

DATE: June 15, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-09969

DECISION OF ADMINISTRATIVE JUDGE

KATHRN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez, Esq., Department Counsel

FOR APPLICANT

Robert R. Sparks, Jr., Esquire, Sparks & Craig, LLP

SYNOPSIS

Applicant mitigated security concerns over foreign influence. He and his wife have been naturalized citizens of the U.S. since 2001 and reside in the U.S.; his children are U.S. citizens. He testified persuasively he has limited ties to his siblings and no interaction with his in-laws who are citizens of and residents in the Republic of China (Taiwan). Although a citizen of Taiwan, his mother lives in the U.S. for six months and is a registered alien. He has not visited Taiwan since 2001 and assures he would contact his security officials if any overt pressure were attempted. Given his history of responsible conduct in the U.S. at work, his supervisor recommends Applicant for a security clearance as his preference and loyalty is exclusively for the U.S. since he became a naturalized U.S. citizen in 2001. 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 October 8, 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. Through counsel, Applicant replied to the SOR allegations in an Answer notarized on October 29, 2004; and he requested a hearing.

After Department Counsel stated the case was ready to proceed in January 2005, the case was assigned to me on January 6, 2005. On February 1, 2005, DOHA issued a Notice of Hearing and set this case to be heard on February 22, 2005, in a city near where Applicant lives and works. At the hearing the government presented two exhibits (Exhibits 1-2) which were admitted into evidence without objection. Department Counsel's request that administrative notice be taken of the information contained in Exhibits I: Annual Report to Congress was granted. (AN I; TR 11-12)

Applicant's counsel offered one exhibit that was admitted without objection and called Applicant as a witness. (Exhibit A; TR 12, 23-24) As the government did not object, I granted Applicant's counsel's request that the record be left open for ten days until March 4, 2005, for Applicant to submit additional evidence. The government agreed to review it on

the date he received the evidence. (TR 44-46, 51) On March 4, 2005, Applicant's counsel submitted Exhibit B; the government offered no objection so Exhibit B was admitted; and the record closed. The transcript (TR) was received on March 3, 2005.

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, 46 years old, has worked for a defense contractor (Employer #1) in State #1 since October 2002. From 1998 to 2001 he worked for Employer #2. In October 2002 he completed a Security Clearance Application (Standard Form 86). Applicant initially had an interim clearance. (Exhibit 1; TR 24-27)

Applicant and his wife married in 1990 in Taiwan. They have two children born in the U.S. in 1992 and 1994. Both Applicant and his wife are naturalized U.S. citizens; Applicant became a naturalized U.S. citizen in 2001. They have owned a house in State #1 since 1996. (Exhibits 1, 2; TR 15-17)

Foreign Influence

Applicant was born in Taiwan, Republic of China (Taiwan) and got a bachelors degree from a private university there in 1981. He served in the Taiwanese military from 1981 to 1983. In 1986 he came to the U.S. to study in State #2. He transferred to do graduate work in State #3 where he got a master's degree. He then returned to Taiwan for two years. Next he studied for a Ph.D. in State #4 in 1990-93, but did not complete it as he took a job in State #1. (Exhibits 1, 2; TR 13-15; 38, 40-41)

Before he became a U.S. citizen Applicant traveled to Taiwan in 1999 to visit as his father was ill. He returned in 2000 when his father died. When he traveled to Taiwan in 2001, he did so on his U.S. passport as he was then a naturalized U.S. Citizen. In 2001 he surrendered his Taiwanese passport. He waived his nationality in the Republic of China in December 2001. (Answer; Exhibits 1, 2; Exhibit A; TR 17-24; 39-40) On his visits to Taiwan no one in the government ever asked Applicant what he did or asked him to help them. If someone in government or in his family would ask him for information, he would not cooperate as he is a U.S. citizen. (TR 34-35) If someone were pressuring his family, he would not "surrender to that kind of pressure. . . ." (TR 42) He would notify his security department to get help. (TR 43)

While Applicant's parents had bought property for him in Taiwan in 1980, they lived in it. As it was his house in name only, Applicant sold it in September 2004. The money from the sale of the house went to his mother. He has no other property in Taiwan and no bank accounts there. (Exhibit 2; TR 27-29; 36-38)

Applicant's family ties to Taiwan include the following:

His mother who is 75 is a citizen of Taiwan and resides in Taiwan. Before she retired, she and her husband worked for a government-run manufacturer of clothes for the military. She has no pension, but lives on social security. Since 2000 when his father died, she became a U.S. registered alien and has lived with Applicant in the U.S. for six months each year. (Answer; Exhibits 1, 2; TR 17-18, 33-34; 35-37)

