

DATE: July 16, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-25135

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant came from Taiwan to the United States in 1989. He pursued a Ph. D. Degree at an American university, and was naturalized in 2001. He retained his Taiwanese passport, which he used to travel to Taiwan later in 2001. In January of 2004, the Applicant renounced his Taiwanese citizenship and surrendered his passport. The Applicant's parents and two brothers are citizens of and reside in Taiwan. His father is retired from a private company. His mother is a housewife. His two brothers work for private companies. His parents-in-law are citizens of the People's Republic of China (PRC), but reside in the U.S. He has little contact with four other friends who are citizens of and reside in Taiwan. He would not submit to coercion, exploitation or pressure from a foreign government vis-a-vis his foreign relatives. Mitigation is shown. Clearance is granted.

STATEMENT OF THE CASE

On October 14, 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 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.

Applicant filed an Answer to the SOR on December 10, 2003.

The case was received by the undersigned on March 22, 2004. A notice of hearing was issued on April 8, 2004, and the case was heard on May 19, 2004. The Government submitted documentary evidence. Testimony was also taken from the Applicant. The transcript was received on June 14, 2004. The issues raised here are whether the Applicant's alleged foreign preference and perceived influence militate against the granting of a security clearance. [The Appellant admits the underlying factual basis of the allegations, except for 1.a. in that he denies he is a dual national.]

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The Applicant is 45 years of age , and is employed by a defense contractor that seeks a security clearance on behalf of the Applicant. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact.

Guideline C - Foreign Preference

1.a.~1.e. The Applicant served a mandatory tour in the Taiwanese military from 1981~1983 (Transcript (TR) at page 29 lines 8~25, and at page 30 line 13 to page 31 line 8). After leaving the military, he received six months of free computer training (TR at page 30 lines 1~12). The Applicant immigrated to the United States in 1989 (TR at page 21 line 9 to page 23 line 5). He pursued a Ph. D. degree at an American university, and was naturalized in 2001 (*id*, and at Government Exhibit (GX) 1 at pages 1~2). He retained his Taiwanese passport, however, which he used to travel to Taiwan later in 2001, after he was naturalized (TR at page 23 line 23 to page 24 line 15, and at page 28 line 21 to page 30 line 12, *see also* at page 33 lines 18~25). In January of 2004, the Applicant renounced his Taiwanese citizenship and surrendered his foreign passport (TR at page 25 line 2 to page 28 line 20, GX 5, and Applicant's Exhibit (AppX) B).

Guideline B - Foreign Influence

2.a.~2.h. The Applicant's parents and his two brothers are citizens of and reside in Taiwan (GX 1 at pages 3~4). His father is 70 years of age, and is retired from a private company (TR at page 31 line 11 to page 32 line 14). His 66 year old mother is a housewife (TR at page 34 lines 4~17). His two brothers work for private companies, one for a "dental company," and the other runs a document copying service (TR at page 35 line 10 to page 38 line 10). The Applicant's contact with his brothers is limited to "every two months" with one brother, and twice a year with the other brother (*id*). His parents-in-law are citizens of the PRC, but they both now reside in the U.S. with the Applicant's sister-in-law (TR at page 38 line 11 to page 42 line 12). Both of his in-laws are retired (*id*). He had traveled to the PRC to visit his in-laws in 1998 and again in 2001 (TR at page 42 lines 13~23). He has little contact with four other friends, who are citizens of and reside in Taiwan (TR at page 42 line 24 to page 44 line 18, and at page 45 line 13 to page 49 line 9). He met them while attending college in the U.S. (*id*). The Applicant would not submit to coercion, exploitation or pressure from a foreign government vis-a-vis his foreign relatives (TR at page 52 lines 6~22).

Mitigation

The Applicant's Project Manager and a co-worker aver that the Applicant is trustworthy, and should be granted a security clearance (AppX C, and AppX D at page 2).

POLICIES

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern. Furthermore, as set forth in the Directive, each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature, extent, and seriousness of the conduct, and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future.

The Administrative Judge, however, can only draw those inferences or conclusions that have a 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.

The Government must make out a case under Guideline C (foreign preference), and Guideline B (foreign influence), which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an 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 disqualifying conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates a foreign preference, or who is subject to a foreign influence, may be prone to provide information or make decisions that are harmful to the interests of the United States. 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

The Applicant became a U.S. citizen in 1995, but retained his Taiwanese passport, which he used to travel to Taiwan later in 2001. The first and second disqualifying conditions under Foreign Preference are therefore applicable, as there was an "exercise of dual citizenship," and the "[p]ossession and/or use of a foreign passport." Prior to immigrating to the U.S., he also served in the Taiwanese military. The third disqualifying condition is therefore also applicable as he performed "[m]ilitary service . . . for a foreign country." These are countered, however, by the second and fourth mitigating conditions. The Applicant's "foreign military service . . . occurred before obtaining United States citizenship," and the "[i]ndividual has expressed a willingness to renounce dual citizenship." The Applicant has gone above and beyond an expressed willingness, having renounced his Taiwanese citizenship six months ago. With this renunciation, he also surrendered his Taiwanese passport. He has thus complied with the *Money Memorandum*, which requires that an Applicant surrender his foreign passport. Guideline C is therefore found in his favor.

The Applicant's parents and brother are citizens of and live in Taiwan. His in-laws are also citizens of the PRC. The second disqualifying condition is therefore applicable as "[a]n immediate family member . . . is a citizen of . . . a foreign country." His parents are both retired, and his brothers work in private enterprises. His retired in-laws live in the U.S. None of the Applicant's immediate family are presently connected with any government, and there is no evidence that their presence in Taiwan or the U.S. can be exploited by any government. In addition, I conclude that it would be unlikely that the Applicant would even consider any such attempt at exploitation. The first mitigation condition is therefore applicable as "the immediate family members . . . 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 persons involved and the United States." Guideline B is also found in the Applicant's favor.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his alleged foreign preference, and foreign influence. The Applicant has thus met the mitigating conditions of Guidelines B and C, and of Section E.2.2. of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guidelines B and C.

FORMAL FINDINGS

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.

c. For the Applicant.

d. For the Applicant.

e. For the Applicant.

Paragraph 2: FOR THE APPLICANT

a. For the Applicant.

b. For the Applicant.

c. For the Applicant.

d. For the Applicant.

e. For the Applicant.

f. For the Applicant.

g. For the Applicant.

h. For the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

DECISION

In light of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant or continue a security clearance for the Applicant.

Richard A. Cefola

Administrative Judge