

DATE: February 28, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-32186

## **DECISION OF ADMINISTRATIVE JUDGE**

**ROBERT J. TUIDER**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Jennifer I. Campbell, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro se*

### **SYNOPSIS**

Applicant applied for a Taiwanese passport to assist his daughter in obtaining a Taiwanese passport for her to legally work as an architecture intern in Taiwan. This act raised a foreign preference security concern. Applicant has successfully mitigated the concern by promptly surrendering his Taiwanese passport after being made aware of Department of Defense concerns. Additionally, Applicant has worked in and made significant contributions in the defense industry for the past 36 years, has held a security clearance for 35 years without incident, and has been a loyal United States citizen for 32 years. In short, the totality of the circumstances do not pose an unacceptable risk or concern of foreign preference. 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 October 3, 2003, DOHA issued a Statement of Reasons (SOR) [\(U\)](#) detailing the basis for its decision-security concerns raised under Guideline C (Foreign Preference) of the Directive. Applicant answered the SOR in writing on October 22, 2003 and elected to have a hearing before an administrative judge. The case was assigned to me on February 20, 2004. On April 9, 2004, I convened a hearing by video-teleconference 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 five exhibits, which were marked as Government Exhibits (GE) 1 through 5, without objection. Applicant presented three exhibits, which were marked as Applicant Exhibits (AE) A through C, without objection. DOHA received the transcript (Tr.) of the proceeding on April 20, 2004. I left the record open after the hearing to afford Applicant the opportunity to submit additional documents. The Applicant timely submitted one additional document, which was admitted without objection as AE D.

### **FINDINGS OF FACT**

Applicant is a 72-year-old married man with two adult children. He was born in the People's Republic of China (China), moved to the Republic of China (Taiwan) when he was approximately 16 years old and emigrated to the United States in 1961 when he was approximately 29 years old. In August 1968, he was awarded PhD. in aerospace engineering at a prestigious university. In September 1968, he was hired by his current employer, a defense contractor, and has been employed at the same company for the past 36 years. He currently holds the position of "Fellow."

Applicant's immediate family, to include his mother and father, mother-in-law, father-in-law, two brothers, three sisters, and spouse where all born in Taiwan and all emigrated to the United States and became naturalized United States citizens. Applicant's parents and in-laws are deceased. His two children were born in the United States and are United States citizens by birth. His son is a 33-year-old physician specializing in nephrology and his daughter is a 32-year-old architect.

Applicant has held a secret security clearance since May 1969, a period of 35 years. He planned to retire six years ago, however, his employer persuaded him to remain because of his expertise and value to the company.

In July 1956, Applicant "cancelled" his residency registration in Taiwan renouncing his right to reside in Taiwan. Answer to SOR. When Applicant became a United States citizen in November 1972, he formally renounced his Taiwanese citizenship. Answer to SOR.

In May 1995, Applicant applied for and received a Taiwanese passport.<sup>(2)</sup> He obtained this passport based on a Taiwanese statute that permits former Taiwanese resident citizens to receive Taiwanese passports. This passport states, "Holder of this passport is a naturalized American citizen." Answer to SOR. Applicant obtained this passport for the sole purpose of assisting his daughter obtain an "Overseas Chinese" Taiwanese passport in order for her to work as an intern at an architecture firm in Taiwan. Answer to SOR.

Based on Applicant's research, parents holding Taiwanese passports can assist their children in obtaining a Taiwanese passport for the purpose of working legally in Taiwan. Upon completion of her internship in Taiwan, Applicant's daughter returned to the United States in 1996.

Applicant's Taiwanese passport expired in May 2001.<sup>(3)</sup> He had no further use for his Taiwanese passport once he had achieved his goal of assisting his daughter obtain an internship in Taiwan. Furthermore, Applicant never used his Taiwanese passport, but did use his United States passport when traveling abroad. Applicant did not renew his Taiwanese passport when it expired four years ago.

Applicant is a loyal, dedicated and, and devoted parent, who supported his children as they were growing up, to include helping them with their homework. Furthermore, his performance evaluations reflect a career of outstanding and above average work performance and years of extraordinary contributions to the defense industry. He is also the recipient of numerous personal awards. AE A, B, and D. He has a demonstrated history of being a trusted and valued employee with no security breaches during the 35 years he has held a clearance.

