

KEYWORD: Foreign Influence

DIGEST: Applicant is a native of the Republic of China (Taiwan) who became a naturalized United States citizen in September 1994. From July 1994 to December 1999, he worked as a consultant in the United States for his sister's engineering corporation based in Taiwan. A dedicated employee for a U.S. defense contractor since January 2001, foreign influence concerns persist because of the Taiwanese residency and citizenship of family members, including his brother who works for a government agency in Taiwan. Clearance is denied.

CASENO: 04-00436.h1

DATE: 11/30/2005

DATE: November 30, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-00436

**DECISION OF ADMINISTRATIVE JUDGE**

**ELIZABETH M. MATCHINSKI**

**APPEARANCES**

**FOR GOVERNMENT**

Daniel F. Crowley, Esq., Department Counsel

**FOR APPLICANT**

## **SYNOPSIS**

Applicant is a native of the Republic of China (Taiwan) who became a naturalized United States citizen in September 1994. From July 1994 to December 1999, he worked as a consultant in the United States for his sister's engineering corporation based in Taiwan. A dedicated employee for a U.S. defense contractor since January 2001, foreign influence concerns persist because of the Taiwanese residency and citizenship of family members, including his brother who works for a government agency in Taiwan. Clearance is denied.

## **STATEMENT OF THE CASE**

On March 1, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the 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 the Applicant. [\(1\)](#) DOHA recommended referral to an administrative judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked. The SOR was based on foreign influence (Guideline B).

On March 10, 2005, Applicant responded to the SOR allegations and requested a hearing before a DOHA administrative judge. The case was assigned to me on May 9, 2005, and on May 11, 2005, I scheduled a hearing for June 3, 2005. At the hearing, two government exhibits and 11 Applicant exhibits were admitted. Applicant and two coworkers (an engineering director and the company's facility security officer) testified, as reflected in a transcript received on June 21, 2005.

At the government's request, I agreed to take official notice of two U.S. State Department publications, *Overview of U.S. Policy Toward Taiwan*, dated April 21, 2004, and *Background Note: Taiwan*, dated January 2005; the National Counterintelligence Center's *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage for 2000*; and an article reporting on the Defense Personnel Security Research Center's Espionage Database Project titled *Espionage by the Numbers: A Statistical Overview*. Applicant submitted as Exhibit F the Taiwan Relations Act of 1979 (Public Law 96-8 96<sup>th</sup> Congress), which authorizes the continuation of commercial, cultural, and other relations between the United States and Taiwan.

## FINDINGS OF FACT

The SOR alleges foreign influence concerns because of the Taiwanese residency and citizenship of Applicant's parents, parents-in-law, and his five siblings, including his brother who is an employee of the Taiwanese government, and Applicant's work for an engineering corporation in Taiwan from about 1994 to 1999. In his Answer, Applicant admitted the allegations, but described his contact with family members in Taiwan as rare or nonexistent. He claimed to have no personal relationship with his brother who works as an engineer in wastewater treatment for a bureau of the Taiwanese government, and explained his consultancy was within the U.S. for the Taiwanese engineering company at pay of only \$1,500 per month. Applicant's admissions are incorporated as findings of fact. After a complete and thorough review of the evidence of record, and upon due consideration of the same, I make the following additional findings:

### **Applicant's background**

Applicant is a 53-year-old principal controls systems engineer employed by a defense contractor since January 2001. Applicant held an interim security clearance from about February 2003 until it was withdrawn with the issuance of the SOR in March 2005. He seeks a secret-level security clearance for his present duties, which involve developing computer modeling and simulation software to evaluate the capabilities of a rocket system.

A native of Taiwan, Applicant was raised with his five siblings in Taiwan. His father taught in a public elementary school in Taiwan until he retired in about 1993, his mother never worked outside of the home. After he earned his undergraduate degree from a Taiwanese university, Applicant served mandatory military service as a lieutenant in the Taiwanese infantry from 1974 to 1976. Following his discharge, Applicant did mechanical design work in the civilian sector for two years and then returned to the university for graduate school.

Applicant came to the U.S. in 1983 to pursue postgraduate studies in engineering. He traveled to Taiwan in 1984 and 1987 to visit family members. In August 1987, he was awarded his doctorate degree in engineering, and was appointed as an assistant professor at a public university in the U.S.

