

DATE: November 9, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-07070

ECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

Nichole Noel, Esq., Department Counsel

FOR APPLICANT

Philip Cave, Esq.

SYNOPSIS

Applicant is a naturalized citizen of the United States and has relatives who are citizens and residents of Taiwan. He has minimal, if any, contact with his siblings and infrequent contact with his father. His mother is deceased. Applicant's wife is also a naturalized U.S. citizen and all of her immediate family reside in the United States. Applicant has no financial ties to Taiwan. His children were born in the United States and he and his wife intend on retiring in the United States. Clearance is granted.

STATEMENT OF THE CASE

On May 28, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating they were unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. ⁽¹⁾ The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline B, foreign influence. Applicant submitted a response to the SOR, dated June 8, 2004, and requested a hearing. In his SOR response, Applicant denied some allegations contained in the SOR, and admitted others while providing explanations in an effort to extenuate and mitigate the security concerns raised by the allegations.

The case was assigned to me on September 23, 2004. A notice of hearing was issued on October 4, 2004, scheduling the hearing for October 19, 2004. The hearing was conducted as scheduled. The government submitted five documentary exhibits that were marked as Government Exhibits (GE) 1-5. GE 1, 2 and 5 were admitted into the record. GE 3 and 4 were objected to by Applicant, the objection was sustained, and these exhibits were not considered. The Applicant testified, called three witnesses to testify on his behalf, and submitted fifteen documentary exhibits that were marked as Applicant's Exhibits (AE) A-O. All of Applicant's exhibits were admitted into the record without an objection. The transcript was received on November 2, 2004.

Applicant's admissions to the allegations contained in the SOR are incorporated herein. In addition, after a thorough review of the pleadings and exhibits, I make the following findings of fact:

Applicant is a 46-year-old man who is employed by a defense contractor as an engineer. He has worked for a defense contractor since 1997. He has been married to the same woman since 1987, and has a daughter and son, both born in the United States in 1994 and 1999 respectively.

Applicant was born and raised in Taiwan. In 1982 after completing college he was required to serve two years of compulsory, military duty in the Taiwan Air Force. After passing an exam, he served as a second lieutenant, and his duty was to evaluate the mental and physical health of the soldiers. He completed his service in 1984. In 1985, at the age of 27, he came to the United States on a student visa for better educational opportunities. While in the United States he attended a University and obtained a Bachelor's degree, a Master's degree and a Doctorate degree.

Applicant met his wife while attending college in Taiwan. She also came to the United States to attend school. They married in the United States in 1987. His wife was born, raised and completed her college degree in Taiwan. She completed a Master's degree in the United States. Applicant's wife works for a defense contractor. Although she was required to go through the security clearance process in 2003, the job later eliminated that requirement. She does not hold a security clearance. Both Applicant and his wife became naturalized citizens in April 1994.

Applicant's father and three siblings live in Taiwan. His mother is deceased. Applicant's father assisted with college expenses while Applicant attended the University for his bachelor's degree. Applicant worked two part-time jobs to pay his expenses for the other degrees he obtained. Applicant's father is a 72-year-old, retired farmer who owns property that he leases. He is independent, supports himself financially and is considered financially well off. Applicant telephones his father approximately every 4-6 weeks and, talks with him for approximately five minutes and checks on his health. Applicant's father visited him in the United States in July 2000. Applicant previously visited his father in Taiwan when he returned for his mother's funeral in March 2000. Applicant also visited Taiwan in February 1997 to visit his parents. He has no ties or obligations with the Taiwan government. Applicant does not know what, if anything, he will inherit upon his father's death. Applicant has no future plans to visit Taiwan.

Applicant has a brother and two sisters who reside in Taiwan. His brother is a medical doctor who works in a private hospital. He last spoke with him at their mother's funeral in 2000. He has had no contact with him since 2000. One sister is a physical therapist who is married to a physical therapist. Applicant has had no contact with her since their mother's funeral. His other sister is a divorced housewife and he has had no contact with her since 2000. Applicant denies he has yearly telephone contact with his siblings. Applicant has no friends he keeps in contact with in Taiwan. Applicant's wife testified and stated she has no contact at all with Applicant's family in Taiwan.

Applicant's parents-in-law reside with Applicant and his wife. They came to live with them in 1994, and went back to Taiwan for visits until six years ago when it became too difficult due to declining health. Both in-laws are citizens of Taiwan. They do have green cards and have applied for naturalization. Applicant's father-in-law worked for a government-owned sugar company and receives a pension. He presently has dementia and is in a wheelchair. Applicant's mother-in-law is a housewife who takes care of her grandchildren while Applicant and his wife work. Applicant has no other in-laws that reside in Taiwan. His wife's sisters and brother reside in the United States and are naturalized citizens. One sister-in-law has her PhD and works for a large U.S. corporation. The other sister-in-law is married, teaches and attends school working on a PhD. Applicant's brother-in-law also has a PhD and works for a large corporation. Applicant's wife may have an elderly uncle who lives in Taiwan, but she is unsure.

