkeep of both properties. Applicant does not receive income from these properties and takes no role in running them. His parents could take his name off of the property if they so desired, giving it to someone else.

Applicant has traveled to Taiwan at least six times since he became a naturalized U.S. citizen.<sup>(1)</sup> These trips were to visit his family, which included his wife and son since they were still living in Taiwan until they could permanently move to and live in the U.S.

After he became a naturalized citizen in February 1999, Applicant and his family lived in Taiwan from June 1999 to October 1999. While he was in Taiwan, he transferred his money from the U.S. to a Taiwanese bank. He then had about \$230,000 in his Taiwanese bank account. He now has about \$100,000 in the bank in Taiwan, having transferred some of the money back to his bank in the U.S.

Applicant has extensive ties to the U.S., which include his professional standing and financial interests. Although he does not own any real property in the U.S., as of February 25, 2005, he had approximately \$333,000 in bank accounts. As of December 31, 2004, there was approximately \$400,075 in his 401K retirement account; he makes a contribution of \$6,000 every three months to his retirement fund. Additionally, he has a couple of thousand dollars in a 401K in Australia, where he worked in a university for 10 months in October 1999 to July 2000. During the hearing, he stated his goal, if he received a security clearance, was to transfer his job to the San Diego office and buy a house.

Applicant's current employer gave accolades to his exemplary work, integrity, and trustworthiness. He received a "Director's Award for Technical Initiatives" from his current employer in October 2003 for his outstanding and superior efforts on a project. His friend and former coworker supported Applicant's application and testified that Applicant is not only smart, but loyal, trustworthy, and a hard worker who is passionate about work.

Taiwan is a democracy with a long history of friendly relations with the U.S., including economic, political, cultural, and social ties.<sup>(2)</sup> The U.S. and Taiwan share military defensive commitments and substantial levels of foreign trade.<sup>(3)</sup> Taiwan is one of the most active collectors of foreign economic information or industrial espionage.

## POLICIES

Enclosure 2 of the Directive sets forth Adjudicative Guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the Adjudicative Guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Conditions).

Based on a consideration of the evidence as a whole, I find the following adjudicative guideline most pertinent to an evaluation of the facts of this case:

Guideline B, Foreign Influence: 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. <sup>(4)</sup>

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to these adjudicative guidelines, are set forth and discussed in the conclusions below.

An administrative judge need not view the Adjudicative Guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in Section E2.2, Adjudicative Process, of the Directive, are intended to assist the administrative judge in reaching fair and impartial decisions.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person" concept, all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The adjudicative process factors which an administrative judge should consider are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (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. Directive, ¶ E2.2.

In the decision-making process, the burden of producing evidence initially falls on the government to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. If the government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation, or mitigation sufficient to overcome the doubts raised by the government's case and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated on trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. Because of this special relationship, the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions are predictive in nature and must often address potential, rather than actual, risk of compromise of classified information.

Finally, Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. Nothing in this Decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty, or patriotism.

## CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

Applicant asserts he is a loyal American citizen who would not betray the U.S. The government has not alleged, and the evidence does not show, Applicant is anything but a loyal U.S. citizen. However, the issue is not his loyalty, but whether he is *vulnerable* to foreign influence that could result in the compromise of classified information.

With respect to Guideline B, the evidence establishes Applicant may not be vulnerable to foreign influence. Paragraph E2.A2.1.2.1 of the Directive provides that it may be a disqualifying condition if "*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.*" Paragraph E2.A2.1.3.1 defines "*immediate family members*" to include a spouse, father, mother, sons, daughters, brothers, and sisters. Pursuant to ¶ E2.A2.1.1, these circumstances "*could create the potential for foreign influence that could result in the compromise of classified information.*" Applicant's wife, with whom he lives, is a citizen of Taiwan. She is a permanent resident of the U.S. and plans on becoming a U.S. naturalized citizen when she is eligible. His wife also maintains regular contact with her retired parents in Taiwan, which includes the occasional visit. Applicant's contacts with his wife's family are minimal but are not of a nature to influence his security worthiness. Applicant's parents are retired, citizens and residents of Taiwan. He maintains weekly telephone contact with his parents, which is appropriate. I find that Applicant is bound by close ties of obligation and affection to his parents in Taiwan.

In evaluating an applicant's foreign associates it is appropriate to consider the significance of the applicant's spouse's ties to foreign countries.<sup>(5)</sup> There is a rebuttable presumption that an applicant has ties of affection for, or obligation to, his spouse's immediate family members.<sup>(6)</sup> Under the circumstances, the possibility that a "foreign power" would attempt to exploit or pressure Applicant's relatives in Taiwan to force Applicant to act adversely to the interest of the United States is not substantial. I conclude this potentially disqualifying condition does not apply.

Similarly, pursuant to ¶ E2.A2.1.2.3, it may be disqualifying where "*[r]elatives . . . are connected with any foreign government.*" The record in this case indicates that both Applicant's father and his father-in-law are retired police officers. Since both of these men are retired, it is unlikely that they would be in a position to be exploited since they are on pensions and have no direct contact with the government. I am not persuaded that these former police officers, now retired and receiving a pension, creates a relationship that is sufficient to constitute a "connection" to a foreign government. Therefore, Applicant has demonstrated 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 and allegiance to the U.S. Thus, I find this potentially disqualifying condition does not apply.

