

DATE: June 7, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-07330

DECISION OF ADMINISTRATIVE JUDGE

ARTHUR E. MARSHALL, JR.

APPEARANCES

FOR GOVERNMENT

Eric Borgstrom, Esq., Department Counsel

FOR APPLICANT

Andrew W. Dyer, Jr., Esq.

Blank Rome, LLP

SYNOPSIS

Applicant is a 61-year-old engineer employed by a defense contractor. He left Taiwan in 1968 to pursue graduate studies in the United States and then remained in this country, becoming a naturalized citizen in 1980. His work takes him on regular trips to the People's Republic of China. He has visited Taiwan through both business stop-overs and personal travel in order to visit his 92 year old father. During these visits, he has incidental contact with three of his siblings, and, occasionally, with his aged mother-in-law. He has contributed to his father's maintenance and toward the final expenses of his late brother. Applicant has mitigated concerns that his relations are agents of a foreign power or in a position to be exploited by a foreign power. Clearance is granted.

STATEMENT OF THE CASE

On August 31, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) detailing why, pursuant to Guideline B (Foreign Influence), it could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. In his response, dated October 6, 2004, Applicant admitted one of the allegations set forth in the SOR and he denied in part and admitted in part the remaining five allegations. Additionally, Applicant appended seven supporting documents to his response and requested a hearing.

Consequentially, I was assigned the matter on February 17, 2005, and a hearing was set for April 6, 2004. Due to an intervening injury, Applicant was granted a continuance and the hearing was moved to May 11, 2005. At the hearing, the Government submitted ten exhibits, marked as Government's Exhibit's 1-10, and Applicant submitted six, marked Applicant's Exhibit's A-F. At the conclusion of his case in chief, Applicant moved to amend the SOR to correctly reflect

the country of residence and citizenship of the relatives at issue as the Republic of China, also known as Taiwan, rather than as the People's Republic of China. ⁽¹⁾ The Government did not object and that motion was granted. Subsequently, I received the transcript on May 19, 2005.

FINDINGS OF FACT

Applicant has admitted to one of the allegations set forth in the SOR, and admitted in part and denied in part the remaining five allegations, all of which pertain to Guideline B (Foreign Influence). After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 61-year-old senior systems engineer employed by a defense contractor. He was born in Hunan, a province within the Chinese mainland then known as the Republic of China. His family moved to Taiwan in 1948, shortly prior to the ouster of the Republic by Communist forces and its relocation on the island of Taiwan in 1949. In 1968, Applicant moved to the United States for graduate school, eventually earning his Ph.D. in 1976. In the interim, in 1974, he married a fellow émigré from Taiwan.

In 1978, Applicant and his family moved to their current community and he commenced his profession. In 1980, he became a naturalized United States citizen and received his first security clearance. Since then, he has maintained a clearance and worked for a handful of the top companies in his field. His work has been lauded and he has received two U.S. patents. Over the past decade, Applicant's job has taken him abroad, including trips to the People's Republic of China.

At home, Applicant resides with his wife, a naturalized U.S. citizen since 1982. Applicant earns over \$130,000 per year, and his wife, otherwise a homemaker and charity volunteer, regularly earns independent income as a part-time tax preparer during tax season. Their two college educated children are both independent adults and U.S. citizens. Their daughter holds a non-sales job in retail; their son, who received his Master of Arts degree in June 2004, and recently completed a nine-month internship with an international manufacturer in Taiwan, is currently pursuing doctoral studies in the United States. The mortgage on the family home, valued in the \$500,000-plus range, will be repaid in full within the coming year. They own two cars, possess common stock, and own mutual fund accounts. Conservatively, Applicant's net worth is approximately 1.2 to 1.3 million dollars.