Applicant and his wife own a home and two rental property in the United States. Applicant estimates his three properties are worth approximately \$2,000,000.00. He is registered to vote, maintains bank accounts in the United States, and exercises all rights of citizenship. Applicant expressed great affection and loyalty for the United States.

## POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they are to be applied by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, administrative judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must have a nexus to an Applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

### **BURDEN OF PROOF**

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." 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." Executive Order 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.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has the ultimate burden of establishing his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). "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 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, 484 U.S. at 531. Doubts are to be resolved against the applicant.

### **CONCLUSIONS**

Upon considering of all the facts in evidence, and after applying all appropriate legal precepts, factors, and conditions, including those described above, I conclude the following with respect to the allegations set forth in the SOR:

The government has established its case, in part, under Guideline C. Applicant's possession of a Taiwanese passport raised a foreign preference concern. The concern as noted in Directive E2.A3.1.1. states: *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.*

The circumstances surrounding Applicant's foreign preference concerns are somewhat unique. What this case essentially comes down to is a father attempting to assist his daughter further her professional career. It was abundantly clear from the evidence presented that Applicant is very dedicated and loyal to his family, profession, and the United States. By virtue of being a Chinese born naturalized United States citizen, Applicant obtained a Taiwanese passport for the sole purpose in assisting his daughter, a United States born citizen, to obtain an "Overseas Chinese" passport in order for her to work as an architecture intern in Taiwan. Applicant's Taiwanese passport was issued in May 1995 and expired in May 2001. Applicant never used his Taiwanese passport and used his United States passport when traveling abroad.

Applicant contends the process of obtaining and possessing a Taiwanese passport did not make him a dual citizen of Taiwan nor did he consider his actions an exercise dual citizenship. He bases this belief on the limited purpose for which he applied for and received his Taiwanese passport and his understanding of Taiwanese and United States law.

Such factors trigger Foreign Preference Disqualifying Condition (FC DC) E2.A3.1.2.1. (*The exercise of dual citizenship*); and FC DC E2.A3.1.2.2. (*Possession and/or use of a foreign passport*).

After being apprised of the Money Memo contents, Applicant immediately surrendered his Taiwanese passport to DOHA. Unfortunately for Applicant, DOHA is not the proper agency to surrender his Taiwanese passport. Applicant credibly testified he misunderstood the Money Memo to require him to surrender his passport to the "government." During the hearing, this misunderstanding was cleared up and Applicant now understands he must surrender his passport to the Taiwanese authorities. Tr. 35-37. His passport was returned to him to accomplish this. His prompt and definitive action taken once apprised of Department of Defense concerns in this regard are viewed as appropriate corrective action. Applicable Foreign Preference Mitigating Condition (FP MC) include full compliance with the Money Memo. Allegations 1.a. through 1.c. are concluded for Applicant.

Applicant's ties and connections to the United States are substantial and deserving of consideration in mitigation. Applicant has been a loyal and valuable employee of his defense contractor employer for 36 years, has held a security clearance for 35 years without incident, and has been a loyal United States citizen for 32 years. His immediate family are either naturalized or native born United States citizens. Since arriving in the United States, his entire life has been centered in the United States to include raising his two children, who are responsible and successful professionals. He acquired substantial real estate holdings worth approximately \$2,000,000.00, and exercises all rights of United States citizenship.

In summary, the record evidence demonstrates Applicant has all the indicators of an industrious, mature, responsible, and trustworthy individual. After weighing the record evidence as a whole, it is my commonsense determination that the facts and circumstances show Applicant has mitigated any foreign preference concerns. In reaching my decision, I have considered the whole-person concept and the appropriate factors and guidelines in the Directive. And, I have weighed the record evidence as a whole, and conclude the favorable evidence outweighs the unfavorable evidence. Under the totality of the facts and circumstances, I conclude Applicant has met his burden.

### **FORMAL FINDINGS**

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

Paragraph 1. Guideline C: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: 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.

2. Assistant Secretary of Defense Memorandum for Secretaries of the Military Departments, et al, Subject: Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Adjudicative

Guidelines, dated August 16, 2002. The Memorandum is commonly referred to as the "Money Memo." Pertinent portion of the Money Memo states, "Therefore, consistent application of the guideline requires that any clearance be denied or revoked unless the applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United States government."

3. Applicant surrendered his Taiwanese passport to DOHA in his Answer to SOR. As DOHA is not the appropriate agency for Applicant to surrender his passport, it was returned to him for the purpose of surrendering it to the Taiwanese authorities. Tr.35-37.