Applicant has worked as an engineer since 1997 and previously worked while attending school. Applicant received good performance evaluations (AE-F) and character references from people who have worked with him (AE A-E). These people hold security clearances and established Applicant is truthful and honest, has a good reputation and they would trust him with classified material. Applicant had one witness attest to his outstanding work performance, reliability and good reputation. His facility's security officer (FSO) testified she had been an FSO for 15 years. She verified that Applicant had nothing derogatory in his file and she would be comfortable with him having a security clearance. Applicant previously had an interim secret clearance for approximately a year and no issues were detected.

Applicant credibly testified that he is loyal to the United States and has no ties with any foreign government, including Taiwan. He would bear arms for the United States if asked to serve. If approached by a foreign agent, he would report the contact and protect the United States' interests. Applicant has lived in his resident state for seven years and owns a

house worth approximately \$700,000. All of his financial interests are in the United States, including savings accounts, certificates of deposits, 401(k) retirement accounts and pensions he has earned. He estimates his joint investments to be more than \$100,000. Applicant's children are being raised as Americans and speak English and study Chinese as a second language. Applicant has voted in U.S. elections, participated in his children's school functions and responded for jury duty. He is financially solvent and pays his bills on time and has a clean driving record. He and his wife donate to their colleges and have provided financial support for four children through an international charitable children's organization. There is no evidence that would anyway call into question his undivided loyalty to the United States.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline B, pertaining to foreign influence, with its respective DC and MC, applies in this case.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽²⁾ The government has the burden of proving controverted facts.⁽³⁾ The burden of proof is something less than a preponderance of evidence,⁽⁴⁾ although the government is required to present substantial evidence to meet its burden of proof.⁽⁵⁾ Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.⁽⁶⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁽⁷⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁸⁾

No one has a right to a security clearance⁽⁹⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹⁰⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽¹¹⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽¹²⁾ 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.

CONCLUSION

Under Guideline B, 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 obligations 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 interest in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Applicant is a 46-year-old man who has lived in the United States for 19 years and been a naturalized citizen for ten years. He works as an engineer for a defense contractor. He received his graduate education in the United States and earned a Bachelor's degree, a Master's degree and a PhD. Applicant's father and three siblings reside in Taiwan. He speaks with his father approximately every 4-6 weeks and has not seen him since July 2000 when his father visited. All of Applicant's wife's relatives live in the United States. Her siblings are all educated and naturalized citizens. Her

parents live with Applicant and his wife and have applied for naturalization.

Based on the allegations in the SOR, Disqualifying Condition (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,* must be evaluated in determining whether it is clearly consistent with the national interest to grant a security clearance for Applicant under Guideline B.

DC 1 applies in this case because Applicant's father, brother and two sisters are citizens and residents of Taiwan. He has very limited contact with his siblings, but does speak with his father by telephone approximately every 4-6 weeks. His last trip to Taiwan was in 2000 to attend his mother's funeral. He has no future plans to visit Taiwan.

Taiwan is an ally and conducts trade with the United States. The following information about Taiwan was provided in GE 5, and is significant in determining whether a security concern exists under the known facts in this case:

Taiwan is a multiparty democracy, and in 2000 it marked the first time in its history there was a transition from one political party to another. The judiciary is constitutionally independent and the police and security agencies are under effective civilian control. The authorities generally respected the human rights of its citizens, however, there were some instances of police abuse of persons in custody, military hazing, judicial corruption and other such abuses. There were no reports of politically motivated disappearances or arbitrary or unlawful deprivation of life committed by the Government or its agents. There were reports that the police occasionally physically abused persons in custody and the Government has taken steps to videotape or audiotape interrogations and have the presence of two police officers at interrogation sessions. Police who participate in such abuse are punished.

There were no reports of political prisoners in Taiwan. The police are required to obtain search warrants and have a clear risk to public safety to conduct searches of people in public places and stop vehicles for inspection. Taiwan's Constitution provides for freedom of speech and the press and authorities generally respected these rights in practice, however some political influence still existed over the electronic media, but has diminished. The Constitution also provides for freedom of assembly, association and religion, and the authorities generally respected these rights in practice. The authorities do not restrict freedom of internal travel and permit passport holders to travel outside of Taiwan. Taiwan has respect for political rights and has generally held free and popular elections four times since 1992. They continue to improve on their labor practices.

