

KEYWORD: Foreign Influence

DIGEST: While Applicant's two brothers and his parents are citizens of Taiwan, and one brother works in Taiwan and the other brother works in the People's Republic of China, the facts and circumstances show that Applicant's overall family ties do not pose an unacceptable security concern or risk under the foreign influence guideline. Clearance is granted.

CASENO: 03-18067.h1

DATE: 01/05/2006

DATE: January 5, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-18067

**DECISION OF ADMINISTRATIVE JUDGE**

**PAUL J. MASON**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

While Applicant's two brothers and his parents are citizens of Taiwan, and one brother works in Taiwan and the other brother works in the People's Republic of China, the facts and circumstances show that Applicant's overall family ties do not pose an unacceptable security concern or risk under the foreign influence guideline. Clearance is granted.

**STATEMENT OF CASE**

On November 9, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Department of Defense Directive 5220.6, dated January 2, 1992, as reissued through Change 4 thereto, dated April 20, 1999, issued a Statement of Reasons (SOR) to 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 Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether his clearance should be granted, continued, denied or revoked. On November 29, 2004, Applicant responded to the SOR and requested a hearing before an Administrative Judge.

The case was assigned to me on March 24, 2005. On April 4, 2005, this case was set for hearing on May 3, 2005. The Government submitted one exhibit; official notice was taken of Government's Exhibits (GE) 2 through GE 7. Applicant's exhibits (AE) are ten in number. The transcript was received on May 13, 2005.

**FINDINGS OF FACT**

Applicant is 46 year years old. He was born in Taiwan in May 1959. In 1983, Applicant obtained his mechanical engineering degree from a Taiwanese university. Then, he completed the required two years of military service in the Taiwanese Army from 1983 to 1985. Applicant was employed as an engineer by two private Taiwanese engineering

companies from 1985 through 1987. Applicant migrated to the United States (U.S.) in 1988 and completed a master's degree in mechanical engineering at an American technological institute in 1989. Then, he completed a master's degree in computer science from an American university in December 1990.

When he could not find work in the U.S. after receiving his computer science degree, he returned to Taiwan and worked for a ceramics company as a project engineer, creating factory layouts and budgets from 1991 to 1995. (GE 1; AE E) Applicant returned to the U.S. in 1995 "Because I like to build my life here." (Tr. 52) He worked as a senior mechanical engineer for an American construction company, establishing drying processes to make building materials more durable. In 2000, Applicant started a consulting business in the computer storage of information related to the drying/finishing process of building materials. Applicant received his U.S. citizenship in May 2001. [\(U\)](#) Since February 2002, Applicant has been employed as an engineering specialist for a defense contractor.

Applicant's older brother (subparagraph 1.a.) is 53 years old and a citizen of Taiwan. At the time the SOR was published, he resided in the People's Republic of China where he was employed by the same ceramics company Applicant worked for in Taiwan from 1991 to 1995. (AE E) In 2003, the company transferred his oldest brother back to Taiwan. Applicant has not communicated with his oldest brother in 2005 but they do contact each other by e-mail occasionally; Applicant last saw his oldest brother in 1997 when the whole family came to visit Applicant after he fractured his leg. (Tr. 38) Applicant and his oldest brother have different lifestyles, with his oldest brother being a lot less frugal with his money than Applicant. (Tr. 54)

Applicant's second brother (subparagraph 1.b.) is 49 years old and a citizen of Taiwan. Since the publication of the SOR, the second brother was laid off from his job in Taiwan, but found a job in the People's Republic of China. (Tr. 35) The second brother's resume reveals an employment history in primarily employee relation positions in Taiwan, including three positions in three large American corporations (AE B) before landing his current job in November 2004. He is employed as an administrative director of a foundry, responsible for administrative services and human resources. Applicant communicates with his second brother by phone once a month and by e-mail about every two weeks. Sometimes, the e-mail from both brothers is more frequent when Applicant's mother has a problem with her diabetes or when his father has blood circulation difficulties. (Tr. 39) Applicant provides no monetary support for his brothers; they provide no support for him for his parents' expenses.

