

DATE: January 27, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-31154

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL J. BRESLIN

APPEARANCES

FOR GOVERNMENT

Braden M. Murphy, Esq., Department Counsel

FOR APPLICANT

John F. Mardula, Esq.

SYNOPSIS

Applicant is a 41-year-old naturalized citizen of the United States, working as an aerospace engineer for a defense contractor. He was born in Taiwan and obtained his B.S. and M.S. degrees there. He completed two years compulsory military service as an instructor at a military high school. He came to the U.S. in 1989 to attend a prominent university, where he obtained his Ph.D. He has worked for defense contractors since 1993, and became a naturalized U.S. citizen in 2001. Applicant renounced his Taiwanese citizenship, returned his passport, and eliminated most of his financial holdings in Taiwan. His father, two brothers, and a sister-in-law live in Taiwan permanently, and his wife's parents live there part of each year. His extensive personal, professional, and economic ties to the United States mitigate possible security concerns. Clearance is granted.

STATEMENT OF THE CASE

On December 12, 2001, Applicant submitted a security clearance application. 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 January 28, 2004, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under Guideline B, Foreign Influence, and Guideline C, Foreign Preference, of the Directive.

Applicant answered the SOR in writing on March 24, 2004. He elected to have a hearing before an administrative judge.

The case was assigned to me on September 7, 2004. With the concurrence of the parties, I conducted the hearing on October 20, 2004. The government presented five exhibits. Applicant's counsel introduced nine exhibits, the testimony of two witnesses, and Applicant's testimony on his own behalf. DOHA received the transcript (Tr.) on October 28, 2004.

FINDINGS OF FACT

Applicant admitted the allegations, in part, and offered mitigating circumstances. Answer to SOR, dated March 24, 2004. *Id.* 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 additional findings of fact:

Applicant is 41 years old. Ex. 1 at 1. He was born in Taiwan (The Republic of China) and grew up in that country. *Id.* He attended a university in Taiwan and obtained a Bachelor of Science degree in 1985 and a Masters of Science degree in 1987. Tr. at 21.

Applicant served in the military forces of Taiwan for two years between 1987 and 1989, pursuant to Taiwan's compulsory service requirement. Tr. at 39. He was a Second Lieutenant, and worked as an instructor at a military high school teaching mechanical drawing, physics, and mathematics. Tr. at 40.

Applicant came to the United States in about 1989. *Id.* He attended a prominent U.S. university between 1989 and 1992 on a scholarship, and earned his doctoral (Ph.D) degree in aerospace engineering. Ex. 1 at 2; Tr. at 43.

Between about 1993 and 1998, Applicant worked as a researcher for a defense contractor, providing services to the U.S. Air Force at a major military installation. Tr. at 22; Ex. 1 at 3. He then served for three years as a senior principal engineer for a company manufacturing rockets for a U.S. space agency. Tr. at 22; Ex. 1 at 3. Between about 2000 and 2001, he was a senior project engineer for two major defense contractors. Ex. 1 at 3. Applicant has not held a security clearance. Tr. at 43; Ex. 1 at 9. However, he has handled sensitive information related to the International Traffic in Arms Regulations without adverse incident. Tr. at 44.

In 2001, Applicant began working for his present employer as a principal staff engineer, designing, analyzing, and testing various rocket and missile systems. Tr. at 21. Applicant's supervisors described him as a careful, meticulous person with sound judgment, who abides by the company's rules and regulations. Tr. at 62-63; 72; Ex. G; Ex. H.

Applicant traveled to Taiwan to visit his family on several occasions, specifically January 1995, October 1996, February 2000, and January 2001. Tr. at 27; Ex. 1 at 6-7. He was then a citizen of Taiwan and traveled on his Taiwanese passport. Tr. at 27.

Applicant became a U.S. citizen in May 2001. Tr. at 26; Ex. 1 at 1. He applied for a security clearance in December 2001. Ex. 1 at 1. Since becoming a U.S. citizen, Applicant used only his U.S. passport to travel abroad. Tr. at 26; Ex. 2; Ex. E. In April 2004, Applicant renounced his Taiwanese citizenship and turned in his passport. Tr. at 27; Ex. A.