Applicant has a younger sister who is a U.S. resident and a naturalized citizen. They speak telephonically about twice a week. The remainder of his immediate family, his 92 year old father and his three younger siblings, remain in, and are citizens of, Taiwan, Republic of China. ⁽²⁾ His father, a widower, is long retired from service at a Taiwanese machinery company that was once under some form of government control and which is now privatized or in the process of privatization. ⁽³⁾ He has been in declining health and suffers from both hypertension and an accelerating degeneration of his short-term memory capacity. This degeneration has resulted in a progressive dementia that has made him incapable of independent living. Therefore, this nonagenarian now resides with his daughter living in Taiwan, to whom Applicant sends approximately \$8,000 per year to complement his meager pension of \$3,600 per year. Because of Applicant's professional success, his contribution to his father's upkeep is roughly the equivalent to the combined contribution of his two surviving brothers. Applicant also sent his father \$1,000 on the occasion of his 90th birthday. Applicant speaks with his father by telephone for three to four minutes per week in order to check on his condition and to help keep his father's more lucid long-term memory stimulated. Applicant now tries to visit his father in Taiwan every year or two, usually as part of a layover *en route* to a business destination, although such travel will cease after his father's eventual demise.

Applicant's sister in Taiwan teaches in a private English language school. His two surviving brothers work as an automobile assembler and a print shop owner, respectively. Although Applicant may exchange an e-mail "once a month or less" with his siblings, usually regarding their father's condition, other contact is minimal and is incidental to his trips or his phone calls to his father. A fourth sibling, his elder brother, died in 2003 after a short, costly battle with a rapidly progressive cancer. During this battle, Applicant made a special trip to visit and help manage his elder brother, volunteering \$6,000 to assist with the ever-mounting medical and hospital bills. Subsequently, he gave \$1,000 toward the funeral. Also that year, he sent a nephew \$500 in lieu of a wedding gift.

Also a citizen and resident of Taiwan is Applicant's mother-in-law. She is an 82 year old widow and a former homemaker. Although his wife calls her mother by telephone approximately twice a month, Applicant's contact is generally limited to offering salutations at the end of these calls when he is available to do so. His wife sends her mother around \$1,500 a year to complement her retirement.

In the past 10 years, Applicant has traveled to Taiwan about 10 times in order to see his parents or, since his mother's demise in 1999, his father. As previously noted, these trips are taken either as a layover *en route* to a business destination or independently at his own expense. His few trips to the People's Republic of China have been strictly on authorized defense contractor business.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, these adjudicative guidelines are subdivided into those that may be considered in deciding whether to deny or revoke one's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to determine one could still be eligible for access to classified information (Mitigating Conditions).

In application, an Administrative Judge is not strictly bound to the adjudicative guidelines. They are guidelines. As such, they are but part of an amalgam of elements for the Administrative Judge to consider in assessing an applicant in light of the circumstances giving rise to the SOR, as well as in assessing the applicant as a whole. The concept of the "whole person" ⁽⁴⁾ means that all available, reliable information about the person - whether it is good or bad, present or past - should be considered in making a fair, impartial, and meaningful decision as to his or her suitability to hold a security clearance. To that end, Enclosure 2 also sets forth factors to be considered during this part of the adjudicative process, including: (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 individuals 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 of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

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 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. ⁽⁵⁾

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns, pertaining to this adjudicative guideline are set forth and discussed in the Conclusions section below.

After a full and thorough examination, however, the final assessment must comport with the considerable gravity of the final decision. There is no right to a security clearance ⁽⁶⁾ and one seeking access to classified information must be prepared to enter into a fiduciary relationship with the United States Government that is inherently predicated on trust and confidence. Therefore, when the facts proven by the Government raise doubts as to an applicant's judgment, reliability, or trustworthiness, the applicant has the heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." ⁽⁷⁾ Therefore, any doubts will be resolved in favor of the national security, not the applicant.

Finally, Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance decisions shall be "in terms of the national interest

and shall in no sense be a determination as to the loyalty of the applicant concerned." Therefore, nothing in this Decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all legal precepts, factors, and conditions, including those described briefly above, I find the following with respect to the allegation set forth in the SOR:

With respect to Guideline B (Foreign Influence), the Government has established its case. Applicant admits that his father, mother-in-law, two brothers, and a sister, are all citizens of, and residents in, Taiwan. This raises both a security concern and Foreign Influence Disqualifying Condition (FI DC) E2.A2.1.2.1 (*[a]n immediate family member, or a person to whom the individual has close tiers of affection or obligation, is a citizen of, or resident or present in, a foreign country.*)

