

DATE: December 20, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-31346

**ECISION OF ADMINISTRATIVE JUDGE**

**KATHRYN MOEN BRAEMAN**

**APPEARANCES**

**FOR GOVERNMENT**

Marc E. Curry, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant mitigated security concerns over foreign influence raised because his parents and brother are citizens of Taiwan (Republic of China). It is improbable that foreign pressure on his parents or brother (who have no ties to the Government of Taiwan) would create a situation that could result in the compromise of classified information as Applicant attests he would report any attempt to his security officer. Given the large proportion of his assets in the U.S. where he lives with his wife and three children, his assets in Taiwan are not sufficient to raise security concerns. Clearance is granted.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on November 14, 2003. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. <sup>(1)</sup> The SOR alleges specific concerns over foreign influence (Guideline B) in paragraph 1. Applicant replied to the SOR allegations in an Answer notarized on November 26, 2003, and requested a decision without a hearing.

The case was assigned to Department Counsel prepared a File of Relevant Material (FORM) on March 31, 2004, which was forwarded to Applicant. He received it on April 5, 2004, and submitted the response (Exhibit A) on April 26, 2004, within the thirty day deadline. Department Counsel indicated that he had no objection to Applicant's submission, Exhibit A. On May 10, 2004, the FORM was assigned to me.

**FINDINGS OF FACT**

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following additional Findings of Fact:

Applicant, a 46-year-old employee, began working for a defense contractor (Employer #1) in State #1 in December 1988. In April 2002 he completed a Security Clearance Application (Standard Form 86) and requested a security clearance which he needs for the position. (Exhibits 4, 5) He attended college and graduate school in Taiwan. He served in the Taiwanese Army from 1982 to 1984 as required by law. (Exhibits 4, 5)

Applicant immigrated to the U.S. in August 1984 on a student visa in order to do graduate work. He received a Ph.D. degree in electrical engineering in December 1988 from a university in State #2. (Exhibits 4, 5)

Applicant married a naturalized U.S. citizen in October 1989, so he was able to apply for permanent resident status through her. He became a naturalized U.S. citizen in September 1993 and was issued a U.S. passport in October 1993. Although he had a valid Taiwanese passport, he did not use it after he became a U.S. citizen. His Taiwanese passport expired in 1997; and he never renewed it. (Answer; Exhibits 4, 5) He and his wife have three children born in 1995, 1997, and 2002. (Exhibit 4)

### **Foreign Influence**

When Applicant completed his SF 86 forms, he disclosed that his parents and brother are citizens of Taiwan and reside in Taiwan. His parents visit Applicant here once every two years and stay two to four weeks. Their last visit was in 1998. He has monthly telephone contact with them. His brother only visited him once in the U.S. in 1996 for ten days. He has telephone contact with him once every three months. (Exhibits 4, 5) Applicant's parents are retired teachers with no ties to the Government of Taiwan; his brother is a manager in a private company with no ties to the Government. All are financially self-sufficient. (Exhibit A)

Applicant has a co-worker who he met in the U.S. who now resides in Taiwan; in 2002 they were in contact with each other weekly through e-mail. (Exhibit 5) In November 2003 Applicant reported that his friend has new assignments, and he no longer has e-mail contact with this co-worker. (Answer)

Applicant owns an apartment in Taiwan which he estimates is worth approximately \$200,000; but he has never had the property appraised. His parents purchased the property when he was 14 and put the apartment in his name to avoid future inheritance taxes. His parents rent out the property and receive the income earned from it. He has never paid for the property or contributed to the purchase of it. He never resided at the property or used it while visiting Taiwan. His U.S. assets far exceed the value of the apartment in Taiwan. His assets totaled approximately \$567,000 in August 2002. (Exhibits 4, 5) In April 2004 Applicant reported that his assets in the U.S. have increased substantially, so that the Taiwanese property in his name is less than 25% of his total assets. (Exhibit A)

