

DATE: February 24, 2005

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-05347

## **DECISION OF ADMINISTRATIVE JUDGE**

**MICHAEL J. BRESLIN**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Jennifer I. Campbell, Esq., Department Counsel

#### **FOR APPLICANT**

Paul Mousalam, Esq.

Peter Pham, Esq.

### **SYNOPSIS**

Applicant is 53-year-old employee of a defense contractor. He was born in Taiwan, came to the U.S. when he was 19 years old, and became a citizen in 1981. He has worked for a defense contractor for more than 20 years and successfully held a confidential clearance when required. Although Applicant has some bonds of affection and obligation to his uncle, his mother-in-law, and several friends in Taiwan, his extensive familial, professional, and economic ties to the U.S. mitigate the security concerns arising from possible foreign influence. Clearance is granted.

### **STATEMENT OF THE CASE**

On August 17, 2001, Applicant submitted a security clearance application. The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (the "Directive"). On April 29, 2004, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under Guideline B, Foreign Influence, of the Directive.

Applicant answered the SOR in writing on May 5, 2004. Applicant elected to have a hearing before an administrative judge.

I was assigned the case on October 14, 2004. With the concurrence of the parties, I conducted the hearing on November 16, 2004. The government presented three exhibits. Applicant's counsel presented 15 exhibits, Applicant's testimony, and a hearing brief. DOHA received the transcript (Tr.) on December 9, 2004.

### **FINDINGS OF FACT**

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

After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant is 53 years old. Ex.1 at 1. He was born in the Republic of China (Taiwan). *Id.* As a child, he was fascinated by aviation and airplanes. Tr. at 25. In about 1966, when he was about 14 years old, Applicant wrote an article about flying that was published in the daily newspaper in Taiwan, sparking a life-long interest in journalism and aviation. Tr. at 26.

Applicant came to the United States when he was 19 years old as an aeronautics student. Tr. at 27; Ex. N. Upon graduation, he worked for two major defense contractors, building and testing jet engines and components. Tr. at 27-28. He received permanent resident status in 1977 and became a naturalized citizen in 1981. Ex. N at 2; Ex. 1 at 1.

Between 1980 and 1984, Applicant attended a university in the United States. While in his senior year, Applicant began working for the Department of Energy as a process control engineer. After a background check, he was granted access to a nuclear power plant. He graduated in 1984 with a bachelor's degree in electrical engineering. Tr. at 28.

In 1984, Applicant began working for his current employer, a defense contractor. Tr. at 29. He obtained a security clearance at the confidential level and held it until the early 1990's when Applicant no longer had a need for the clearance. Tr. at 31. Applicant performed well for his employer, inventing a process that saved the company more than ten million dollars. Tr. at 30. He was named Employee of the Month in December 1988. *Id.*

While working for the defense contractor, Applicant enrolled in college for post-graduate studies. Tr. at 31. He obtained his master's of business administration (MBA) in 1992. *Id.* His supervisor praises his expertise and job performance. Ex. O.

Applicant is married. Tr. at 32. His wife was born in Taiwan, and became a naturalized citizen of the United States in 1999. Ex. 1 at 5. Applicant's wife operates a business. Ex. H. Applicant and his wife have substantial financial holdings in the United States, including their home, rental properties, savings accounts, retirement funds, and investments. Ex. N at 2; Ex. I; Tr. at 47-49.

Applicant has two children, ages 24 and 28. Tr. at 33. Both are citizens and residents of the United States. Ex. 1 at 3-4.

Applicant's parents were born in the People's Republic of China. Ex. 1 at 3. Both became citizens and residents of the United States. *Id.* His father passed away in 1995. Applicant's mother lives in the U.S. He also has a brother who is an attorney and a sister who is an electrical engineer. Tr. at 50. Both were born in Taiwan, but are now citizens and residents of the United States. Ex. 1 at 4; Tr. at 50.

Applicant also has an uncle living in Taiwan. Tr. at 45. He is a retired high school teacher who is about 82 years old. *Id.* Applicant is not aware of any connection between his uncle and the government of Taiwan. *Id.* Applicant only contacts his uncle when he visits Taiwan. Tr. at 64.