Under the Directive, this potentially disqualifying condition may be mitigated. In particular, Foreign Influence Mitigating Condition (FI MC) E2.A2.1.2.1 (*[a] determination that the family member(s), (spouse, father, mother, sons, daughters, brothers, sons), 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. I base this finding after conducting the following assessment:

First, none of Applicant's immediate family are members of the military forces or the government of Taiwan. His siblings each work in the private sector and his mother-in-law remains a homemaker. Although Applicant's father once worked for a Taiwanese machinery company that was formerly associated with the government, he has been retired for many years and the company is now either privatized or undergoing privatization. More importantly, there is no evidence indicating that the company is currently dedicated to, or in any way involved with, intelligence gathering. There is no indication in the record that any one of these individuals is an "agent of a foreign power," as defined by 50 U.S.C.A. § 1801(b).

Second, in order to assess whether an applicant is vulnerable to exploitation through relatives or associates in a foreign country, one must consider several factors, including the character of the government of the relevant foreign country. Taiwan is a democracy and an ally of the United States; the two are joined in economic and security agreements. Although Taiwanese businesses and individuals do have a history of engaging in economic and industrial espionage, there is no evidence indicating that the government of Taiwan, or any other entity meeting the definition of a "foreign power," sponsors or encourages efforts to exploit citizens or residents of Taiwan for that purpose. Given present circumstances, the possibility that a "foreign power" would attempt to exploit or pressure Applicant's relations in Taiwan in order to force Applicant to act adversely to the interests of the United States exists, but it is limited and very remote.

One must also consider the vulnerability of Applicant's relatives in Taiwan to duress. Applicant's mother-in-law is a widow with grown children and remains a homemaker, virtually independent of the Taiwan government. His siblings each have a measure of personal affluence and each works in the private sector. His father, however, does receive a scant pension from either the government or his former employer that supplements his family's generous fiscal support. Although he is in his 90s, suffers from dementia, virtually unaware of the present, incapable of independent living, and financially supported by his children,⁽⁸⁾ the existence of this meager pension does create a small, if not negligible, opportunity for coercive or non-coercive action against him - regardless of the fact the father would most likely be unaware of any such pressure.

Another significant consideration is Applicant's vulnerability to pressure or duress applied indirectly through his ties with relatives and associates. Applicant is a U.S. citizen by choice, and has lived in this country for 37 years, almost the entirety of his adult life. The American family he has formed and nurtured, as well as the sibling with whom he is most often in contact, his American sister, are all citizens and residents of the U.S. The children in whom he takes so much pride are here. Not only are all these individuals citizens and residents of the U.S., but each is comfortably ingrained in their respective American lives and routines, be they social, religious, academic, or professional. Moreover, Applicant's

lucrative job with his current employer, for whom he has worked steadily since 1990, is based in the United States, and the security clearance he has maintained successfully and without incident since 1980 is from the United States government. Further, all his assets and holdings, conservatively comprising a net worth of approximately 1.2 to 1.3 million dollars, are here in the United States. Considering Applicant's minimal connection to his siblings in Taiwan, in light of the fact that this minimal contact will be even further diminished after the passing of his aged father and mother-in-law, and in view of Applicant's powerful and extensive ties to the United States, I find Applicant is not vulnerable to pressure or duress from a foreign power in Taiwan to such an extent as to constitute an unacceptable security risk. Based on all of these considerations, I consequentially conclude that FI MC E2.A2.1.3.1 applies.

