

DATE: October 28, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-11744

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Eric Borgstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's parents, mother-in-law, and three brothers are citizens and residents of Taiwan. His wife, a citizen of the U.S., provides \$2,000 a year in support to her mother in Taiwan. After attaining U.S. citizenship and acquiring a U.S. passport, Applicant obtained a Taiwanese passport, which he possessed and used for personal travel to Taiwan. As a U.S. citizen, he was enrolled in the Taiwanese national insurance program and received health benefits from the program when visiting in Taiwan. Applicant's conduct indicating a preference for Taiwan over the U.S. and his familial ties to citizens and residents of Taiwan raise serious security concerns because they could result in the compromise of classified information. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On April 30, 2004, under the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision-security concerns raised under Guideline B (Foreign Influence) and Guideline C (Foreign Preference) of the Directive. Applicant answered the SOR in writing May 25, 2004, and elected to have a hearing before an administrative judge. The case was assigned to me on June 20, 2005. I convened a hearing on August 26, 2005, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses, introduced six exhibits, and offered seven documents for administrative notice. Applicant called two witnesses and introduced nine exhibits (Ex.), which were identified as Ex. A through I. The Government's exhibits (Ex.) were numbered 1 through 6, and its documents offered for administrative notice were numbered I through VII. All exhibits and documents were admitted into evidence without objection. At the close of the proceeding, with the agreement of both parties, I left the record open until September 19, 2005, so that Applicant could submit additional documentation regarding the surrender of his Taiwanese passport, his removal from the Taiwanese health care system, and the renunciation of his Taiwanese citizenship. On September 8, 2005, Applicant filed four documents pertaining to these matters. Three documents were in English and one was in Chinese. Department Counsel did not object to the admission of these documents. Accordingly, I marked the

documents as Applicant's Exs. J, K, L, and M, and admitted them into the administrative record of this case. DOHA received the transcript (Tr.) of the proceeding September 16, 2005.

FINDINGS OF FACT

The SOR contains four allegations of disqualifying conduct charged under Guideline B, Foreign Influence, and three allegations of disqualifying conduct charged under Guideline C, Foreign Preference. In his answer to the SOR, Applicant admitted three allegations under Guideline B, and denied one Guideline B allegation. He admitted the three Guideline C allegations. His admissions are incorporated as findings of fact.

Applicant is 48 years old and employed as a senior software engineer by a defense contractor. (Ex. 1, at 1-2.) He has been married since 1982. Applicant and his wife were born in Taiwan and are the parents of two children. Both children are now young adults. (Ex. 1, at 4-5.)

Applicant's parents are citizens and residents of Taiwan. His mother-in-law and his three brothers are also residents and citizens of Taiwan. (Ex. 1.) Applicant's parents own a real estate service company which assists buyers and sellers of commercial real estate. Two of Applicant's brothers also work in the company, which requires a license from the Taiwan government to carry out its business. (Tr. 62-63; 82-83.)

As the surviving spouse of a deceased military officer, Applicant's mother-in-law receives a pension from the government of Taiwan. (Tr. 48.)

Applicant and his wife are close to their families in Taiwan. Applicant speaks with his parents by telephone every three to four weeks (Tr. 78.) Since 1995, he has traveled approximately eight times to Taiwan to visit family. (Ex. 1; Tr.68.) Three years ago, Applicant's mother sent his daughter 20,000 U.S. dollars to use for tuition when she started college. (Tr. 81.) Applicant's wife sends approximately \$2,000 a year to her mother in Taiwan for her support. (Tr. 49.) She has two brothers and two sisters who are citizens and residents of Taiwan. (Tr. 47.)

Applicant and his wife came to the U.S. to pursue graduate degrees. In 1997, they became U.S. citizens. (Tr. 44-45; Ex. 1.) When she became a U.S. citizen, Applicant's wife renounced her Taiwanese citizenship and did not renew her Taiwanese passport when it expired. (Tr. at 19.)

Applicant did not renounce his Taiwanese citizenship when he became a U.S. citizen. (Ex. 2, at 3.) He obtained a U.S. passport in 1998. He renewed his Taiwan passport in 1999 and used it to travel to Taiwan at least four times. (Tr. 64-67.) He last used his Taiwan passport to travel to Taiwan in 2003. (Tr. 68.)

