

DATE: October 12, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-16244

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL H. LEONARD

APPEARANCES

FOR GOVERNMENT

Pamela C. Benson, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is unable to successfully mitigate the foreign preference and foreign influence security concerns raised by her close and continuing connections to Taiwan. Clearance is denied.

STATEMENT OF THE CASE

On December 31, 2003, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating the reasons why DOHA proposed to deny or revoke access to classified information for Applicant. ⁽¹⁾ The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline B for foreign influence and Guideline C for foreign preference. In particular, the SOR alleges Applicant has family members (mother, father, and brother) who are citizens of and residents in Taiwan (the Republic of China) and that she has possessed a Taiwanese passport since she was a child and she renewed that passport in August 2001. In her answer to the SOR, dated January 15, 2004, Applicant admitted the SOR allegations; she also requested a clearance decision based on a written record in lieu of a hearing.

On March 4, 2004, Department Counsel prepared and submitted her written case. The File of Relevant Material (FORM) ⁽²⁾ was mailed to Applicant on or about March 8, 2004, and it was received by Applicant on March 15, 2004. Applicant's response to the FORM was due by April 14, 2004, and, to date, no response has been received. The case was assigned to me April 28, 2004.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the record, I make the following essential findings of fact:

Applicant is a 25-year-old unmarried woman. Since February 2002, Applicant has worked as a electrical engineer

associate for a major defense contractor.

Applicant was born in the U.S. in February 1979, and as such, she is a native-born U.S. citizen. Her birth in the U.S. was a fortuity, however, since her mother, a citizen of Taiwan, was pregnant and vacationing in the U.S. when she gave birth to Applicant. In March 1979, mother and daughter returned to Taiwan where Applicant lived until December 1995.

In 1995, while still a teenager, Applicant came to live in the U.S. with an aunt. Applicant completed high school in May 1997. She then attended a major state university starting in August 1997 until she was awarded a bachelor's degree in electrical engineering in December 2001. She started her current employment a few months later.

In March 2003, Applicant completed a security-clearance application (Item 1) for her employment with a major defense contractor. In her application, she revealed the following: (1) she has dual citizenship with Taiwan; (2) her mother, father, and brother are citizens of and residents in Taiwan; (3) she has an active passport from Taiwan, issued in August 2001 and expiring in August 2011; and (4) she traveled to Taiwan about eight times from August 1996 until January 2002.

Applicant was interviewed twice during her background investigation, and both interviews produced sworn, written statements (Items 5 and 6). In her initial written statement of June 2002, she discussed her birth in the U.S., her education in Taiwan and the U.S., and her family members in Taiwan, among other things. In concluding her written statement, Applicant said "If the United States was ever at war with Taiwan, I will resign my job with [the company] due to my strong Taiwanese heritage (Item 5, at p. 3)."

Applicant provided another written statement in June 2003 (Item 6). Concerning her family members in Taiwan, Applicant explained:

My parents will likely both live in Taiwan all their life. I have one younger brother, and he lives in Taiwan. He is a college student at this time. I have no other siblings. I have no family in government, military, or sensitive positions. Due to my family in Taiwan, it might be possible for pressures to be applied upon me, but it is no more likely than to happen to anyone else. I can not foresee any problems or issues with my family overseas. If I were to be approached for information, I would immediately contact the FBI or the appropriate agencies to resolve the issue. I would not allow threats against me or my family (Item 6 at p. 2).

Applicant also explained her possession and use of the Taiwanese passport as follows:

My mother obtained a Taiwanese passport for me when I was a child, and I renewed it on one occasion on 15 Aug 01. The passport was issued from the inistry of Foreign Affairs in Kaoshiung, Taiwan, and expires on 15 Aug 2011. The name on the passport shows . . . , which is the direct translation of my name. The identification number on the passport is . . . , and reflects I was born in the USA. The passport was renewed during one of my visits home. I have not used the passport from Taiwan since it was renewed. I think that last time I used it was when I was a junior in college in about 1999. This travel was on the original passport, and it was turned in when I renewed. I have used my U.S. passport since that time.

* * *

I would be willing to relinquish my passport from Taiwan, and I was not aware that use of the passport would be any problem. I do not know what I would need to do to turn in my passport, but if I were to be contacted regarding the issue, I would turn it in [to] the appropriate people (Item 6 at p. 3).