Mitigation is also possible to a lesser extent pursuant to FI MC E2.A2.1.3.2 (*contacts and correspondence with foreign citizens are casual and infrequent*). Based on his highly credible testimony, Applicant's contact with his siblings and his mother-in-law is rare, uncommon, and far from intimate. The e-mails between siblings are sporadic, relations are apparently cool, and conversation between Applicant and his siblings is almost exclusively incidental to telephone calls placed to his father. Similarly, personal interaction is equally incidental to trips made expressly to see his father or, as occurred recently, to attend to the rapid decline and death of his elder brother. As well, Applicant credibly explained that his interaction with his mother-in-law is limited to the occasional civil salutation appended at the conclusion of a telephone call between his wife and her mother, making his own contact with her seem truly casual and infrequent. Consequentially, I find that FI MC E2.A2.1.3.2 applies with regard to his siblings and mother-in-law, and that this factor additionally serves as a basis to find for Applicant with regard to subparagraphs 1.b. and 1.c. of the SOR. His contact with his father, however, is significantly different. In spite of - or, perhaps because of - the fact that the nonagenarian patriarch's health is declining, Applicant calls his father on a weekly basis. While these calls may be deemed casual owing to the father's diminished capacity and the very brevity of the calls, the contact remains regular and frequent. His annual effort to visit his father in Taiwan is similarly regular. While one certainly must commend the Applicant for these expressions of obligation and responsibility, they work against him for the purposes of this mitigating condition. Consequentially, with regard to Applicant's father, I find that mitigation under FI MC E2.A2.1.3.2 does not apply.

Two additional issues remain. Subparagraph 1.d of the SOR alleges that Applicant provides financial support to his "family residing in Taiwan, including providing [his] father with approximately \$16,000.00 a year." While the record evidence demonstrates that Applicant does provide some financial support to his aged father, and that his wife provides her mother with some similar aid, the actual level of support is significantly lower than the sum alleged. Applicant annually contributes about \$8,000 toward his father's maintenance and Applicant's wife sends her mother approximately \$1,500 per year to assist with medical and living costs; both sums are annually generated and are expected to continue only through the respective recipient's lifetime. This \$9,500 represents their joint annual overseas support. Granted, unusual circumstances have given rise to additional sums at various times: his elder brother's brief but costly illness and subsequent burial in 2002/2003 generated \$7,000 to defray related costs, \$500 was sent to a nephew in lieu of a more traditional wedding gift, and his father was sent \$1,000 to hone his 90th birthday. Given Applicant's personal finances, his wife's additional income, and their conservative, empty-nester lifestyle, an annual, combined contribution of \$9,500 toward the base maintenance of two elderly relatives does not represent a significant amount or, standing by itself without more, give rise to a disqualifying condition. Therefore, I find subparagraph 1.d of the SOR in Applicant's favor.

Subparagraph 1.e of the SOR incorrectly alleges that one of Applicant's children is currently residing in Taiwan interning for a company in Taiwan. While it is true that Applicant's son took a nine month internship in Taiwan between graduate degrees, he has since returned to the U.S. and is currently enrolled in a doctoral program. Given these revised facts, and because an internship abroad does not, in and of itself, raise a disqualifying condition, I find subparagraph 1.e of the SOR in Applicant's favor.

I considered carefully all the facts and circumstances in this case in light of the "whole person" concept. Balancing the totality of Applicant's substantial familial, financial, professional, and social assets against his limited, transitory, and emotional holdings abroad, I do not find that the existence of his relatives in Taiwan constitutes an unacceptable security risk. Based both on this independent basis and the discussion *supra*, I conclude Applicant, through his submissions and his very credible testimony, has mitigated any potential security concerns arising from his personal ties to relations in Taiwan.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.2.5 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: 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 or continue a security clearance for Applicant. Clearance is granted.

Arthur E. Marshall, Jr.

Administrative Judge

1. Transcript of hearing conducted on May 11, 2005 (Tr.), at 97.
2. The SOR noted four siblings. In actuality, as detailed *infra*, Applicant's elder brother died in early 2003.
3. "At that time, it was somewhat associated with the government.... You know, like the railroad and things like that." Tr. at 82.
4. ⁷ Directive, Enclosure 2, at E2.2.
5. Directive, Enclosure 2, Attachment 2, Guideline B, ¶ E2.A2.1.1.
6. ⁷ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).
7. ⁷ *Id.*, at 531
8. In addition to his sister's in-kind contribution of home care for their father, Applicant gives approximately \$8,000 per year toward his father's upkeep, as his other siblings, collectively, contribute a matching sum. To a lesser degree, his father's pension, which the Applicant characterizes as being similar to our Social Security payments, only amounts to around \$3,600 per year, less than 20% of the father's total annual retirement income.