

KEYWORD: Foreign Influence; Foreign Preference

DIGEST: Applicant was born in Taiwan and is now a U.S. citizen. His father is a U.S. citizen and his mother a citizen of Taiwan. Both parents are elderly, in poor health, and reside in a private nursing home in Taiwan, paid for by Applicant and his siblings. Applicant's sister is a citizen and resident of Taiwan and cares for their parents. Applicant's other three sisters and brother are citizens and residents of the U.S. His mother-in-law and father-in-law are citizens of Taiwan residing in the U.S. Applicant used his Taiwanese passport to travel to Taiwan three times, but he surrendered it when he learned it raised security concerns. The security concerns based on foreign preference and foreign influence are mitigated. Clearance is granted.

CASENO: 04-04780.h1

DATE: 09/30/2005

DATE: September 30, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-04780

DECISION OF ADMINISTRATIVE JUDGE

LEROY F. FOREMAN

APPEARANCES

FOR GOVERNMENT

Eric Borgstrom, Esq., Department Counsel

FOR APPLICANT

Leslie McAdoo-Brobson, Esq.

SYNOPSIS

Applicant was born in Taiwan and is now a U.S. citizen. His father is a U.S. citizen and his mother a citizen of Taiwan. Both parents are elderly, in poor health, and reside in a private nursing home in Taiwan, paid for by Applicant and his siblings. Applicant's sister is a citizen and resident of Taiwan and cares for their parents. Applicant's other three sisters and brother are citizens and residents of the U.S. His mother-in-law and father-in-law are citizens of Taiwan residing in the U.S. Applicant used his Taiwanese passport to travel to Taiwan three times, but he surrendered it when he learned it raised security concerns. The security concerns based on foreign preference and foreign influence are mitigated. Clearance is granted.

STATEMENT OF THE CASE

On March 28, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny Applicant a security clearance. This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive). The SOR alleges security concerns under Guidelines C (Foreign Preference) and B (Foreign Influence). Under Guideline C, it alleges Applicant exercises dual U.S.-Taiwan citizenship (§ 1.a.), possesses a Taiwanese passport (§ 1.b.), maintained and used his Taiwanese passport after becoming a U.S. citizen (§ 1.c.), and maintains dual citizenship to protect his future inheritance of real estate and property in Taiwan (§ 1.d.). Under Guideline B, the SOR alleges Applicant's father is a dual U.S.-Taiwan citizen residing in Taiwan (§ 2.a.), his mother is a citizen and resident of Taiwan (§ 2.b.), his brother and three of four sisters are dual U.S.-Taiwan citizens residing in the U.S. (§ 2.c.), one of his sisters is a citizen and resident of Taiwan (§ 2.d.), and his father-in-law and mother-in-law are citizens of Taiwan residing in the U.S. (§ 2.e.).

Applicant answered the SOR in writing on April 20, 2005. Under Guideline C, he denied exercising dual citizenship, admitted possessing and using a Taiwanese passport after becoming a U.S. citizen, and admitted maintaining dual

citizenship to protect his inheritance. Under Guideline B, he admitted all the allegations and offered explanations. He requested a hearing.

The case was assigned to me on June 20, 2005. On July 22, 2005, DOHA issued a notice of hearing setting the case for August 19, 2005. The case was heard as scheduled. I kept the record open until September 19, 2005, to enable Applicant to submit additional documentary evidence. DOHA received the transcript (Tr.) on September 6, 2005. I received Applicant's additional evidence on September 15, 2005, and it is incorporated in the record as Applicant's Exhibit (AE) I.

