

DATE: April 8, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-09469

DECISION OF ADMINISTRATIVE JUDGE

MARTIN H. MOGUL

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, born in the People's Republic of China (Taiwan), became a United States citizen in 1996. His wife and three children are citizens of the United States. In 1997 and 1999, Applicant used both his Taiwanese and United States passports when traveling to Taiwan. He has now surrendered his expired Taiwanese passport to the Taiwanese government. Applicant's mother, father, brother, and in-laws are citizens and residents of Taiwan. None of these family members belong to, or are active with any government agency of Taiwan. They are not in a position to be exploited by Taiwan in a way that could force Applicant to choose between loyalty to these family members and his loyalty to the United States. Mitigation has been shown. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4), issued a Statement of Reasons (SOR), dated August 23, 2004, to Applicant which detailed reasons 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. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted or denied.

Applicant filed a notarized Response to the allegations set forth in the SOR (RSOR), dated September 23, 2004, and he requested a hearing before a DOHA Administrative Judge. On January 3, 2005, the case was assigned to me to conduct a hearing, and pursuant to formal notice, dated March 3, 2005, a hearing was held on March 22, 2005.

At the hearing, Department Counsel offered 5 documentary exhibits (Government Exhibits 1- 5) and no witnesses were called. Applicant offered 6 documentary exhibits (Exhibits A-F) and offered his own testimony. The transcript (TR) was received on April 4, 2005.

FINDINGS OF FACT

The SOR was based on Foreign Preference (Guideline C) related to his exercise of dual citizenship with the United States and Taiwan, and Foreign Influence (Guideline B) concerns because of the foreign residency and/or citizenship of close family members. The SOR contains one allegation, 1.a., under Guideline C, and five allegations, 2.a., through 2.e., under Guideline B. Applicant admitted all of the SOR allegations, with the exception of 2.c., and he gave some explanations which will be discussed in this decision. Those admissions are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the admitted documents, and testimony of Applicant, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 48 years old. He is employed as a Research Scientist by a United States defense contractor that wants him to have a security clearance. He received a Masters and a Ph. D. degree, in Chemical Engineering from a United States university.

Applicant was born in Taiwan in 1957 and emigrated to the United States in 1983. He became a naturalized U. S. Citizen in 1996. Applicant has three children who were all born in the United States and are U. S. citizens.

Paragraph 1 (Guideline C - Foreign Preference)

The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has acted in such a way as to indicate a preference for another country over the United States. The Government was concerned because Applicant used both his Taiwanese and United States passports to enter and exit Taiwan on two occasions in 1997 and once in 1999.

In 1996, when Applicant first became a U. S. Citizen, he used only his U.S. passport when he traveled to Taiwan with his two young children. However, the line was extremely long and after learning that the line was far shorter if he used both passports, he decided to use both passports when entering Taiwan in 1997 and 1999. His U. S. and his Taiwanese passports were identified and stamped for each trip. Applicant has not traveled to Taiwan or used his Taiwanese passport since 1999. He does not have a current Taiwanese passport, as it expired in 2002, and in March 2005, he and his wife surrendered their cut up passports to the Taipei Economic and Cultural Office (Exhibits D and E).

Paragraph 2 (Guideline B - Foreign Influence)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has immediate family members or people to whom he may be bound by affection or obligation, who are not citizens of the United States, or may be subject to duress.

Applicant's parents are Taiwan citizens and residents. Both of them are retired and his mother is in poor health. His father was a representative of the food bureau of a local province in Taiwan and his mother was a homemaker. Neither of them ever worked for or had any affiliation with the Taiwan Government. Applicant talks to them by telephone on a weekly basis mainly to ask about their health.

Applicant's parents-in-law are citizens and residents of Taiwan. Applicant's three sisters-in-law and one brother-in-law are also citizens and residents of Taiwan. None of them of them ever worked for or had any affiliation with the Taiwan Government. Applicant has had no set contact with any of them, but may speak to them briefly when they call his wife.