Applicant's father-in-law lived in Taiwan. In 2000, while traveling in the People's Republic of China, he suffered a stroke and was hospitalized. Tr. at 35. Applicant and his wife received notice, and traveled to the People's Republic of China to assist him. In August 2000, Applicant arranged and financed his father-in-law's transfer back to Taiwan for treatment. Tr. at 37. Applicant's father-in-law passed away about one month later. *Id.* Applicant returned to Taiwan for the funeral. *Id.*

Applicant's mother-in-law is 80 years old. Tr. at 63. She lives with Applicant and his wife for about three months each year, and lives in Taiwan the remainder of each year. *Id.* Applicant and his wife send her support each month while she is living in Taiwan. Applicant's mother-in-law does not have substantial assets in Taiwan. When her mother is in Taiwan, Applicant's wife calls her almost everyday. Tr. at 64.

Applicant also maintains his relationship with five close personal friends when he visits Taiwan. Tr. at 42. One friend works for the government of Taiwan as an inspector for the civil aviation administration. The others are a commercial pilot, a restaurant owner, an administrator for a television station, and a magazine editor. Tr. at 43. Other than his visits to Taiwan, Applicant stays in regular contact only with his friend who is a commercial airline pilot. Ex. N at 4; Tr. at 61.

Applicant pursued his interest in writing about aviation, and is now recognized as an expert in Chinese aviation history. Ex. J. Over the years, he wrote numerous articles about air battles between Taiwan and China which were published in the Sunday supplement for a U.S. newspaper published in Chinese. Tr. at 40-41. Applicant properly reported writing these articles to his defense contractor. *Id.*

Applicant is presently finishing the biography of a general in the Taiwanese armed forces who retired in 1991. Tr. at 37-38. The general was a friend of Applicant's father and knew of Applicant's aptitude for writing about aviation history, so he asked Applicant to write his biography. Tr. at 38. Applicant began working on the project in about 2001. He interviewed the general at length, prepared drafts of the chapters, and discussed the general's comments. Tr. at 39. As part of developing the narrative, Applicant contacted another retiring Taiwanese general to inquire about a specific incident that occurred in about 1966. Tr. at 53. Applicant is writing the biography as a favor; it is intended only to be shared privately, and not for publication or sale. Tr. at 55.

Applicant traveled to Taiwan on several occasions. He visited in 1986 to see family and friends. Tr. at 35. As noted above, he returned several times in 2000 to assist his father-in-law during his illness, and later to attend his funeral. Applicant and his family returned to Taiwan in 2001 for the one-year anniversary of her father's death. Tr. at 37. Applicant anticipates traveling to Taiwan about once a year. Tr. at 65.

Taiwan is a democracy with a long history of friendly relations with the United States, including economic, political, cultural, and social ties. Ex. C; Ex. D. The United States and Taiwan share military defensive commitments and substantial levels of foreign trade. Ex. C; Ex. D. The National Counterintelligence Executive Office's Annual Report to Congress on Foreign Economic Collection and Industrial Espionage for 2000 includes a summary of a survey of a dozen Fortune 500 companies that indicated Taiwan is one of the most active collectors of foreign economic information or industrial espionage. Ex. 2 at 15.

## POLICIES

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." *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guideline at issue in this case is:

Guideline B, Foreign Influence: A security risk may exist when an individual's immediate family, including cohabitants, or other persons to whom he 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, as well as those which could mitigate security concerns pertaining to these adjudicative guidelines, are set forth and discussed in the conclusions below.

"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 the following factors: (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 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. *Id.*

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. Directive, ¶ E3.1.14. Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. 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). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2.

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. Exec. Ord. 10865, § 7. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

### CONCLUSIONS

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

Paragraph E2.A2.1.2.1 of the Directive provides that it may be a disqualifying condition if "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." Paragraph E2.A2.1.3.1 defines "immediate family members" to include a spouse, father, mother, sons, daughters, brothers, and sisters. None of Applicant's immediate family members are citizens or residents of a foreign country; indeed all his immediate family members are citizens and residents of the United States. Applicant's uncle and his mother-in-law are citizens and residents of Taiwan. Applicant displays a strong sense of responsibility and duty toward his family. I find he has close ties of affection or obligation to his uncle and his mother-in-law. Similarly, Applicant has close ties with his five friends in Taiwan, and the retired general whose biography he is writing. Thus, this potentially disqualifying condition applies.