Applicant has relatives living in Taiwan. None of Applicant's relatives were ever engaged in gathering intelligence for any government. Tr. at 30-31.

Applicant's 68-year-old father lives in Taiwan. Tr. at 28. He was a human resources manager for a private company, but is now retired. *Id.* He currently manages some properties in Taiwan and cares for his wife, who is ill. *Id.* Applicant speaks to his father by telephone about once every two or three months. *Id.*

Applicant has two brothers living in Taiwan. Tr. at 29. One of Applicant's brothers is a professor of engineering for a major university in Taiwan. *Id.* He also serves as a structural engineer for a private company in Taiwan that works on government contracts involving unclassified aviation projects. *Id.* at 29-30.

Applicant's second brother in Taiwan is a psychiatrist at a government hospital. *Id.* at 30. His practice is devoted to the treatment of the mentally ill. *Id.*

Applicant was married in the United States in 1992. Ex. 1 at 4. His wife was also born in Taiwan but is now a naturalized citizen of the United States. *Id.* Applicant's wife is an actuary for the Department of Defense. Tr. at 25. Applicant has a 6-year-old son, born in the United States. Tr. at 24-25.

Applicant's wife has a brother who is a computer engineer. Tr. at 32. He is also a naturalized citizen and resident of the United States. *Id.*

Applicant's wife has relatives who live in Taiwan all or part of the time. Applicant's father-in-law is a retired physician. Tr. at 31. He is a citizen of Taiwan. *Id.*; Ex. 1 at 5. For part of the year, he lives in the United States with Applicant's brother-in-law. Tr. at 31. He also spends part of the year living in Taiwan. *Id.*

Applicant's mother-in-law was a high school teacher in Taiwan but is now retired. Tr. at 32. She has resident alien status in this country and spends eight or nine months of each year living with Applicant and his family in the U.S. *Id.* The remaining time she lives in Taiwan.

Applicant's wife has a sister who lives in Taiwan. Tr. at 33. She and her husband, a U.S. citizen, operate a private tutoring business in Taiwan. *Id.* They plan to return to the United States one day. Applicant and his wife see them when they visit Taiwan. Tr. at 56.

Applicant has had property interests in Taiwan. For a time, he maintained a bank account in Taiwan with about \$1,200.00 in funds. Tr. at 35. He and his wife kept the account for their personal convenience while visiting Taiwan. Tr. at 48. Applicant later closed the account. *Id.*; Ex. B. Applicant's mother passed away in 1985, and left him shares of stock in a Taiwanese company. Tr. at 35. Applicant sold the stock. *Id.*

Applicant's mother left a home in Taiwan to Applicant and his younger brother, in equal shares. *Id.* Later, the home was demolished and replaced by an apartment complex. Tr. at 37. Applicant now owns an undivided one-half interest in three units in an apartment complex; his interest is valued at about \$130,000.00. *Id.*; Tr. at 49. Applicant gave his father a power of attorney to manage the property for him. Applicant takes no role in running the building and receives no rent. Tr. at 37-38. Applicant tried to sell his interest in the building, but his relatives were not in a position to buy him out. Tr. at 38. Applicant calculates his share of the building is about 13 percent of his net worth. *Id.*

Applicant has substantial assets in the United States, including a home, bank accounts, and investments. Tr. at 46. In March 2004, Applicant returned to Taiwan to resolve personal and property issues and obtain documents necessary to formally relinquish his Taiwanese citizenship. Tr. at 50. He traveled on his U.S. passport. Tr. at 26.

Taiwan is a democracy with a long history of friendly relations with the United States, including economic, political, cultural, and social ties. Ex. 3 at 1. The United States and Taiwan share military defensive commitments and substantial levels of foreign trade. Ex. 3 at 3-4, 6, 7; Ex. F. The National Counterintelligence Executive Office's Annual Report to Congress on Foreign Economic Collection and Industrial Espionage for 2000 includes a summary of a survey of a dozen Fortune 500 companies that indicated Taiwan is one of the most active collectors of foreign economic information or industrial espionage. Ex. 4 at 15.

POLICIES

In Executive Order 12968, *Access to Classified Information*, § 3.1(b) (August 4, 1995), the President provided that eligibility for access to classified information shall be granted only 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." A person granted access to classified information enters into a special relationship with the government. 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. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. Exec. Ord. 10865, § 7. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are:

Guideline B, Foreign Influence: A security risk may exist when an individual's immediate family, including cohabitants, 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. 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. Directive, ¶ E2.A2.1.1.

