

KEYWORD: Foreign Preference; Foreign Influence'

DIGEST: Applicant is a 56-year-old engineer. He was born in Taiwan in 1949, came to the U.S. in 1973, and became a citizen in 1985. He is married and has two grown children. He obtained a Taiwanese passport in 2000 for the purpose of being eligible to vote in a presidential election. His intent was to promote democracy in Taiwan. He used his U.S. passport to enter Taiwan on that occasion and all others. He has surrendered the Taiwanese passport and renounced his Taiwanese citizenship. He has two brothers and two sisters in Taiwan, but the relationships are casual, infrequent, and minimal in comparison with his American family. He fully understands his obligations to protect U.S. interests. Mitigation has been shown. Clearance is granted.

CASENO: 04-04202.h1

DATE: 11/22/2005

DATE: November 22, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-04202

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 56-year-old engineer. He was born in Taiwan in 1949, came to the U.S. in 1973, and became a citizen in 1985. He is married and has two children. He obtained a Taiwanese passport in 2000 so he could vote in a presidential election. His intent was to promote democracy in Taiwan. He used his U.S. passport to enter Taiwan on all occasions. He has surrendered the Taiwanese passport and renounced his citizenship. He has siblings in Taiwan, but the relationships are casual, infrequent, and minimal in comparison with his American family. He fully understands his obligations to protect U.S. interests. Itigation has been shown. Clearance is granted.

STATEMENT OF THE CASE

On March 30, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding required under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether a clearance should be granted, denied or revoked.

On June 6, 2005, Applicant submitted a response to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge after a hearing. The matter was assigned to me for resolution on August 25, 2005. A Notice of Hearing was issued on August 29, 2005, setting the matter for September 7, 2005. At the hearing the government five exhibits (Government's Exhibits (GX) 1-5. Applicant testified and offered eight exhibits (Applicant's exhibits (AX) A-H). Applicant submitted two post hearing exhibits (AX I and J). All exhibits were admitted without objection. The transcript was received by DOHA on September 21, 2005.

FINDINGS OF FACT

Applicant is a 56-year-old network engineer for a defense contractor. The SOR contains four allegations, 1.a.-1.d., under Guideline C (Foreign Preference) and three allegations, 2.a.-2.c., under Guideline B (Foreign Influence). In his response to the SOR, Applicant denied allegation 1.a., and admits all other allegations, 1.b.-1.d., and 2.a-2.c. His admissions are accepted and made Findings of Fact. After considering the totality of the evidence derived from the hearing, I make the following FINDINGS OF FACT as to each SOR allegation:

Guideline B (Foreign Preference)

1.a. - At the time of the issuance of the SOR, Applicant exercised dual citizenship with the Republic of China (Taiwan) and the United States (U.S.). At the hearing, Applicant stated an intent to renounce his Taiwanese citizenship and he has begun the formal process of doing so (Tr at 33, 34). On November 17, 2005, he received official notification (in Chinese) that his application for renunciation of his Taiwan citizenship had been approved (AX J).

1.b. - Applicant traveled to Taiwan in March 2000, in order to vote in a Taiwanese presidential election (Tr at 40-42). The Taiwanese passport allowed him to be recognized at the polling place as eligible to vote in a presidential election, but was never used for any other purpose. He used his U.S. passport to enter and exit Taiwan on that and all other occasions (Tr at 37-39).

1.c. - Applicant applied for and was issued a Taiwanese passport on January 7, 2000, even though he had become a naturalized U.S. citizen on October 15, 1985, and had a valid U.S. passport issued on June 24, 1996. This was for the purpose of being eligible to vote in a presidential election.

1.d. - As of January 6, 2004, when he was interviewed by an agent of the Defense Security Service (DSS), Applicant possessed a Taiwanese passport that was issued on January 7, 2000. This passport expired on January 7, 2006. He sought to surrender this passport to Taiwan authorities, who sent it back to him (Tr at 41-43). He subsequently cut it up, retained a copy, but has since lost the original (Tr at 33, 43).

Guideline B (Foreign Influence)

2.a. - Applicant has two brothers and two sisters who are citizens/residents of Taiwan. Their relationship is "quite casual" and "not very frequent" (Tr at 30). The two sisters are retired. One brother works for a mutual fund company.

2.b. - Applicant's other brother retired in 2003 from being the Director of a government agency that specializes in business and economic development. Applicant had never discussed his work with this brother, who now has no connection with the government (*Id.*, and 35, 36).

2.c. - Applicant traveled to Taiwan at least 12 times between 1996 and 2002. These trips have been primarily to visit family members, in and out of the hospital, to attend the funerals of his mother and father, and to attend weddings of relatives (AX B).

POLICIES

Each adjudicative decision must also include an assessment of nine generic factors relevant in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowing participation; (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 pertinent 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, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are

denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons. If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

CONCLUSIONS

Guideline C (Foreign Preference) -The Concern: When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the United States.

