

DATE: September 12, 2005

In Re:

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SSN: -----

Applicant for Security Clearance

CR Case No. 02-20381

**DECISION OF ADMINISTRATIVE JUDGE**

**JOHN GRATTAN METZ, JR.**

**APPEARANCES**

**FOR GOVERNMENT**

Braden M. Murphy, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant demonstrated that his family members living in Taiwan were not agents of a foreign government or so situated as to provide a point of influence on Applicant, mitigating any foreign influence concerns. Clearance granted.

**STATEMENT OF THE CASE**

Applicant challenges the 22 July 2003 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of foreign influence. <sup>(1)</sup> Applicant answered the SOR on 8 August 2003 and requested a hearing. DOHA assigned the case to me 29 July 2004 and I convened a hearing on 17 December 2004. DOHA received the transcript 27 December 2004.

**FINDINGS OF FACT**

Applicant admitted that his spouse is a citizen and resident of Taiwan (1.a.), but denied the remaining the allegations of the SOR; accordingly I incorporate that admission as a finding of fact. He is a 45-year-old field engineer employed by a defense contractor since August 1987. He seeks to retain the industrial security clearance he has held during that employment. He previously had a clearance while serving in the U.S. Marine Corps from 1979 to 1987, reaching the rank of Staff Sergeant (paygrade E-6).

Applicant is a U.S. citizen, born, raised, and educated in the U.S. He was first married from 1983 to May 1995, when his first wife died. He has two sons and a step-son from his first marriage.

Beginning in 1992, Applicant--who worked in his employer's foreign military sales (FMS) division--began regular business trips to Taiwan in support of his employer's contract with the U.S. Navy to build ships for the Taiwanese navy. He met the woman who would later become his second wife on one of these trips. She was from a rural aborigine family in the Taiwanese mountains, orchard farmers by trade. She has an uncle, who Applicant has met a number of times, <sup>(2)</sup> who was once a county "senator" in Taiwan, but has returned to private life as a Presbyterian minister (1.d.). Although

she has resided with Applicant in the U.S. for brief periods of time (one of which was on a humanitarian visa in approximately 1997), she is not able to obtain U.S. citizenship or legal permanent resident status because of a disqualifying drug conviction in Taiwan when she was 19 years old (approximately 20 years ago).

Applicant married his second wife during one of his business trips to Taiwan in February 1996. His job in FMS later moved him to Taiwan in October 1996, where he resided with his wife until late 1998. He then returned to the U.S. because of delays in the ship building contract he was working on. In November 1998, Applicant and his wife had a son born in Taiwan, who derived U.S. citizenship from his father. The child's dual citizenship status is unclear from the record.

Applicant's FMS job continued to take him to Taiwan, as well as other foreign countries. In November 2000, Applicant and his wife had a second son born in Taiwan, who also derived U.S. citizenship from his father. This child's dual citizenship status is also unclear from the record.

The ship building contract returned Applicant to Taiwan in June 2002 and he resided there until May 2004. However, the stress of his FMS travel had taken its toll on his marriage, which deteriorated to the point where his wife was spending substantial time with her family in the mountains. When Applicant returned to the U.S. in May 2004, they agreed to separate. Their minor children still reside with the wife in Taiwan, but she has indicated that Applicant may have custody. He is in the process of retaining a Taiwanese attorney to obtain the divorce and transfer custody of the children.

During Applicant's periods of residence in Taiwan and his business trips there, his principal point of contact with the Taiwanese government on the ship building contract was a Taiwanese naval officer. Although the bulk of the contacts were government-sanctioned, Applicant developed the kind of social relationship typical of business relationships: office parties, retirements, etc. Applicant has had no contact with the naval officer since returning to the U.S. in ay 2004. Applicant has since moved out of the FMS division because he wanted to decrease his foreign travel to be more available to deal with one of his older children, who was experiencing disciplinary problems.

Taiwan is a multiparty democracy, whose authorities generally respect the human rights of its citizens. There is no evidence in the record that the government of Taiwan targets U.S. intelligence information. Taiwan is an active collector of industrial information and does engage in industrial espionage. However, there is no evidence in the record that it seeks to exert pressure on its citizens to collect information from family members residing in country or abroad.

## **POLICIES**

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guideline is Guideline B (Foreign Influence).

## **Burden of Proof**

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly

consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.<sup>(3)</sup>

### **CONCLUSIONS**

The government established a Guideline B case by demonstrating that Applicant's wife is a citizen and resident of Taiwan and his two minor children are residents of Taiwan (1.a., 1.b.).<sup>(4)</sup> However, the government failed to establish any fact regarding Applicant's relationship with the Taiwanese naval officer (1.c.) or with his wife's uncle, the former county "senator" (1.d), that raises security concerns under foreign influence. All Applicant's contacts with the naval officer can be fairly characterized as stemming from his official position as a contractor for the U.S. Navy, and those contacts ceased once the contract was completed. Applicant has no relationship with the uncle that could be exploited, particularly where the two cannot even communicate with each other without a translator. I conclude 1.c. and 1.d. for Applicant.

The security concerns raised by Applicant's wife are mitigated by her status as a rural farmer not employed by the Taiwanese government and not positioned to be exploited for information, where there is no evidence that Taiwan engages in collection activities that seek to exploit, coercively or otherwise, Taiwanese citizens such as her to obtain information. Any potential vulnerability is further attenuated by the fact that she and Applicant are divorcing.

The security concerns raised by Applicant's minor children, although greater than those raised by his wife, are mitigated because there is no evidence that Taiwan engages in collection activities that seek to exploit, coercively or otherwise, the minor children of U.S. or Taiwanese citizens. Under these circumstances, I conclude that it is unlikely Applicant can be pressured based on his wife and minor children currently living in Taiwan. I resolve Guideline B for Applicant.

### **FORMAL FINDINGS**

Paragraph 1. Guideline B: FOR THE APPLICANT

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: For the Applicant

Subparagraph d: 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.

**John G. Metz, Jr.**

**Administrative Judge**

1. Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).
2. But not spoken with, as the uncle speaks no English and the Applicant speaks no Chinese.
3. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).
4. The children's U.S. citizenship is clearly established in the record, their Taiwanese citizenship unclear.