

DATE: May 27, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-08853

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Nichole Noel, Esquire, Department Counsel

FOR APPLICANT

Kristen E. Ittig, Esquire

SYNOPSIS

Applicant mitigated security concerns over foreign influence as his immediate family are naturalized citizens of the U.S. since 1982 and reside in the U.S. He testified persuasively he has casual and infrequent ties to his siblings and in-laws citizens of and residents in the Republic of China (Taiwan). He has not visited Taiwan since 1998 and has scrupulously complied with security rules since he was granted access in 1987 and 1992 by the Department of Defense (DoD) and in 1997 by the Central Intelligence Agency (CIA). Given his long history of responsible conduct in the U.S., it is improbable that foreign pressure on these distant relatives would create a situation that could influence Applicant. He persuasively verifies that his preference and loyalty is exclusively for the U.S. since he became a naturalized U.S. citizen in 1982. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) ⁽¹⁾ to the Applicant on May 5, 2004. The SOR detailed reasons why the Government could not find that it is clearly consistent with the national interest to grant him access to classified information. The SOR alleges specific concerns over foreign influence (Guideline B) in paragraph 1. Applicant replied to the SOR allegations in an Answer notarized on May 28, 2004, where he admitted in part and provided additional explanations. He requested a decision with a hearing.

After the case was assigned to Department Counsel, she stated it was ready to proceed in October 2004. The case was assigned to me on October 12, 2004. On October 14, 2004, DOHA issued a Notice of Hearing and set this case to be heard on November 10, 2004, in a city near where Applicant lives and works. Subsequently, on October 19, 2004, Applicant asked for a continuance; as he provided a good cause basis for a continuance, it was granted. On October 25, 2004, his counsel entered her appearance. On November 2, 2004, DOHA issued an Amended Notice of Hearing and set this case to be heard on December 1, 2004. At the hearing the government presented one exhibit (Exhibits1) which was admitted into evidence without objection. As Applicant's counsel did not object, I consented to Department Counsel's request that administrative notice be taken of the information contained in Exhibits I-VI: a U.S. Department of State list of Independent States in the World (Exhibit I), a Background Note: Taiwan (Exhibit II), Country Reports on Human

Rights Practices - 2003: China (Taiwan Only) (Exhibit III); Operations Security Intelligence Threat Handbook (Exhibit IV); Annual Report to Congress on Foreign Economic Collection and Industrial Espionage from 2000 (Exhibit V), and *U.S. v. Yang*, 281 F.3rd 534 (6th Cir. 2002) (Exhibit VI). (TR 9-10)

Applicant's counsel offered one exhibit that was admitted without objection and called Applicant as a witness. (Exhibit A; TR 11) The transcript (TR) was received on December 13, 2004.

FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following additional Findings of Fact:

Applicant, 58 years old, works as a principal scientist for a non-profit defense contractor (Employer #1) in State #1; he began work for that entity in January 1996. From 1992 to 1996 he worked for another entity of the same non-profit defense contractor. During this period he spent one year working at a federal agency. In April 2000 he completed a Security Clearance Application (Standard Form 86). He has previously been granted security clearances: Defense Department Secret in 1987 and Top Secret in 1992; Central Intelligence Agency Secret in 1997 and Top Secret in 1997. (Exhibit 1; TR 15-17; 41-42; 56) Previously he worked at a university from 1974 to 1987 in State #2 and had a very active research and publishing career. (Exhibit 1; TR 42)

Foreign Influence

Applicant was born in Shanghai, People's Republic of China (China), and moved to Taiwan when he was one years old. He lived there for 22 years. In 1968 he graduated from college in Taiwan, and in 1969 he came to the U.S. as a graduate student on a fellowship. He did graduate work at a university in State #3 and completed a Ph.D. in 1974. Subsequently, from 1974 to 1987 he worked at a university in State #2 and was promoted to full professor in 1987. He became a naturalized U.S. citizen in 1982 and has a U.S. passport issued in 1997. (Exhibit 1; TR 13-17)

Applicant married in 1971. His wife also became a naturalized U.S. citizen in 1982. She resides in the U.S. He and his wife renounced their citizenship from Taiwan when they became U.S. citizens. (Exhibit 1; TR 18) They have two children born in Taiwan who live in the U.S. and who became naturalized U.S. citizens in 1982. (TR 13, 22; Exhibit 1)

