

DATE: August 25, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-15309

## DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

### APPEARANCES

#### FOR GOVERNMENT

Erin C. Hogan, Esquire, Department Counsel

#### FOR APPLICANT

*Pro Se*

### SYNOPSIS

Applicant mitigated security concerns over foreign preference because of his dual citizenship: he never used his foreign passport after he became a naturalized United States (US) citizen in October 1999. He voluntarily chose to comply with the Department of Defense (DoD) policy requirements when he learned of them: he relinquished his Taiwanese passport and renounced his foreign citizenship in May 2003. Although his wife was also a dual citizen, she too relinquished her passport and renounced her foreign citizenship. His parents were citizens of Taiwan, but they have no ties to the government as they now live in the US. His father became a US citizen in July 2002 and his mother's US citizenship paperwork is complete. Applicant has also mitigated the allegations of foreign influence. Clearance is granted.

### STATEMENT OF THE CASE

The Government could not reach 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> so the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on May 1, 2003. The SOR detailed security concerns in paragraph 1 over foreign preference (Guideline C) and in paragraph 2 over foreign influence (Guideline B). Applicant received the SOR and replied to these SOR allegations in an Answer forwarded on May 27, 2003 with attachments. He requested a hearing. The case was assigned to Department Counsel who on June 13, 2003, attested it was Ready to Proceed, and the case was assigned to Administrative Judge John Metz. On June 30, 2003 the case was re-assigned to me because of regional rotation.

Subsequently, a mutually convenient date for hearing was agreed to and a Notice of Hearing issued on July 10, 2003, set the matter for July 28, 2003, at a location near where Applicant works and lives. At the hearing the Government asked that I take Official Notice of two documents (ON I & II) and introduced one exhibit which were admitted into evidence (Exhibit 1). Applicant testified himself and offered one exhibit (Exhibit A) which was admitted into evidence. The transcript (TR) was received on August 5, 2003.

## PROCEDURAL ISSUE

### **Clarification of Department of Defense Policy on Foreign Preference**

The Department of Defense issued a policy memorandum on August 16, 2000. It clarified the policy on Foreign Preference, Guideline C and stated, in part:

The purpose of this memorandum is to clarify the application of Guideline C to cases involving an applicant's possession or use of a foreign passport. The Guideline specifically provides that "possession and/or use of a foreign passport" may be a disqualifying condition. It contains no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country. The only applicable mitigation factor addresses the official approval of the United States Government for the possession or use. The security concerns underlying this guideline are that possession and use of a foreign passport in preference to a U.S. passport raises doubt as to whether the person's allegiance to the United States is paramount and it could also facilitate foreign travel unverifiable by the United 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 State Government. Modification of the Guideline is not required.

### 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 Findings of Fact:

Applicant, who is 48 years old, has worked for Company #1 from January 2001 to present as a senior engineer in State #1. Previously he worked for Company #2 from 1989 to 2000 in State #1. In March 2001 he was asked to obtain a security clearance and completed an Office of Personnel Management (OPM) Security Clearance Application (Standard Form 86) (SF 86) to seek a security clearance. (Exhibit 1; TR 37-39)

Applicant married his wife in March 1983, in State #1. (Exhibit 1) He has two sons born in the U.S. who are U.S. citizens who are age 19 and 11. (TR 32)

### **Foreign Preference and Foreign Influence**

Although Applicant was born in State #1 in 1955, his parents were citizens of Taiwan (Republic of China) and the family returned there. He was required to serve in the Taiwanese military from 1980-82. He has lived in State #1 for 21 years. He did graduate work at a state university in State #1 from 1982-89 and received a masters degree. Before he became a US Citizen, he possessed a Taiwanese passport issued on July 1982 and renewed in June 1999. However, after he became a naturalized US citizen in October 1999, he immediately applied for and received a US passport in April 2000. He never used his foreign passport after he became a U.S. citizen. When he traveled to Taiwan in 2000 and 2002, he used his U.S. passport. After he learned there were security issues with his maintaining dual citizenship, he decided to renounce his Taiwanese citizenship and relinquish his foreign passport in May 2003. He has no intent to use his foreign passport in the future. (Answer; Exhibit 1; TR 20-22; 27-31; 34-36; 44)

Born in Taiwan, Applicant's wife became a naturalized U.S. Citizen in 1999. She has renounced her citizenship and allegiance to the Taiwanese government in July 2003. Her father recently died but her mother and siblings live in Taiwan. Applicant has very limited contact with his wife's family. (Exhibit A; TR 22, 29, 32-33)

Applicant's parents sold all of their properties in Taiwan to come to the U.S. to retire in 1996. His father returned to Taiwan briefly for medical reasons. His father who is 80 years old became a U.S. citizen in July 2002 in State #2. His mother, who is 74 is a housewife; her U.S. citizenship application is pending; she has passed her tests on English, U.S. history and government in September 2002. She expects to be able to take the oath within a few weeks. (Answer; Exhibit A; TR 22-26)

Applicant has all of his assets in the U.S. He no longer has any personal contact with friends in Taiwan; none of his relatives work for a foreign government. (TR 32-33)

Given Applicant's commitment to report any attempt to influence him, any risk of foreign duress or influence on Applicant and/or his immediate family would appear to be slight and clearly manageable as his family has no ties to the government.