In 1991, Applicant and his spouse married in Taiwan. While they met during his undergraduate days at the Taiwanese university, she had come to the U.S. in 1989 for her master's degree studies in education. In 1992, they traveled to Taiwan to see family members, staying with family while there. Around May 1993, Applicant's application for tenure

was denied, and he left the university in June 1994. Applicant filed a civil complaint against the university alleging discrimination based on national origin, as his proposals had been funded and he felt he was the most qualified of those faculty members eligible for tenure.

Pending the resolution of his lawsuit, Applicant in July 1994 started consulting for a Taiwanese engineering company owned by his sister. From his home in the U.S., he researched heavy duty construction equipment that his sister was looking to purchase and import into Taiwan. She paid him \$1,500 monthly in salary. Applicant's spouse worked for a small software company in the U.S. to supplement their income.

In September 1994, Applicant became a U.S. naturalized citizen, taking the oath to renounce all foreign allegiances, to support and defend the U.S. Constitution and its laws, and to bear arms or perform noncombatant service or civilian service on behalf of the U.S. if required. He obtained a U.S. passport in December 1994 and destroyed his Taiwanese passport. [\(2\)](#)

In February 1998, Applicant and his spouse had a daughter. His spouse has since stayed at home to care for her. Applicant's spouse became a U.S. naturalized citizen in November 1998. In December 1999, Applicant stopped consulting for his sister's company, and the following month, he went to work as a lead engineer for a technology company in the U.S. Applicant's spouse and daughter traveled to Taiwan sometime in 2000 to see family members. Applicant did not accompany them.

In December 2000, a state appeals court affirmed the lower court's ruling for the university on Applicant's complaint of discrimination. In January 2001, Applicant started working for his current employer. In July 2002, Applicant was visited in the U.S. by his father, and three of his siblings who stayed with him for ten days.

Two years into his employ with the defense contractor, Applicant executed an application (SF 86) for a secret-level security clearance on January 30, 2003. He disclosed his consulting work for his sister's company in Taiwan from July 1994 to December 1999, his service in the Taiwanese army from September 1974 to July 1976, and the Taiwanese citizenship and residency of his parents, siblings (two brothers and three sisters), and parents-in-law. Concerning foreign travel within the preceding seven years, he listed only four day trips to Canada in 2001 for shopping, as he had not been to Taiwan since 1992.

On November 24, 2003, Applicant was interviewed about his foreign connections, including his past military service for Taiwan and his employment with the Taiwanese engineering firm. Applicant denied any further obligation beyond the two years of mandatory military service for Taiwan that he completed in 1976. Applicant explained he consulted for his sister's company in Taiwan for the income while awaiting the outcome of his legal challenge to the U.S. university's denial of tenure to him. His duties for the foreign firm, consisting of specification analysis of heavy machinery, business development planning of heavy machinery import/export, and project application analysis did not require travel by him

to Taiwan. Applicant added that he had not traveled to Taiwan since 1992, which is when he last saw his mother, his parents-in-law, his older sister, and the brother employed by the Taiwanese government in waste water management. He volunteered that his father and three of his siblings had visited him and his family in the U.S. in July 2002. Applicant provided the addresses and occupations of his family members in Taiwan, and denied any foreign government solicitation other than for his sister's business when he was actively consulting for her. He maintained his loyalties are to the U.S. and indicated he would immediately report any foreign government attempts to pressure him.

As of June 2005, Applicant's parents, siblings, and parents-in-law were still resident citizens of Taiwan. Applicant contacts his mother by telephone about once per month. Applicant's older sister (he is the second of six children) works for a local grocery store in Taiwan. He has not seen her since 1992 and has no regular contact with her. When her husband died in December 2004, Applicant was informed of his passing in a short electronic mail message. He did not send her a card expressing his condolences as his mother told him it was not necessary. The brother closest in age to Applicant of his siblings has a college degree in electronic engineering. He works for a Taiwanese government agency in waste management. Applicant has not seen him since 1992, although he called his brother in October 2003 to obtain information about his job for the DSS. Another sister, who graduated from high school, works in accounting for a private high school in Taiwan. She visited Applicant in the U.S. in 2002, as did Applicant's two youngest siblings, fraternal twins born in December 1961. This sister, who has a college degree in chemical engineering, owns and manages the engineering company for which Applicant worked as a consultant in the mid to late 1990s. To Applicant's knowledge, her company has no business interests in the U.S. Her twin brother, who has his degree in electrical engineering, supervises construction projects for an engineering company in Taiwan.

