

DATE: September 30, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-27157

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Eric Borgstrom, Esq., Department Counsel

FOR APPLICANT

Richard Murray, Esq.

SYNOPSIS

Applicant failed to mitigate security concerns regarding foreign preference and foreign influence since he did not take steps to surrender his Taiwan passport and renounce his citizenship, until faced with the possibility of being unable to obtain a security clearance for a position he took in 2003, even though he had been a U.S. citizen since 1999. He and his wife have extensive family in Taiwan, and he renewed and used his Taiwan passport after becoming a U.S. citizen. Clearance is denied.

STATEMENT OF THE CASE

On April 4, 2005, the Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry* as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, 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 the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated May 2, 2005, Applicant responded to the allegations stated in the SOR with one attached exhibit, and requested a hearing. The case was assigned to me on July 13, 2005, and a Notice of Hearing was issued July 18, 2005, and a hearing was held on August 5, 2005. The Government and the Applicant each introduced two exhibits at the hearing. All were accepted into evidence. The Applicant and one witness testified on his behalf. The Government amended the SOR at the hearing to conform to testimony adding two additional allegations concerning additional relatives and ownership of property in Taiwan (SOR 2.e. and f.). The transcript was received on August 17, 2005.

FINDINGS OF FACT

Applicant has admitted with explanation all of the factual allegations pertaining to foreign preference under Guideline C and the allegations pertaining to foreign influence under Guideline B. His admissions are incorporated herein as findings of fact. After a complete review of the record and I make the following additional findings of fact:

Applicant is a 48-year-old employee of a defense contractor working as a communications engineer. He was born in Taiwan, graduated from college in Taiwan, and emigrated to the U.S. in 1979 to attend graduate school at a major mid-western university. He graduated with a Ph. D. in electrical engineering in 1988. He received a green card in 1993 and became a U.S. citizen in 1999, at which time he obtained a U.S. passport. He has worked for three different companies between 1988 and 2005. He took his latest position in 2003, the first employment to require a security clearance. His current salary is \$125,000.00 per annum. His salary from his immediate past employer was \$100,000.0.

He continued to use his Taiwan passport for travels to Taiwan in 2001 and 2002 after obtaining his U.S. citizenship. The use of his Taiwan passport facilitated his travels to Taiwan. His Taiwan passport was renewed in April 2003 but he has not traveled to Taiwan since that time. When he learned of the need for a security clearance from his current employer, he began to take steps to surrender his Taiwan passport and renounce his Taiwan citizenship. In May, 2003, he surrendered his passport to Taiwan authorities.

Applicant has relatives who are citizens and residents of Taiwan, namely, his mother, four siblings, his mother-in-law and father-in-law, two sisters-in-law and one brother-in-law. Applicant

owns inherited property in Taiwan in the form of an apartment in the same building where his mother lives that is valued between \$100,000.00 and \$125,000.00. His mother manages the property which produces rents of \$800.00-\$1,000.00 per month that are used to provide income to her. His mother is 72 and is a housewife. His father is deceased. Applicant's siblings in Taiwan are all professors or editors. All went to school in the U.S. for advanced degrees. They travel to the U.S. frequently for conferences and seminars during which times he sees them if their paths cross. His siblings have similar interests in the apartment building.

Applicant's wife is also a native of Taiwan, and works for a major U.S. corporation in information technology. Her annual salary is \$125,000.00 per annum. They were married in 1982 and she also holds a Ph.D from the same university as her husband. They have two teenage sons who were born in the U.S. and have only U.S. citizenship. The family owns a home valued at \$600,000.00 and has retirement accounts valued at \$800,000.00. She holds only a U.S. passport as her Taiwan passport expired in February, 2005, and she did not renew it to help insure that her husband received a security clearance. Her parents are in their 70's. Her mother is a housewife and her father is a retired township supervisor living on retirement income. She has three siblings who are citizens and residents of Taiwan and two others who live in the U.S. Her parents visit the U.S. and were in the U.S. at the time of the hearing. She calls her parents "quite often" when they are in Taiwan. She travels to Taiwan to visit approximately every year and a half. Her last trip was in February, 2005, using a U.S. passport.

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.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "Any doubt as to

whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b).

