

DATE: December 8, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-21704

DECISION OF ADMINISTRATIVE JUDGE

THOMAS M. CREAN

APPEARANCES

FOR GOVERNMENT

Kathryn Antigone Trowbridge, Esq., Department Counsel

FOR APPLICANT

Leigh B. Meineke, Esq.

SYNOPSIS

Applicant is a naturalized United States citizen and the president of three architect firms, one doing business with the United States government requiring a security clearance. The other firms do no business with the United States government but do seek commercial business in Taiwan and China. His firms have bid for but not received work in Taiwan and China. After receiving his United States passport, Applicant obtained a Taiwan passport to facilitate a loan from a United States bank guaranteed by the government of Taiwan. Applicant did not receive the loan. Upon learning the Taiwan passport could affect his security clearance, Applicant immediately surrendered the foreign passport. Clearance is granted.

STATEMENT OF THE CASE

On March 18, 2004, The Defense Office of Hearing and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to not grant a security clearance to Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb 20, 1990), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan 2, 1992), as amended and modified (Directive). Applicant acknowledged receipt of the SOR on March 24, 2004. The SOR alleges security concerns under Guideline C (Foreign Influence), Guideline L (Outside Activities), and Guideline B (Foreign Preference) of the Directive.

Applicant answered the SOR in writing on March 29, 2004. He admitted to all of the allegations under Guideline C except for an allegation of dual citizenship. He admitted all of the allegations under Guideline L and denied the allegation under Guideline B. He requested a hearing before an administrative judge. The request for a hearing was received by DOHA on April 12, 2004. Department Counsel was prepared to proceed and the case was assigned to me on October 20, 2004. A notice of hearing was issued on October 27, 2004. The hearing was held on November 17, 2004. Five government exhibits, two Applicant exhibits, and the testimony of the Applicant were received during the hearing. The transcript was received on November 29, 2004.

FINDINGS OF FACT

Applicant is the president of his own architecture firm. The firm has offices in 3 states. He started the firm in State A in 1982, acquired the firm in State B in 1999, and the firm in State C in 2001. While each office operates separately, they do share expertise when required. The State A office is involved in public projects, the State B office is involved in retail structures, and the State C office does work primarily for the Army Corps of Engineers, . Applicant is required to have a security clearance because he is the major shareholder of the State C office doing primarily federal work. Applicant's main function in the State A office is marketing and finance. His role with the other offices is mainly oversight and as the major shareholder of the businesses.

Applicant is 55-years old and was born in the People's Republic of China (PRC) but moved to Taiwan when 4 months old. He received his undergraduate architecture degree in Taiwan and came to the United States in 1974 to obtain a Master's of Architecture degree. Applicant did compulsory military service as an enlisted soldier in Taiwan after graduating from college. After receiving his Master's degree, he worked for a few years for architecture firms before starting his own architecture company in State 1. His wife is a naturalized United States citizen residing in the United States. He has two children in their 20s, born and living in the United States. His father is deceased but was a United States citizen. His mother, brother, and sister live in the United States and are United States citizens. He has no close relatives in Taiwan or China. He has no property or businesses in China or Taiwan. In addition to the work with his firm, Applicant has taught architecture subjects at various schools and universities, given lectures on Chinese architecture to various groups, and published numerous articles on architecture subjects. He received numerous awards from various organizations in the United States. He also belongs to various civic and cultural groups in the United States. He was recently appointed to a special State commission by the Governor of State A.

Applicant became a naturalized United States citizen in 1980. He obtained a United States passport in 1996. Between 1980 and 1996, he did not travel outside the United States so he did not need a passport. He obtained a Taiwan passport in 1998 for business purposes. He was seeking a loan from a local bank which catered to Chinese clientele. He was informed by his loan officer he may be eligible for a loan from the bank guaranteed by the Taiwan government. He applied for the Taiwan passport to facilitate obtaining this loan. He did not receive the loan because his net worth would not support the loan. When informed possession of a foreign passport affected his security clearance, Applicant immediately surrendered the passport to the Taiwan government. (Government Exhibit 3). Applicant in 2001 had a stamp placed in his United States passport by the Taiwan consulate to facilitate his trips to Taiwan. Applicant never traveled using his Taiwan passport but has always used his United States passport to travel.