Applicant's parents (subparagraph 1.c.) are citizens of Taiwan and have been residing in the U.S. with Applicant for at least three years. (GE 1) His father is 87 years old and his mother is 77 years old. His father was employed as a civil engineer while his mother has always been a housewife. They both have their resident alien cards, commonly known as green cards. Based on their respective ages and current daily activities that are television and trips to the supermarket/discount store, I find both are presently retired. (Tr. 35)

Applicant has traveled to Taiwan (subparagraph 1.d.) in 1997, 2000, 2002, and also May 2004, when he spent a week with his friends, his girlfriend, and his second brother, who happened to be in the country at the time. (Tr. 41) Applicant usually contacts his friends when he visits Taiwan, however, he was unsuccessful locating two of his best friends during his most recent trip in May 2004.

Applicant submitted U.S. property tax printouts related to his American home he once owned in the 1990s and for his current home he has owned for about two years. (AE F; Tr. 45) Applicant has about \$7,000.00 in his checking account, \$160,000.00 in his money market account, and approximately \$90,000.00 in his retirement account. (*Id.*) Applicant is uncertain whether his parents still own property in Taiwan because his brother is responsible for the property. Several years ago, Applicant was informed by his mother that he had a bank account in Taiwan with about \$20.00 in the account. (Tr. 46)

A supervisor with Applicant's current employer interviewed and recommended that Applicant be hired in February 2002. The supervisor views Applicant as a conscientious employee. Applicant's performance evaluations reveal improvement between 2003, when Applicant's performance "fully met [the] objective" and 2004, when Applicant's performance "exceeded [the] objective." Applicant received perfect attendance citations for 2003 and 2004.

On April 2, 1998 and again in January 2000, former coworkers of Applicant during his employment from 1995 to 2000, provided favorable recommendations based on Applicant's competence as an engineer in the construction materials drying process.

In explaining how he would respond if some country were to exert influence on him through his family, Applicant indicated he would do what he could for his family member but at the same time, would not yield to pressure by disclosing classified information. (Tr. 48) With regard to political relations between Taiwan and the U.S., Applicant noted Taiwan is still against the People's Republic of China, not the U.S.

Having carefully evaluated the record, I find Applicant testified credibly. I also find none of Applicant's family are agents or instruments of a foreign power.

## **POLICIES**

Enclosure 2 of the Directive sets forth guidelines containing disqualifying conditions (DC) and mitigating conditions (MC) that should be given binding consideration in making security clearance determinations. These conditions must be considered in every case along with the general factors of the whole person concept. However, the conditions are not automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense.

## **Burden of Proof**

Initially, the government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualifies, or may disqualify, the applicant from being eligible for access to classified information. *Department of the Navy v. Egan*, 484 U.S. at 531 "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 481 U.S. at 531; *see* Directive E2.2.2.

## **Foreign Influence**

The security concern emerges 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.

## **CONCLUSIONS**

A security risk 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 may create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

The Government has established a case of foreign influence (FI) within the scope of disqualifying condition (DC) 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*). Subparagraphs 1.a. and 1.b. involve Applicant's two brothers who are citizens of Taiwan and reside either in Taiwan or the People's Republic of China. The third allegation addresses

Applicant's parents (green card holders) who are citizens of Taiwan residing in the U.S. with Applicant.

Once the Government has demonstrated an applicant has immediate family members who are residents of a foreign country, the applicant must present sufficient evidence in rebuttal, extenuation or mitigation to meet his ultimate burden of persuasion in demonstrating it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The determination of whether Applicant's family members may be vulnerable to coercion should include consideration of the nature of Applicant's contacts with the family member, and also the character of foreign government involved. Contacts with immediate family members in a foreign country raise a rebuttable presumption those contacts are not casual in nature. ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002) Furthermore, the presence of Applicant's brothers in Taiwan and the People's Republic of China might be sufficient to raise security concerns over the possibility of Applicant's vulnerability to coercion, the mere presence of the family member in the foreign country is not security disqualifying under the foreign influence guideline. See, ISCR Case No. 98-0507 (Appeal Board Decision and Reversal Order, May 17, 1999), at 10. Taiwan has had historical problems in the areas of police abuse of detainees, judicial corruption, child abuse, and other human rights violations. Though the country has also been known to target U.S. economic and technical information, the government has made significant progress in demonstrating respect for human rights while relaxing restrictions on personal freedoms. The People's Republic of China has a totalitarian government that has been involved in military and economic espionage against the U.S., as well as engaging in a history of suppression of the human rights of its own citizens.