FINDINGS OF FACT

Applicant's admissions in his answer to the SOR and at the hearing are incorporated into my findings of fact. I also make the following findings:

Applicant was born in Taiwan in August 1950. He completed his mandatory two years of military service in the Taiwan armed forces. He came to the U.S. in 1977, went to college, and received a bachelor's degree in civil engineering and a master's degree in computer science. He became a U.S. citizen in July 1986. By virtue of his birth in Taiwan, he is a dual U.S.-Taiwan citizen. ⁽¹⁾

Applicant worked as computer specialist for the federal government from October 1991 until September 1998. From September 1998 until the present, he has worked for a defense contractor. He is currently working as a contractor for the Immigration, Customs, and Enforcement Agency, Department of Homeland Security. Using his formal education and technical expertise as well as his own experience as an immigrant, he is redesigning the immigration process to improve its efficiency by providing automated support. ⁽²⁾ His colleagues and supervisors consider him talented, dedicated, and hard-working. ⁽³⁾

Applicant's spouse also is a native of Taiwan. She became a U.S. citizen in April 1984. They have two daughters who are native-born U.S. citizens, attending college in the U.S. ⁽⁴⁾

Applicant obtained a Taiwanese passport in August 1998, which expired in August 2004. ⁽⁵⁾ Applicant was not aware his possession and use of a Taiwanese passport raised security concerns until he was interviewed by a security

investigator in February 2004.⁽⁶⁾ He immediately made inquiries about surrendering his passport. When his first attempt to surrender the passport was unsuccessful, he mutilated it to make it unusable. On September 13, 2005, with the assistance of his lawyer, he surrendered his passport to the Taipei Economic and Cultural Representative Office (TECRO) in Washington, D.C.⁽⁷⁾

Applicant visited Taiwan in 1998, 2001, and 2003, before his Taiwan passport expired. Each time he carried both his U.S. and Taiwan passports. He used his Taiwan passport for convenience in case his father died and he needed to settle his affairs.⁽⁸⁾

Applicant's 87-year-old father is seriously ill. He is bedridden in a private nursing home operated by a church in Taiwan, kept alive with a feeding tube, and unable to perform daily functions without assistance. He retired from his position as a hydro power engineer for the Taiwanese Power Company and took his retirement in a lump sum.⁽⁹⁾ He then came to the U.S. and became a U.S. citizen. He became ill while visiting in Taiwan and is not physically able to travel back to the U.S.⁽¹⁰⁾ He receives Social Security retirement benefits from the U.S., based on the years he worked and resided in the U.S.⁽¹¹⁾

Applicant's 85-year-old mother also is seriously ill, wheelchair-bound, and lives in the same nursing home as Applicant's father. She was a permanent U.S. resident but was unable to pass the naturalization test because she is illiterate.⁽¹²⁾

One of Applicant's four sisters is a citizen and resident of Taiwan. She is a housewife and takes care of Applicant's parents. Applicant calls her at least once a week to check on the condition of his parents.⁽¹³⁾ Her husband has a private practice as an architect.⁽¹⁴⁾

Applicant's other three sisters and his brother are dual U.S.-Taiwan citizens by virtue of their Taiwanese birth and subsequent naturalization as U.S. citizens. They all reside in the U.S.⁽¹⁵⁾

Applicant's 85-year-old father-in-law and 83-year-old mother-in-law are citizens of Taiwan residing in the U.S. They are permanent residents, but they have not applied for U.S. citizenship because their inability to communicate in English makes them unable to pass the naturalization test. Applicant's wife usually initiates the contact, because Applicant spends so much time taking care of his own parents. However, Applicant testified he and his wife have a "very close relationship" with his mother-in-law and father-in-law.⁽¹⁶⁾ Applicant has no contact with relatives in Taiwan other than his parents and one sister.⁽¹⁷⁾

As the eldest son, Applicant is expected to take responsibility for his parents.⁽¹⁸⁾ Applicant and his siblings have established a fund to defray the costs of the nursing home for their parents, and they contribute \$2,000.00 per year to the fund.⁽¹⁹⁾ Medical expenses for Applicant's parents are paid by the Taiwanese government, but the cost of the nursing home is not.

