

DATE: August 13, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-23868

DECISION OF ADMINISTRATIVE JUDGE

MARTIN H. MOGUL

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Department Counsel

FOR APPLICANT

Michael A. Weiss, Esq.

SYNOPSIS

Applicant, born in the Republic of China (Taiwan), came to the United States in 1971 and became a United States citizen in 1981. His wife and two children are also United States citizens. He has a mother, two brothers, a sister and a mother-in-law, who are citizens of Taiwan and reside in Taiwan. His contacts with them are infrequent. None of these family members, belong to, participate in, or are active with any government agency of Taiwan. They are not in a position to be exploited by Taiwan in a way that could force Applicant to choose between loyalty to these family members and his loyalty to the United States. Applicant's strong attachment to the United States and long history here make it unlikely that he would respond favorably to any efforts to act against United States interests. Mitigation has been shown. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4), issued a Statement of Reasons (SOR), dated October 31, 2003, to the 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 the Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, or denied. The SOR was based on Foreign Influence (Guideline B) concerns because of the foreign residency and/or citizenship of close family members.

Applicant, through his attorney, filed a notarized response, dated December 1, 2003, to the allegations set forth in the SOR, and requested a hearing before a DOHA Administrative Judge. On February 2, 2004, the case was assigned to this Administrative Judge to conduct a hearing. Pursuant to formal notice dated February 12, 2004, a hearing was held on March 26, 2004.

At the hearing, Department Counsel offered three documentary exhibits (Government Exhibits 1-3) and no witnesses

were called. Applicant offered 51 documentary exhibits (Exhibits A-YY) and offered his own testimony, and that of three additional witnesses. The transcript (TR) was received on April 15, 2004.

FINDINGS OF FACT

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline B (Foreign Influence) of the Directive. The SOR contains six allegations, 1.a., through 1.f., under Guideline B. Applicant admitted all of the facts upon which the SOR allegations were made except 1.b. The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the admitted documents, and testimony of Applicant and the other witnesses, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 57 years old. He is employed by a defense contractor, as a Senior Assistant Engineer, and he seeks a DoD security clearance in connection with his employment in the defense sector. He first received a security clearance in 1977, which was retained through background investigations in 1983 and 1987 (Exhibit 1).

Applicant was born in Taiwan. He served in the Taiwanese military for one year in 1969 to 1970 (Exhibit HH). He came to the United States in 1971, and became a naturalized United States citizen in 1981. He received a Masters degree in electrical engineering from a United States university in 1973, and a masters degree in Business Administration in 1981. Applicant's wife, who

was also born in Taiwan, became a United States citizen in 1976. They have two daughters, both of whom are United States citizens.

Guideline B (Foreign Influence)

Applicant's mother is a citizen of and resides in Taiwan. She is 92 years of age and in failing health. He last saw her in 2001, and his communication with her, approximately every other month, is brief (Tr at 73-74).

Applicant's mother-in-law also resides in Taiwan. She is a citizen of the United States, but moved back to Taiwan after her husband died. He last saw her in 2001, and he has no communication with her at all (Tr at 69-70).

Applicant has two sisters. One is a citizen of Taiwan, but a permanent resident of the United States. She currently resides primarily in the United States, but also in Taiwan. She has purchased a home in the U.S., and she plans to live here permanently and become a United States citizen, when her husband, who is still employed in Taiwan, moves to the U.S. (Tr at 84-86) His other sister is a citizen of and resides in Taiwan. She is a college professor, and does not work for the Taiwanese Government. Applicant has no regular communication with this sister (Tr at 78-80).

Applicant has two brothers, who are citizens of and reside in Taiwan. His brothers were in the Taiwanese army many years ago. His brothers are now retired. Applicant communicates with one of his brothers rarely, only if he happens to be at his mother's home, when he calls her. He does not communicate at all with the other brother (Tr at 70-72, 75-77).

