

DATE: November 16, 2004

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-19259

## **ECISION OF ADMINISTRATIVE JUDGE**

**PHILIP S. HOWE**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Jennifer I. Campbell, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant' girlfriend, his father, and grandparents are citizen residents of the Republic of China (a/k/a ROC or Taiwan). His father is a resident alien of the United States and returns frequently to the ROC. Applicant has frequent contact with a friend of his in the ROC. Applicant visited the ROC in 1998 and December 1995 to January 1996. Applicant did not mitigate the foreign influence security concerns. Clearance is denied.

### **STATEMENT OF THE CASE**

On May 24, 2004, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons under Guideline B (Foreign Influence) 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 conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

In a signed and sworn statement, dated June 8, 2004, Applicant answered the SOR allegations, admitting all of them. He requested his case be decided on the written record in lieu of a hearing.

On August 2, 2004, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) [\(U\)](#) was provided to the Applicant, and he was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the FORM on August 9, 2004. Applicant did not file a response to the FORM. The case was assigned to me on September 17, 2004.

### **FINDINGS OF FACT**

Applicant admitted the SOR allegations. Those admissions are incorporated herein as findings of fact. 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:

Applicant is 28 years old. He works for a defense contractor. Applicant's father is a sculptor and before that was a fine arts teacher in the Republic of China (ROC), which is located on the island of Taiwan. Applicant came to the United States in 1991 with his father and attended high school. Applicant's father bought a house in the United States, and Applicant lives there. After his mother retired in 1993, she came to live with Applicant in that house, as did his sister. Applicant's grandmothers are elderly and live in the ROC. Applicant's father spends several months there taking care of his mother and mother-in-law each year. He is a resident alien in the U.S. Applicant became a U.S. citizen in May 2000. Applicant remains close to his grandmothers. (Items 3, 4 and 5)

Applicant traveled to the ROC to visit his father and grandmothers in December 1995 and January 1996, the summer and winter of 1998 to visit his family and his girlfriend, who lives in the ROC and is a citizen of the ROC. Applicant met his girlfriend in 1999. She works in her family's noodle restaurant in the ROC. Applicant maintains daily 30 minute telephone contact with his girlfriend, and e-mail communication with her frequently. Applicant also communicates with his grandmothers at least annually. Applicant has a friend in the ROC whom he has visited on his trips to the ROC, and with whom he maintains e-mail contact on a frequent basis. (Items 3 and 5)

The ROC engages in economic and industrial espionage against the U.S. The ROC seeks military and proprietary trade secrets on a regular basis. (Item 6)

## POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the Administrative Judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. 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.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance

determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

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, Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

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

### **GUIDELINE B: Foreign Influence**

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 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. Directive ¶ E2.A2.1.1.

Conditions that could raise a security concern and may be disqualifying include:

An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country. Directive ¶ E2.A2.1.2.1.

Conditions that could mitigate security concerns include:

A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(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. Directive ¶ E2.A2.1.3.1.

### **CONCLUSIONS**

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions above, I conclude the following with respect to each allegation set forth in the SOR:

The foreign influence alleged under Guideline B is based on Applicant's family members being citizens of and residents of the ROC. Also, Applicant's girlfriend lives and works in the ROC. The Government established by substantial evidence that the security concern of the Guideline B, and in particular Disqualifying Condition (DC) 1 applies to this case.

Applicant did not meet his burden of showing that his girlfriend and family members were not in a position to be exploited by a foreign power that could force Applicant to choose between loyalty to the person involved and the United States. Applicant's father travels back and forth frequently to the ROC, and has a business interest in having his sculptures sold in the U.S. and other countries. Applicant has an interest in seeing his girlfriend, and he hopes she can come to the U.S. in another one or two years. Applicant's family connections are strong. There are no Mitigating Conditions (MC) which I apply to this case because of these strong connections. Therefore, I find against Applicant on this guideline.

## **FORMAL FINDINGS**

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline B: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

## **DECISION**

In light of all the circumstances and facts 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. Clearance is denied.

Philip S. Howe

Administrative Judge

1. The Government submitted six items in support of the SOR.