Applicant's parents own a small piece of property and a house in a mountain village on the east coast of Taiwan. About 50 of Applicant's extended family members own an interest in the property. His parents have told him his inherited interest in the property will be taxed at a higher rate if he gives up his Taiwan passport. Because of the multiple owners, the property would be difficult to sell, and the persons inheriting it would be required to pay the inheritance tax out of pocket. The property has little economic value, but it has sentimental value as an ancestral home where Applicant spent his childhood.⁽²⁰⁾ Applicant testified he is willing to renounce his Taiwanese citizenship even if it meant losing his right to inherit an interest in the ancestral property.⁽²¹⁾

Applicant is financially secure. He owns a home in the U.S. with an assessed value of \$1.1 million. He has about \$300,000.00 in retirement funds and \$200,000.00 in mutual funds for his children's education.⁽²²⁾

Applicant is active in the Asian-Pacific American Heritage Council, and has served as an officer of that organization. The organization's mission is to help Asian-Pacific Americans integrate into the American social and political structure.⁽²³⁾

Taiwan is a multiparty democracy, a U.S. ally, and a major U.S. trading partner. It has a good human rights record. Taiwan maintains a large military establishment, and its primary mission is the defense of Taiwan against the Peoples Republic of China (PRC). Men between ages 18 and 40 who were born in Taiwan or have ever held Taiwanese passports are subject to compulsory military service, even if they are also U.S. citizens and have entered Taiwan on U.S. passports.⁽²⁴⁾ The Taiwan Relations Act, 22 U.S.C. §§ 3301-3316, is the legal basis for the unofficial relationship between the U.S. and Taiwan and the U.S. commitment to ensuring Taiwan's defensive capability.⁽²⁵⁾ Taiwan is an active collector of defense, medical, economic, and computer information through industrial espionage.⁽²⁶⁾

Taiwan's assertion of independence from the PRC is a source of conflict with the PRC and a significant factor in U.S.-PRC relations. While U.S.-Taiwan relations are friendly, the U.S. has adopted a one-China policy which complicates relations with Taiwan.

Contact between Taiwan and the PRC has grown significantly over the past decade. Taiwan has relaxed restrictions on

unofficial contacts with the PRC, allowing trade and travel to increase. [\(27\)](#)

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), as amended and modified. 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.

The Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶¶ 6.3.1 through ¶ 6.3.6.

In evaluating an applicant's conduct, an administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the applicant'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 ¶¶ E2.2.1.1 through E2.2.1.9.

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 the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions 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. "[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. ISCR Case No. 01-20700 at 3 (App. Bd. Dec 19, 2002); *see* Directive ¶ E3.1.15. 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 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

CONCLUSIONS

Guideline C: Foreign Preference

When an applicant acts in such a way as to indicate a preference for a foreign country over the U.S., he or she may be prone to provide information or make decisions that are harmful to the interests of the U.S. Directive ¶ E2.A3.1.1. A disqualifying condition may arise if an individual exercises dual citizenship (DC 1), possesses or uses a foreign passport (DC 2), performs military service for a foreign country (DC 3), or uses foreign citizenship to protect financial or business interests in another country (DC 6). Directive ¶¶ E2.A3.1.2.1., E2.A3.1.2.2., E2.A3.1.2.3., E2.A3.1.2.6. All four disqualifying conditions are established by the record.

Several mitigating conditions are relevant. MC 1 applies if dual citizenship is based solely on parents' citizenship or birth in a foreign country. Directive ¶ E2.A3.1.3.1. This mitigating condition is established because Applicant did not affirmatively seek foreign citizenship, but acquired it by virtue of his birth in Taiwan to Taiwanese parents.

MC 2 applies if indicators of possible foreign preference occurred before the individual obtained U.S. citizenship. Directive ¶ E2.A3.1.3.2. This condition is established for Applicant's mandatory military service in the Taiwan armed forces, which occurred before he became a U.S. citizen; however, it is not established for his exercise of dual citizenship by use of a foreign passport, which continued after he acquired U.S. citizenship.

When use of a foreign passport is involved, the clarifying guidance issued by the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence (the "Money Memorandum") dated August 16, 2000, requires denial of a clearance unless the applicant surrenders the foreign passport or obtains official approval for its use from the U.S. Government. Applicant has met this requirement by surrendering his expired Taiwanese passport.