She also added she does not desire to renounce her Taiwanese citizenship, because Taiwan is part of her heritage and identity. She views her Taiwanese citizenship as a personal attachment to the country (the people and culture), but she has no desire to live in Taiwan and plans to always live in the U.S. To date, Applicant remains in possession of the Taiwanese passport.

Applicant's mother, father, and brother are citizens of and residents in Taiwan. Her father is a medical doctor and her mother is a housewife. Her brother is a college student.

Applicant has never experienced any problems during her multiple trips to Taiwan. She has had no difficulties with customs, border officials, or law enforcement officials. Nothing questionable has happened, and she has never felt like she was being monitored or under surveillance while in Taiwan.

As requested by Department Counsel, I have taken administrative or official notice of two reports (Items 8 and 9). The first report is a Consular Information Sheet on Taiwan issued by the U.S. State Department. The second report is National Counterintelligence Center Annual Report to Congress on Foreign Economic Collection and Industrial Espionage for 2000. Based on the first report, I take administrative notice that Taiwan's government is a stable democracy. Based on the second report, I take administrative notice that Taiwan, along with several other countries, is one of the most active collectors of economic information and engages in industrial espionage against the U.S.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's security-clearance eligibility, including disqualifying conditions (DC) and mitigating conditions (MC) for each applicable guideline. In addition, each clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, and the factors listed in ¶ 6.3.1. through ¶ 6.3.6. of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

In August 2000, the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence (ASDC3I), issued a memorandum clarifying the application of the foreign preference security guideline for cases involving possession and/or use of a foreign passport (Exhibit 1--the so-called Money memorandum, because it is signed by Assistant Secretary Arthur L. Money). In pertinent part, the Money Memorandum "requires that any clearance be denied or revoked unless the applicant surrenders the foreign passport or obtains approval for its use from the appropriate agency of the United States Government (Item 7)."

BURDEN OF PROOF

The only purpose of a security-clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽³⁾ There is no presumption in favor of granting or continuing access to classified information.⁽⁴⁾ The government has the burden of proving controverted facts.⁽⁵⁾ The U.S. Supreme Court has said the burden of proof in a security-clearance case is less than the preponderance of the evidence.⁽⁶⁾ The DOHA Appeal Board has followed the Court's reasoning on this issue establishing a substantial-evidence standard.⁽⁷⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁸⁾ Once the government meets its burden, an applicant has the burden of presenting evidence of refutation, extenuation, or mitigation sufficient to overcome the case against him.⁽⁹⁾ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹⁰⁾

As noted by the Court in *Egan*, "it should be obvious that no one has a 'right' to a security clearance," and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹¹⁾ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

CONCLUSIONS

1. Guideline B-Foreign Influence

Under Guideline B for foreign influence,⁽¹²⁾ a security concern 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 not citizens of the U.S. or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. In addition, common sense suggests that the stronger the ties

of affection or obligation, the more vulnerable a person is to being manipulated if the relative, cohabitant, or close associate is brought under control or used as a hostage by a foreign intelligence or security service.

Here, based on the record as a whole, the government has established its case under Guideline B. Applicant has close and continuing family ties to Taiwan, as evidenced by her mother, father, and brother who are citizens of and residents in Taiwan. By contrast, Applicant has no immediate family members in the U.S. The closeness of the ties is further demonstrated by Applicant's multiple trips to Taiwan for family visits. These circumstances raise a security concern under DC 1. [\(13\)](#)

I have reviewed the mitigating conditions under Guideline B and conclude none apply. The only MC deserving serious consideration is MC 1, [\(14\)](#) but it too does not apply. It does appear that none of the family members are agents of the Taiwanese government or any other foreign power. [\(15\)](#) But that does not end the analysis, as Applicant must show her family members are not in position to be exploited by the Taiwanese government.

In foreign influence cases, it is proper to consider how the foreign country at issue is governed. The focus is not the country or its people, but its rulers and the nature of the government they impose. This approach recognizes it is nonsensical to treat North Korea as if it were Norway. Here, we know Taiwan is friendly to the U.S. and is ruled by a democratic government. We also know Taiwan attempts to collect economic information and engages in industrial espionage against the U.S. The information we have about Applicant's immediate family members in Taiwan is benign, but limited. Given these circumstances, Applicant has not established that her immediate family members in Taiwan are not in a position to be exploited in a way that could force her to choose between loyalty to her family and the interests of the U.S. Accordingly, Guideline B is decided against Applicant.