Applicant's family ties to Taiwan include the following:

His parents are deceased. When his mother was ill, he traveled to Taiwan to visit her in 1980. At that time while he was a professor in State #2, he gave some lectures at the local universities in Taiwan at the invitation of their National Science Council. He returned again in 1982 to see his father and delivered more lectures. He frequently lectures a various international locations; he has had no more contact with the National Science Council since 1982. However, in 1989 he gave a lecture to a university in Taiwan; and in 1990 he spoke at a conference in Taipei. In 1998 he went to Taiwan as he was nominated for a job at a research foundation which he declined. He would no longer consider a position in Taiwan. (Exhibit 1; 31-36; 42-52; 53-55)

Applicant has four siblings. His oldest brother lives in the U.S. and is a U.S. citizen. His other brother is a Taiwanese citizen, but Applicant has lost contact with him and last saw him in 1992 when he attended his father's funeral. (Exhibit 1; TR 20-22)

He has two sisters: one sister became a naturalized U.S. citizen in 1997 and resides in Taiwan as she is retired. His other sister is married; she and her husband are Brazilian citizens. He speaks to this sister once or twice a year. (Exhibit 1; TR 21-22; 28-29; 41)

Applicant's wife's father is deceased. While his wife's mother is a citizen of Taiwan, she is 87 and now is visiting in the U.S. Previously, he had very little contact with her. He reported her visit to the CIA as required by them. One of his wife's brothers is a Taiwanese citizen, but he is a U.S. permanent resident; his wife became a naturalized U.S. citizen in 2002; however, they now live in Taiwan. He has infrequent contact with them. (TR 22-23; 29-31; 40)

None of Applicant's relatives has any government, military, or intelligence ties. (TR 24) Applicant has no financial interests or ties in Taiwan. He owns a home in the U.S. and all of his financial investments are in the U.S. Since he has had a security clearance, he has always reported his trips as required. Applicant has not visited Taiwan since 1998. (TR 36-40; 52) Should anyone ever ask him to compromise classified information, he would immediately report the contact to the security officer at his company and at the CIA as he also has a security clearance there. (TR 55)

Given Applicant's casual and infrequent ties to his siblings in Taiwan and to his in-laws, I conclude it is unlikely that any of these relatives would be exploited by the government in Taiwan in a way that could force Applicant to choose between loyalty to his siblings and his in-laws and his loyalty to the United States.

References

Several professionals from his non-profit corporation submitted declarations in support of maintaining Applicant's security clearance:

A scientist who has had a security clearance since 2000 stated that Applicant is "scrupulously honest and trustworthy." He has worked side-by-side with Applicant and has observed he follows all the security regulations and policies. He recommended Applicant for a security clearance. (Exhibit A, TR 25-27)

A vice-president who has had a security clearance since 2000 stated that Applicant is "scrupulously honest and trustworthy." He has worked continuously with Applicant since 1987. He views Applicant as "a person of the utmost honesty, integrity and trustworthiness" who safeguards classified information. He recommended Applicant for a security clearance. (Exhibit A, TR 25-27)

A senior fellow who has had a security clearance since 1982 and has known Applicant since 1983 views Applicant as very conscientious in his work and in following security regulations. He recommended Applicant for a security clearance. (Exhibit A, TR 25-27)

A senior manager who is his supervisor stated Applicant has had a security clearance since 1983 and has known Applicant since 1987. Applicant has "always conducted himself in an exemplary manner." He is a key member of the team and has been "scrupulous in his handling and protection of classified information." His work is of high quality. He has "always taken his security responsibilities seriously and his conduct has been above reproach." (Exhibit A, TR 25-27)

A principal scientist who has been Applicant's co-worker and supervisor reported that he has had a security clearance since 1997. He has known Applicant since 1998 and views Applicant as "one of the most honest and trustworthy people" he knows. He described Applicant as a person of integrity who is very experienced and skilled in the precautions necessary to protect data. He has strictly followed security rules. He stated that Applicant has had a security clearance for seven years and recommends his clearance be continued. (Exhibit A, TR 25-27)