MC 4 applies if the individual has expressed willingness to renounce dual citizenship. Directive ¶ E2.A3.1.3.4. This condition is established because Applicant testified he was willing to renounce his citizenship even if it costs him his right to inherit an interest in his ancestral home.

The record, including Applicant's testimony, makes it clear Applicant's loyalty, financial interests, and family ties are centered in the U.S., except for his aged and infirm parents and his sister who cares for them. When he discovered his exercise of dual citizenship and use of a foreign passport raised a security concern, he immediately made inquiries about surrendering his passport. When his first attempt to surrender the passport was unsuccessful, he mutilated it to make it unusable. With the assistance of his lawyer, he was finally successful in surrendering it, even though it may subject him to increased out-of-pocket inheritance taxes on his ancestral home or prejudice his entitlement to his inheritance. After weighing the disqualifying and mitigating conditions and making a commonsense evaluation of the evidence in the context of the whole person, I conclude Applicant has mitigated the security concern based on foreign preference.

Foreign Influence

A security risk may exist when an applicant's immediate family, or other persons to whom he may be bound by affection, influence, or obligation, are not citizens of the U.S. 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. A disqualifying condition (DC 1) may arise when "[a]n 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." Directive ¶ E2.A2.1.2.1. Applicant's wife's ties to Taiwan and the possible effect they may have on Applicant's conduct are relevant considerations under Guideline B (Foreign Influence). ISCR Case No. 01-02452 at 8 (App. Bd. Nov. 21, 2002). "[T]here is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse." ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at * 8 (App. Bd. Feb. 20, 2002). Furthermore, a disqualifying condition (DC 2) may arise if an applicant is "[s]haring living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists." The totality of an applicant's family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003).

Applicant's ties to his parents and one sister in Taiwan establish DC 1. His wife's close ties to her parents, who are citizens of Taiwan residing in the U.S., and Applicant's affection for them establish DC 2.

In cases where an Applicant has immediate family members who are citizens or residents of a foreign country or who are connected with a foreign government, a mitigating condition (MC 1) may apply if "the immediate family members (spouse, father, mother, sons, daughters, brothers, sisters) . . . 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." Directive ¶ E2A2.1.3.1.

Notwithstanding the facially disjunctive language of MC 1 ("agents of a foreign power **or** in a position to be exploited"), it requires proof "that an applicant's family members, cohabitant, or associates in question are (a) not agents of a foreign power, **and** (b) not in a position to be exploited by a foreign power in a way that could force the applicant to chose between the person(s) involved and the United States." ISCR Case No. 02-14995 at 5 (App. Bd. Jul. 26, 2004); *see* 50 U.S.C. § 1801(b) (defining "agent of a foreign power"). Since the Government produced substantial evidence to establish DC 1, the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Although Taiwan historically has been regarded as friendly to the U.S., the distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly.

Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. *See* ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). Nevertheless, the nature of a nation's government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the U.S.

Applicant's father is a U.S. citizen. He and Applicant's mother reside in Taiwan because they are seriously ill and physically unable to return to the U.S. They clearly are not agents of a foreign power. They live in a private nursing home, paid for by Applicant and his siblings. Although his father worked for a Taiwanese utility company, he retired and took his retirement pay in a lump sum. He receives U.S. social security payments. Applicant's parents are not dependent on the Taiwan government for their pensions, and thus they are less vulnerable to governmental coercion. Neither parent has any business connections that would lend themselves to exploitation, private economic espionage, or government industrial espionage.

Applicant's mother-in-law and father-in-law have resided in the U.S. for twenty years. They have not become U.S. citizens because they cannot speak or write English. They have no government or business connections that would make them vulnerable to exploitation, economic espionage, or industrial espionage.

Applicant's sister in Taiwan is a housewife with no government or business connections. Her husband is an architect

with no government or business connections. Applicant's remaining siblings are citizens and residents of the U.S., subject only to the authority of the U.S. and having no connection to the Taiwanese government.