In assessing whether an applicant is vulnerable to exploitation through relatives in a foreign country, it is helpful to consider several factors, including the character of the government of the relevant foreign country. Taiwan is a democracy and an ally of the U.S. The two countries are joined in economic and security agreements. Taiwanese businesses and individuals have a history of engaging in economic and industrial espionage. However, there is no evidence indicating that the government of Taiwan, or any other entity meeting the definition of a "foreign power," sponsored or encouraged efforts to exploit citizens or residents of Taiwan for that purpose. Under the circumstances, the possibility that a "foreign power" would attempt to exploit or pressure Applicant's relatives in Taiwan to force Applicant to act adversely to the interests of the U.S. is limited.

Paragraph E2.A2.1.2.8 of the Directive provides that a "*substantial financial interest in a country, or in any foreign-owned or -operated business that could make the individual vulnerable to foreign influence*" may be disqualifying. Applicant derives no financial or other benefits from his real estate interests in Taiwan nor does he participate in the management of the property. The value of the property is not minimal; however, his parents could divest him on any interest in those properties at any time. Applicant's real estate holdings in Taiwan have the potential to be a substantial financial interest but in actuality, this ownership may or may not occur. From June 1999 to October 1999, Applicant and his family lived in Taiwan. At that time, he had about \$230,000 in a Taiwanese bank. He transferred some of the money from the Taiwanese bank account to the U.S., but \$100,000 still remains in a Taiwanese bank. Applicant testified that he dreams of owning a house in California. Applicant is in a position to transfer his funds from Taiwan whenever he wants. I conclude this potentially disqualifying condition does not apply.

Another significant factor is Applicant's vulnerability to pressure or duress applied indirectly through his ties with his relatives. Applicant maintains regular contact with his parents and less frequent contact with his mother-in-law and his

father-in-law in Taiwan. I find he is bound by close ties of obligation and affection to his relatives in Taiwan. At the same time, he has extensive ties to the U.S. Applicant has now lived here most of his adult life in the U.S. and his son is a citizen and resident of the U.S., his professional standing is with U.S. firms, and he has strong financial interests in the U.S. As of February 25, 2005, he had approximately \$333,000 in bank accounts in the U.S. There is approximately \$400,075 in his 401K retirement fund as of December 31, 2004 and he makes an additional contribution of \$6,000 every three months to this retirement fund. From October 1999 to July 2000 he lived and worked in Australia and he also has a couple of thousand dollars in a 401K plan in Australia for working in a university there for 10 months. Although his wife has permanent residency status in the U.S., she plans on applying for U.S. citizenship when she is eligible. He has worked for defense contractors for many years without adverse incident. Considering the extent of his ties to the U.S., I find Applicant is not vulnerable to pressure or duress through his relatives in Taiwan. I conclude the mitigating condition set out in ¶ E2.A2.1.3.1 of the Directive applies.

Under ¶ E2.A2.1.3.3. of the Directive, it may also be mitigating where "*[c]ontact and correspondence with foreign citizens are casual and infrequent.*" Applicant maintains regular contact with this mother and father. Thus, this mitigating condition does not apply to his relationships with them. Applicant has infrequent contact with his mother-in-law and his father-in-law in Taiwan. I conclude this mitigating condition applies to those relatives.

It is a mitigating condition if the immediate family members are not agents of a foreign power and are not in a position to be exploited by a foreign power in a way that could force the Applicant to choose between loyalty to the family members and loyalty to the U.S. Applicant's family members are not agents of a foreign power, and they are not in a vulnerable position. I find this mitigating condition in favor of Applicant. <sup>(7)</sup>

Paragraph E2.A2.1.3.5 of the Directive provides that security concerns arising from the ownership of property in a foreign country may be mitigated where the "*foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.*" Applicant's derives no financial or other benefits from his real estate interests in Taiwan nor does he participate in the management of the property. The value of the property is not minimal; however, his parents could divest him on any interest in those properties at any time. Applicant's real estate holdings in Taiwan have the potential to be a substantial financial interest but in actuality, this ownership may or may not occur. However, I find that the value of his assets in the U.S. far exceed the value of his assets in Taiwan. When the totals are added from his 401K in Australia, and his bank accounts and 401K in the U.S., his assets total approximately \$735,075. Add to that another \$24,000 per year for contributions to his 401K and at the end of 2005 his net worth should be about \$759,000 and this amount does not include any deposits that may be made during the year to his bank accounts. Therefore, I conclude this mitigating condition applies.

I considered carefully all the facts and circumstances in this case in light of the "whole person" concept. Applicant is a mature individual who has spent the majority of his adult life in the U.S. The personal, professional, and economic ties that bind him to the U.S. outweigh his connections with relatives and property interests in Taiwan. I conclude Applicant has mitigated any potential security concerns arising from his family ties and financial interests in Taiwan.

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1, Guideline B: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: For Applicant

Subparagraph 1.g: For Applicant

**DECISION**

In light of all of 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. Clearance is granted.

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Jacqueline T. Williams

Administrative Judge

1. Ex. 2 at 3.
2. Ex. 6 at 1.
3. Ex. 6 at 3-6.
4. Directive, ¶ E2.A2.1.1.
5. ISCR Case No. 02-02452 at 8 (App. Bd. Nov. 21, 2002).
6. ISCR Case No. 01-26893, 2002 DOHA LEXIS 505 at \*8 (App. Bd. Feb. 20, 2002).
7. *See* 50 U.S.C.A. § 1801(b).