

DATE: June 11, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-18668

## **DECISION OF ADMINISTRATIVE JUDGE**

**JOSEPH TESTAN**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Jennifer I. Campbell, Department Counsel

#### **FOR APPLICANT**

Victor R. Schwanbeck, Esq.

### **SYNOPSIS**

Applicant and his wife became naturalized United States citizens in 1976. Their two adult sons were born and raised in the United States, and currently reside and work here. Applicant is proud to be a United States citizen, and intends to remain here permanently. His mother and three brothers remaining 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 December 26, 2002, 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, (as administratively reissued on April 20, 1999), 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 or about January 14, 2003. The case was assigned to the undersigned on February 4, 2003. A Notice of Hearing was issued on March 26, 2003, and the hearing was held on April 29, 2003. The transcript was received on May 6, 2003.

### **FINDINGS OF FACT**

Applicant is 60 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 1967, following his completion of military service, he moved to the United States to attend graduate school. His wife, who he met in Taiwan, also moved to the United States.

They were married in the United States in 1970. In 1973, applicant earned his PhD and began working for a company that manufactured cash registers. Applicant and his wife both became United States citizens in 1976. As far as applicant knows, he is no longer a Taiwanese citizen. He has never claimed to be a dual citizen. Applicant is proud to be a United States citizen. He intends to remain in the United States.

Applicant's two sons were born and raised in the United States. They graduated from the same United States university, and are currently living and working in the United States.

Applicant's mother and three brothers are citizens and residents of Taiwan. Prior to the death of his father in 2001, applicant spoke by telephone with his parents, and wrote to them, once or twice a year. Shortly after applicant's father passed away in 2001, applicant spoke with his mother on a monthly basis to console her. As time went on, the contacts became less frequent - during the past year he spoke with her just once or twice. Applicant maintains steady but infrequent contact with his brothers. He has contact with them two or three times per year. Other than their mandatory two or three years of service in the Taiwanese military, none of the brothers had or has a connection with the Taiwanese government or military.

Applicant's wife has four siblings who are citizens and residents of Taiwan. None has connections with Taiwanese government or military, and all are retired. Applicant speaks with them less frequently than he speaks with his brothers.

Applicant's first visit to Taiwan after moving here was in 1977. He has visited Taiwan numerous times since then to visit his family. He last visited Taiwan in February 2001 to attend his father's funeral. Applicant has always informed his employer about his travels abroad.

Testimony from one coworker (TR at 27-35), employment records (Exhibit C), the results of an investigation (Exhibit D), and letters from applicant's coworkers and friends (Exhibits E through J), establish that applicant is an excellent employee, and considered by a wide variety of people who know him well to be a reliable and trustworthy individual who is loyal to the United States.

## **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:**

1. An immediate family member is a citizen or resident of a foreign country.

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

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.
2. Contact and correspondence with foreign citizens are casual and infrequent (in-laws only).

## CONCLUSIONS

Applicant was born and raised in Taiwan. In 1967, he moved to the United States to continue his education, and has lived here ever since. In 1976, he and his wife became United States citizens. They raised two children who are citizens and residents of the United States. Applicant and his wife intend to remain in the United States permanently.

The presence of applicant's wife's siblings in Taiwan, none of whom have connections with the Taiwanese government, does not raise a security concern, particularly since applicant maintains little contact with them. The only immediate family members applicant has in Taiwan are his mother and three brothers. 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.<sup>(1)</sup> I reach this conclusion for at least three 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. Third, as evidenced by applicant's testimony, the testimony of one of his coworkers, and Exhibits C through J, since coming to the United States in 1967, applicant's conduct has indicated that he is a reliable and trustworthy individual who is loyal to the United States. This leads me to conclude that, even in the unlikely event pressure was exerted upon him to compromise classified information, he would resist it, and would report the incident to the proper authorities.

## FORMAL FINDINGS

GUIDELINE B: 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.

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Joseph Testan

Administrative Judge

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