

DATE: August 20, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-11986

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's foreign contacts consist of two brothers and three sisters who are citizens of and reside in Taiwan, they do not pose a security risk. Mitigation has been shown. Clearance is granted.

STATEMENT OF THE CASE

On March 6, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on May 21, 2003, in which he elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on June 15, 2003. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on July 10, 2003, and submitted a response dated July 22, 2003.

The case was assigned to the undersigned for resolution on August 11, 2003.

FINDINGS OF FACT

The Applicant is 66 years old and married. He is employed by a defense contractor as a Senior Staff Engineer and is seeking to retain his security clearance in connection with his employment.

The Government opposes the Applicant's request for a continued security clearance, on the basis of allegations set forth

in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR:

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant was born and raised in Taiwan. He studied engineering in Taiwan, completed his mandatory military service, and became a teaching assistant in electronics and physics. In 1961, he met a woman who was also a teaching assistant. In 1963, he came to the United States on a student visa. In 1964, he and the woman were married. The Applicant attended several Universities in the United States and obtained his masters degree in electrical engineering. He became a naturalized United States citizen in 1973. His wife is also a naturalized citizen of the United States. They have two children who were born in the United States. (*See*, Government Exhibit 5).

Before he passed away, the Applicant's father owned and operated a rice mill factory that processed rice. His mother was a housewife but passed away in 1969. The Applicant's has two brothers and three sisters who are residents and citizens of Taiwan. One of his brothers is a retired elementary school teacher, the other is a retired city hall general employee. Both of their spouses are homemakers. One of the Applicant's sister's was a school teacher before becoming a housewife. The other two sisters are also homemakers. Their spouses are not employed with or agents for the Taiwanese Government. None of the Applicant's relatives, including his in-laws and their spouses are associated in any way with the Taiwanese Government. (*See*, Government Exhibit 5).

The Applicant has very infrequent contact with his relatives in Taiwan. He has yearly contact with one of his sisters. Since moving to the United States, some thirty years ago, the Applicant has visited his family in Taiwan on three occasions, in June 1977, in June 1989 and July 2002. (*See*, Government Exhibit 3).

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Foreign Influence

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.

Condition that could raise a security concern:

1. An immediate family member, or person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country.

Conditions that could mitigate security concerns:

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 the loyalty of the person(s) involved and the United

States.

3. Contacts and correspondence with foreign citizens are casual and infrequent.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "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. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

The Government must make out a case under Guideline B (foreign influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. Foreign influence can raise questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSIONS

Having considered the evidence in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR, and that Applicant's foreign contacts have a direct impact on his suitability for access to classified information.

With respect to Guideline B, however, the evidence establishes that the Applicant's foreign ties do not subject him to foreign influence. The Applicant has minimal contact with his relatives in Taiwan. He has been a naturalized citizen, lived in the United States, and made his home here for over thirty years. He has two native born children, who also live in the United States and were educated here. He has had very little contact with his family in Taiwan since moving to the United States. Mitigating Condition 3, "contact and correspondence with foreign citizens are casual and infrequent" clearly applies in this case.

Furthermore, the Applicant's two brothers and three sisters who are citizens of, and reside in Taiwan are in no way associated with the Taiwanese Government, nor are they in a position to be exploited that could force the Applicant to choose between loyalty to them and loyalty to the United States. The Applicant testified credibly that he "could not be coerced to act against the best interest of the United States", and that he "would never divulge classified information to an unauthorized individual or entity." (*See*, Government Exhibit 5, p. 5). Accordingly, Mitigating Condition 1, "a determination 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 and the United States", also applies in this case. Based on the foregoing, Guideline B is found for the Applicant.

Considering all the evidence, the Applicant met the mitigating conditions of Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guideline B.

FORMAL FINDINGS

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

DECISION

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson

Administrative Judge