

DATE: May 19, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-22718

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Edward W. Lougran , Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's work history with a foreign government and his foreign family ties have not been mitigated. Clearance is denied.

STATEMENT OF THE CASE

On September 15, 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 October 31, 2003, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on January 15, 2004. A notice of hearing was issued on January 22, 2004, scheduling the hearing for February 24, 2004. At the hearing the Government presented three exhibits. The Applicant presented five exhibits and he testified on his own behalf. The official transcript (Tr.) was received on arch 11, 2004.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the exhibits and the testimony. The Applicant is 57 years of age and holds a Doctorate degree in Physics. He is employed as an Engineer for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline C - Foreign Preference). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has acted in such a way as to show a preference for another country over the United

States.

The Applicant was born in Taiwan in 1947 and raised there. He came to the United States in 1971. In 1978, while working for a defense contractor, he held a security clearance. It expired when he left the company. In 1983, he began working for another defense contractor. In 1984, he became a United States citizen. (Tr. p. 17).

In 1993, as a result of the defense industry downsizing, the Applicant took a leave of absence from his job in the United States, and decided to look for employment in Taiwan. He found a job in Taiwan and moved there to work. While working in Taiwan he was laid off from his job in the United States. From February 1993 until December 1995, the Applicant continued to live and work in Taiwan. His first job was a teaching position at a University in Taiwan, from February 1994 until September 1994. There, he taught Space Physics and a course on navigation. (Tr. p. 20). The University is public and funded by the Taiwanese Government. (Tr. p. 21).

In September 1994, the Applicant went to work for the Taiwan National Space Program, where he worked on technology for launching satellites. The Applicant believes the satellites he was working on were to be used for research purposes in a commercial setting. (Tr. pp. 22-25). The Applicant did not hold a security clearance in that position. The Applicant explained that after several months of employment at the Space Program Agency, he was told that as a condition of his employment, he was asked to sign an agreement requiring that he not work for any company who may at some point become a contractor of the National Space Agency. The Applicant felt this requirement was too restrictive because at the time many United States Aerospace companies were merging and the possibility that he might want to work for one of those companies in the future was of great interest to him. The Applicant chose to leave the job instead of signing the agreement. (Tr. pp. 26-28).

From February 1995 to December 1995, the Applicant continued to look for a job, mainly in Taiwan, but was unsuccessful. (Tr. p. 28). In December 1995, he returned to the United States and continued his job search. He ultimately gained employment with another United States defense contractor.

Since returning to the United States, the Applicant has had lunch on one occasion with one former co-worker who was in a similar situation, where they left their employment with a United States defense contractor, moved to Taiwan to work for the National Space Program Agency, and have now returned to the United States. (Tr. pp. 40-42).

Paragraph 2 (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 has two brothers and two sisters who are citizens of and reside in Taiwan. His wife's mother is also a citizen of and resides in Taiwan along with other extended family members. He contacts his brothers and sisters in Taiwan about once every two or three months. His brothers and sisters in Taiwan visit him in the United States from time to time. None of his family members in Taiwan are associated in any way with the Taiwanese government.

Mitigation.

Letters of recommendation from professional colleagues and coworkers of the Applicant indicate that the Applicant is very knowledgeable in the area of space telecommunication technology. He is considered dependable, capable, ethical, loyal and an efficient researcher. (See Applicant's Exhibits A, B, C, D and E).

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 Preference

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:

9. Performing or attempting to perform duties, or otherwise acting, so as to serve the interest of another government in preference to the interests of the United States.

Conditions that could mitigate security concerns:

None.

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.

Conditions 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;
3. Relatives, cohabitants, or associates who are connected with any foreign government;

Conditions that could mitigate security concerns:

None.

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 C (foreign Preference) and 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 influence and foreign preference have a direct and negative impact on his suitability for access to classified information.

The Applicant was born and raised in Taiwan. After becoming a United States citizen, when confronted with a job lay-off in this country, he moved to Taiwan and worked for the Taiwanese Government. He taught at their University and worked for their Space Program Agency. He paid taxes to the Taiwanese Government during his employment there. When he could no longer find suitable employment, he left and returned to the United States. Under these particular circumstances, the Applicant has not clearly demonstrated that the United States is his preference. It appears to be a situation where whatever country can provide the Applicant the most benefit is where the Applicant wants to be. Accordingly, the Applicant has not clearly demonstrated an unequivocal preference for the United States. None of the mitigating conditions in the Directive apply. Under the circumstances of this case, I find against the Applicant under Guideline C.

With respect to Guideline B, the evidence establishes that the Applicant may be vulnerable to foreign influence. The Applicant has four siblings who are citizens of and reside in Taiwan. Although none of these individuals are directly associated with the Government of Taiwan, the Applicant maintains regular contact with his siblings. The Applicant indicates that he is not close to his family in Taiwan, but they come to visit him in the United States from time to time. His wife's mother is also a citizen of Taiwan and resides there along with other extended family members. The Applicant has even associated with an individual who was at one time employed with him in Taiwan for the Taiwanese Government. The Applicant has significant ties of affection in Taiwan and therefore has foreign ties or contacts that could potentially influence him. The Applicant has not severed his ties with Taiwan. None of the mitigating conditions

in the Directive apply. It is possible that a situation could occur that could create the potential for foreign influence that could result in his compromise of classified information. None of the mitigating factors in the Directive apply. Accordingly, the Applicant's request for a security clearance must be denied under Guideline B.

Considering all the evidence, the Applicant has not met the mitigating conditions of Guidelines C and B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Guidelines C and 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: Against the Applicant.

Subparas. 1.a.: Against the Applicant

1.b.: Against the Applicant

1.c.: Against the Applicant

1.d.: Against the Applicant

Paragraph 2 : Against the Applicant.

Subparas. 2.a.: Against the Applicant.

DECISION

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson

Administrative Judge