Applicant's wife has five brothers, one of whom lives in the United States and is a United States citizen, and four of whom are citizens of and reside in Taiwan. Neither Applicant nor his wife has any regular contact with any of these brothers, and as far as Applicant knows, none of them are employed by the Taiwanese Government (Tr at 117).

Applicant last traveled to Taiwan in 2001, where he stayed for two days during a family trip to Thailand. Previously, he traveled to Taiwan in 1999 to attend the funeral of his father. In 1998, Applicant went to Taiwan to see his ailing father, who died shortly after Applicant returned to the United States. In 1996, Applicant attended a business meeting in Taiwan at the request of a United States company. In 1996, Applicant attended a business meeting in Thailand at the request of another United States company (Tr at 99-105, Exhibit).

Applicant does not have any inheritance or financial interest in Taiwan. He owns three properties in the United States,

and his financial holdings in this country are significant (Tr at 118, Exhibits H, I, J).

Applicant presented two witnesses, who are coworkers of his. Both of them spoke highly that Applicant is thorough in his job, and trustworthy (Tr at 38-58). He also submitted a number of letters and declaration from friends, neighbors and coworkers, who spoke extremely highly of him (Exhibits W-DD).

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines that must be carefully considered in evaluating an individual's security eligibility and making the overall common sense determination required. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, etc.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk.

Each adjudicative decision must also include an assessment of: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence (*See* Directive, Section E2.2.1. of Enclosure 2).

Based upon a consideration of the evidence as a whole, I find the following guidelines and concerns most pertinent to an evaluation of the facts of this case:

FOREIGN INFLUENCE (GUIDELINE B)

E2.A2.1.1. 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 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.

BURDEN OF PROOF

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance. Assessment of an applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of rehabilitation.

A person who seeks access to classified information enters into a fiduciary relationship with

the U.S. Government that is predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability, or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531

(1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

CONCLUSIONS

Under Guideline B, a security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he is bound by affection, influence or obligation, are not citizens of the United States or may be subject to duress. Based on the evidence of record, the Government has established a reason to deny Applicant a security clearance because of Guideline B (Foreign Influence). Applicant has a mother, four brothers, a sister, and mother-in-law, who are citizens of and reside in Taiwan. The Taiwan citizenship and residency of Applicant's family create the potential for foreign influence that could result in the compromise of classified information because it makes Applicant potentially vulnerable to coercion, exploitation, or pressure. The possession of such ties raises a security concern sufficient to require Applicant to present evidence in rebuttal, extenuation, or mitigation sufficient to meet his burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him. This Applicant has done.

The evidence of Applicant's family members, who are citizens of and reside in Taiwan comes within Disqualifying Condition (DC) E2.A2.1.2.1, "immediate family members, or persons to whom the individual has close ties of affection or obligation, who are citizens of, or resident in, a foreign country."

The primary factors in mitigation that I have considered include: Applicant's long history since coming to the United States in 1971 and becoming a U. S. citizen with his wife in 1981; the lack of government involvement of Applicant's family members and the extremely limited and infrequent contact he has with them; his devotion to his wife and children; and his strong feelings concerning this country. Based on the nature of the overall record and the totality of the evidence, I have determined that his family in Taiwan does not constitute an unacceptable security risk, and the Mitigating Condition (MC) E2.A2.1.3.1, "a determination that the immediate family member(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," applies. MC E2.A2.1.3.3. also applies because Applicant's contact with his family in Taiwan is extremely casual and infrequent.

After considering all of the evidence of record on these issues, I conclude that the mitigating evidence substantially outweighs the evidence supporting the SOR and even in the unlikely event pressure was exerted upon Applicant to compromise classified information, he would resist it and would report the incident to the proper authorities.

On balance, it is concluded that Applicant has overcome the Government's information opposing his request for a security clearance.

FORMAL FINDINGS

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: 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 Applicant.

Martin H. Mogul
Administrative Judge