Applicant has three sisters in Taiwan and is in phone and e-mail contact with them: one sister, born in 1956, is a housewife; one sister, born in 1955, works for the immigration in Taiwan in a clerical position; a third sister, born in 1952, works at the welfare department and has sold products to government employees at a retail store and is now doing typing. (Exhibits 1, 2; TR 30-32; 40-41)

Applicant does not have any contact with his wife's parents who live in and are citizens of Taiwan. (Exhibits 1, 2)

Taiwan is one of the most active collectors of economic espionage. (AN I at 15) However, given Applicant's extensive ties to the U.S., I conclude it is unlikely he would succumb if any of these relatives were pressured by the government in Taiwan. He credibly established that if someone were pressuring his family, he would not "surrender to that kind of pressure. . . ." Applicant established he would choose his loyalty to the United States over loyalty to his mother, his

siblings, or his in-laws in Taiwan.

References

Applicant's supervisor and evaluator who has had a security clearance for over 38 years stated that he has supervised Applicant for three years. His supervisor affirmed his "complete and utter trust in the loyalty and fidelity of" Applicant. He is a loyal and committed American and exemplifies "everything honorable and trustworthy" of someone who holds a security clearance. (Exhibit B)

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 foreign influence concerns under disqualifying conditions (DC): 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 a mother, siblings and in-laws who are citizens of and reside in Taiwan. He traveled to Taiwan in 1999 and 2000 before he became a U.S. citizen. After he became a U.S. citizen and obtained a U.S. passport he traveled to Taiwan again in 2001 on his U.S. passport.

While I have seriously considered these concerns and the document submitted for administrative notice which raises security concerns over Taiwan's extensive industrial espionage, I conclude Applicant has presented sufficient evidence to meet the burden these circumstances present. Applicant mitigated⁽³⁾

the Government's security concerns over possible foreign influence.

First Applicant has been a naturalized U.S. citizen for almost four years. His supervisor who has had a security clearance for 38 years and has supervised Applicant for three years endorses Applicant strongly as a person who should be allowed to obtain his security clearance because of his security worthiness that he personally observed. Applicant's

immediate family are all naturalized U.S. citizens who reside in the U.S.

With regard to his relatives in Taiwan, his mother is a U.S. registered alien and spends half of every year living with Applicant. He has very limited, casual and infrequent contact with his siblings and in-laws who are citizens of and reside in Taiwan. Also, in evaluating the relevance of an individual's conduct, the adjudicator should consider the following factors: E.2.2.1.1. The nature, extent, and seriousness of the conduct; E.2.2.1.2. The circumstances surrounding the conduct, to include knowledgeable participation; E.2.2.1.3. The frequency and recency of the conduct; E.2.2.1.4. The individual's age and maturity at the time of the conduct; E.2.2.1.5. The voluntariness of the participation; E.2.2.1.6. The presence or absence of rehabilitation and other pertinent behavioral changes; E.2.2.1.7. The motivation for the conduct; E.2.2.1.8. The potential for pressure, coercion, exploitation, or duress; and E.2.2.1.9. The likelihood of continuation or recurrence. (E.2.2. Adjudication Process)

Looking at all of these factors, I conclude Applicant has overcome foreign influence security concerns. Given his strong ties to the U.S. and his limited contact with Taiwan since he became a U.S. naturalized citizen, there is limited potential for coercion, exploitation or duress. (E.2.2.1.8. The potential for pressure, coercion, exploitation, or duress.) All of his nuclear family are in the U.S. and his financial ties are exclusively to the U.S. He has none in Taiwan having sold the family home that was in his name in 2004 and given the profits to his mother. Applicant has not returned to visit Taiwan since 2001 when his father died.

Further, Applicant has limited family ties to relatives in Taiwan who are financially self-sufficient. His two sisters' ties to the government are circumscribed as they merely serve in clerical positions. His mother has retired. Given his long history of responsible conduct with his employer as attested to by his supervisor, it is unlikely that he could be exploited by coercive or non-coercive means by the government in Taiwan in a way that could force Applicant to choose between loyalty to his mother, his siblings and his in-laws and his loyalty to the United States.

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 circumscribed family ties are not of such a nature as to create any tangible risks of undue pressure on Applicant, so foreign influence security concerns are mitigated. Thus, I resolve SOR paragraph 1 and subparagraphs 1.a. through 1.h. 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

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant

Subparagraph 1.h.: 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.