DATE: June 14, 2006

In Re:

SSN: ----------

Applicant for Security Clearance

ISCR Case No. 03-11481

ECISION OF ADMINISTRATIVE JUDGE

MARTIN H. MOGUL

APPEARANCES

FOR GOVERNMENT

Candace Le'i, Esq., Department Counsel

FOR APPLICANT

David P. Price, Esq.

SYNOPSIS

Applicant, born in the People's Republic of China (PRC), moved with his family when he was young to Republic of China (Taiwan). He came to the United States in 1969 and became a United States citizen in 1978. His wife, two children and five siblings are also United States citizens and residents. His father, who is elderly and ill, is a citizen and resident of Taiwan. He is not in a position to be exploited by Taiwan, in a way that could force Applicant to choose between loyalty to this family member and his loyalty to the United States. Applicant's strong attachment to the United States and long and successful history here make it unlikely that he would respond favorably to any efforts to act against United States interests. Mitigation has been shown. Clearance is granted.

STATEMENT OF THE CASE

On December 7, 2005, 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) to the 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 the 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, incorrectly dated December 14, 2006, the correct date is December 14, 2005, to the allegations set forth in the SOR, and requested a hearing before a DOHA Administrative Judge. On February 17, 2006, the case was assigned to this Administrative Judge to conduct a hearing. Pursuant to formal notice, dated April 21, 2006, a hearing was held on May 9, 2006.

At the hearing, Department Counsel offered twelve documentary exhibits (Government Exhibits 1-12) and no witnesses were called. Applicant, through counsel, offered 37 documentary exhibits (Exhibits A-KK) and offered his testimony and that of two other witnesses. The transcript (Tr) was received on May 19, 2006.

FINDINGS OF FACT

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline B (Foreign Influence) of the Directive. The SOR contains seven allegations, 1.a., through 1.g., under Guideline B. Applicant admitted all of the SOR allegations. The admitted allegations 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 61 years old. He is employed by a defense contractor as an Engineer, and he seeks a DoD security clearance in connection with his employment in the defense sector.

Applicant was born in the PRC. When he was young, he moved to Taiwan with his family, and he grew up there. He served in the Taiwan navy, as a compulsory requirement. Applicant came to the United States in 1969. He received a Ph.D. degree in engineering in 1973 from a United States university, and he became a naturalized United States citizen in 1978.

Applicant's wife, who was born in the PRC, also became a United States citizen. Applicant and his wife have a son and a daughter, both of whom were born in the United States. Applicant, his wife, and children are solely United States citizens. Applicant has five siblings, all of whom are United States citizens and residents.

Guideline B (Foreign Influence)

Applicant's father is a citizen and resident of Taiwan. He worked for the Taiwanese army as a judge, and he retired around1970. He then worked as a law professor and attorney. He is now 88 years old, long retired and suffers from Alzheimer's disease. His father had lived in the United States for many years as a permanent resident, but he was unable to pass the United States citizenship exam because of his inability to speak English well. After Applicant's mother died in the United States, Applicant's father desired to return to Taiwan. Applicant communicates with him in Taiwan in a limited fashion approximately once a month.

In 2003, as Applicant's father had become ill and frail, Applicant went to Taiwan to check his father into a nursing home,. In 2004, at the request of Applicant's son's wife, Applicant traveled with his family to the PRC for the sole purpose of sightseeing. Applicant consulted and got approval from his company security officer and consulted with them after returning. This was Applicant's first trip to the PRC in 55 years.

Applicant does not have any current financial interest in Taiwan. He and his five siblings each contribute $200 a month for the care of their father in Taiwan. He estimated that his financial holdings in this country are worth approximately $2 million.

In 1978, Applicant met an individual from Taiwan, during professional and social gatherings in the United States. During a period when Applicant held a Department of Defense Industrial Security Clearance, he arranged for meetings between representatives of his employer, a United States contractor, and representatives of Taiwan. Applicant revealed some background and research information to this individual that he believed did not violate any Government or company policy. Applicant believed that he was helping his company and helping Taiwan at the same time, and that he was not violating any rules or regulations.