Applicant has traveled for business and personal reasons. His company paid for all of his business travel; and he paid for all of his personal travel. Any business contacts remain contacts solely for business purposes. He traveled on business to Israel in 1995 and 1996. He traveled on business to Japan in 1996 and 1997. He took a personal trip to the Bahamas in 1996. He went on business to Australia in 1998 and to Canada in 1995, 1997, 2000 and 2002. He traveled to Hong Kong and Taiwan in 2000 for business and personal reasons; he traveled to Taiwan in February 2001 for a family funeral and took his children to meet family members. Applicant took two personal trips to China in October/November 1999 and December 2000 on "mission trips" with his church to help Christian churches in China.. (Exhibits 4, 5; Answer) Since 2000 Applicant has not returned to China and has not been involved in any evangelical church activities related to China. He has no plans to participate in such activities in China again. (Exhibit A)

Applicant attested that he could not be blackmailed or coerced into revealing classified information because of his relatives residing outside the U.S. His loyalty lies only with the U.S.; he does not have any loyalty to Taiwan or to the PRC. If anyone ever attempted to coerce him to reveal classified information, he would report the incident immediately to his security officer. (Exhibit 5) Applicant asserts that Taiwan is a democratic society which has had friendly relations with the U.S. for more than half a century. (Exhibits I, II; Answer; Exhibit A)

### **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions

that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below :

### **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: (1) not citizens of the United States or (2) 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.**

#### **Conditions that could raise a security concern and may be disqualifying include:**

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;
3. Relatives, cohabitants, or associates who are connected with any foreign government;
8. A substantial financial interest in a country, or in any foreign-owned or -operated business that could make the individual vulnerable to foreign influence.

#### **Conditions that could mitigate security concerns include:**

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;
3. Contact and correspondence with foreign citizens are casual and infrequent;
5. Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

## **CONCLUSIONS**

### **Foreign Influence**

Applicant has mitigated the Government's security concerns over possible foreign influence raised by Applicant's close ties of affection to citizens of a foreign country. The security concern under Guideline B, Foreign Influence, is that a security risk may exist when an individual's immediate family. . . and other persons to whom he may be bound by affection, influence, or obligation are: (1) not citizens of the United States, (3) or have relatives who are connected with any foreign government who may be subject to duress, or (8) a substantial financial interest in a country . . . that could make the individual vulnerable to foreign influence.

While I have considered these concerns, I conclude Applicant has presented evidence to meet the burden <sup>(2)</sup> those circumstances presents. These security concerns are mitigated by the fact that Applicant's only family ties to Taiwan are his elderly parents and his brother who have no ties to the government. He no longer has any ties to the co-worker based in Taiwan. Thus, any risk of foreign duress or influence on Applicant and/or his immediate family would appear to be slight and clearly manageable. Moreover, Applicant made evident that at any hint of any coercion or pressure on himself or his family, he would immediately report such coercion to the corporate security officer. Thus, I find there is no substantial likelihood that he would be subject to duress merely because of these family ties. While he traveled for personal and business reasons, that business and personal travel solely does not raise a security concern. Although his evangelical trips to China posed some risk, he stated he will no longer make any further evangelical trips to China as he understands they might create potential problems. Further, his assets in Taiwan proportionally are modest vis a vis his U.S. assets. As his investment there constitutes only 25% of his U.S. assets, I conclude that portion does not raise a concern as under MC 5 it is not sufficient to affect his security responsibilities.

Security clearance decisions are predictive judgments about an applicant's security eligibility in light of the applicant's past conduct and present circumstances. *Department of Navy v. Egan*, 484 U.S. 518, 528-29 (1988). Contacts with citizens of other countries are relevant to security determinations only if they make an individual potentially vulnerable to coercion, exploitation, or pressure through threats against those foreign relatives. Acts indicative of foreign influence warrant careful scrutiny. After considering the Adjudicative Process factors and the Adjudicative Guidelines, I conclude these ties are not of such a nature as to create any tangible risks of undue pressure on Applicant, so foreign influence security concerns are mitigated. Thus, I resolve SOR paragraph 1 and subparagraphs 1.a. through 1.e. in Applicant's favor.

### **FORMAL FINDINGS**

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

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

### **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.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.
2. The Government presented no evidence of the hostile nature of the relationship between the U.S. and Taiwan. The Appeal Board in ISCR Case No. 01-26893 issued on October 16, 2002, outlined a standard that when there is hostility between a foreign government and the U.S. this circumstance places "a very heavy burden on Applicant " to show that family ties there do not pose a security risk.