2. Guideline C-Foreign Preference

Under Guideline C, [\(16\)](#) a security concern may exist when a person acts in such a way as to indicate a preference for a foreign country over the U.S. In particular, the exercise of dual citizenship raises a security concern because the active exercise of foreign citizenship may indicate a preference for that foreign country over the U.S. Dual citizenship by itself, however, is not automatically a security concern. Absent the exercise of dual citizenship or indicia of some affirmative action demonstrating foreign preference, mere possession of foreign citizenship by virtue of birth does not fall within the scope of Guideline C.

Here, based on the record evidence as a whole, the government has established its case under Guideline C. By her actions--possessing and using a Taiwanese passport while a U.S. citizen--Applicant has demonstrated a preference for Taiwan. Under these circumstances, DC 1 [\(17\)](#) and DC 2 [\(18\)](#) apply against Applicant. In addition to these matters, Applicant continues to possess the Taiwanese passport, which was issued to her in August 2001. Her current possession of the foreign passport invokes the Money Memorandum *per se* rule, which requires a clearance be denied or revoked under these circumstances.

Turning to the mitigating conditions under Guideline C, MC 1 [\(19\)](#) applies because her dual citizenship is based on her parents' citizenship. [\(20\)](#) I have reviewed the remaining MC and conclude none apply. In particular, MC 4 [\(21\)](#) does not apply because Applicant has indicated she is unwilling to renounce her dual citizenship with Taiwan.

Applicant has resided in the U.S. since December 1995. She completed high school and earned a college degree in the U.S. Shortly thereafter, she started her first job as an engineer with a large U.S. defense contractor, and it appears she intends to live her life in the U.S. Although not required to renounce dual citizenship to obtain access to classified information, the fact Applicant is unwilling to renounce her Taiwanese citizenship is a clear, logical, and convincing reason to have concern given her affirmative exercise of dual citizenship. It also appears Applicant intends to keep one foot in each country. This situation, although perfectly legal and ethical, creates a divided preference, which is a bona fide security concern. In addition, because Applicant possesses a Taiwanese passport, the Money Memorandum requires the clearance be denied. Accordingly, Guideline C is decided against Applicant.

To conclude, this decision should not be construed as an indictment of Applicant's loyalty and patriotism to the U.S., as

those matters are not at issue. Nor is this decision based on Applicant's race or national origin. Instead, the clearly-consistent standard requires I resolve any doubt in favor of protecting national security. The record evidence of Applicant's exercise of dual citizenship, coupled with her close and continuing family ties to a foreign country that targets the U.S. for economic information and engages in industrial espionage, creates doubt. In reaching my decision, I have considered the evidence as a whole, the whole-person concept, and the appropriate factors and guidelines in the Directive.

FORMAL FINDINGS

As required by ¶ E3.1.25 of Enclosure 3 to the Directive, below are my conclusions as to the allegations in the SOR:

SOR ¶ 1-Guideline B: Against the Applicant

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

SOR ¶ 2-Guideline C: Against the Applicant

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

DECISION

In light of all 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.

Michael H. Leonard

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. The FORM contains several documents for consideration and they are identified as Items 1 - 9.
 3. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
 4. ISCR Case No. 02-18663 (March 23, 2004) at p. 5.
 5. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
 6. *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).
 7. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
 8. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
 9. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
 10. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.
 11. *Egan*, 484 U.S. at 528, 531.
 12. Directive, Enclosure 2, Attachment 2.

13. 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.

14. 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.

15. *See* 50 U.S.C. § 1801(b).

16. Directive, Enclosure 2, Attachment 3.

17. E2.A3.1.2.1. The exercise of dual citizenship.

18. E2.A3.1.2.2. Possession and/or use of a foreign passport.

19. E2.A3.1.3.1. Dual citizenship is based solely on parents' citizenship or birth in a foreign country.

20. ISCR Case No. 99-0452 (March 21, 2000) at pp. 2-3 (Modifying its earlier rulings, the DOHA Appeal Board, in an expansive reading of MC 1, concluded the literal language of MC 1 allows it to be applied even when an applicant exercises foreign citizenship after becoming a U.S. citizen).

21. E2.A3.1.4. Individual has expressed a willingness to renounce dual citizenship.