Subsequent to the meetings, this individual gave to Applicant a payment of $400 as a thank-you and to defray some expenses. There was never any suggestion from this individual, nor was there any belief by Applicant, that this payment was an attempt to influence Applicant's future conduct. Applicant's last contact with this individual was in 1985. In a October 11, 1990 Security Clearance Application (SCA), Applicant failed to identify the situation discussed above. Applicant believed that he only had to reveal any incidences within a five year period, and this was beyond that scope. In fact, this incident is not beyond the scope of the Government's question, and Applicant should have revealed it.

In 1982, while Applicant held a Department of Defense Industrial Security Clearance, he delivered a lecture at an

institute in Taiwan, based on a paper he had published when he was with a former United States employer. Applicant had been invited to give this lecture by a Taiwanese engineer. The lecture was given during a period that Applicant was in Taiwan visiting his father.

Applicant was given a payment of $1,000 for this presentation from the Taiwanese institute. In an October 11, 1990 Security Clearance Application (SCA), Applicant failed to identify that he had given a lecture and received $1,000, as discussed above. Again, Applicant believed that he only had to reveal any incidences within a five year period, and this was beyond that scope. This incident also was not beyond the scope of the Government's question, and Applicant should have revealed this information, as well.

None of the material furnished by Applicant was ever found to be classified or company sensitive. Applicant acknowledged his naivete regarding security matters in the early 1980s and that he was not as aware of proper reporting requirements at that time. There has been no allegation or evidence to suggest that subsequent to the events alleged in 1.f. and 1.g., of the SOR, as discussed above, and of which the Government became aware in 1991 (Exhibit 3), Applicant has violated any security procedure or failed to disclose any required information to the United States Government.

Applicant is extremely accomplished. He holds 35 patents with his company and holds the prestigious position of Fellow in the Institute of Electrical and Electronics Engineers (IEEE) (Exhibits G, II). He has contributed to four books and published 70 papers.

A co-worker of Applicant testified on his behalf. He has known Applicant since 1979. He testified that, ". . . as far as loyalty to the U.S., it's unquestionable." He concluded that Applicant "is very, very trustworthy" (Tr at 54). Applicant also submitted a letter from a vice president of Applicant's current employer, who has known him for about ten years. He described him in very positive terms as "highly professional, very bright, creative, honest, forthright, very hard-working and highly respected by everyone" (Exhibit GG). Applicant also introduced his 2004 Employee Performance Summary, which rated him as Exceeding Requirements (Exhibit F).

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

Under Guideline B, a security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he is bound by affection, influence or obligation, are not citizens of the United States or may be subject to duress. 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 father is a citizen and resident of Taiwan. The 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. This Applicant has done.

The evidence of Applicant's family member, who is a citizen and resident of Taiwan, comes within Disqualifying Condition (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." DC E2.1.2.4., "Failing to report, where required, associations with foreign nationals" may also be argued to apply. However, the conduct last occurred in the early 1980s, and there is no indication that any such conduct has occurred in over 20 years. Also, I find that Applicant's failure to report was due to a misunderstanding, not a desire to hide information from the United States Government.

Based on the nature of the overall record and the totality of the evidence, I have determined that his father in Taiwan does not constitute an unacceptable security risk, and the Mitigating Condition (MC) E2.A2.1.3.1, "a determination that the immediate family member(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," applies. MC E2.A2.1.3.3, "Contact and correspondence with foreign citizens are casual and infrequent"certainly mitigates this case as well.

The primary factors in mitigation that I have considered include: Applicant's long and successful history since coming to the United States in 1969 and becoming a United States citizen in 1978; his devotion to his wife and his two children, as well as his five siblings, who are all United States citizens and residents; the frail and weakening condition of his father; his significant financial holdings in the United States; his acknowledging his naivete regarding security matters in the early 1980s and his excellent security record since that time, and Applicant's strong feelings concerning his devotion to this country.

After considering all of the evidence of record on these issues, 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.

On balance, it is concluded that Applicant has overcome the Government's information opposing his request for a security clearance.

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

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