Applicant renewed his Taiwan passport so he could keep his household registration in Taiwan and be eligible for membership in Taiwan's national health insurance program. (Ex. 2, at 3.) In January 2004, Applicant completed and signed a statement surrendering his Taiwan passport. (Ex. 3.; Ex. G.) He took his statement and his Taiwan passport to an official representative of the Taiwan government in the U.S. Officials received his statement and then returned his passport to him, saying his surrender of the passport would be noted in their computer files. The passport was not marked "cancelled," and Applicant was not given a receipt to indicate he had surrendered the passport. (Tr. 70.) Applicant then took possession of his passport. Several days later, he cut it to indicate he did not want it. (Tr. 69; Ex. G.)

After his hearing, Applicant submitted two documents, one in English and one in Chinese, purporting to show his request to be removed from eligibility for participation in Taiwan's national health insurance program. (Ex. J. and K.) He also presented a letter from an official of the Taiwan government certifying Applicant's request to renounce his citizenship was being acted upon and would be accomplished in approximately two months. (Ex. L.) Additionally, Applicant sent an e-mail communication, dated September 19, 2005, to Department Counsel indicating he had surrendered his passport to the Taiwan embassy but had been advised the passport would remain his possession until the government acted upon his renunciation of his Taiwanese citizenship. (Ex. M.)

Applicant's supervisor testified Applicant was dependable and hardworking. He said Applicant possessed the highest level of honesty, integrity, and loyalty to the U.S., and he rated Applicant among the top 20% of the employees he supervised. (Ex. F.; Tr. 40.) Applicant presented evidence of his wife's many activities as a volunteer in their

community. (Tr. 58-60; Ex. I.)

I take administrative notice of on-going tensions between Taiwan and the People's Republic of China (PRC) Taiwan seeks to become an independent State, an aspiration which is strongly opposed by the PRC, which sees Taiwan as a province of the PRC. (U.S. Department of State: Background Note: Taiwan, at 7; 10, Government Document II, for Administrative Notice.) Additionally, I take administrative notice of Taiwan's active and historic roles as collector of competitive information and perpetrator of industrial espionage against U.S. companies producing militarily critical technologies such as information systems, sensors and lasers, and electronics. (Annual Reports to Congress on Foreign Economic Collection and Industrial Espionage: 2000 and 2003, Government Documents VI and V for Administrative Notice.)

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

CONCLUSIONS

Guideline B - Foreign Influence

In the SOR, DOHA alleged, under Guideline B of the Directive, that Applicant's mother, father, mother-in-law, and three brothers are citizens and residents of Taiwan (¶¶ 1.a., 1.b., and 1.c.); and that Applicant's wife is a dual citizen of Taiwan and the U.S., and resides with him in the U.S. (¶ 1.d.).

A Guideline B security concern exists when an individual seeking clearance is bound by ties of affection, influence, or obligation to immediate family, close friends, or professional associates in a foreign country, or to persons in the United States whose first loyalties are to a foreign country. A person who places a high value on family obligations or fidelity to relationships in another country may be vulnerable to duress by the intelligence service of the foreign country or by agents from that country engaged in industrial espionage, terrorism or other criminal activity. The more faithful an

individual is to family ties and obligations, the more likely the chance that the ties might be exploited to the detriment of the United States.

Applicant's case requires the recognition that Taiwan and the PRC are engaged in an on-going struggle regarding Taiwan's political and economic autonomy and identity. In their efforts to gain strategic or economic advantage, some individuals and groups in Taiwan seek to obtain, through illegal methods, militarily critical technologies from companies doing business as government contractors in the United States. These actions threaten U.S. security interests. American citizens with immediate family members who are citizens or residents of Taiwan could be vulnerable to coercion, exploitation, or pressure.

