

DATE: May 10, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-32962

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

In 1986, at the age of 24, Applicant emigrated from Taiwan to the United States to study and obtain his doctorate in science. Applicant is married to a Canadian citizen, and has a child born in the United States. He has one brother in the United States who is a naturalized citizen. All other relatives, and his wife's relatives, are all in Taiwan or Canada. His sister works for the Taiwanese Department of Health. Applicant used his Taiwanese passport after becoming a U.S. citizen to visit his aged parents and sister in Taiwan. He renewed his Taiwanese passport in 2003 for a term of 10 years after making a commitment in 2002 to cancel it. He has now renounced officially his Taiwanese citizenship and surrendered his Taiwanese passport to the appropriate Taiwanese representatives. Applicant mitigated the personal conduct concern. He did not mitigate the foreign preference and foreign influence security concerns. Clearance is denied.

STATEMENT OF THE CASE

On August 11, 2002, 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 the personnel security Guideline C (Foreign Preference), Guideline B (Foreign Influence), and Guideline E (Personal Conduct) 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. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

In a signed statement, dated August 27, 2003, and notarized on August 29, 2003, Applicant responded to the SOR allegations. He admitted all the allegations except the allegation contained in Subparagraph 3.a., which he denied. He requested his case be decided on the written record in lieu of a hearing.

On November 25, 2003, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant filed a response to the FORM by a letter with attachments dated December 31, 2003, and received on January 4, 2004, within the scheduled due date of January 6, 2004. The case was assigned to me on March 22, 2004.

FINDINGS OF FACT

Applicant admitted the allegations contained in the SOR, except the allegation contained in Subparagraph 3.a., which alleged he falsified his marital status on his security clearance application (SCA). 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 immigrated to the United States in 1986 when he was 24 years old. He obtained a doctorate degree in science. He works for a defense contractor. He is married and has a young child. His wife is a Canadian citizen, born on Taiwan, who is a permanent U.S. resident. His daughter was born in the U.S. (Items 3, 5 and 6)

Applicant became a U.S. citizen in June 1998 and obtained a U.S. passport at that time. He retained his Taiwanese passport because it was convenient for him to use when traveling to Taiwan to visit his aging parents (his father is 80 and his mother is 68). His father suffers from Parkinson's Disease and is confined to the family residence where his wife takes care of him. During an interview with an investigator in 2002, Applicant stated he would surrender his Taiwanese passport in accordance with the procedures and requirements of the "Money Memo". However, in 2003, during the security clearance review process and because he did not know the status of the application and the possible outcome, he renewed the Taiwanese passport of another 10 years to allow himself to travel immediately to Taiwan if his father's health deteriorated quickly and he needed to go there to visit his father. The Taiwanese passport allows him to stay longer than 14 days in country, while a visa with an American passport would only allow him 14 days. He visited Taiwan in 1995, 1997, and twice in 2000 to see his aged parents. (Items 3, 4, 5 and 6; Response at Exhibit A at 1 and 3)

Applicant has renounced his Taiwanese citizenship and surrendered his Taiwanese passport in March 2004. He went through the formal process required by the Taiwanese government, and submitted translations of the documents. (Response at Exhibit B)

Applicant completed the SCA in October 2000 when he was hired by the defense contractor for whom he works. Applicant was not married when he completed the SCA. In May 2001 his employer's security office told him the form was ready for his signature. He signed and submitted it then, and forgot to change the form to reflect his marriage in April 2001. Applicant did not deliberately answer Question 8 on the SCA wrong, because at the time of filling it out he was not married, and then he forgot to review each answer in May 2001 prior to signing it. Applicant never hid the fact he was married. (Items 3, 5 at 4, 6, Response at Exhibit A)

Applicant's parents live in Taiwan, and his sister lives there too. Applicant's sister is a pharmacist working for the Taiwanese Department of Health. Applicant speaks with his parents weekly to check on their health, and must also speak with his sister to discuss their parent's health. (Item 6; Response at Exhibit A)