None of the individual family circumstances discussed above are determinative. They must be considered together under the "whole person concept" mandated by the Directive ¶ E2.2.1. The Appeal Board has made it clear that the burden of disproving a mitigating condition is never shifted to the Government.⁽²⁸⁾ Nevertheless, Applicant's evidence of his family's absence of governmental connections, financial dependence on the government, or business connections susceptible to industrial espionage is relevant and encompassed in the "whole person concept." To ignore such evidence would establish a virtual per se rule against clearing applicants with foreign family ties. After evaluating each family member's individual circumstances as well as the totality of Applicant's family ties to Taiwan, I conclude MC 1 is established.

With respect to Applicant's potential inheritance, a mitigating condition (MC 5) applies if the foreign financial interest is minimal and not sufficient to affect Applicant's security responsibilities. Applicant's potential inheritance has sentimental value, but virtually no economic value because more than 50 relatives have claims to it, making it virtually unmarketable. It is a financial liability, because Applicant may be required to pay inheritance taxes out of pocket at the higher rate for non-citizens of Taiwan, as a result of his having surrendered his passport. The economic value of his interest in his ancestral home is minuscule compared to his U.S. assets. I conclude MC 5 is established.

Taiwan is a close ally, friend, and trading partner of the U.S., and is dependent on the U.S. for its defense. The nature of Taiwan's government, its human rights record, and its relationship with the U.S. are clearly not determinative. Nevertheless, they are all relevant factors in determining whether Taiwan would risk damaging its relationship with the U.S. by exploiting or threatening its private citizens in order to force a U.S. citizen to betray the U.S. After weighing the disqualifying and mitigating conditions and making a commonsense evaluation of the evidence, I conclude the security concern based on foreign influence is mitigated.

FORMAL FINDINGS

The following are my findings as to each allegation in the SOR:

Paragraph 1. Guideline C (Foreign Preference): FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Paragraph 2. Guideline B (Foreign Influence): FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

Subparagraph 2.d.: For Applicant

Subparagraph 2.e.: For 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 Applicant a security clearance. Clearance is granted.

LeRoy F. Foreman

Administrative Judge

1. Tr. 45.
2. Tr. 41-43.
3. Applicant's Response to the LOI, pp. 6-8.
4. Tr. 45; Applicant's Exhibit H.
5. Government Exhibit 5; Applicant's Exhibit B.
6. Government Exhibit 3; Tr. 91-92.
7. Applicant's Exhibit I.
8. Tr. 67.
9. Tr. 75.
10. Tr. 48, 74; Applicant's Exhibit F.
11. Applicant's Exhibit G.
12. Tr. 49.
13. Tr. 69.
14. Tr. 75.
15. Tr. 50.
16. Tr. 96.
17. Tr. 70.
18. Tr. 89.
19. Tr. 69-70, 74, 87-88.
20. Tr. 51-58; Applicant's Exhibits C, D, and E.
21. Tr. 86-87.
22. Tr. 59.
23. Tr. 67-68.
24. U.S. Department of State, *Consular Information Sheet, Taiwan* (Jan. 14, 2005), attached to the record as Hearing Exhibit I.
25. U.S. Department of State Background Note: Taiwan, November 2004; U.S. Department of State Country Reports on Human Rights Practices, February 25, 2004. These documents are available on the internet at www.state.gov. They are attached to the record as Hearing Exhibits II and IV.

26. National Counterintelligence Center (NACIC), *Annual Report to Congress 15* (2000) available on the internet at www.nacic.gov. The NACIC Annual Reports for 2001, 2002, and 2003 did not identify the most active practitioners of industrial espionage by name. In 2000, NACIC identified practitioners, including Taiwan, as the "most active." The number of countries targeting the U.S. rose to 75 in 2001 and over 90 in 2002. The NACIC Annual Reports for 2000 and 2003 are attached to the record as Hearing Exhibits V and VI.

27. U.S. Department of State Background Note: Taiwan, *supra* at n. 3.

28. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).