

DATE: October 31, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-30223

DECISION OF ADMINISTRATIVE JUDGE

ROBERT J. TUIDER

APPEARANCES

FOR GOVERNMENT

Stephanie Hess, Esq., Department Counsel

FOR APPLICANT

Elizabeth L. Newman, Esq.

SYNOPSIS

Foreign influence concerns arose at the time Applicant's Statement of Reasons was prepared as a result of his mother having renounced her citizenship to accept and assume a position with the Taiwanese legislature. Since Applicant's hearing, his mother's term with the Taiwanese legislature has expired, she has returned permanently to the United States, and taken all possible steps to renew her United States citizenship. This concern is no longer applicable. Applicant also successfully mitigated a security concern about his inadvertent omission of foreign travel when he failed to list a vacation to Australia on his security clearance application. 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. On November 5, 2003, DOHA issued a Statement of Reasons (SOR) [\(1\)](#) detailing the basis for its decision-security concerns raised under Guideline B (Foreign Influence) and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on December 3, 2003 and elected to have a hearing before an administrative judge. The case was assigned to me on March 22, 2004. On May 10, 2004, DOHA issued a notice of hearing scheduling the case to be heard on June 11, 2004. That scheduled hearing was cancelled on June 8, 2004, and on August 6, 2004, DOHA issued a notice of hearing scheduling the case to be heard on September 14, 2004. The hearing was conducted as scheduled on that date to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

At the hearing, the Government presented eight exhibits, which were marked as Government Exhibits (GE) 1 through 8, without objection. Applicant presented five exhibits, which were marked as Applicant Exhibits (AE) A through E, without objection. At the request of Applicant, I left the record open until February 10, 2005. Applicant timely submitted three additional exhibits, which were marked AE F through H, without objection. DOHA received the transcript (Tr.) of the proceeding on September 21, 2004.

FINDINGS OF FACT

Applicant is a 27-year-old unmarried man, who was born and raised in the United States. He enrolled in a prestigious Midwestern university in September 1996 and graduated from that university with a bachelor of science degree in June 2001.

Since June 2001, Applicant has been employed as an engineer for a defense contractor. Additionally, in May 2004, Applicant was awarded a masters degree in computer science as a result of taking part-time classes while employed full time. Applicant currently holds an interim secret security clearance and seeks a permanent clearance in conjunction with his present employment.

Applicant's father immigrated to the United States from Taiwan in the early 1970s and became a United States citizen in 1976. His mother immigrated to the United States from Taiwan in 1977 and became a United States citizen in 1982. Tr.44-45, GE 1. Applicant's parents were married in Taiwan before immigrating to the United States. After moving to the United States, Applicant's parents had two sons. The Applicant was the first son born in 1978 followed by his brother in 1982. After Applicant's brother graduated from college, he found full-time employment in the banking industry.

During his working life, Applicant's father earned his living in the construction business assisted by Applicant's mother, who helped him with "paperwork." Tr. 57. In addition to assisting Applicant's father with his construction business, Applicant's mother also did volunteer work in the local Taiwanese community. Her volunteer work consisted of helping Taiwanese immigrants assimilate in the United States. As a result of her volunteer work, Applicant's mother became well-known in the Taiwanese community in the United States and in Taiwan.

The family construction business was struggling in 1996, the year Applicant was scheduled to begin his university studies. At this time in 1996, Applicant's mother was offered and accepted a position as a member of the Legislative Yuan in Taipei, Taiwan. She was required to renounce her United States citizenship before accepting this position, which she did in 1996. Her duties consisted primarily of assisting Taiwanese citizens traveling to and from the United States to adjust and assimilate in their new environment. As a member of the Legislature, she earned a monthly salary of approximately \$4,500.00, which she used in large part to support Applicant at university. Tr. 45-50, GE 2, AE D. Applicant visited his mother in Taiwan during the summer of 1997 for approximately six weeks. GE 2.

At the time the SOR was issued and on the date of hearing, Applicant's mother was still serving in the Taiwanese legislature. Her term was scheduled to expire on January 31, 2005, and was not to be renewed. Tr. 45-50, GE 2, AE E.

Applicant's father had filed for and received Immigration and Naturalization Service (INS) Form I-797C, Immigration Petition for Relative, Fiance(e), or Orphan, dated December 20, 2000, to allow Applicant's mother to return to the United States. AE C. His request was approved by the INS on August 29, 2001. AE B. All legal requirements have been met for Applicant's mother to legally return permanently to the United States.