A senior scientist who has had a security clearance since 1985 and has known Applicant since 1985 views him as honest and trustworthy; he is organized and follows security rules. He can be relied on to protect the national security of the U.S. He recommends his clearance be continued. (Exhibit A, TR 25-27)

A senior scientist who has had a security clearance since 1999 and has known Applicant since 1992 views him as honest and trustworthy. He regards Applicant as conscientious and as someone who can be relied on to protect the national security of the U.S. He recommends his clearance be continued. (Exhibit A, TR 25-27)

A vice president who has had a security clearance since 1985 and has known Applicant since 1987 views him as honest and trustworthy; he is scrupulous in following security rules. She is confident that Applicant can be relied on to protect the national security of the U.S. and recommends his clearance be continued. (Exhibit A, TR 25-27)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security

eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below :

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: (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.

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance.

Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Because of Applicant's ties to Taiwan, the government⁽²⁾ raised concerns over disqualifying conditions: E2.A2.1.2. 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; and E2.A2.1.2.6. Conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government Applicant has siblings and in-laws who are citizens of and reside in Taiwan and Brazil. He traveled to Taiwan in 1989, 1990, 1992, and 1998 and gave lectures for the Taiwan National Science Council in 1980 and 1982 when he was a professor at a university and had an active research and publishing career.

While I have seriously considered these concerns and the documents submitted for administrative notice which raise various security concerns over Taiwan, I conclude Applicant has presented evidence to meet the burden these circumstances present. These security concerns are mitigated by several facts: first Applicant has been a naturalized U.S. citizen for 22 years and has had DoD security clearances granted in 1987 and 1992 and CIA security clearances granted in 1997. He has held this access without any adverse incident as reported by eight officials of the non-profit defense contractor where he has worked since 1992. They uniformly view him as a person who should be allowed to retain his security clearance because of his work ethic and security worthiness that they have all personally observed. Applicant's immediate family are all naturalized U.S. citizens who reside in the U.S. His parents are deceased, and he has very limited, casual and infrequent contact with his siblings and in-laws who are citizens and reside in Taiwan.

Thus, Applicant mitigated⁽³⁾

the Government's security concerns over possible foreign influence. He overcame the security concern as he has limited family ties to relatives who are financially self-sufficient and have no ties to the government. Given his long history of responsible conduct while he has had access to classified information, it is unlikely that given his distant relationship to his relatives that he could be exploited by the government in Taiwan in a way that could force Applicant to choose between loyalty to his siblings and his in-laws and his loyalty to the United States. For example, he has not been in touch with one brother since his father died. All of his nuclear family are in the U.S. and his financial ties are exclusively to the U.S. as he has none in Taiwan.

While he traveled to Taiwan several times as an academic and gave scientific lectures before he joined his non-profit corporation and was granted a security clearance, that travel to Taiwan does not raise a security concern. While he has had a security clearance, Applicant visited Taiwan in 1998 and then followed the security regulations and reported his trip. He has not returned to visit Taiwan in over six years; he is no longer a research scientist at a university, and no longer gives lectures there. Thus, any risk of either coercive or non-coercive foreign duress or influence on Applicant and/or his immediate family would appear to be slight and clearly manageable. Contacts with citizens of other countries are relevant to security determinations only if they make an individual potentially vulnerable to coercion, exploitation, or pressure through threats against those foreign relatives.

After considering the Adjudicative Process factors and the Adjudicative Guidelines, I conclude these limited family ties are not of such a nature as to create any tangible risks of undue pressure or influence on Applicant, so foreign influence security concerns are mitigated. Thus, I resolve SOR paragraph 1 and subparagraphs 1.a. through 1.e. in Applicant's favor.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

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

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 the Applicant.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by DoD Directive 5200.6, dated January 2, 1992 (Directive).

2. ". . . Department Counsel is not required to prove that there is a clear and present danger or imminent threat to classified information before access to classified information is denied or revoked. Nor does Department Counsel have to prove that a particular foreign country is targeting a particular applicant before access to classified information is denied or revoked." See Appeal Board Decision and Reversal Order, ISCR Case No. 02-24267 (May 24, 2005) at 6.

3. E2.A2.1.3 Conditions that could mitigate security concerns include: E2.A2.1.3.1. 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 loyalty to the person(s) involved and the United States; E2.A2.1.3.3. Contact and correspondence with foreign citizens are casual and infrequent.