The following mitigating conditions (MC) must be evaluated in determining whether it is clearly consistent with the national interest to grant a security clearance for Applicant under Guideline B: MC 1: *A determination that the immediate family member (s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitants, 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 person(s) involved and the United States;* and MC 3: *Contact and correspondence with foreign citizens are casual and infrequent.*

There is no evidence to suggest that Applicant's family members are, or ever have been agents for the Taiwanese Government, so the issue under MC 1 is whether they are in a position to be exploited by Taiwan. Taiwan is a country that the United States has diplomatic relations with. It conducts friendly trade with Taiwan. It is not a country hostile to the United States. There is no indication that Taiwan has attempted to exploit any residents for the purpose of compromising a security clearance holder within the United States. More specific to the facts of this case, Applicant has lived in the United States for nineteen years, been a citizen for ten years, attended school and worked since arriving. His Taiwanese relatives have resided in that country during that time. He has traveled to Taiwan on two occasions. His wife's family all live in the United States and except for her parents are all naturalized citizens. The best predictor of whether Applicant's relatives are in a position to be exploited in the future is the Taiwanese government's past conduct. Since Applicant came to the United States in 1985 no action has been taken by the Taiwanese government to exploit his relationship with relatives in Taiwan.

Taiwan is not a hostile government to the United States. However, Applicant has the burden of persuasion to demonstrate that his family ties with relatives living in Taiwan do not pose a security risk. To that end he has introduced evidence of his minimal contacts with all relatives except his father whom he speaks with on the telephone approximately every 4-6 weeks. Applicant sincerely asserted that he would immediately report any contact with a

foreign agent or government and would never divulge classified information that he had a duty to protect. While it is impossible to say with certainty what would actually occur in that event, ⁽¹³⁾ the assertion is entitled to some consideration, especially in view of Applicant's strong ties to the United States, ten years of loyal citizenship, and minimal close ties with his Taiwanese relatives. Considering all of the evidence, I find that Applicant has met his burden of showing that MC1 applies.

As evidenced by his home ownership, financial investments and dual income from Applicant and his wife's salary it appears that he would have the financial means to travel to Taiwan to visit his relatives, including his father, if he chose to do so. However, not only has he not chosen to visit them, he seldom even speaks or otherwise communicates with any of his siblings, and has little knowledge of their daily lives. He does speak with his father by telephone on a regular, though infrequent basis, but has not visited with him since July 2000, when his father came to the United States. Applicant's father is self-sufficient and needs no financial support. He is considered financially well-off in Taiwan. Applicant is entrenched in his community and the American culture and plans on retiring and remaining in the United States. Accordingly, I find that Applicant has succeeded in demonstrating that MC 3 applies.

Applicant also receives credit under the "whole person" concept for his commendable work record. Likewise earning three degrees, a stable family life, participating in community events and fulfilling civic responsibilities, as well as earning the respect of his co-workers and supervisors are indicators of a mature, steady, responsible, and trustworthy individual.

In all adjudications the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes we should view a person by the totality of their acts, omissions, motivations and various other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I am satisfied that Applicant has presented sufficient evidence of refutation, extenuation, and mitigation to overcome the case against him. Accordingly, Guideline B is decided for Applicant.

FORMAL FINDINGS

Formal Findings for or 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 B FOR THE APPLICANT

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.c. For the Applicant

Subparagraph 1.d. For the Applicant

Subparagraph 1.e. For the Applicant

Subparagraph 1.f. For the Applicant

Subparagraph 1.g. For the Applicant

DECISION

In light of all 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.

Carol G. Ricciardello

Administrative Judge

1. This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
3. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Section E3.1.14.
4. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
5. ISCR Case No. 01-20700 (December 19, 2002) at p.3 (citations omitted).
6. ISCR Case No. 98-0761 (December 27, 1999) at p.2.
7. ISCR Case No. 94-1075 (August 10, 1995) at pp.3-4; Directive, Enclosure 3, Section E3.1.15.
8. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Section E3.1.15
9. *Egan*, 484 U.S. at 528, 531.
10. *Id.* at 531.
11. *Egan*, Executive Order 10865, and the Directive.
12. Executive Order. 10865. § 7.
13. See ISCR Case No.99-0511 (December 19, 2000) "statements by an applicant about what he or she will do in the future in response to any attempt to exploit his or her family ties, however, sincere or credible, cannot be taken simply at face value. An applicant's stated intention about what he or she might do in the future under some hypothetical set of circumstances is merely a statement of intention that is not entitled to much weight, unless there is record evidence that the applicant has acted in an identical or similar manner in the past under identical or similar circumstances."