Applicant's wife also was born in Taiwan, but she became a naturalized U. S. Citizen on September 17, 2002.

Applicant's brother is a citizen and resident of Taiwan. He is a medical doctor, and he has never worked for or had any affiliation with the Taiwan Government. Applicant speaks to him no more frequently than quarterly.

Since Applicant came to the United States, he has traveled to Taiwan on a number of occasions from 1994 to his last visit in April 1999. The primary reason for his early visits was to visit his family, and his latter visits in 1996 and 1997 was to arrange the marriage and move to the United States of his current wife. His last visit in 1999 was to attend the

funeral of his Grandmother.

Applicant was not aware of receiving any inheritance or other financial interest from Taiwan. He has estimated his financial holdings in this country to be worth several hundred thousand dollars

Applicant introduced a letter from his supervisor. He indicated that he believed Applicant was trustworthy and reliable. He stated, ". . . I can see that he and his family have established strong feelings for and loyalty to the United States of America" (Exhibit B).

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines that must be carefully considered in evaluating an individual's security eligibility and making the overall common sense determination required. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

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.

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. of Enclosure 2).

BURDEN OF PROOF

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance. Assessment of an applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of rehabilitation.

A person who seeks access to classified information enters into a fiduciary relationship with

the U.S. Government that is predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability, or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of Applicant, I conclude the following with respect to Guidelines C and B:

(Guideline C - Foreign Preference)

Guideline C is based on actions taken by an individual that indicate a preference for a foreign country over the United States. Applicant's decision to use his Taiwan passport raises foreign preference (Guideline C) concerns. At the time the

SOR was issued, Disqualifying Condition (DC) (E2.A3.1.2.1.), the exercise of dual citizenship could be argued to apply because he had used his Taiwanese passport, and DC (E2.A3.1.2.2.), possession and/or use of a foreign passport applied. However, Applicant has not used his Taiwanese passport since 1999, nor has he renewed his passport, and in fact he has now surrendered his cut up passport to the Taipei Economic and Cultural Office. I conclude that the exercise foreign citizenship was more than 5 years ago, and neither DC (E2.A3.1.2.1.) nor (E2.A3.1.2.) currently apply. I resolve Guideline C for Applicant.

(Guideline B - Foreign Influence)

Based on the evidence of record, the Government has established an initial reason to deny Applicant a security clearance because of Guideline B (Foreign Influence) . Applicant's parents are citizens and residents of Taiwan. The Taiwan citizenship and residency of Applicant's family create the potential for foreign influence that could result in the compromise of classified information because it makes Applicant potentially vulnerable to coercion, exploitation, or pressure. The possession of such ties raises a security concern sufficient to require Applicant to present evidence in rebuttal, extenuation, or mitigation sufficient to meet his burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him.

The evidence of existence of immediate family members, who are citizens of and reside in Taiwan comes within DC (E2.A2.1.2.1), immediate family members, or persons to whom the individual has close ties of affection or obligation, who are citizens of, or resident in, a foreign country.

Based on the nature of the overall record and the totality of the evidence, including: the lack of Taiwanese government involvement of Applicant's parents, brother and other family members, currently and in the past, the fact that his wife is now a United States citizen, his devotion to his children, his history since coming to the United States, and his strong feelings concerning this country, I have determined that his family in Taiwan do not constitute an unacceptable security risk, and Mitigating Conditions (MC) E2.A2.1.3.1., 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, applies.

After considering all of the evidence of record on Guideline B , I conclude that the mitigating evidence substantially outweighs the evidence supporting the SOR and even in the unlikely event pressure was exerted upon Applicant to compromise classified information, he would resist it, and would report the incident to the proper authorities.

FORMAL FINDINGS

Paragraph 1. Guideline C: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Paragraph 2. Guideline B: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

Subparagraph 2.d.: For Applicant

Subparagraph 2.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 Applicant.

Martin H. Mogul
Administrative Judge