On the facts of this case, I conclude FI mitigating condition (MC) E2.A2.1.3.1. (*a determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associates(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 U.S.*) applies to mitigate the foreign influence concerns. As expressed by the DOHA Appeal Board in ISCR Case No. 00-0317, decided on March 29, 2002:

Under Guideline B, the presence of family members in a foreign country must be evaluated both in terms of (I) possible vulnerability to coercive pressure or influence being brought to bear on, or through Applicant's family members in a foreign country, and (ii) possible vulnerability to means of influence being brought to bear on, or through, an applicant's family member in a foreign country.

Applicant has provided sufficient evidence indicating his immediate family members are not agents of a foreign power. Furthermore, I conclude that neither his brothers nor his parents are in a position to be influenced through coercive or noncoercive means by a foreign power that could force Applicant to choose between his immediate family members and the U.S. His oldest brother is employed by the same ceramics factory that employed Applicant in the 1990s. It does not appear the oldest brother is involved in activities that might benefit from U.S. classified information. Notwithstanding the citizenship status of Applicant's mother and father and their frequent contact with Applicant, their age and health problems make any effort to pressure Applicant through them almost nonexistent.

Though the second brother's job as an administrative director of a foundry in the People's Republic of China might be sufficient to raise possible vulnerability concerns for influence and coercion, Applicant's risk of vulnerability to

influence through his second brother is minimal. Although the overall contact Applicant has with his family members cannot be considered casual and infrequent, he has only seen his second brother twice since 1997, and has not seen his oldest brother since 1997. Moreover, the risk of vulnerability to foreign influence through his second brother is also minimal when balanced against Applicant's strong ties to the U.S. A commonsense evaluation of all the facts and circumstances of this case reveals that Applicant's decision to obtain his advanced education in the U.S., to make his home and pursue his career, and, obtain his U.S. citizenship, furnish sound reasons he will not yield to foreign influence. Applicant owns his home in the U.S, and has consistently paid his property taxes. Although there may be property that his parents own located in Taiwan, Applicant believes the property belongs to his oldest brother. Applicant has over \$250,000.00 in American banks while he may have only about \$20.00 in a Taiwanese bank. Applicant has indicated there is no situation a foreign power could pressure him into disclosing classified information. Even though the DOHA Appeal Board has held an applicant's statement of intention about how he would act in the future is not entitled to much weight, I still find Applicant's testimony regarding his future inclinations credible. *See* ISCR Case No. 99-0501 (December 19, 2000)

Applicant has traveled to Taiwan on three occasions listed in the SOR, and one additional visit in May 2004 to see some friends and his girlfriend. The visits to Taiwan do not raise any security concerns under the FI guideline. Subparagraph 1.d. is found in Applicant's favor.

Considering the evidence as a whole, including Applicant's strong connections to the U.S., and his favorable job performance at his current and previous positions, I conclude Applicant's family contacts to Taiwan and the People's Republic of China do not pose unacceptable security concerns under the FI guideline. In reaching my decision, I have also considered the whole person concept appearing at E2.2.1. of the Directive.

### **FORMAL FINDINGS**

Formal Findings required by Paragraph 25 of Enclosure 3 are:

Paragraph 1 (Foreign Influence, Guideline B): FOR THE APPLICANT.

Subparagraph 1.a. For the Applicant.

Subparagraph 1.b. For the Applicant.

Subparagraph 1.c. For the Applicant.

Subparagraph 1.d. 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.

Paul J. Mason

Administrative Judge

1. Applicant's sister, 57 years old, is also a naturalized U.S. citizen..