

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: This 54-year-old engineer was born in Taiwan in 1950. He came to the U.S. in 1974 to pursue his higher education, and became a U.S. citizen in 1986. He married a U.S. citizen and has two grown children who are American by birth and upbringing. He has assets in the U.S. of about \$3,000,000. He obtained a Taiwan passport in the late 1990s on the advice of an uncle, to facilitate a small inheritance in Taiwan, but he did not go to Taiwan and never used the passport, which he has since surrendered to Taiwan officials. His relatives in Taiwan are his brother and uncle, and their relationships are not close. Applicant has shown his dedication and allegiance to the U.S. for several decades and he has never done anything showing a preference for Taiwan. Mitigation has been established. Clearance is granted.

CASENO: 02-26261.h1

DATE: 01/11/2005

DATE: January 11, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-26261

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 54-year-old engineer was born in Taiwan ml 950. He came to the U.S. in 1974 to pursue his higher education, and became a U.S. citizen in 1986. He married a U.S. citizen and has two grown children who are American by birth and upbringing. He has assets in the U.S. of about \$3,000,000. He obtained a Taiwan passport in the late 1 990s on the advice of an uncle, to facilitate a small inheritance in Taiwan, but he did not go to Taiwan and never used the passport, which he has since surrendered to Taiwan officials. His relatives in Taiwan are his brother and uncle, and their relationships are not close. Applicant has shown his dedication and allegiance to the U.S. for several decades and he has never done anything showing a preference for Taiwan. Mitigation has been established. Clearance is granted.

HISTORY OF THE CASE

On March 18, 2004, 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, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding required under the Directive that it

is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and

determine whether a clearance should be granted, denied or revoked.

On April 16, 2004, Applicant responded to the allegations set forth in the SOR, and elected

to have a decision made by a DOHA Administrative Judge after a hearing. The matter was assigned to me for resolution on July 2, 2004. A Notice of Hearing was issued on August 3, 2004, setting the hearing for August 24, 2004. At the hearing, the Government introduced ten exhibits (GX 1 - 10).

Applicant testified and introduced three exhibits (AX A - C). The transcript was received at DOHA on September 13, 2004.

FINDINGS OF FACT

Applicant is a 54-year-old engineer for a defense contractor. The April 14, 2004 SOR contains six allegations under Guideline C (Foreign Preference), and three allegations under Guideline 13 (Foreign Influence). in his May 1, 2004 Response to the SOR, Applicant admits all of

the allegations in the SOR, with explanations. The admitted parts of the allegations are accepted and incorporated herein as Findings of Fact.

After considering the totality of the evidence, I make the following additional FINDINGS OF FACT as to the status, past and present, of each SOR allegation:

Guideline C (Foreign Preference)

1.a. - Applicant exercised dual citizenship - Republic of China (Taiwan) by birth and United States (U.S.) by naturalization.

1 .b. - Applicant applied for and was issued a Taiwan passport on July 16, 2001, even though he had become a U.S. citizen in December 1986, and he had a valid U.S. passport issued to him in July 1989 and renewed in March 2000. However, as discussed below, he never used the passport.

1 .c. - As of October 9, 2003, when he was interviewed by an Agent of the Defense Security Service (DSS), Applicant still retained the Taiwan passport he obtained in July2001, for the purpose of being able to "get rid of the small estate inherited from [his] grandfather" in Taiwan (Response to SOR). The passport was valid until July2011. However, after the events of September 11, 2001, he cancelled the trip to Taiwan and never used the passport for that or any other reason. On April 16, 2004, after receiving the SOR, Applicant surrendered the passport to Taiwan authorities (Attachment to SOR).

Guideline B (Foreign Influence)

2.a. - Applicant's brother is a permanent resident of the U.S., and a citizen of Taiwan, and currently resides in Taiwan with his American wife and two grown children. He is a teacher at a private high school and has no connection with the Taiwan government.

2.b. - Applicant is the co-owner of inherited real property in Taiwan. He has a 1/32 share of a one story building of about 1,400 square feet. The estimated value of the property is about \$104,000, so his 1/32 share is worth about \$3,273. His small share gives him no real control over the property and a minimal return, so he is seeking a buyer. His assets in the U.S. exceed \$3,000,000.

2.c. - Applicant's uncle, a naturalized U.S. citizen, now resides in Taiwan and manages the property, including representing Applicant's interest in his 1/32 share.

POLICIES

Each adjudicative decision must also include an assessment of nine generic factors relevant

in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowing participation; (3) the frequency and recency of the conduct; (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 (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

Because each security case presents its own facts and circumstances, it should not be assumed that the factors cited above exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable financial judgment and conduct.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of

whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. In reaching the fair and impartial overall common sense determination based on the "whole person" concept required by the Directive, the Administrative Judge is not permitted to speculate, but can only draw those inferences and conclusions that have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make

critical judgments as to the credibility of witnesses.

In the defense industry, the security of classified information is entrusted to civilian workers

who must be counted on to safeguard classified information and material twenty-four hours a day.