Applicant's father-in-law worked for an organization providing assistance to Taiwanese farmers before he retired more than ten years ago. Applicant's mother-in-law engaged in financial work until her retirement more than 20 years ago. Applicant has not seen his in-laws since 1992. His spouse telephones her parents about once a month, but he has not spoken to them in almost seven years. Applicant has two brothers-in-law who are employed in bank management in Taiwan.

Applicant is willing to cease his contacts with his Taiwanese relatives if necessary for the clearance. He provides no financial support to his family members in Taiwan, and he has no financial assets in Taiwan. He owns his home in the U.S. that he purchased in 2001. Applicant's daughter attends public school in the U.S. She is fluent only in English as Applicant and his spouse expect her future to be in the U.S. They speak English rather than Chinese in their home.

Applicant is highly regarded by his coworkers for his professionalism, dedication, and expertise. Committed to a very high level of performance, Applicant has earned excellent ratings from supervisory personnel. He received monetary cash awards for his contributions in 2001 and 2004.

### **Taiwan's political and economic state**

On January 1, 1979, the U.S. formally recognized the government of the People's Republic of China (PRC) as the sole legal government of China. The U.S. has since been committed to maintaining cultural, commercial and other nonofficial relations with Taiwan.<sup>(3)</sup> By formal act of Congress (Taiwan Relations Act of 1979), the U.S. is committed to provide Taiwan with arms of a defensive character in support of Taiwan's security and stability in the region. In 2001, the U.S. approved the largest sale of defensive weapons and services to Taiwan in more than a decade. Known to be an active collector of U.S. economic intelligence as of 2000, Taiwan had achieved "remarkable progress in democratic elections, civil liberties, market economic development, and stable viable governmental institutions" by July 2002.<sup>(4)</sup> By 2004, the People's Republic of China (PRC) had developed a quantitative and qualitative military advantage over Taiwan aimed at forestalling independence for Taiwan and deterring U.S. involvement in any conflict between Taiwan and the PRC.<sup>(5)</sup>

## 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. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

After a complete review of the evidence of record, the following adjudicative guideline is most pertinent to an evaluation of Applicant's security suitability:

**Foreign Influence.** 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 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. 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. (¶ E2.A2.1.1.)

## **CONCLUSIONS**

Having considered the evidence in light of the appropriate legal precepts and factors, and having assessed the credibility of those who testified, I conclude the government has established its case with respect to Guideline B, foreign influence.

Applicant's parents, his five siblings, and his parents-in-law are resident citizens of his native Taiwan. Common sense suggests that the stronger the ties of affection or obligation, the more vulnerable a person is to being manipulated if the relative is improperly influenced, brought under control, or even used as a hostage by a foreign intelligence or security service. Applicant telephones his mother primarily once a month, and speaks to his father occasionally when he calls. Although Applicant has not returned to Taiwan since 1992, his father visited with him in the U.S. for ten days in 2002. Applicant does not telephone his siblings with any regularity, but three of the five also stayed with him in the U.S. in 2002. Applicant has a sufficiently close bond with his youngest sister to where she helped him out financially, hiring him on as a consultant for her Taiwanese engineering business from July 1994 through December 1999. Disqualifying condition ¶ 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,* applies.

Applicant does not share close personal bonds with his in-laws, as reflected in the absence of any ongoing contact with them, but his spouse telephones her parents about once a month. The DOHA Appeal Board has held it reasonable for the administrative judge to consider the significance not only of an applicant's ties, but also of his spouse's ties to a foreign country and the possible effect they may have on Applicant's contacts under Guideline B (*see* ISCR Case No. 01-02452, App. Bd. Nov. 21, 2002). Accordingly, DC ¶ E2.A2.1.2.2. *Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists,* also applies. Since one of Applicant's brothers is employed by the Taiwanese government, DC ¶ E2.A2.1.2.3. *Relatives, cohabitants, or associates who are connected with any foreign government* is pertinent, despite the limited contacts between Applicant and this brother.

The foreign influence concerns raised by these family connections in Taiwan may be mitigated where it can be determined that they 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 Applicant to choose between loyalty to them and the United States (*see* C E2.A2.1.3.1.). Applicant's father was a public school teacher before his retirement, his father-in-law worked for an organization providing assistance to farmers in Taiwan until he retired. Little is of record concerning his mother-in-law's former occupation other than that she worked in the financial sector. Applicant's oldest sister works for a grocery store; another works in accounting for a private school. The youngest siblings employ their engineering degrees in the private sector, his sister for her own company in Taiwan. However, one brother is an engineer for the Taiwanese government.