Guideline C, Foreign Preference: When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States. Directive, ¶ E2.A3.1.1.

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.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." Directive, ¶ E2.2.1. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. *Id.* An administrative judge should consider the following factors: (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. *Id.*

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. Directive, ¶ E3.1.14. Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. 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 (App. Bd. Dec. 19, 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2.

CONCLUSIONS

I considered carefully all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Guideline C, Foreign Preference

The Directive sets out circumstances that could indicate a disqualifying foreign preference. Directive, ¶ E2.A3.1.2. Under ¶ E2.A3.1.2.1, "[t]he exercise of dual citizenship" may be disqualifying. Applicant became a citizen of the United States in May 2001, but did not formally renounce his Taiwanese citizenship until 2004. There is no evidence, however, indicating that Applicant exercised his rights of dual citizenship after becoming a U.S. citizen, such as using his Taiwanese passport or voting in an election in Taiwan. I find this potentially disqualifying condition does not apply.

Paragraph E2.A3.1.2.2 of the Directive indicates that the "[p]ossession and/or use of a foreign passport" may show a potentially disqualifying foreign preference. In this case, Applicant possessed his Taiwanese passport after becoming a U.S. citizen, even though he did not use it. I find that this potentially disqualifying condition applies.

The Directive also provides that "military service" for a foreign country may raise security issues. Directive, ¶ E2.A3.1.2.3. Here, Applicant was a second lieutenant for two years, as part of Taiwan's compulsory service requirement. This raises the possibility of security concerns.

The Directive also sets out conditions that could mitigate security concerns related to foreign preference. Under ¶ E2.A3.1.3.1, it may be mitigating where "[d]ual citizenship is based solely on parents' citizenship or birth in a foreign country." Applicant became a citizen of Taiwan because of his birth in that country. I conclude this potentially mitigating condition applies.

Under ¶ E2.A3.1.3.2 of the Directive, it may be mitigating where "[i]ndicators of possible foreign preference (e.g., foreign military service) occurred before obtaining United States citizenship." Applicant's military service in Taiwan occurred before he became a U.S. citizen. The service was required by the law of Taiwan, it was relatively brief, and it did not involve intelligence gathering functions. I find this mitigating condition applies.

It may also be mitigating where the activity in question is "sanctioned by the United States." Directive, ¶ E2.A3.1.3.3. The law of the United States does not prohibit a U.S. citizen from holding a foreign passport; however, recognizing that it is lawful is not the same as sanctioning the practice. Here, the United States did not direct, request, or require Applicant to keep his foreign passport. I conclude this mitigating condition does not apply.

Finally, it may be mitigating where an "[i]ndividual has expressed a willingness to renounce dual citizenship." Applicant renounced his Taiwanese citizenship unequivocally and returned his passport to that country. Ex. A. Moreover, he has chosen to live in the United States for the greater part of his adult life, his wife and son are U.S. citizens, he and his wife have risen to positions of responsibility in their career fields, and he has most of his financial assets here. I conclude this mitigating condition applies.

I carefully considered all the potentially disqualifying and mitigating conditions in light of the "whole person" concept. I conclude that Applicant has mitigated the security concerns arising from his possession of a foreign passport.

Guideline B, 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. Applicant has immediate family members-his father and two brothers-who are citizens and residents of Taiwan. Additionally, Applicant's mother-in-law, father-in-law, and sister-in law are persons with whom he has close bonds of affection. Applicant maintains regular contact with his father, his younger brother, his mother-in-law and his father-in-law. These circumstances "could create the potential for foreign influence that could result in the compromise of classified information." Directive, ¶ E2.A2.1.1. While the

mere possession of family ties with persons in a foreign country is not, as a matter of law, automatically disqualifying . . . [it] does raise a prima facie security concern sufficient to require an applicant to present evidence of rebuttal, extenuation or mitigation sufficient to meet the applicant's burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for the applicant.

ISCR Case No. 99-0424, 2001 DOHA LEXIS 59 at **33-34 (App. Bd. Feb. 8, 2001). I conclude this potentially disqualifying condition applies.