Applicant, in the last few years, has traveled to China for business reasons 15 to 20 times. He has also made a few trips to Taiwan for business purposes. Approximately half of his trip to both China and Taiwan were made with local political leaders as part of trade missions for his local area. The other half of the trips were for the purpose of generating business opportunities for his State 1 and State 2 offices. In the last two years, his firm has submitted 2 bids for work in China which were rejected. At present, his firms have no business interests in the China or Taiwan.

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 judgement, 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.

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the

disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6

"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." Directive ¶ E2.2.1. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. *Id.* An administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the applicant'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 of recurrence. Directive ¶¶ E2.2.1.1 through E2.2.1.9.

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.

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

CONCLUSIONS

I carefully considered all of the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR:

Under Guideline C (Foreign Preference), a security concern exists when an individual acts in such a way as to indicate a preference for a foreign country over the United States so that he may be prone to provide information or make decisions that are harmful to the interests of the United States. Directive ¶ E2.A3.1.1. Under Guideline B (Foreign Influence), a security concern exists when an individual has contacts with citizens of other countries or financial interests in other countries that make an individual vulnerable to coercion, exploitation, or pressure. Directive ¶ E2.A2.1.1. Under Guideline L (Outside Activities), a security concern exists for involvement in certain types of outside employment or activities that pose a conflict with an individual's security responsibilities and could create an increased risk of unauthorized disclosure of classified information. Directive ¶ E2.A12.1.1.

Applicant's obtaining and possessing a foreign passport, after receiving a United States passport, and using it to obtain loans guaranteed by a foreign government brings the matter under Foreign Preference Disqualifying Conditions Directive ¶ E2.A3.1.2.1. (*exercise of dual citizenship*); Directive ¶ E2.A3.1.2.2. (*possession and/or use of a foreign passport*); Directive ¶ E2.A3.1.2.4. (*accepting...benefits...from a foreign country*); and Directive E2.A3.1.2.6. (*using foreign citizenship to protect foreign business interest in another country*). Applicant obtained his Taiwan passport to qualify for a loan from a United States bank guaranteed by the Taiwan government. This action was an exercise of dual citizenship, and the use of a foreign passport. I conclude the disqualifying conditions under Directive ¶ E2.A3.1.2.1. and Directive ¶ E2.A3.1.2.2. have been established. Since Applicant did not receive the loan, there was no benefit from a foreign country and there is no business in a foreign country. I conclude the Disqualifying Conditions under Directive ¶ E2.A3.1.2.4 and Directive ¶ E2.A3.1.2.6 have not been established.

The mitigating conditions that may apply to Applicant is Directive ¶ E2.A3.1.3.4. (*individual has expressed a willingness to renounce dual citizenship*). As soon as he learned that possession of the Taiwan passport was a security concern, Applicant took the appropriate steps to return the passport to the Taiwan government. He has denounced any claim to Taiwan citizenship. I conclude Applicant has mitigated the established security concerns under Guideline C.

Applicant's travels to Taiwan and China to obtain business for his firms and his submission of two bids for business brings this matter under Outside Activities Disqualifying Conditions Directive ¶ E2.A12.1.2. (*any service, whether compensated, volunteer, or employment with a foreign country* (Directive ¶ E2.A12.1.2.1), or (*a representative of any foreign interest* (Directive ¶ E2.A12.1.2.3.)). There is also a security concern under Foreign Influence Disqualifying Conditions Directive ¶ E2.A2.1.2.8 (*a substantial financial interest in a country, or in any foreign-owned or- operated business that could make the individual vulnerable to foreign influence*). Applicant's bids for architect work in China and Taiwan were not approved so his firms do not now have any work in China or Taiwan. Even if these bids for architect services in Taiwan for retail structures were approved, they would be mitigated by mitigating condition Directive E2.12.1.3.1. (*evaluation of the outside employment or activity indicates that it does not pose a conflict with an individual's security responsibilities*). The architect services to be performed would be for a private business and not a government entity. The architect services to be performed in China and Taiwan would not be different than the services performed for a client in the United States. I conclude there is no security concern under Guideline L and Guideline B.

I carefully considered all of the circumstances in light of the "whole person" concept. I conclude Applicant is eligible for access to classified information.

FORMAL FINDINGS

Formal findings For and Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline C FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Paragraph 2, Guideline L FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

Paragraph 3, Guideline B FOR APPLICANT

Subparagraph 3.a.: For Applicant

DECISION

In light of all of 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. Clearance is granted.

Thomas M. Crean

Administrative Judge