Applicant's wife works in private industry as an accounting manager, financial planner, realtor, and loan consultant. Her father is 74 years old and retired from business. Her mother is 62 and is not involved in any activities outside the home where they live on Taiwan. Both parents, and also Applicant's parents, are not involved in government or political activities where they live. Applicant's wife's three sisters live and work in Taiwan. They work as a business manager for a bakery, a sales manager for an insurance company, and a hotel secretary. Applicant speaks with his in-laws when his wife telephones them to speak with her family. He will speak with them at that time. He has little further interaction with them because they all live on Taiwan. (Item 6; Response at Exhibit A at 4 and 5)

Applicant traveled to Taiwan in 1993, 1995, 1997, 1998, and twice in 2000 to visit his parents. He had no other interaction with anyone on those visits outside his family. (Item 6; Response at Exhibit A at 5)

Applicant served in the Taiwanese Army for the mandatory two years of service prior to his immigration to the United

States in 1986. He traveled to the United States two months after completion of his military service. (Response at Exhibit A at 5)

None of Applicant's educational expenses in the United States were paid for by the Taiwanese government. Applicant's parents paid for his first year of schooling for his doctorate in the United States. The succeeding years were paid for by the school through teaching assistantship positions. (Item 6 at 2)

Applicant submitted two character references from his superiors and co-workers at his place of employment attesting to his credentials, integrity, honesty, loyalty, and trustworthiness. One writer states also that Applicant disclosed his marriage to the investigator prior to being confronted about it in the interview with the government investigator. (Response at Exhibits D and E)

POLICIES

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. Enclosure 2 to the Directive sets forth adjudicative guidelines that must be carefully considered according to the pertinent Guideline in making the overall common sense determination required.

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, Section E2.2.1., 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 C: Foreign Preference:

The Concern: 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. Directive ¶ E2.A3 .1.1.

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

The exercise of dual citizenship. Directive ¶ E2.A3.1.2.1.

Possession and/or use of a foreign passport. Directive ¶ E2.A3.1.2.2.

Military Service or a willingness to bear arms for a foreign country. Directive ¶ E2.A3.1.2.3.

Conditions that could mitigate security concerns include:

Dual citizenship is based solely on parents' citizenship or birth in a foreign country. Directive ¶ E2.A3.1.3.1.

Indicators of possible foreign preference (e.g., foreign military service) occurred before obtaining United States citizenship. Directive ¶ E2.A3.1.3.2.

Individual has expressed a willingness to renounce dual citizenship. Directive ¶ E2.A3.1.3.4.

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.

Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists. Directive, ¶ E2.A2.1.2.2.

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.

Guideline E - Personal Conduct:

The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

Refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials or other official representatives in connection with a personal security or trustworthiness determination.

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

The deliberate omission, concealment, falsification or misrepresentation of relevant and material facts from any personnel security questionnaire, personal history statement or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities. Directive, ¶ E2.A5.1.2.2.

Conditions that could mitigate security concerns include:

The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily. Directive, ¶ E2.A5.1.3.2.

The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts. Directive, ¶ E2.A5.1.3.3.

The Memorandum of August 16, 2000, from Assistant Secretary of Defense for Command, Control, Communications, and Intelligence Arthur L. Money is a clarification of "the application of Guideline C to cases involving an applicant's possession and or use of a foreign passport. The Guideline specifically provides that 'possession and/or use of a foreign passport' may be a disqualifying condition. It contains no mitigating factor related to the applicant's personal convenience, safety, requirements or foreign law, or the identity of the foreign country. The only applicable mitigating

factor addresses the official approval of the United States government for the possession or use. The security concerns underlying this guideline are that the possession and use of a foreign passport in preference to as U.S. passport raises doubt as to whether the person's allegiance to the United States is paramount and it could also facilitate foreign travel unverifiable by the United States. Therefore, consistent application of the guideline requires that any clearance be denied or revoked unless the applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United States Government." (Item 4)

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 Government has clearly established its case. The Guideline C Disqualifying Conditions (DC) which are applicable are DC 1 (exercising dual citizenship), DC 2 (possession and/or use of a foreign passport), and DC 3 (military service for a foreign country). They are the key concerns in this case. Applicant had dual citizenship with Taiwan and the United States from 1998 to the present. He was born on Taiwan, and obtained his citizenship by birth. He had a Taiwanese passport while having a U.S. passport from 1998 to the present time. He renewed the Taiwanese passport while applying for a security clearance, clearly exercising dual citizenship. He served the mandatory two years of military service in the Taiwanese Army prior to immigrating to the U.S. in 1986 for an educational degree, a doctorate.