Applicant admits three of the four allegations under Guideline B. His admissions raise security concerns under Disqualifying Conditions (DC) E2.A2.1.2.1, E2.A2.1.2.2, and E2.A2.1.2.6. Applicant's father, mother, mother-in-law, and three brothers are citizens and residents Taiwan. The presence of these immediate family members in Taiwan raises security concerns under E2.A2.1.2.1 of Guideline B. Applicant's wife, a naturalized U.S. citizen who shares a home with him, contributes approximately \$2,000 per year to the support of her mother in Taiwan, raising a concern under DC E2.A2.1.2.2. Additionally, Applicant acknowledged eight trips to Taiwan since 1995. Applicant's frequent visitations to Taiwan show his closeness to his relatives in Taiwan and could make him vulnerable under DC E2.A2.1.2.6 of Guideline B to coercion, exploitation, or pressure by individuals or groups seeking militarily critical technologies to be used by the government of Taiwan.

The Government alleged, and Applicant denied, that his wife, who shares his living quarters, was a dual citizen of Taiwan and the U.S. The Government provided no rebuttal to Applicant's denial of the allegation and his assertion that his wife renounced her Taiwanese citizenship when she became a U.S. citizen and had not renewed her Taiwanese passport after receiving U.S. citizenship. However, a security concern under DC E2.A2.1.2.2 exists regardless of Applicant's wife's renunciation of her Taiwanese citizenship because her annual financial support of her mother in Taiwan raises the potential for adverse foreign influence or duress.

An applicant may mitigate foreign influence security concerns by demonstrating that immediate family members are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force an applicant to choose between loyalty to the foreign associates and loyalty to the U.S. mitigating Condition (MC) E2.A2.1.3.1. While the evidence does not establish that Applicant's father, mother, mother-in-law, and three brothers are agents of a foreign power, they are citizens of a country with an uncertain political future where groups engaged in industrial espionage or illegal data collection are not constrained from acting against U.S. interests. Applicant offered no evidence to rebut the Government's assertion that his family members in Taiwan could be exploited by these groups in a way that could force him to choose between loyalty to his family and the security interests of the United States. (ISCR Case No. 03-15485, at 4-6 (App. Bd. June 2, 2005) Accordingly, MC E2.A2.1.3.1 does not apply to Applicant's case.

An applicant may also mitigate foreign influence security concerns if he shows his contacts and correspondence with foreign citizens are casual and infrequent. C E2.A2.1.3.3. Applicant's contacts with his family members who are citizens and residents of Taiwan are based on ties of familial affection or obligation. While Applicant communicates less frequently with his brothers, his contacts with his parents are frequent and based on close ties of affection and obligation. He speaks with his parents by telephone every three or four weeks. His parents, as devoted grandparents, contributed 20,000 U.S. dollars to Applicant's daughter's college education. His wife's contacts with and financial support of her mother suggest a relationship that is familial instead of casual. Accordingly, mitigating condition E2.A2.1.3.3 does not apply to Applicant's relationships with his father, mother, mother-in-law, and three brothers, all of whom are citizens and residents of Taiwan.

Nothing in Applicant's answers to the Guideline B allegations in the SOR suggested he was not a loyal American citizen and a credit to his adopted country. However, he was unable to put forward evidence that could mitigate the security concerns alleged in subparagraphs 1.a., 1.b., and 1.c. of the SOR and demonstrate that he would not be vulnerable to foreign influence that would result in the compromise of classified information. Accordingly, allegations in subparagraphs 1.a. through 1.c. under Guideline B of the SOR are concluded against the Applicant. The allegation in subparagraph 1.d. of the SOR is also concluded against Applicant.⁽³⁾ While Applicant's wife is not a dual citizen of Taiwan, she shares Applicant's home and provides \$2,000 in support per year to her mother, a citizen of Taiwan. This

creates the possibility that Applicant could be exploited by a foreign power in a way that could force him to choose between loyalty to his wife and her mother and loyalty to the U.S. ⁽⁴⁾

Guideline C - Foreign Preference

In the SOR, DOHA alleged, and Applicant admitted, that he was issued a passport in June 1999 from the Republic of China (Taiwan) and that he possessed that passport until January 2004 (¶ 2.a.); that he used his Taiwanese passport until at least 2001 (¶ 2.b.); and that, as of February 2003, he was a registered member of the Taiwanese national health insurance program (¶ 2.c.).

A Guideline C security concern exists when an individual's conduct indicates a preference for a foreign country over the United States. A preference for another country could lead a person to provide information or make decisions that are harmful to the interests of the United States.