1.a. - The SOR alleges that Applicant exercises dual U.S./Taiwanese citizenship. Applicant was born in Taiwan in 1949, came to the U.S. in 1973, received his PhD in 1977, and became a naturalized U.S. citizen in 1985 (AX H).. He has worked for this present employer, a major defense contractor, since 1982. He is married to a Taiwan-born naturalized U.S. citizen and has two grown American-born children. Applicant is adamant about his love for, and devotion to, the United States. "U.S. interests always take precedence in all my activities" (Response to SOR). He is also proud of his Taiwanese heritage.

1.b. and 1.c. - Applicant renounced his Taiwanese citizenship when he took the oath of allegiance when he was naturalized in 1985 (GX 1), but he recognized that Taiwan still considered him to be a Taiwan citizen. In 2000, he became excited about the democratic election being held in Taiwan that year, and decided to help spread freedom (quoting President Bush as his inspiration) by voting in that election. He applied for and received a Taiwanese passport in 2000 for the express purpose of being able to vote in a Presidential election (Tr at 29). He never used that passport as a travel document (AX G). In fact he used his U.S. passport to enter and exit Taiwan on the election trip (Response to SOR). He did not think of his voting in Taiwan as an expression of a preference for Taiwan over the United States, but only as a way of promoting democracy in that country (Tr at 30. 44-46). Voting in a foreign election is stated as a disqualifying condition under Guideline C and it is viewed seriously. On balance however, it was a one-time occurrence volunteered by Applicant,

and all of his explanations are credible and strongly suggest he was not acting out of any preference for Taiwan over the United States, and has never done so since becoming a naturalized American citizen many years ago.

1.d. - Applicant was not aware of the security significance of the possession of a foreign passport until so informed by the DSS agent. He promptly cut up the Taiwan passport (Response to SOR and attachment). He has begun the formal

process of renouncing his Taiwanese citizenship (AX F and AX I).

Applicant is viewed very highly by his employers: "conscientious" and "highly principled" (AX D and AX I). He has a "greater house" in an upscale area in State A and no financial interests in Taiwan.

Disqualifying Conditions (DC) (1)- the exercise of dual citizenship and (2) possession and use of a foreign passport are applicable. DC (8) is also applicable in that Applicant voted in a Taiwan election in 2000. Mitigating Condition (MC) (1) is applicable since his Taiwanese citizenship was based on his birth in Taiwan to Taiwanese parents. Mitigating Condition (MC) (4) is applicable in that Applicant has formally renounced his Taiwan citizenship (AX J).

Guideline B (Foreign Influence) - The Concern: A security risk may exist when [members of] an individual's immediate family . . . are (1) not citizens of the United States or (2) 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 foreign countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

The DOHA Appeal Board has held that: "an applicant with immediate family members living in a country hostile to the United States should not be granted a security clearance without a very strong showing that those family ties do not pose a security risk (Appeal Board Decision, ISCR Case No. 01-26893 (October 16, 2002)). The Government has not suggested that Taiwan should be considered a "hostile" country, but Taiwan is listed by the U.S. government as being among the most active intelligence gatherers in the U.S. (GX 4 and GX 5), Appeal Board guidance states that: "family ties in [any] foreign country raise a *prima facie* security concern that requires an applicant to present evidence of rebuttal, extenuation or mitigation sufficient to meet the burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him" (Appeal Board Decision, ISCR Case No. 02-06478 (May 19, 2003)).

Disqualifying Condition (1) is applicable "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." None of the other listed disqualifying conditions is established by the facts of record.

Mitigating Condition (1) is also shown by the record. Based on the Applicant's long and close ties to the U.S., including but not limited to his family here and his admirable work record, I conclude that his relationships with relatives in Taiwan "would not constitute an unacceptable security risk."

Summary - There is no question that Applicant has the ultimate burden of proof in establishing eligibility, and faces the difficulties of proving a negative. However, after a careful consideration of the entire record, I conclude that Applicant's relatives in Taiwan are not agents of a foreign government and are not likely to be asked to apply pressure on Applicant. Even more important, I conclude that Applicant has clearly demonstrated his preference and allegiance to the United States to the degree that he has sought to foster American-style democracy in his country of origin. He has done and said nothing to suggest anything less than an unequivocal preference for the United States over Taiwan or any other country. Specifically, I conclude Applicant has demonstrated that he is not vulnerable to improper pressure from any source and can be relied upon to protect U.S. security interests.

Applicability of the Money Memorandum - the operative language of the Money Memorandum (GX 3) states that:

[c]onsistent application of the guideline [C] requires that any clearance be denied or revoked unless the applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United States Government.

Applicant has established that he did surrender his Taiwan passport, but that it was returned by Taiwan authorities. He then cut a corner off of the passport, and has submitted a copy to DoD. The original passport has now been lost. Applicant has also begun the process of formally renouncing his Taiwanese citizenship. Under these circumstances, I find that Applicant has complied with both the letter and spirit of the Money Memorandum.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Guideline C (Foreign Preference) 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

Guideline B (Foreign Influence) For the Applicant

Subparagraph 2.a. For the Applicant

Subparagraph 2.b. For the Applicant

Subparagraph 2.c. 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.

BARRY M. SAX

ADMINISTRATIVE JUDGE