

DATE: October 19, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-19730

**ECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Department Counsel

**FOR APPLICANT**

Gregory M. Murphy, Attorney At Law

**SYNOPSIS**

Applicant's foreign preference, including possession and use of a valid foreign passport, and his foreign influence, including foreign family members, have been mitigated. Clearance is granted.

**STATEMENT OF THE CASE**

On March 15, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), 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.

The Applicant responded to the SOR in writing on April 8, 2004, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on May 20, 2004. A notice of hearing was issued on June 23, 2004, scheduling the hearing for July 29, 2004. At the hearing the Government presented four exhibits. The Applicant presented thirteen exhibits. He also testified on his own behalf. The official transcript (Tr.) was received on August 19, 2004.

On August 16, 2000, a memorandum was issued by Mr. Arthur Money, Assistant Secretary of Defense for Command, Control, Communications and Intelligence, clarifying "the application of Guideline C to cases involving an Applicant's possession or use of a foreign passport." The Applicant received a copy of this memorandum. (See Government Exhibit 4).

**FINDINGS OF FACT**

The following Findings of Fact are based on Applicant's Answer to the SOR, the exhibits and the testimony. The

Applicant is 43 years of age and holds a Phd in Electrical Engineering. He is employed as a Scientist for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline C - Foreign Preference). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has acted in such a way as to show a preference for another country over the United States.

The Applicant is a dual citizen of Taiwan and the United States. He was born Taiwan in 1961. He moved to the United States in 1985, at the age of twenty-four. He came for educational and job opportunities that were not available to him in Taiwan. In June 1998, the Applicant was issued a Taiwanese passport that was not to expire until April 22, 2004. In 2000, he received his United States citizenship. (Tr. p. 21). He obtained his United States passport at that time.

Since learning of the provisions of the Money Memorandum, the Applicant testified that he tried to surrender his Taiwanese passport to the Taiwanese Consulate, but they would not take it. (Tr. p. 22). As an alternative, he took it to his company's security office and destroyed it in front of the security officer. (See Tr. p. 22). The Applicant further testified that when he took the oath of allegiance to become a United States in 2000, he no longer considered himself a citizen of Taiwan. He also recently sent a letter to the Taiwanese consulate formally declaring that he gave up his Taiwanese citizenship. (See Applicant's Exhibit G).

In November 1999, January 2000 and April 2000, the Applicant traveled to Taiwan. He went for the purpose of visiting his sick mother and most recently to attend her funeral. (See Tr. pp. 20 and 27). He used his Taiwanese passport to travel to Taiwan because he was not yet a United States citizen. (See Government Exhibit 1).

Paragraph 2 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant's father and a brother live in Taiwan. His father is a retired worker for a private railroad company and is supported solely by his pension. The Applicant speaks with his father about once a month. His mother passed away in March 2000. She was a housewife. The last time he had any contact with his brother in Taiwan was at his mother's funeral in 2000. The Applicant's other brother is a citizen of and resides in the United States.

### Mitigation.

The Applicant has a wife and two children who are all United States citizens. He and his wife own a home, a bank savings account, and have retirement pension accounts with their employers in the United States. (See Applicant's Exhibits J, K, L, and M). The Applicant has no assets in Taiwan and no plans to ever return. He is involved in his local community. He has served as a community watch volunteer, and he has been teaching adult Sunday school at his church for the past sixteen years.

Several letters of recommendation from professional colleagues submitted on behalf of the Applicant attest to the Applicant's attentiveness to detail, conscientiousness, excellent performance on the job, and overall compliance with all of the required protocols and rules governing his work. He is considered to be an extremely valuable member of their organization. (See Applicant's Exhibits A, B, C, D, E, and F).

## **POLICIES**

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

### Foreign Preference

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

#### Conditions that could raise a security concern:

1. The exercise of dual citizenship;
2. Possession and/or use of a foreign passport;

#### Conditions that could mitigate security concerns:

1. Dual citizenship is based solely on parent's citizenship or birth in a foreign country;
4. Individual has expressed a willingness to renounce dual citizenship.

### Foreign Influence

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: (1) not citizens of the United States or (2) 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.

#### Condition that could raise a security concern:

1. An immediate family member, or person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country;

#### Condition that could mitigate security concerns:

1. 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 the loyalty of the person(s) involved and the United States.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress

i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have 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. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

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

An individual who demonstrates a foreign preference and has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The mere possession of a foreign passport raises legitimate questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. 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

Having considered the evidence in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR, and that Applicant's foreign contacts have a direct and negative impact on his suitability for access to classified information.

The Applicant was born in Taiwan. Since learning that possession of a foreign passport is not permitted when holding a security clearance, in compliance with the provisions of the Money Memorandum, he tried to surrender his foreign passport to the Taiwanese Consulate but they would not accept it, so he destroyed his expired Taiwanese passport in front of his company security officer. With respect to his Taiwanese citizenship, the Applicant has renounced it. Under the circumstances, the Applicant has done everything possible to be in compliance with the requirements of the directive and the Money Memorandum. Accordingly, he has clearly demonstrated an unequivocal preference for the United States. Mitigating factors 1 and 4 under Guideline C also apply. (*1. Dual citizenship is based solely on parent's citizenship or birth in a foreign country, and 4. Individual has expressed a willingness to renounce dual citizenship.*) Under the circumstances of this case, I find for the Applicant under Guideline C.

With respect to Guideline B, the evidence establishes that he is not vulnerable to foreign influence. The Applicant's contacts with his foreign relatives are not of a nature to influence his security worthiness. There is no evidence in the record that any of his family or friends have any connection with the Taiwanese Government, or are in a position to be exploited by Taiwan in a way that could force the Applicant to choose between loyalty to them and loyalty to the United States. Mitigating factor 1 under Guideline B applies. (*1. 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 the loyalty of the person(s) involved and the United States.)* Based on the foregoing, this does not raise a security concern and Guideline B is found for the Applicant.

Considering all the evidence, the Applicant has met the mitigating conditions of Guideline C and Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guidelines C and B.

### **FORMAL FINDINGS**

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.

Subparas. 1.a.: For the Applicant

1.b.: For the Applicant 1.c.: For the Applicant

Paragraph 2: For the Applicant.

Subparas. 2.a.: For the Applicant

2.b.: For the Applicant

2.c.: For the Applicant

### **DECISION**

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

Darlene Lokey Anderson

Administrative Judge