

DATE: June 8, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-08951

## **DECISION OF ADMINISTRATIVE JUDGE**

**BARRY M. SAX**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Francisco J. Mendez, Jr., Esquire,

Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

This 51-year-old Principal Engineer was born in Taiwan in 1951 and moved to the U.S. in the early 1980s, to attend college. He became an American citizen in 1991 and, in 1993, he married an American who had been born in the Peoples Republic of China (PRC). Applicant has extensive family ties on Taiwan and his wife's parents still reside in the PRC. These ties create a risk that has not been adequately mitigated or extenuated. Mitigation has not been shown. Clearance is denied.

### **STATEMENT OF THE CASE**

On May 5, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding required under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether a clearance should be granted, denied or revoked.

On May 14, 2004, Applicant submitted responses to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge on the written record, i.e, without a hearing. A File of Relevant Materials (FORM) was issued on July 22, 2004, in which Applicant was advised to file any response within 30 days of receipt of the FORM. Any such response was due by August 23, 2004, but no new submission was received by DOHA. The matter was assigned to me on November 1, 2004.

### **FINDINGS OF FACT**

This 51-year-old Principal Engineer was born in Taiwan in 1954 and came to the U.S. in the early 1980s to attend college. He became a U.S. citizen in 1991. He was married in 1993. His PRC-born wife is now an American citizen. The April 29, 2004 SOR contains seven allegations under Guideline B (Foreign Influence). In his May 14, 2004 Response to the SOR, Applicant *admits* all the allegations, 1.a - 1.g., with a brief comment. The admitted parts of the allegations are accepted and incorporated herein as Findings of Fact.

After considering the totality of the evidence, I make the following additional FINDINGS OF FACT as to the status, past and present, of each SOR allegation:

#### Guideline B (Foreign Influence)

1.a. - Applicant's father, step-mother, four siblings, and two step-siblings are citizens of Taiwan, and currently reside in that country.

1.b. - Applicant maintains telephone contact with his relatives in Taiwan, once or twice a month.

1.c. - Applicant's oldest sibling is a taxation official for a local government taxation agency in Taiwan.

1.d. - Applicant's second oldest sibling is employed as a scientist within the central government of Taiwan.

1.e. - Applicant traveled to Taiwan in May 1998.

1.f. - Applicant's parents-in-law are citizens of the Peoples Republic of China (PRC).

1.g. - Applicant traveled to the PRC in June 2002.

### **POLICIES**

Each adjudicative decision must also include an assessment of nine generic factors relevant

in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding

the conduct, to include knowing 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 (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

Because each security case presents its own facts and circumstances, it should not be assumed that the factors cited above exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable financial judgment and conduct.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of

whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. In reaching the fair and impartial overall common sense determination based on the "whole person" concept required by the Directive, the Administrative Judge is not permitted to speculate, but can only draw those inferences and conclusions that have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make

critical judgments as to the credibility of witnesses.

In the defense industry, the security of classified information is entrusted to civilian workers

who must be counted on to safeguard classified information and material twenty-four hours a day.

The Government is therefore appropriately concerned where available information indicates that an

applicant for a security clearance, in his or her private life or connected to work, may be involved

in conduct that demonstrates poor judgment, untrustworthiness, or unreliability. These concerns include consideration of the potential, as well as the actual, risk that an applicant may deliberately

or inadvertently fail to properly safeguard classified information.

An applicant's admission of the information in specific allegations relieves the Government

of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons. If the Government meets its burden (either

by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence

of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

A person seeking access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. As required by DoD Directive 5220.6, as amended, at E2.2.2., "any doubt as to whether access to classified information is clearly consistent with the interests of national security will be resolved in favor of the nation's security."

## CONCLUSIONS

Applicant is a 51-year-old Principal Engineer for a major defense contractor. He was born in Taiwan in 1954 and came to the U.S. in the early 1980s to attend college. He became a U.S. citizen in August 1991 (Item 4). His Security Clearance Application (SF 86) lists nine immediate family members who are citizens of and reside in Taiwan and two parents-in-law who are citizens of and reside in the PRC (*Id.*, at Question 14). His wife since 1993 was born in the PRC in 1967 and is now a U.S. citizen (*Id.* at Question 13). They visited Taiwan in 1998 to visit his family and the PRC in 1993 to visit her parents (*Id.*) His father, now retired, worked in the fortification of dams in Taiwan, and one brother is a research and development scientist for the Taiwan government (Item 5). Applicant maintains periodic telephone contact with members of his family, which, if not really frequent, is nonetheless far from infrequent or casual.

Under Guideline B, a security risk may exist when [members of] an individual's immediate family . . . are (1) not citizens of the United States or (2) may be subject to duress. These situations may create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of foreign countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

The DOHA Appeal Board has held that: "an applicant with immediate family members living in a country hostile to the United States should not be granted a security clearance without a very strong showing that those family ties do not pose a security risk ((Appeal Board Decision, ISCR Case No. 01-26893 (October 16, 2002): In addition, "family ties in [any] foreign country raise a *prima facie* security concern that requires an applicant "to present evidence of rebuttal, extenuation or mitigation sufficient to meet the burden of persuasion that it is clearly consistent with the national

interest to grant or continue a security clearance for him" (Appeal Board Decision, ISCR Case No. 02-06478 (May 19, 2003)). The PRC and Taiwan are listed by the U.S. government as being among the most active of intelligence gathers in the U.S. (Item 7, 8, 9, and 10).

Disqualifying Conditions - (1). An immediate family member . . . is a citizen of, or resident or present in, a foreign country; and (3) relatives who are connected with any foreign government.

Mitigating Conditions - All but one of the possible mitigating conditions are not applicable. Only one is problematic. MC 1 requires a determination that the immediate family members . . . would not constitute an unacceptable security risk.

The government must always establish a case with evidence that supports SOR allegations under specific guidelines. It is axiomatic in the security clearance process, however, that the ultimate burden of proof is always on the applicant to demonstrate that he or she is eligible to hold a security clearance and not on the government to prove otherwise. In this case, I have considered the totality of the record, specifically the number of family members in both Taiwan and the PRC (both of which are on U.S. official lists as being active intelligence gatherers in the U.S.; one or two brothers, being employed by the Taiwan government (one a scientist); and his periodic contacts with the family members. The Government has not questioned Applicant's loyalty to the United States, but the record simply does not demonstrate that Applicant has demonstrated mitigation or extenuation of the Government's concerns. Based on the evidence of record, I conclude Applicant has failed to demonstrate that he is not vulnerable to improper pressure, even from his own family.

### **FORMAL FINDINGS**

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Guideline B (Foreign Influence) Against the Applicant

Subparagraph 1.a. Against the Applicant

Subparagraph 1.b. Against the Applicant

Subparagraph 1.c. Against the Applicant

Subparagraph 1.d. Against the Applicant

Subparagraph 1.e. Against the Applicant

Subparagraph 1.f. Against the Applicant

Subparagraph 1.g. Against the Applicant

### **DECISION**

In light of all the circumstances 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.

**BARRY M. SAX**

**ADMINISTRATIVE JUDGE**