Similarly, it may be disqualifying where an applicant "shar[es] living quarters with a person . . . if the potential for adverse foreign influence or duress exists." Directive, ¶ E2.A2.1.2.2. As noted above, Applicant's mother-in-law lives with Applicant's family for a portion of each year. She is a retired high school teacher, with no continuing connection to the Taiwanese government other than her pension. She is a citizen of Taiwan, but holds a "green card" allowing her to reside in the U.S. The fact that Applicant's mother-in-law resides in the U.S. for a substantial part of each year greatly reduces the possibility a foreign power could improperly influence or exert pressure upon her. However, Applicant's mother-in-law has a daughter who is also a citizen and resident of Taiwan. Under the circumstances, I find this potentially disqualifying condition applies.

Under ¶ E2.A2.1.2.3 of the Directive, it may be disqualifying where, "[r]elatives . . . are connected with any foreign government." One of Applicant's brothers works for a private company that performs contract work for the government of Taiwan. Applicant's mother-in-law receives a retirement as a former school teacher. I am not persuaded that this relationship is sufficient to constitute a "connection" to a foreign government. I find this potentially disqualifying condition does not apply.

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 regular income from his real estate holdings, he does not participate in the management of the property, and he cannot liquidate the asset at present. Nonetheless, considering its value, I find Applicant's real estate holding in Taiwan is a substantial financial interest. I conclude this potentially disqualifying condition applies.

Under the Directive, the security concerns arising from possible foreign influence may be mitigated under certain circumstances. These security concerns may not be disqualifying where it is determined that "the immediate family members . . . 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 involved and the United States." Directive, ¶ E2.A2.1.3.1. None of Applicant's relatives are employees or officers of the government. There is no evidence indicating any one of them is an "agent of a foreign power." *See* 50 U.S.C.A. § 1801(b).

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 United States. 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 United States is limited.

It is important to consider the vulnerability to duress of Applicant's relatives in Taiwan. As noted above, Applicant's relatives in Taiwan are not and have never been employees of the Taiwanese government. His father is retired from a private company, and does not draw a government pension. Applicant's father and brothers have the educational backgrounds and job skills to be financially secure and independent. Applicant's mother-in-law and father-in-law are retired and reside in the United States during a substantial portion of each year, minimizing their vulnerability. Applicant's sister-in-law operates a private business. Under these circumstances, Applicant's relatives in Taiwan are not especially vulnerable to adverse influence by a "foreign power."

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 father, his younger brother, his mother-in-law and his father-in-law. 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 United States. Applicant has now lived here most of his adult life, his spouse and child are citizens and residents of the U.S., his professional standing is with U.S. firms, and most of his financial interests are in the United States. He has worked for defense contractors for many years and was previously granted access to controlled material without adverse incident. Considering the extent of his ties to the United States, 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 his father, his younger brother, and his mother-in-law. Thus, this mitigating condition does not apply to his relationships with them. Applicant has not seen his older brother or his sister-in-law in Taiwan for several years, and does not maintain regular contact. I conclude this mitigating condition applies to those relatives.

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 "[f]oreign financial interests are minimal and not sufficient to affect the individual's security responsibilities." Applicant's undivided interest in several units of an apartment complex represents a fraction of his net worth. He has no control over the management of the property, nor does he receive any proceeds. I find this financial interest is not sufficient to affect Applicant's security responsibilities. However, the value of the property is not minimal. Therefore, I conclude this mitigating condition does not apply.

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 United States. The personal, professional, and economic ties that bind him to the United States far outweigh his connections with relatives and property in Taiwan. I

conclude Applicant has mitigated any potential security concerns arising from Applicant's family ties and financial interests in Taiwan.

FORMAL FINDINGS

My conclusions as to each allegation in the SOR are:

Paragraph 1, Guideline C: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Paragraph 2, Guideline B: FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For Applicant

Subparagraph 2.c: For Applicant

Subparagraph 2.d: For Applicant

Subparagraph 2.e: For Applicant

Subparagraph 2.f: For Applicant

Subparagraph 2.g: For Applicant

Subparagraph 2.h: For Applicant

Subparagraph 2.i: 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.

Michael J. Breslin

Administrative Judge