

KEYWORD: Foreign Influence

DIGEST: Applicant was born in Taiwan in 1969. He came to the United States in 1981 to attend school. He has resided here since then and became a naturalized citizen in 1990. His mother, sister and brother are naturalized citizens of the United States. His father is a citizen and resident of Taiwan, and also has status as a permanent resident of the United States. Applicant owns property in Taiwan. Applicant has mitigated the security concerns arising from foreign influence. Clearance is granted.

CASENO: 04-03720.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. 04-03720

**DECISION OF ADMINISTRATIVE JUDGE**

**SHARI DAM**

**APPEARANCES**

**FOR GOVERNMENT**

Jeff A. Nagel, Esq., Department Counsel

**FOR APPLICANT**

## **SYNOPSIS**

Applicant was born in Taiwan in 1969. He came to the United States in 1981 to attend school. He has resided here since then and became a naturalized citizen in 1990. His mother, sister and brother are naturalized citizens of the United States. His father is a citizen and resident of Taiwan, and also has status as a permanent resident of the United States. Applicant owns property in Taiwan. Applicant has mitigated the security concerns arising from foreign influence. Clearance is granted.

## **STATEMENT OF THE CASE**

On April 1, 2005, the Defense Office of Hearings and Appeals (DOHA) under Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR, which is essentially an administrative complaint, detailed reasons under Guideline B (Foreign Influence) why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant a security clearance to the Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted.

On April 14, 2005, Applicant answered the SOR in writing and elected to have the case decided on the written record. (1) On June 16, 2005, Department Counsel prepared a File of Relevant Material (FORM) and provided Applicant with a complete copy. (2) Applicant had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on July 11, 2005. He did not submit additional information. This case was assigned to me on August 25, 2005.

On September 20, 2005, pursuant to my request I received a complete copy of Applicant's Security Clearance Application from Department Counsel, as the one enclosed in the file and marked as Government Exhibit 4 did not contain all of the pages. (3)

## **FINDINGS OF FACT**

In his Response Applicant admitted the allegations in SOR subparagraphs 1.a. and 1.c., and denied the allegations contained in subparagraphs 1.b. and 1.d. Those admissions are incorporated into my findings of fact. After a complete review of the evidence in the record, I make the following additional findings of fact:

Applicant is 36-years-old. He was born in Taiwan in 1969.<sup>(4)</sup> At the age of 11, Applicant left Taiwan to come to the United States on a student visa. After arriving here in 1981, he stayed with his uncle until 1983, when his father, mother, sister and brother arrived as legal alien residents.<sup>(5)</sup> Applicant's mother became a naturalized United States citizen in 1989, he and his sister in 1990, and his brother in 1993. All of these relatives continue to reside in the United States.<sup>(6)</sup> Applicant's 66 year-old father is a legal permanent resident of the United States who maintains his Taiwanese citizenship and residency. His father travels back and forth to the United States several times a year because he owns a small business in Taiwan which provides income to support his family. While in the United States, the father stays with Applicant for at least four months annually. Eventually, Applicant's father intends to retire, apply for citizenship and live permanently in the United States.<sup>(7)</sup>

Applicant attended an American university and graduated in June 1995, with a Bachelor of Architecture degree. After graduating college, Applicant worked in the field of architecture for a period of time. He later returned to school and in December 2003, completed a Master of Science degree in Computer Science. Since July 2003, he has been employed as a software engineer for a defense contractor.<sup>(8)</sup> In September 2003, he completed a Security Clearance Application (SCA).

In response to Question 12 of said SCA (*Your Foreign Activities - Property: Do you have any foreign property, business connections, or financial interests?*) Applicant answered "No."<sup>(9)</sup> In a later statement he acknowledged that he owned real property, which his father had purchased and placed in his name. However, Applicant did not know about this property until January 2004. At that time his father told him that in 2002 he had deposited monies into a Taiwanese bank account in Applicant's name as a way to avoid inheritance taxes, and later used some of the monies to purchase the commercial property. In his Response to the SOR, Applicant acknowledged that the property is worth \$230,000, but pointed out that he has no financial interest in it and intends to sell his share by the end of 2005.<sup>(10)</sup> Applicant also claimed that he no longer has the bank account previously disclosed to the government.<sup>(11)</sup>

Applicant returned to Taiwan at the end of 1996, in 1997, 1998, 2001, and 2002. He went for pleasure and stayed with his father while he was there. He did not go in 2000.<sup>(12)</sup>

Administrative notice is taken of the fact that Taiwan is a stable democracy and it has a strong and well-developed economy.<sup>(13)</sup> At the same time, it also has been identified as one of the most active collectors of foreign economic information and industrial espionage against the United States.<sup>(14)</sup>

## POLICIES

Enclosure 2 of the Directive sets forth adjudication guidelines which must be considered in the evaluation of security suitability. An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the adjudicative process provision in Paragraph E2.2., Enclosure 2 of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. In addition, each security clearance decision must be based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically, these are: (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. 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.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>(15)</sup> The government has the burden of proving controverted facts.<sup>(16)</sup> The burden of proof is something less than a preponderance of the evidence.<sup>(17)</sup> Once the government has met its burden, the burden shifts to the applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against her.<sup>(18)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(19)</sup>

