

KEYWORD: Foreign Preference Foreign Influence

DIGEST: This 43-year-old engineer for a defense contractor was born in Taiwan in 1961. He came to the U.S. in 1987 to pursue his higher education, and became a U.S. citizen in 2001, at which time he renounced his Taiwan citizenship. He was married in 1998 to a naturalized U.S. citizen and has one son. He has assets in the U.S. of about \$800,000. He has not had any contacts with the Taiwan government since coming to the U.S. His mother and some siblings reside in Taiwan, but most of his relatives are now in the U.S. He has shown his allegiance to the U.S. Mitigation has been established. Clearance is granted.

CASENO: 03-12087.h1

DATE: 01/05/2005

DATE: January 5, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-12087

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 43-year-old engineer for a defense contractor was born in Taiwan in 1961. He came to the U.S. in 1987 to pursue his higher education, and became a U.S. citizen in 2001, at which time he renounced his Taiwan citizenship. He was married in 1998 to a naturalized U.S. citizen and has one son. He has assets in the U.S. of about \$800,000. He has not had any contacts with the Taiwan government since coming to the U.S. His mother and some siblings reside in Taiwan, but most of his relatives are now in the U.S. He has shown his allegiance to the U.S. Mitigation has been established. Clearance is granted.

HISTORY OF THE CASE

On April 15, 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 1, 2004, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge after a hearing. The matter was assigned to me for resolution on July 2, 2004. A Notice of Hearing was issued on July 19, 2004, setting the hearing for August 3, 2004. At the hearing, the Government introduced five exhibits (GX 1 - 5).

Applicant testified and introduced three exhibits (AX 1 - 3). Applicant also submitted two timely post hearing exhibits

(AX D and AX E). The transcript was received at DOHA on August 23, 2004

FINDINGS OF FACT

Applicant is a 43-year-old engineer for a defense contractor. The April 14, 2004 SOR contains one allegation under Guideline C (Foreign Preference), and six allegations under Guideline B (Foreign Influence). In his May 1, 2004 Response to the SOR, Applicant *admits* all of the allegations in the SOR, with explanations. 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 C (Foreign Preference)

1.a. - As of January 8, 2003, Applicant possessed a valid passport of the Republic of China (Taiwan), that had been issued December 1998 and was scheduled to expire in December 2004. The passport was surrendered to Taiwan officials on March 3, 2003 (Response to SOR).

Guideline B (Foreign Influence)

2.a. - Applicant's mother and three siblings are citizens of Taiwan and reside in that country.

2.b. - Applicant has telephone contact with her siblings about once to twice yearly.

2.c. - Applicant's mother was evicted from her rent-free apartment after Applicant's father died in March 2004. She now lives with a daughter in Taiwan. She is financially independent and does not require any financial assistance from Applicant.

2.d. - Applicant's father was a retired employee of the Taiwan Agriculture Department.

2.e. - Applicant's three sisters and are employed by the Government of Taiwan in the area of social services.. His brother-in-law is a retired employee of the Government of Taiwan. None of the jobs appear to have any connection with politics or intelligence.

2.f. - Applicant last traveled to Taiwan in May 2000.

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

Guideline C (Foreign Preference)

Applicant is 43 years old. He is a "Physics Engineer" for a major defense contractor. He was born in Taiwan in 1961, came to the U.S. in 1987 to pursue his higher education, and became a U.S. citizen in 2001, at which time he renounced his Taiwan citizenship (AX C). He was married in 1998 to a naturalized U.S. citizen and has one son. He has assets in the U.S. of about \$800,000 and none in Taiwan (Tr at 35). He has not had any contacts with the Taiwan government since coming to the U.S. He has assimilated himself into American society

1.a. - Applicant no longer has a Taiwan passport and there is no other evidence of his exercise of Taiwan citizenship (Tr at 28).

Disqualifying Conditions

None

Guideline B (Foreign Influence)

2.a. - 2.f. - I have considered the presence and status of Applicant's family members and other relatives in Taiwan and his relationship and contacts with them. Most of his relatives now reside in the U.S. (GX 1 and GX 2). I have also considered the life Applicant has made for himself in the United States since coming here 17 years ago. He considers himself to be an American only and his efforts at supporting U.S. interests indicate his allegiance to this country and his willingness to bear arms in its behalf (Tr at 28, 29). He owes no allegiance to Taiwan or any other country. It is almost five years since his last travel to Taiwan (GX 2). He has no financial interests in Taiwan and significant financial interests in the U.S. He does not discuss his work with anyone in his family (Tr at 24).

He has introduced letters of recommendation from official of his employer. He is seen as a "highly responsible individual of strong character" (AX A at page 2) and one who is an "honest and trustworthy professional" (*Id.*, at page 4). He received a \$1000 Achievement Award in 2002 for his work on an advanced weapons system (*Id.*, at page 3). I find these letters and award to be on point and persuasive as to Applicant's character and integrity.

The current state of the record is that the only ongoing concern deals with Applicant's relationship with his mother and siblings. While any relatives in a foreign country may present a risk, the Directive does not make this factor an automatic bar to holding a Secret or Top Secret clearance. Fairness and commonsense require an analysis of the entire record and an overall commonsense determination. Taiwan is cited in an official Government documents (Item 7) as a country involved in economic espionage in the United States, but the same document does not indicate the documented use of pressure applied against individuals with relatives in Taiwan.

The lack of any past improper contacts in the past is not evidence establishing that it will not happen in the future, but it is a positive factor that should be considered along with all other evidence, including, but not limited to, Applicant's statement that his allegiance is to the United States only. Based on the totality of the record, I conclude (1) that Applicant has done nothing to suggest any preference for Taiwan, and (2) there is minimal risk that Applicant's parents will be pressured into contacting Applicant for improper purposes. In addition, based on his long history of residence in and dedicated service to this country, there is even less risk that Applicant would respond to any such contact by agreeing to act against U.S. interests.

A security risk may exist when 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.

Disqualifying Condition - 1. An immediate family member . . . is a citizen of, or resident or present in, a foreign country.

Mitigating Condition - 1. A determination that the immediate family member(s) . . . in question would not constitute an unacceptable security risk.

FORMAL FINDINGS

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

Guideline C (Foreign Preference) For the Applicant

Subparagraph 1.a. For the Applicant

Guideline B (Foreign Influence) For the Applicant

Subparagraph 2.a. For the Applicant

Subparagraph 2.b. For the Applicant

Subparagraph 2.c. For the Applicant

Subparagraph 2.d. For the Applicant

Subparagraph 2.e. For the Applicant

Subparagraph 2.f. For the 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.

Barry M. Sax

Administrative Judge