"A security risk may exist when an individual's immediate family 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." Directive, ¶ E2.A2.1.1. Having immediate family members who are citizens of, and residing in a foreign country, may raise a disqualifying security concern. Directive, ¶ E2.A2.1.2.1.

CONCLUSION

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors and conditions above, I conclude the following with respect to all allegations set forth in the SOR:

The applicable guidelines in the SOR for Foreign Preference Guideline C provide that an individual who acts in such a way as to indicate a preference for a foreign country over the United States may be prone to provide information or make decisions that are harmful to the interests of the United States.

Conditions that could raise a security concern and may be disqualifying include the exercise of dual citizenship (E2.A3.1.2.1.), and the possession and/or use of a foreign passport. Security concerns may be mitigated by a willingness to renounce dual citizenship (E2.A3.1.3.4.) and return or invalidation of a foreign passport. Applicant has expressed a renunciation of his Taiwan citizenship and returned his passport at the time he applied for a security clearance. His failure to do so earlier is not helpful to his case and the fact that he used it to travel to Taiwan twice after he became a citizen and had obtained a U.S. passport militates against the application of a mitigating condition. While he had no need for a security clearance in his employment between 1988 and 2003, the fact that he continued to maintain dual citizenship, hold and use a passport of Taiwan, and use it even after obtaining a U.S. passport indicates a preference that raises security concerns.

The applicable Guidelines in the SOR concerning Foreign Influence-Guideline B provide that a security risk may exist when an individual's immediate family are not citizens of the United States or may be subject to duress. Such facts could create the potential for foreign influence that could result in the compromise of classified information.

Conditions that could raise a security concern and may be disqualifying include having an immediate family member, or a person to whom the individual has close ties of affection or obligation, who is a citizen of, or resident in a foreign country. (E2.A2.1.2.1.), or having a substantial financial interest in a country that could make the individual vulnerable to foreign influence. (E2.A2.1.2.8.)

Applicant and his wife have numerous relative who are citizens and residents of Taiwan. They are family members with whom they have close ties of affection be virtue of those relationships. While those relatives appear not to have governmental connections, they are in positions of influence in Taiwan by virtue of their education and employment are in a position to be subject to foreign influence.

Based on the evidence of record, including Applicant's admissions, the Government established reasons to deny him a security clearance because of foreign preference and foreign influence. Having established such reasons, the Applicant had the burden to establish security suitability through evidence which refutes, mitigates, or extenuates the disqualification and demonstrates that it is clearly consistent with the national interest to grant a security clearance. ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

Possible mitigating conditions that might be applicable are a determination that the immediate family members would not constitute an unacceptable security risk. Such security concerns could be mitigated by 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." (E2.A2.1.3.1.) and the foreign financial interests are minimal and not sufficient to affect security responsibilities. (E2.A2.1.3.5.)

The steps he has taken to mitigate the allegation of foreign preference and the facts surrounding his use of a foreign passport do not provide a sufficient basis to mitigate that allegation. He has not demonstrated that the extensive family ties in Taiwan of both Applicant and his wife do not create a security problem regarding foreign influence.

Applicant's ownership of property in Taiwan raises security concerns. While the total value is substantial, it is valued at an amount only a little over half the combined annual salaries of Applicant and his wife so the ownership is relatively not of great significance particularly since the rental income now goes to Applicant's mother. However, the fact that he has ownership that eventually will produce income as well as a salable asset of significant value leads me to conclude the mitigating condition is not applicable.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is a fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. The "whole person" concept recognizes that we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. Applicant and his wife have established themselves in the U.S. with a family and are solidly prosperous members of the community. Their assets are considerable and they clearly have a large stake in the U.S. However, the steps they have taken to separate themselves from the indicia of ties to Taiwan were only made after it became apparent that he needed a security clearance to obtain his present position. Thus, it is premature to grant a security clearance at this time.

After considering all the evidence in its totality, and focusing on the whole person of Applicant, I conclude that it is not clearly consistent with the national interest to grant clearance to Applicant.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline C: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Paragraph 2 Guideline B: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Subparagraph 2.d.: Against Applicant

Subparagraph 2.e.: Against Applicant

Subparagraph 2.f.: Against Applicant

DECISION

After full consideration of all the facts and documents 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.

Charles D. Ablard

Administrative Judge