

DATE: December 23, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-11629

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant and his wife are naturalized United States citizens. Their three children were born and raised in the United States. Applicant's only loyalty is to the United States. His father and four siblings still residing in Taiwan have no connection with the Taiwanese government, and they are not in a position to be exploited by Taiwan in a way that could force applicant to choose between his loyalty to these family members and his loyalty to the United States. Clearance is granted.

STATEMENT OF THE CASE

On June 13, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR in writing on July 10, 2003, and elected to have his case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's written case (FORM) on or about September 15, 2003. Applicant filed a response to the FORM on October 3, 2003. The case was assigned to me on October 27, 2003.

FINDINGS OF FACT

Applicant is 57 years of age. He is employed as an engineer by a defense contractor.

Applicant was born and raised in Taiwan. After earning an undergraduate degree at a Taiwanese university, he served his one year of mandatory service in the Taiwanese military. In 1970, following his completion of military service, he moved to the United States to attend graduate school. In 1976, he earned his PhD and began working for a defense contractor. Applicant became a United States citizens in 1984. Although Taiwan may still consider him a citizen,

applicant does not claim to be a dual citizen. He is willing to renounce his Taiwanese citizenship. His only loyalty is to the United States.

Applicant's wife was born in Taiwan. He met her while they were both attending school in the United States. She is now a United States citizen. Applicant's three children were born and raised in the United States.

Applicant's father, who is in his nineties, and four of applicant's siblings are citizens and residents of Taiwan. None has a connection to the Taiwanese government or military. Two of applicant's siblings are United States citizens, and at least one of them resides in the United States.

In a signed, sworn statement that he gave to the Defense Security Service in 2002, applicant stated that if he were approached "for possible espionage purposes" he would immediately report the contact to his security department.

Applicant had a Taiwanese passport, which he renewed in 1998. He used it on two occasions to visit Taiwan. He surrendered it to Taiwanese authorities in September 2003 after receiving the Money memorandum.

Since moving to the United States, applicant has visited Taiwan on a yearly basis to see his family.

POLICIES

Enclosure 2 of the Directive sets forth Guidelines (divided into Conditions that could raise a security concern and conditions that could mitigate security concerns) which must be followed by the Administrative Judge. Based on the foregoing Findings of Fact, the following Disqualifying Factors and Mitigating Factors are applicable:

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 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.

Conditions that could raise a security concern:

E2.A2.1.2.1: An immediate family member is a citizen or resident of a foreign country.

Conditions that could mitigate security concerns:

E2.A2.1.3.1: The immediate family member in question is not an agent of the foreign power or in a position to be exploited by the foreign power in a way that could force applicant to choose between loyalty to the immediate family member and the United States.

Foreign Preference

The Concern: 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.

Conditions that could raise a security concern:

E2.A3.1.2.1: The exercise of dual citizenship.

E2.A3.1.2.2: Possession and/or use of a foreign passport.

E2.A3.1.2.3: Military service for a foreign country.

Conditions that could mitigate security concerns:

E2.A3.1.3.1: Dual citizenship is based solely on parents' citizenship or birth in a foreign country.

E2.A3.1.3.2: Foreign military service occurred before obtaining United States citizenship.

E2.A3.1.3.4: Individual has expressed a willingness to renounce dual citizenship.

CONCLUSIONS

Applicant was born and raised in Taiwan. In 1970, he moved to the United States to continue his education, and has lived here ever since. In 1984, he became a United States citizen. His wife also became a United States citizen. Their three children were born and raised in the United States.

With respect to Guideline B, the only immediate family members applicant has in Taiwan are his elderly father and four siblings. Based on the evidence presented, I conclude that these immediate family members are not agents of Taiwan, or in a position to be exploited by Taiwan in a way that could force applicant to choose between loyalty to these immediate family members and loyalty to the United States. ^(U) I reach this conclusion for at least two reasons: First, there is no evidence that any of these immediate family members are connected with the Taiwanese government, Taiwanese military, or any of the Taiwanese intelligence services. Second, it is highly unlikely that Taiwan, a close United States ally which is highly dependent on the United States for its defense, would risk threatening this relationship by exploiting/threatening its private citizens for the purpose of forcing a United States citizen to betray the United States. Based on these facts, and applicant's credible statement that in the unlikely event he was approached "for possible espionage purposes," he would immediately report the contact to his security department, Guideline B is found for applicant.

With respect to Guideline C, the evidence establishes that applicant's dual citizenship is based on his birth in Taiwan. Since moving to the United States in 1970, his conduct has indicated a clear preference for the United States. He and his wife and children have, through their actions and deeds, made it clear that the United States is their permanent home. Given these facts, and the fact that applicant satisfied the security concern raised by his possession of the Taiwanese passport by surrendering it to Taiwanese authorities, Guideline C is found for applicant.

FORMAL FINDINGS

GUIDELINE B: FOR THE APPLICANT

GUIDELINE C: 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.

Joseph Testan

Administrative Judge

1. Accordingly, Mitigating Condition 1 is applicable to this case.