As noted by the Court in *Department of the Navy v. Egan*, 484 U.S. 518 (1988), "it should be obvious that no one has a right to a security clearance"<sup>(20)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(21)</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>(22)</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.<sup>(23)</sup> 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.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security

clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration relevant circumstances, and applying sound judgment, mature thinking and careful analysis.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guideline most pertinent to an evaluation of the facts of this case:

**Guideline B (Foreign Influence): 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 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.**

## CONCLUSIONS

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

The government established its case under Guideline B. Based on his admissions to the SOR, Foreign Influence Disqualifying Condition (FI DC) E2.A2.1.2.1. (*An immediate family member, or 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 to this case because Applicant's father continues to maintain his citizenship and residency with Taiwan, despite his legal residency status with the United States.

Although Applicant did not purchase the commercial property, valued at \$230,000, he is the legal owner of it, which constitutes a second disqualification under Foreign Influence Disqualifying Condition (FI DC) E.2.1.2.8. (*A substantial financial interest in a country, or in any foreign-owned or operated business that could make the individual vulnerable to foreign influence*).

While family ties with a person in a foreign country are not, as a matter of law, disqualifying under Guideline B, <sup>(24)</sup> they do raise a *prima facie* security concern, along with ownership of real property. These concerns are sufficient to require an applicant to present evidence of rebuttal, extenuation or mitigation sufficient to meet the applicant's burden of persuasion that it is clearly consistent with the national interest to grant a security clearance for him. <sup>(25)</sup>

In evaluating these concerns, I considered all the mitigating conditions under Guideline B and concluded that Foreign Influence Mitigating Condition (FI MC) 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*) applies to this case. There is no evidence in this case to show that Applicant's father is an agent for the Taiwanese government or that his small business places in him a position that would raise a security concern for the Applicant. Rather, the father is an ordinary citizen who maintains a small business in Taiwan as a means of support for his family in the United States until he can retire and live here permanently. In the interim, he spends several months a year in the United States with the Applicant and other family members, all of whom are United States citizens. Given these circumstances Applicant's father does not pose a discernible vulnerability to pressure or coercion sufficient to create a potential for foreign influence that could result in the compromise of classified information.

Moreover, I have also considered FI MC E2.A.1.3.5. (*Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities*) and concluded that it mitigates any concern about the property placed in Applicant's name by his father. Applicant stated that he personally has no financial interest in the parcel and that it was essentially, a gift. He also indicated that he intends to divest himself of his share of the property, implying that he is not the sole owner of the property's total value.

As to the Taiwanese bank account (which Applicant initially disclosed to the government), Applicant stated that the account has been closed. Because there is no evidence to contradict Applicant's statement, the allegation contained in Subparagraph 1.b. regarding the account is resolved in Applicant's favor.

I have considered all the evidence in this case in evaluating Applicant's risk and vulnerability in protecting our national interest, including his educational achievements, citizenship of family members residing in the United States, his partial interest in a gift from his father, and his claim that he intends to sell the Taiwanese property. Those factors sufficiently mitigate the concerns raised in the government about Applicant's suitability for access to classified information. Therefore, I am persuaded by the totality of the evidence in this case that it is consistent with the national interest to grant Applicant's application for security clearance. Accordingly, Guideline B is decided for Applicant.

## **FORMAL FINDINGS**

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1 Guideline B (Foreign Influence): FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

### **DECISION**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant a security clearance for Applicant. Clearance is granted.

Shari Dam

Administrative Judge

1. Government Exhibit 3 (Response to SOR, dated April 14, 2003).
2. The Government submitted seven exhibits in support of its case.
3. Administrative Judge Exhibit A (Security Clearance Application, dated September 3, 2003).
4. *Id.* at 2.
5. Government Exhibit 5 (Statement of Subject, dated January 23, 2004) at 2.

6. Government Exhibit 4 (Security Clearance Application, dated September 4, 2003) at 4-5.
7. Government Exhibit 3, *supra* note 1, at 1.
8. Government Exhibit 5, *supra* note 5, at 3.
9. Government Exhibit 4, *supra* note 6, at 6.
10. Government Exhibit 5, *supra* note 5, at 4.
11. Government Exhibit 3, *supra* note 1, at 1.
12. Government Exhibit 5, *supra* note 5, at 4-5.
13. Government Exhibit 7 (U.S. Department of State Background Note: Taiwan, dated January 2005) at 1.
14. Government Exhibit 6 (2000 Annual Report to Congress on Foreign Economic Collection and Industrial Espionage) at 15.
15. ISCR Case No. 96-0277 at 2 (App. Bd., Jul. 11, 1997).
16. ISCR Case No. 97-0016 at 3 (App. Bd., Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.
17. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).
18. ISCR Case No. 94-1075 at 3-4 (App. Bd., Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.
19. ISCR Case No. 93-1390 at 7-8 (App. Bd., Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.
20. *Egan*, 484 U.S. at 528.
21. *Id.*
22. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
23. Executive Order No. 10865 § 7.
24. ISCR Case No. 99-0424, 2001 DOHA LEXIS at 33-34 (App. Bd. Feb. 8, 2001)
25. *Id.*