Applicant's admitted conduct raises security concerns under Disqualifying Conditions (DC) E2.A3.1.2.1, E2.A3.1.2.2, and E2.A3.1.2.4. of Guideline C. After his naturalization as a U.S. citizen, Applicant did not renounce his Taiwanese nationality, thereby retaining dual citizenship. He exercised his dual citizenship by obtaining a Taiwanese passport in 1999, while holding a U.S. passport. After becoming a U.S. citizen, he used the Taiwanese passport to travel to Taiwan at least four times. Possession of the Taiwanese passport enabled him to register as a member of the Taiwanese health insurance program, and to accept medical benefits from the Taiwanese government

We turn to an examination of applicable mitigating conditions under Guideline C. An applicant may mitigate Guideline C disqualifying condition E2.A3.1.2.1 if he shows his dual citizenship is based solely on his parents' citizenship or birth in a foreign country (Mitigating Condition (MC) E2.A3.1.3.1. Applicant did not renounce his Taiwanese citizenship upon becoming a U.S. citizen. He actively exercised his dual citizenship status when he obtained and used a Taiwanese passport in 1999 and thereafter to enter Taiwan in order to benefit from medical insurance offered to its citizens by the government of Taiwan. Since Applicant actively exercised his dual citizenship, MC E2.A3.1.3.1. is inapplicable.

An applicant can mitigate an indicator of possible foreign preference if it occurred before obtaining United States citizenship (MC E2.A3.1.3.2) or if the activity is sanctioned by the United States. (MC E2.A3.1.3.3.) Neither of these mitigating conditions applies to Applicant's participation in the Taiwanese health insurance program. Accordingly SOR allegation 2.c. is concluded against the Applicant.

On January 4, 2004, Applicant filed a statement with an official Taiwanese government office in which he surrendered his Taiwanese passport. However, the passport was returned to him and was not marked in any way to show that it was invalid. After his hearing, Applicant filed a document showing he was removed from the Taiwanese national household registry on March 15, 2005, an action that made him ineligible for participation in the Taiwanese national health insurance program.

Applicant expressed a willingness to renounce his dual citizenship. After his hearing, he filed a document from the Government of Taiwan indicating he had begun the process of renouncing his Taiwanese citizenship, which could take 60 days to complete. He also filed an unofficial document which indicated he could not relinquish his Taiwanese passport until the renunciation of his citizenship was complete.

Possession and use of a foreign passport may be a disqualifying condition under ¶ E2.A.3.1.2.2. of Guideline C. In a memorandum (Money Memo), dated August 16, 2000, Assistant Secretary of Defense Arthur L. Money stated, in pertinent part:

The purpose of this memorandum is to clarify the application of Guideline C to cases involving an applicant's possession or use of a foreign passport. The Guideline specifically provides that "possession and/or use of a foreign passport" may be a disqualifying condition. It contains no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country. The only applicable mitigating factor addresses the official approval of the United States Government for the possession or use. The security concerns underlying this guideline are that the possession and use of a foreign passport in preference to a U.S. passport raises doubt as to whether the person's allegiance to the United States is paramount and it could also facilitate foreign travel

unverifiable by the United States. Therefore, consistent application of the guideline requires that any clearance be denied or revoked unless the applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United State Government.

Applicant presented no evidence that he had been granted approval by the U.S. government to possess and use a Taiwanese passport. When the record of this case was closed, he had provided no evidence that he no longer possessed a Taiwanese passport. Accordingly, SOR allegations 2.a. and 2.b. are concluded against the Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline B: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Paragraph 2. Guideline C: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

DECISION

In light of all of 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. Clearance is denied.

Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.
3. Disqualifying Condition E2.A2.1.2.2. reads: "Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence of duress exists."
4. *See* ISCR Case No. 98-0507 at 3 (App. Bd. May 17, 1999): "In a case involving Criterion B, Department Counsel need not present direct or objective evidence that affirmatively proves the applicant is vulnerable to coercion or undue influence [footnote omitted], but it does need to present evidence that demonstrates the applicant has engaged in conduct or is in a situation that, as a matter of common sense (Directive, Section F. 3.) raises the kind of security concerns covered by Criterion B."