

DATE: August 12, 2004

In Re:

SSN:

Applicant for Security Clearance

ISCR Case No. 03-15475

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 51-year-old engineer was born in Taiwan, came to the U.S. in 1984 and became a U.S. citizen in 1994. He makes yearly visits to his parents in Taiwan, but most of his family reside in the U.S. He has renounced his Taiwanese citizenship and surrendered his Taiwanese passport. He did not intentionally provide false information on his security clearance application. He would reject and promptly report any improper contacts. Mitigation has been established. Clearance is granted.

STATEMENT OF THE CASE

On September 30, 2003, 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 October 20, 2003, Applicant submitted a response 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 January 24, 2004. On April 2, 2004, a Notice of Hearing was issued, setting the hearing for April 23, 2004. The hearing was conducted by video-conference. At the hearing, the Government did not present any witnesses but offered four exhibits, Government Exhibits (GX) 1-4. Applicant testified and offered 11 exhibits, which were marked as Applicant's Exhibits (AX) A-K. All exhibits were admitted without objection. The transcript (Tr) was received at DOHA on May 10, 2004.

FINDINGS OF FACT

Applicant is a 51-year-old engineer. He was born in 1952 in the Republic of China (Taiwan). He came to the United States (U.S.) in 1982 and became a U.S. citizen in July 1994. The SOR contains four allegations, 1.a. - 1.d., under

Guideline C (Foreign Preference); two allegations, 2.a. and 2.b., under Guideline B (Foreign Influence); and one allegation, 3.a, under Guideline E (Personal Conduct). Applicant admits the factual allegations in all SOR allegations, with explanations. The specific admissions are incorporated into this decision and are deemed to be findings of fact.

After considering the totality of the evidence derived from the hearing testimony and all evidence of record, I make the following FINDINGS OF FACT as to each SOR allegation:

Guideline C (Foreign Preference)

1.a. - As of the date of time of Applicant's response to the SOR, October 20, 2003, Applicant was a dual citizen of the U.S. and Taiwan because he had not considered the consequences of retaining his Taiwanese citizenship. After being put on notice by DSS, Applicant formally renounced his Taiwanese citizenship on February 20, 2004 (AX E). He is now a citizen of the U.S. only.

1.b. - Applicant no longer owns the property in Taiwan cited in the SOR. He sold it to his brother in February 2004, as documented by Certificate of Title (EX G). The property is worth about \$200,000 (Tr at 40) and his brother will be the sole beneficiary. Applicant owns real estate in the U.S., and has assets of about \$900,000.

1.c. - From about 1994 to the present, Applicant has made about one trip a year to Taiwan to visit his elderly father (85) and mothers (71). His father is a retired accounting manager for a city government and his mother was a nurse. He has no other immediate family members in Taiwan. Both parents are retired and not connected with the government in any way.

1.d. - As of July 5, 2001, Applicant maintained a valid Taiwan passport. Applicant subsequently renounced his Taiwanese citizenship and surrendered his Taiwanese passport (AX E and AX F). He retained his Taiwanese passport until recently so that his parents "could keep the property they purchased in my name a long time ago" (AX H). When he transferred title to the property to his brother in November 2003, the need for the Taiwanese citizenship and passport no longer existed and Applicant promptly acted to end his legal ties to Taiwan in early 2004 (AX F and AX H).

The copies of the two passports (U.S. and Taiwan) provided by Applicant (AX Ea. and AX Eb) show Taiwan entry and exit stamps on both passports. Applicant explained that he used the Taiwanese passport to protect his parents' interests in the apartment and the U.S. passport so the U.S. could keep track of his foreign travels (Tr at 26-28). This establishes that Applicant clearly understands his obligations to the U.S. and acts with integrity

Guideline B (Foreign Influence)

2.a. - Applicant's parents are both citizens of Taiwan and reside in that country. Applicant has telephone contact with them about once a week, out of concern for their health.

2.b. - Until recently, Applicant owned/had title to an apartment in Taiwan that had been purchased and maintained for him by his parents when he in school in Taiwan in 1978 (Tr at 26). He did not make any payments on the apartment and it has been occupied and maintained by his parents since he came to the U.S. He has never considered it to be his property, but that of his parents. The title to the house, still occupied by his parents, has now been transferred to his brother (AX G and Tr at 29, 30).

Guideline E (Personal Conduct)

3.a. - Applicant *did not* intentionally falsify his answer to Question **12 - Your Foreign Activities - Property** on his security clearance application (SCA), filed on May 21, 2001 when he omitted mention of the apartment discussed above at 2.b. His parents have been living in the apartment for more than 25 years, since Applicant was a teenager, and he has never considered himself to be the "owner" of the property. His parents still live there, but title has been transferred to Applicant's brother (AX G). When he completed the SF 86, it did not occur to him that he should report the apartment in Taiwan as his property (Tr at 31, 32).