Under ¶ E2.A2.1.2.2 of the Directive, it may be disqualifying where an applicant is, "[s]haring living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists." Applicant's mother-in-law lives with him and his wife for part of the year. Also, Applicant's wife stays in close touch with her mother during the remainder of each year. I find this potentially disqualifying condition applies.

Paragraph E2.A2.1.2.3 of the Directive indicates that it may raise security concerns where an applicant has "associates who are connected to a foreign government." Applicant's close friend from childhood is an inspector for the civil aviation administration of Taiwan. I conclude this potentially disqualifying condition applies.

Under the Directive, these potentially disqualifying conditions can be mitigated under certain conditions. It is potentially mitigating where the "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 involved and the United States." Directive, ¶ E2.A2.1.3.1.

None of Applicant's relatives are members of the military forces or the government of Taiwan. One friend is an inspector for the civil aviation administration; I note, however, the organization is not dedicated to intelligence gathering. The retired general has been off of active duty since 1991. There is no evidence indicating any one of them is an "agent of a foreign power" as defined by 50 U.S.C.A. § 1801(b).

In assessing whether an applicant is vulnerable to exploitation through relatives or associates in a foreign country, it is helpful to consider several factors, including the character of the government of the relevant foreign country. Taiwan is a democracy and an ally of the United States. The two countries are joined in economic and security agreements. Taiwanese businesses and individuals have a history of engaging in economic and industrial espionage. However, there is no evidence indicating that the government of Taiwan, or any other entity meeting the definition of a "foreign power,"

sponsored or encouraged efforts to exploit citizens or residents of Taiwan for that purpose. Under the circumstances, the possibility that a "foreign power" would attempt to exploit or pressure Applicant's relatives or associates in Taiwan to force Applicant to act adversely to the interests of the United States exists, but it is limited.

It is important to consider the vulnerability to duress of Applicant's relatives and associates in Taiwan. Applicant's mother-in-law is a retired homemaker without independent means. His uncle is retired. His friend at the CAA and the retired general have extensive connections to the government through their careers and are apparently reliant on the government for their income. Under these circumstances, there is some opportunity for adverse influence against Applicant's relatives or associates in Taiwan.

Another significant factor is Applicant's vulnerability to pressure or duress applied indirectly through his ties with relatives and associates. Applicant is a U.S. citizen by choice, and has lived in this country most of his adult life. All his immediate family members, including his wife, his children, his mother, and his siblings, are citizens and residents of the U.S. All Applicant's assets are in this country. He has worked for the same defense contractor for over 20 years, and has successfully held a confidential clearance. Considering Applicant's limited connection to his relatives and associates in Taiwan and his powerful ties to the United States, I find Applicant is not vulnerable to pressure or duress from a foreign power in Taiwan. I conclude the mitigating condition set out in ¶ E2.A2.1.3.1 of the Directive applies.

Under ¶ E2.A2.1.3.3 of the Directive, it may also be mitigating where "[c]ontact and correspondence with foreign citizens are casual and infrequent." Applicant does not stay in close or continuing contact with his uncle or four of his five childhood friends in Taiwan, therefore this mitigating condition applies to the security concerns arising from those relationships. At the same time, Applicant has regular but sporadic contact with his mother-in-law and regular contact with his friend the commercial pilot. This potentially mitigating condition does not apply to those relationships.

I considered carefully all the facts and circumstances in this case in light of the "whole person" concept. I conclude Applicant has mitigated any potential security concerns arising from Applicant's personal ties to relatives and associates in Taiwan.

### **FORMAL FINDINGS**

My conclusions as to each allegation in the SOR are:

Paragraph 1, Guideline B: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: 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.

Michael J. Breslin

Administrative Judge