

DATE: April 15, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-22842

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a United States citizen. His brother is currently a resident and citizen of Taiwan, and is employed by the Taiwanese government. Clearance is denied.

STATEMENT OF THE CASE

On July 31, 2003, 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, 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 August 29, 2003, and elected to have his case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's written case (FORM) on or about November 18, 2003. Applicant did not file a response to the FORM. The case was assigned to me on January 15, 2004.

FINDINGS OF FACT

Applicant is a 50 year old engineer employed of a defense contractor.

Applicant became a naturalized United States citizen in 1988. His wife, to whom he has been married since 1982, became a naturalized United States citizen in 1989. His two children were born in the United States.

Applicant's brother is a citizen and resident of Taiwan. The brother is employed by the Taiwanese government in the Public Relations field. Applicant's brother-in-law is a citizen of Taiwan and currently resides in Canada. He is currently applying for Canadian citizenship.

In his response to the SOR, applicant stated that after his father passed away in March 2001, his brother applied for a visa to return to the United States. ⁽¹⁾ He further stated that the visa was granted in June 2001, and that his brother "plans to come back to U.S. permanently once he finishes taking care of family business."

CONCLUSIONS

In this case, the evidence establishes that applicant's brother is a citizen and resident of Taiwan, and an employee of the Taiwanese government. These facts require application of Disqualifying Condition E2.A2.1.2.1 (an immediate family member is a citizen or resident of a foreign country) and Disqualifying Condition E2.A2.1.2.3 (relatives who are connected with any foreign government).

I have carefully considered applicant's explanation for his brother's return and extended stay in Taiwan (approximately 20 years) after moving to the United States and obtaining a green card. These facts, however, are insufficient to remove the security concerns that arise from his brother's current employment with the Taiwanese government. His brother's current position as an employee and agent of the Taiwanese government precludes application of Mitigating Condition E2.A2.1.3.1 (a determination that the immediate family member is not an agent 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). No other mitigating conditions are applicable.

Applicant has a brother-in-law who is a citizen of Taiwan and a resident of Canada. Because there is absolutely no evidence that applicant has any relationship or contact with this individual, I conclude the Government failed to establish that this individual's status is a security concern.

FORMAL FINDINGS

PARAGRAPH 1: AGAINST THE APPLICANT

Subparagraph 1a: against the applicant

Subparagraph 1b: for the applicant

DECISION

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

Joseph Testan

Administrative Judge

1. According to applicant, the brother lived in the United States and had a green card in the early 1980s, but returned to Taiwan in the mid-1980s to care for their elderly parents.