But these DCs could be offset by the Mitigating Conditions (MC) 1 (dual citizenship based solely on the parents' citizenship and birth in a foreign country), C 2 (indicators of possible foreign preference such as foreign military service occurred before obtaining United States citizenship), and MC 4 (individual has expressed a willingness to renounce dual citizenship) if Applicant had not violated his commitment stated in his 2002 statement to surrender his Taiwanese passport. Applicant was born on Taiwan and that birth is the basis for his dual citizenship after he became a U.S. citizen. His Taiwanese military service occurred prior to his immigration to the U.S. and his obtaining citizenship here. Applicant has done more than merely express a willingness to renounce his Taiwanese citizenship, he has actually renounced it formally and it was effective February 23, 2004. However, all of this action does not offset his renewal in 2003 of his Taiwanese passport, which action by itself clearly expresses a preference for Taiwan and an exercise of dual citizenship after having obtained U.S. citizenship. It is particularly troublesome and of a security concern when Applicant had stated he would surrender that passport, and then he renews it while the security clearance application is being processed. Applicant is trying to have the benefits of both citizenships, and those type of actions are clearly what the guideline conditions were meant to address. Considering all of the facts in this case, I do not find that the MC outweigh the DC here. I do not find Applicant's explanation for that renewal persuasive while he is seeking a security clearance and also allegedly trying to renounce his Taiwanese citizenship. Therefore, I find against Applicant on Guideline C.

Regarding Guideline B, the applicable DCs are DC 1 (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), DC 2 (sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists), and DC 3 (relatives, cohabitants, or associates who are connected with any foreign government). Only Applicant's infant daughter and brother are U.S. citizens and live in the United States. Every other relative or in-law lives in and/or is a citizen of Taiwan or Canada. Applicant's wife is a Canadian citizen. His sister is an employee of the Taiwanese Department of Health. His parents and his wife's parents are elderly and retired from business. Applicant's contacts with his family are constant, close and personal due to his affection for his parents and concern for their health. His wife is in frequent contact with her family, and Applicant speaks to them on regular occasions.

The MC applicable here is MC 1 (a determination that the immediate family members 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). I cannot find any other MC applicable under these facts. Applicant has shown his relatives are not agents of a foreign power, either the Taiwanese or Canadian governments. However, his parents could be exploited if their health care is dependent upon the Taiwanese government to provide it at low or no cost. Also, his sister could be exploited because she works for the Taiwanese government, and promotions and salary adjustments could be contingent upon obtaining Applicant's cooperation in economic espionage.

This MC does not counter-balance the DC and the concerns of exploitation. I find against Applicant on Guideline B.

Under Guideline E, the DC 2 (the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, to determine security clearance eligibility) applies here. Applicant did not disclose on his SCA that he was married in April 2001.

The MC which are applicable here are MC 1 (the falsification was an isolated incident, not recent, and the individual has subsequently provided correct information voluntarily), and MC 3 (the individual made prompt, good-faith efforts to correct the falsification before being confronted by the facts). Applicant completed the SCA in October 2000 when he was hired. It took about eight months for the document to move through the company's security operation until he was asked to come to the security office and sign the paper copy in May 2001. Applicant admits he did not proof read the SCA prior to merely affixing his signature to the document. In the meantime he got married. He did not deliberately conceal his marriage, and it was common knowledge in his employer's work environment, as attested by one of his character references. Considering the whole person here, I find for Applicant on Guideline E.

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 C: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Paragraph 2 Guideline B: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Subparagraph 2.d.: Against Applicant

Subparagraph 2.e.: Against Applicant

Subparagraph 2.f.: Against Applicant

Subparagraph 2.g.: Against Applicant

Subparagraph 2.h.: Against Applicant

Paragraph 3 Guideline E: FOR APPLICANT

Subparagraph 3.a.: For 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