The Government is therefore appropriately concerned where available information indicates that an

applicant for a security clearance, in his or her private life or connected to work, may be involved

in conduct that demonstrates poor judgment, untrustworthiness, or unreliability. These concerns include consideration of the potential, as well as the actual, risk that an applicant may deliberately

or inadvertently fail to properly safeguard classified information.

An applicant's admission of the information in specific allegations relieves the Government

of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons. If the Government meets its burden (either

by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence

of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

A person seeking access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. As required by DoD Directive 5220.6, as amended. at E2.2.2., "any doubt as to whether access to classified information is clearly consistent with the interests of national security will be resolved in favor of the nation's security."

CONCLUSIONS

Guideline C (Foreign Preference)

Applicant is 54 years old (born in Taiwan in 1961). He came to the United States in 1974 to further his education, culminating in a Ph.D. He is an Engineer for a major defense contractor and

has been employed there since 1983. He has returned to Taiwan on only one occasion, in 1980. He became a U.S. citizen in 1986, is married, and has two grown children, both of whom are native born Americans.

In the 1990s, he inherited a 1/32 partial interest in some real estate in Taiwan. His interest is less than \$4,000. In order to deal with the property, based on advice from his uncle (Tr at 23), he came to believe that it would be helpful to dispose of his interest if he had a Taiwan passport for "identification" (Id.). He did not go to Taiwan, and never used the Taiwan passport for any reason.

Once he became aware it was a negative factor in obtaining a security clearance, he surrendered it to Taiwan officials in 2004.

Applicant avers that "the United States is [my] country. And I don't have any thoughts about my loyalty to this country" (Tr at 22).

Guideline C (Foreign influence)

This concern deals with Applicant's relatives in Taiwan. His brother, who is a U.S. resident alien, has returned to Taiwan to accept a better employment offer to teach in a private high school.

Applicant does not consider their relationship to be a close one. The only relative he keeps in contact with is his uncle, who takes care of the family real estate in Taiwan.

Guideline B (Foreign Influence)

2.a. - 2.c. - I have considered the presence and status of Applicant's family members and other relatives in Taiwan and his relationship and contacts with them. His immediate family resides

in the U.S. and his two grown children were born here. I have also considered the personal and professional life Applicant has made for himself in the United States since coming here in 1974. He

has spent considerably more time in the U.S. than in Taiwan, and he has been there only once since he moved to the U.S. in 1974, and that was 24 years ago.

He considers himself to be an American and much of his professional career has been in supporting U.S. military and security interests. At age 54, there is absolutely no reason to question

his feelings of allegiance and loyalty to the U.S. and to the interests of his family. He owes no allegiance to Taiwan or any other country. He has no intentions of returning to Taiwan (Tr at 35).

He has no financial interests in Taiwan beyond a minimal interest (about \$3,000) in a small piece

of property in Taiwan. On the other hand, Applicant's net worth in the U.S. is about \$3,000,000. He does not discuss his work with anyone in Taiwan and even his brother there knowr only that

Applicant is an engineer (Tr at 37).

He has introduced a letter of high praise from his department manager (AX A). He has received several cash awards for distinguished perfon~nance (AX B and AX C). His work evaluations are consistently highly positive (AX D). I find these letters and awards to be on point and persuasive as to Applicant's character, dedication, and integrity.

While any relatives in a foreign country may present a risk, the Directive does not make this

factor an automatic bar to holding a security clearance. Fairness and commonsense require an analysis of the entire record and an overall common sense determination. Taiwan is cited in an official Government documents (Item 7) as a country involved in economic espionage in the United

States, but the same document does not indicate the documented use of pressure applied against individuals with relatives in Taiwan.

The lack of any past improper contacts in the past is not evidence establishing that it will not

happen in the future, but it is a positive factor that should be considered along with all other evidence, including, but not limited to, Applicant's statement that his allegiance is to the United States only. Based on the totality of the record, I conclude (1) that Applicant has done nothing to suggest any preference for Taiwan, and (2) there is minimal risk that Applicant's relatives will be

pressured into contacting Applicant for improper purposes. In addition, based on his long history of residence in and dedicated service to this country, there is even less risk that Applicant would respond to any such contact by agreeing to act against U.S. interests.

A security risk may exist when an individual's immediate family... are (1) not citizens of the United States or (2) may be subject to duress. These situations may create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of foreign countries are also relevant to security determinations if they make an individual

potentially vulnerable to coercion, exploitation, or pressure.

Disqualifying Condition - 1. An immediate family member..., is a citizen of, or resident or

present in, a foreign country.

Mitigating Condition - 1. A determination that the immediate family member(s) . . . in question would not constitute an unacceptable security risk.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Guideline C (Foreign Preference) For the Applicant

Subparagraph 1.a. For the Applicant

Guideline B (Foreign Influence) For the Applicant

Subparagraph 2.a. For the Applicant

Subparagraph 2.h. For the Applicant

Subparagraph 2.c. For the Applicant

Subparagraph 2.d. For the Applicant

Subparagraph 2.e. For the Applicant

Subparagraph 2.f. 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.

Barry M. Sax

Administrative Judge