

DATE: May 27, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-30753

DECISION OF ADMINISTRATIVE JUDGE

JOHN GRATTAN METZ, JR.

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esquire, Department Counsel

Stephanie C. Hess, Esquire, Department Counsel

FOR APPLICANT

Kristen E. Ittig, Esquire

SYNOPSIS

The government's evidence did not establish that Applicant had immediate family members living in Taiwan. Alternatively, Applicant demonstrated that those family members were not agents of a foreign government or so situated as to provide a point of influence on Applicant. Clearance granted.

STATEMENT OF THE CASE

Applicant challenges the 25 February 2004 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of foreign influence. [\(U\)](#) Applicant answered the SOR on 5 March 2004 and 4 February 2004 and requested a hearing. DOHA assigned the case to me 15 July 2004 and I convened a hearing on 30 August 2004. DOHA received the transcript 18 September 2004.

FINDINGS OF FACT

Applicant admitted the allegations of the SOR; accordingly I incorporate those admissions as findings of fact. He is a 44-year-old senior technical specialist for a defense contractor seeking access to classified information. He has not previously held a clearance.

Applicant is a U.S. citizen, born, raised, and educated in the U.S. In 1995, while he was employed as a librarian at a local university, he met a young graduate student from Taiwan who had come to the U.S. in 1994 to attend school. They married in June 1997 and have two children, both native-born U.S. citizens. His wife became a naturalized U.S. citizen in January 2003.

Applicant's in-laws--mother, father, sister, brother--are all citizens and residents of Taiwan. Father is a herbal doctor; mother is his assistant and a housewife. Neither speak English. Applicant speaks enough Chinese to say "how are you."

His wife has telephone contact with her parents about twice a month.

Brother is a medical doctor who speaks very little English. Applicant has telephone contact with him about once a year. Sister is a school teacher who speaks better English. She is working on a master's degree. Applicant has bi-monthly telephone contact with her, some of which is to help her with her English grammar.

Applicant spent eight days in Taiwan in April 2000 to meet his in-laws. He's not been back since, and has no plans to return anytime soon. In 2001, his wife took their new-born son to Taiwan to meet her parents. Applicant's mother- and father-in-law spent a month visiting the U.S. in May 2001. His mother-in-law came for another month in 2003 to help take care of Applicant's second son.

Applicant's in-laws have no connection to the government of Taiwan and are not politically active in Taiwan.

Taiwan is a multiparty democracy, whose authorities generally respect the human rights of its citizens. There is no evidence in the record that the government of Taiwan targets U.S. intelligence information. Taiwan is an active collector of industrial information and does engage in industrial espionage. However, there is no evidence in the record that it seeks to exert pressure on its citizens to collect information from family members residing abroad.

Applicant's work references extol his work ethic and personal integrity. They recommend him for a clearance (A.E. A-E).

POLICIES

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guideline is Guideline B (Foreign Influence).

Burden of Proof

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government. ⁽²⁾

CONCLUSIONS

The government did not establish a Guideline B case. The plain language of the stated concerns and disqualifying factors of Guideline B may (or may not) raise concerns and may (or may not) be disqualifying. This implies that mere citizenship of, or residence in, a foreign country of an immediate family member does not automatically establish the disqualifying conditions precedent to shift the burden to Applicant to mitigate the government's case.

In this case, the evidence establishes that Applicant has no immediate family members living in Taiwan. His wife is a U.S. citizen, living in the U.S. His in-laws are not his immediate family members. Further, while it may make sense to

presume that his wife has close ties of affection or obligation to her parents and siblings, and even that he has close ties of affection or obligation to his wife, it does not make sense to impute her familial obligations to him--particularly where his contacts with his in-laws are casual and infrequent and burdened by language barriers. In addition, there is no evidence that Taiwan engages in collection activities that seek to exploit, coercively or otherwise, family members of Taiwan citizens such as Applicant's in-laws to obtain information from overseas.

Even if I concluded that the government established a Guideline B case, Applicant's mitigation is established. None of his in-laws is connected to the government of Taiwan, none is an agent of the government of Taiwan, and--given Taiwan's general respect for the human rights of its citizens--none is positioned to be exploited in such a way as to influence Applicant to disclose classified information. Under these circumstances, I conclude that it is unlikely Applicant can be pressured based on his in-laws living in Taiwan. I resolve Guideline B for Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline B: FOR THE APPLICANT

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: For the Applicant

Subparagraph d: For the Applicant

Subparagraph e: 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 Applicant.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).
2. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).