Subsequent to the hearing, Applicant submitted a copy of a one way airline ticket from Taiwan to the United States for Applicant's mother. The date of travel on the ticket was February 5, 2005. On February 7, 2005, Applicant submitted a notarized statement signed by his mother dated February 5, 2005, that she had in fact returned to the United States permanently and stated, "I will apply to become a US citizen as soon as I'm eligible." AE H.

Expert testimony was also submitted by a former Assistant Under Secretary of Defense for Policy Planning , who is an expert on China/Taiwan politics and espionage. He provided an opinion as an expert regarding the potential for coercion of Applicant by the Taiwan Intelligence Service vis-a-vis his mother. He concluded that such a scenario in this case to "be a low level of probability for the Taiwan Intelligence service to seek to exploit [Applicant's] mother in order to coerce him." He explained: "The Taiwan Intelligence Service would have to face a considerable domestic political risk to approach [Applicant's] mother to ask her to coerce her son to commit espionage." AE F, AE A.

Applicant was cited in his SOR for falsifying his security clearance application, dated July 10, 2001, by failing to list all of his foreign travel, in particular, his failure to list his travel to Australia in December 1998. Applicant responded in his Answer to the SOR and testified at hearing that his failure to list his trip to Australia was an unintentional omission.

When Applicant was interviewed by the Defense Security Service (DSS), he advised that he traveled to Australia for a two-week vacation and reiterated his failure to list this travel on his security clearance application was not intentional and was an oversight. GE 2. Applicant credibly testified at his hearing that this omission was an oversight and unintentional. Tr. 22-24

All of Applicant's immediate family now resides in the United States. Applicant has no financial interest in Taiwan and all of his financial interests are within the United States.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

CONCLUSIONS

Guideline B-Foreign Influence

In the SOR, DOHA alleged Applicant's mother was a citizen resident of Taiwan, who had renounced her United States citizenship, and was holding a legislative position with the Taiwanese government. It was further alleged that Applicant had traveled to Taiwan during the summer of 1997, (SOR ¶¶ 1.a. through 1.d.). A security risk may exist when an Applicant's immediate family, or other persons to whom he 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. Directive ¶ E2.A2.1.1.

At the time of hearing, the Government established by substantial evidence and Applicant's admissions each of the allegations to the SOR. However, since the hearing, Applicant's mother has completed her term with the Taiwanese legislature effective January 31, 2005, has taken all possible steps to renew her United States citizenship, and has returned permanently to the United States.

Security clearance decisions are not an exact science. Instead, they are predictive judgments about an Applicant's security suitability in light of that person's past conduct and *present circumstances*. *Egan*, 484 U.S. at 528-29. Applicant is a loyal United States citizen, and has strong ties of affection or obligation to his immediate family members, all of whom now reside in the United States. At the time the SOR was issued, foreign influence concerns were present. Inasmuch as the underlying concerns no longer exist, no need to show extenuation and mitigation arises.

Also persuasive was the expert opinion and explanation offered by the Applicant, which concluded that it would be a low level risk for the Taiwanese intelligence services to exploit Applicant's mother in order to coerce him. Under the totality of circumstances, I find for Applicant.

Guideline E-Personal Conduct

In the SOR, DOHA alleged Applicant falsified material facts on his security clearance application dated July 10, 2001, by failing to list his travel to Australia in December 1998, (SOR ¶ 2.a). A security risk may exist by the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities. Directive ¶ E2.A5.1.2.2.

While Applicant could reasonably have been expected to be more diligent about ensuring his security clearance application was complete with regard to his foreign travel, his judgment lapses are not enough to impute knowing and willful falsification under Guideline E.

Applicant has been completely forthright to DSS, in his Response to SOR, and in his testimony at hearing. Applicant's explanations of his omissions due to oversight, his subsequent submission of this information, and credible testimony are persuasive enough to avert inferences of knowing and wilful omission. There being no misconduct substantiated, no need to show extenuation or mitigation arises. *Cf.* ISCR Case No. 02-13568 (February 13, 2004.).

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

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a.: 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.

Robert J. Tuider

Administrative Judge

1. Pursuant to Exec. Or. 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.