In a recent decision involving an applicant with connections to Taiwan, a DOHA administrative judge found that the applicant's three brothers in Taiwan were not foreign agents as they "work for public utilities in Taiwan which are run by the government, but which are being privatized. They work in technical areas and have never worked in a military or defense program." (*See* ISCR Case No. 02-24267, Aug. 30, 2004) In reversing the favorable decision on appeal, the DOHA Appeal Board held the applicant's three brothers are agents of a foreign power for purposes of ¶ E2.A2.1.3.1. (*See* ISCR Case No. 02-24267, App. Bd. ay 24, 2005) The Board did not explain the basis for its holding. The Directive does not define who may be considered an agent of a foreign power. In the absence of a specific provision in Directive 5220.6, pertinent federal statutes are to be followed. Under 50 U.S.C. § 1801, which pertains to foreign intelligence surveillance, any entity that is openly acknowledged by a foreign government to be directed and controlled by the foreign government is considered a foreign power. An agent of a foreign power is defined as:

(1) any person other than a United States person, who-

(A) acts in the United States as an officer or employee of a foreign power, or as a member of a foreign power as defined in subsection (a)(4) of this section;

(B) acts for or on behalf of a foreign power which engages in clandestine activities in the United States contrary to the interests of the United States when the circumstances of such person's presence in the United States indicate that such person may engage in such activities in the United States, or when such person knowingly aids or abets any person in the conduct of such activities or knowingly conspires with any person to engage in such activities; or

(2) any person who-

(A) knowingly engages in clandestine intelligence gathering activities for or on behalf of a foreign power, which activities involve or may involve a violation of the criminal statutes of the United States;

(B) pursuant to the direction of an intelligence service or network of a foreign power, knowingly engages in any other clandestine intelligence activities for or on behalf of such foreign power, which activities involve or are about to involve a violation of the criminal statutes of the United States;

(C) knowingly engages in sabotage or international terrorism, or activities that are in preparation therefor, for or on behalf of a foreign power;

(D) knowingly enters the United States under a false or fraudulent identity for or on behalf of a foreign power or, while in the United States, knowingly assumes a false or fraudulent identity for or on behalf of a foreign power; or

(E) knowingly aids or abets any person in the conduct of activities described in subparagraph (A), (B), or (C) or knowingly conspires with any person to engage in activities described in subparagraph (A), (B), or (C).



Under federal law, the terms foreign power and agent of a foreign power have the same meanings with respect to national security and access to classified information. *See* 50 U.S.C. § 438.

The burden is on Applicant to show his brother is not a foreign agent, but status as a foreign agent cannot be presumed solely on the basis of a government connection. There must be evidence the foreign national is acting in the United States as an officer or employee of a foreign power or as a member of an international terrorism group, or is otherwise acting for or on behalf of a foreign power that engages in clandestine intelligence activities in the U.S. The evidence established his brother is not an agent of a foreign power as defined in 50 U.S.C. § 1801(b).

However, the inquiry in a foreign influence case is not limited to consideration of whether the foreign contacts or connections are agents of a foreign power. The foreign contacts or connections must also be evaluated in terms of whether they place an applicant in a position of vulnerability, even if there is no evidence that a foreign country has sought to exploit that vulnerability. (*See* ISCR Case No. 00-0628, Feb. 24, 2003) As long as there is a tie of obligation or affection to a person who is subject to a foreign government's jurisdiction/laws and/or is within physical reach of the foreign authorities, undue foreign influence remains possible. Although not specifically stated in the adjudicative guideline, the particular foreign country of which the close relative or associate is a citizen or resides is relevant in determining the likelihood of undue influence being brought to bear on its citizens/residents. Countries with strong democratic institutions and respect for the rule of law are generally regarded as presenting less of a risk than totalitarian regimes with a record of human rights abuses, support for terrorist activities, or hostility to the U.S.