Applicant came to the U.S. on 1982 to continue his studies and received his M.A. in engineering from a U.S. university

in 1984. He developed an affection for this country and became a citizen in 1994. His sole ties to Taiwan are with his elderly parents. He does not send them money since they are financially stable on their own.

Applicant has received praise from his employer, friends and church pastor (AX I, AX J, AX K). He has received highly positive work evaluations. (Tr at 34, 35, AX B).

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.

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. 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.

CONCLUSIONS

Guideline C - The underlying concern expressed in Guideline C is that when a individual "acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States." In this case, the basic issue is whether Applicant's conduct, as alleged in the SOR, indicates such a preference for Taiwan over the U.S.

Disqualifying and Mitigating Conditions - Based on the totality of the record, I conclude that no disqualifying conditions presently exist since Applicant has renounced his Taiwanese citizenship, no longer has a Taiwanese passport, and is a citizen only of the United States.

Analysis - 1.a. - Applicant maintained dual citizenship with Taiwan after he became a U.S. citizen in 1994 for the sole purpose of protecting the ability of his elderly parents to reside in an apartment in Taiwan to which Applicant held legal title. When it became clear to Applicant that his ownership of the apartment had security implications, he promptly transferred title to his brother. Once there was no longer being any reason to retain his legal ties to Taiwan, he promptly renounced his Taiwanese citizenship and surrendered his Taiwanese passport. I conclude his conduct in the past did not indicate a preference for Taiwan over the U.S. and is, in any case, now moot and not of current security significance.

1.b. - As discussed above under 1.a., Applicant's legal ownership of the apartment was the result of his concern to

protect his parents. Any concern has been mooted by the transfer of legal title to his brother. In any case, the value of the apartment, about \$200,000, is minimal in the context of his assets in the U.S.

1.c. - To care for his elderly parents, Applicant and his brother each visit Taiwan once a year.

This shows a praiseworthy respect for his parents, and does not suggest a preference for Taiwan over the U.S.

1.d. - As discussed above, Applicant no longer maintains a Taiwanese passport and has renounced his Taiwanese citizenship.

In summary, I conclude that none of the conduct discussed above was intended to express a preference for Taiwan over the United States, and to the degree the conduct may have been a concern in the past, Applicant has acted to clarify his overriding preference, choice, and loyalty toward the United States.

Guideline B - The underlying concern is that a "security risk may exist when an individual's immediate family member, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information.

Disqualification and Mitigation

Condition that could raise a security concern and may be disqualifying:

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;

Condition that could mitigate security concerns include:

1. A determination that the 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 the individual to choose between loyalty to the person(s) involved and the United States;

Analysis - 1.a. - As with any case involving immediate family members in a foreign country, there is a risk in the abstract, but each such case must be evaluated on its specific circumstances. Based on the totality of the evidence, I conclude that Applicant has no ties to or contacts with Taiwan except for his visits to elderly and ailing parents. His affection for them is suggested by the frequency of his visits, but there is no indication they are agents of the Taiwanese government or are likely to be. Likewise there is no evidence suggesting they are at risk of being asked to pressure Applicant to act against U.S. interests. The Government has established that Taiwan is on a list of countries known to be involved in at least industrial espionage in the U.S. (GX 4 at page 15). There is no evidence of any improper contact in the past. Although this is not conclusive evidence that no such contact will be made in the future, it can at least be considered in evaluating such risk.

Other than the passage of decades without any improper contacts, and relatives with no ties to government intelligence agencies, there is not much that an applicant can show to mitigate the general or abstract risk that he will be asked to act improperly. In the present case, I find that risk to be minimal. Going one step further, I find that Applicant is clearly aware of his responsibilities when it comes to national security, and he has stated his intent to promptly report any such attempt to the proper authorities, clearly and convincingly. Applicant has become an American and is committed to the nation's welfare to the point that he would act responsibly even if his parents were to become involved.

To the extent that DC 8 applied (financial interest in real property in Taiwan), it is outweighed by MC 5 because the financial interest was minimal and no longer exists.

Guideline E - Personal Conduct (Falsifications) - As discussed above, I conclude that Applicant did not intentionally provide a false answer, as alleged in the SOR. Therefore, no Disqualifying Conditions apply.

Overall, I conclude that Applicant is man of integrity and one who takes his obligations seriously. Considered separately and together, the allegations have no or minimal current security significance. I conclude there is minimal risk that Applicant's parents in Taiwan would be asked to influence Applicant or that they would agree to do so. More important, I conclude that Applicant would not feel "forced to choose" between his family and his obligations to the U.S., but would promptly report it to U.S. authorities. For these reasons, notwithstanding that the foreign country is Taiwan, Applicant is not likely to be subject to foreign influence from any person or government.

FORMAL FINDINGS

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

Guideline B (Foreign Influence) For the Applicant

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

Guideline C (Foreign Preference) 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

Guideline E (Personal Conduct) For the Applicant

Subparagraph 3.a. 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