### References

Applicant's co-worker who holds a security clearance knows him through his affiliation with work on the same project for two years at Company #1. He assesses Applicant as having a good work ethic and with being thorough and exhaustive in his endeavors. He does "not consider him to be a national security risk in any way." (Exhibit A)

A friend who has known him for eight years assesses Applicant as trustworthy, honest, sincere, and hard working. "His integrity is beyond reproach." (Exhibit A)

A manager at Applicant's predecessor Company #2 attested that he has known Applicant since 1988 when he was general manager of Company #2 and commended him for his favorable work record and good character. (Exhibit A)

Applicant received many awards from the client agency when he worked for Company #2. (Exhibit A)

### POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility 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. 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 the following relevant Adjudication Guidelines:

#### **Guideline C - Foreign Preference** <sup>(2)</sup>

**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 and may be disqualifying include:**

- (1) the exercise of dual citizenship;
- (2) possession and/or use of a foreign passport <sup>(3)</sup>;

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

- (1) Dual citizenship is based solely on parents' citizenship or birth in a foreign country;
- (4) Individual has expressed a willingness to renounce dual citizenship.

#### **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

### **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;

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 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 only draw those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

## **CONCLUSIONS**

### **Guideline C - Foreign Preference**

Applicant has mitigated security concerns over his possible preference for a foreign country over the United States. At the time he applied for a security clearance he did hold a Taiwanese passport which raised security concerns: (1) the exercise of dual citizenship; (2) possession and/or use of a foreign passport as DoD policy clarification of August 16, 2000 explains that "possession and/or use of a foreign passport" may be a disqualifying<sup>(4)</sup> condition and to mitigate an Applicant must surrender his foreign passport or obtain official approval for its use. While dual citizenship is not prohibited *per se* (and in that sense is sanctioned by policies of the United States), any conduct indicating possible foreign preference does raise a security concern where such action would increase the risk of an individual being influenced by the needs, desires, or aims of a foreign nation. While Applicant possessed a foreign passport, after he became a naturalized citizen in 1999, he applied for a U.S. passport and used it exclusively for his travels in 2000 and 2002. Applicant meets the mitigation guidelines as under MC (1), his dual citizenship was based solely on parents' citizenship or birth in a foreign country. To his credit Applicant voluntarily complied with DoD guidance soon after he became aware of proper avenue for individuals to take corrective avenue to mitigate this security concern: Applicant surrendered his foreign passport and voluntarily renounced his foreign citizenship in 2003. Not only did he maintain that his principal preference is for the US, but also he backed up his statements with actions and now falls within MC 4 as he not only expressed willingness to renounce his dual citizenship, he did so and fully complied with DoD policy guidance on foreign passports.

After reviewing all of the evidence in the record and considering all of the security policies, including the August 16, 2000, policy clarification memorandum, I conclude he has met the DoD mitigation sufficiently to indicate his clear preference for the United States. 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). Acts indicative of foreign preference warrant careful scrutiny. Hence, I decide SOR paragraph 1 and subparagraphs 1.a. and 1.b. for Applicant.

### **Guideline B - Foreign Influence**

The Government also expressed security concerns over Applicant's possible foreign influence raised by his close ties of affection to citizens of a foreign country: he has a wife who he reported was a dual citizen of the U.S. and Taiwan<sup>(5)</sup> and his parents at the time he applied for a security clearance were citizens of Taiwan who resided in the U.S. 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 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.

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). Acts indicative of foreign influence warrant careful scrutiny. These security concerns are mitigated by the fact that Applicant's father is now a US citizen and his mother who is a U.S. resident wants to become a US citizen and anticipates becoming a US citizen in the near future. His parents sold all of their property in Taiwan when they retired to the US. His wife is a naturalized US citizen who has renounced her citizenship of Taiwan. Applicant's relatives have no ties to the foreign government; nor is there any substantial likelihood that they would exercise foreign influence over Applicant. Merely because of these family ties Applicant is not vulnerable to duress. Given his history of responsible conduct in the US for 22 years, I think it improbable that his any of his family members would create a situation that could result in the compromise of classified information. 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. Given Applicant's clear commitment to report any attempt to influence him, any risk of foreign duress or influence on Applicant and/or his immediate family would appear to be slight and clearly manageable.

After considering the Adjudicative Process factors and the Adjudicative Guidelines, here I conclude these ties are not of such a nature as to create any tangible risks of undue pressure, so do not invoke such foreign influence concerns. Thus, I resolve SOR paragraph 2 and subparagraphs 2.a. through 2.b. 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 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

### **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.

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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. See also the DoD August 16, 2000, Policy Clarification Memorandum, quoted above.
3. DoD policy clarification of Guideline C issued in August 2000 made clear that "any clearance [must] be denied or revoked unless the applicant surrenders the foreign passport . . . ."
4. The policy contains no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country.
5. Taiwan is a country that engages in economic espionage against the United States. (TR 42;ON I & II)