Reports of Taiwan targeting U.S. economic and proprietary interests in 2000<sup>(7)</sup> are counterbalanced by Taiwan's partnership in a defense pact with the U.S. and Taiwan's progress in achieving democratic elections, civil liberties, and stable, viable governmental institutions. As reported by the U.S. State Department in January 2005, Taiwan has taken dramatic steps to improve respect for human rights and create a democratic political system since ending martial law in 1987. Almost all restrictions on the press have ended, restrictions on personal freedoms have been relaxed, and the prohibition against organizing new political parties has been lifted. Taiwan also has a history of favorable relations with the U.S. While the U.S. does not support independence for Taiwan and is committed to one China policy, under the Taiwan Relations Act, signed into law on April 10, 1979, the U.S. is obligated to help Taiwan defend itself, including making available defensive arms and defensive services to Taiwan. U.S. commercial ties with Taiwan have been maintained and expanded since 1979, and Taiwan is now the eighth-largest trading partner of the U.S. Taiwan is not likely to jeopardize its relationship with the U.S. by overly pressuring its citizens, but even nations with a history of friendly relations do not always have the same interests.

Furthermore, the particular circumstances of each applicant must be taken into account. From July 1994 to December 1999, Applicant assisted his sister by consulting for her Taiwanese engineering company rather than look for a job in the U.S. pending his legal challenge to the U.S. university's decision to deny him tenure. While the consulting involved heavy machinery not related to his current defense work and Applicant claims no personal investment in his sister's business, it shows a strong family bond that cannot be described as casual. In the event a foreign entity attempted to influence Applicant through his or his spouse's family members in Taiwan, Applicant submits that he would do nothing to jeopardize his seven-year-old daughter's future in the U.S. Consistent with their intent to make the U.S. their

permanent home, Applicant and his spouse speak only English in their household, and they send their daughter to the local public school. Applicant has not traveled to Taiwan since 1992 and has been up-front about his past consulting work for the Taiwanese company, disclosing it on his SF 86. He credibly testified he would not have consulted for his sister's company had he realized it could later cause him his clearance. (Tr. 63) Applicant is well-respected at work, not only for his professional contributions but also for his ethical behavior. He has appropriately handled company sensitive information. His stable lifestyle and productive employment are indicators of a mature, steady, responsible, and trustworthy individual, but he remains vulnerable to undue foreign influence through his family members in Taiwan. None of the mitigating conditions apply. Accordingly, SOR ¶¶ 1.a., 1.b., 1.c. and 1.d. are resolved against him.

## **FORMAL FINDINGS**

Formal findings as required by Section 3. Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

### **Paragraph 1. Guideline B: AGAINST THE APPLICANT**

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: 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.

**Elizabeth M. Matchinski**

## Administrative Judge

1. The SOR was issued under the authority of Executive Order 10865 (as amended by Executive Orders 10909, 11328, and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4).
2. Applicant told a DSS agent in November 2003 that when he took his oath of allegiance to the U.S., he renounced his Taiwanese citizenship. There is no evidence he formally applied to renounce his Taiwanese citizenship.
3. *See* the U.S. Department of State's *Background Note: Taiwan*, dated January 2005.
4. *See* Chapter 8 of the U.S.-China Economic and Security Review Commission's July 2002 report to Congress (Ex. H). The Commission was created in October 2000 by the Floyd D. Spence National Defense Authorization Act for 2001 § 1238, to monitor, investigate, and submit to Congress an annual report on the national security implications of the bilateral trade and economic relationship between the U.S. and the PRC, and to provide recommendations for legislative and administrative action. Public Law 108-7, February 20, 2003, directed the Commission to focus its work and study in part on regional and economic security impacts. *See* [www.uscc.gov](http://www.uscc.gov)
5. *See* Chapter 8 of the U.S.-China Security Review Commission's report to Congress in 2004. (Ex. H)
6. *See* MC E2.A2.1.3.1. *A determination that the immediate family members(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.* The mitigating condition is bifurcated in nature ["A determination that the immediate family member(s) . . . are not agents of a foreign power or in a position to be exploited by a foreign power. . . ."]. To construe the conjunction "or" as "and" would be against the plain language. While MC E2.A2.1.3.1. can be applied if an applicant satisfies only one of the two parts, a given adjudicative condition (either disqualifying or mitigating) cannot be read in such a way to be inconsistent with other adjudicative conditions. Under Guideline B, if foreign relations, who are not government agents or employees, are in a position to be exploited then MC E2.A2.1.3.1. does not mitigate the foreign influence concerns.
7. *See* the National Counterintelligence Center's Annual Report to Congress on Foreign Economic Collection and Industrial Espionage for 2000.