

DATE: January 27, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-07766

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Candace Le'i, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant has surrendered his Taiwanese passport to the proper authorities and it has been cancelled. He has also renounced his Taiwanese citizenship. His casual and infrequent contact with his siblings in Taiwan poses no security risk. Clearance is granted.

STATEMENT OF THE CASE

On June 2, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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 and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on June 14, 2005, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on September 15, 2005. A notice of hearing was issued on November 3, 2005, scheduling the hearing for November 29, 2005. At the hearing the Government presented seven exhibits. The Applicant presented four exhibits. He also testified on his own behalf. The record was left open until close of business on December 13, 2005 to allow the Applicant to submit additional supporting documentation. The Applicant submitted one Post-Hearing Exhibit consisting of twenty-two pages. The official transcript (Tr.) was received on December 12, 2005.

On August 16, 2000, a memorandum was issued by Mr. Arthur Money, Assistant Secretary of Defense for Command, Control, Communications and Intelligence, clarifying "the application of Guideline C to cases involving an Applicant's possession or use of a foreign passport." The Applicant received a copy of this memorandum with the SOR.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the exhibits and the testimony. The Applicant is 44 years of age and holds a master's Degree in Computer Science. He is married to a United States citizen and has three children. He is employed as a Software Architect for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline C - Foreign Preference). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has acted in such a way as to show a preference for another country over the United States.

The Applicant was a dual citizen of Taiwan (Republic of China) and the United States. He was born in Taiwan. He satisfied the two year mandatory military requirement by serving in the Taiwanese Army from 1984 to 1986. Unlike his eight siblings in Taiwan, he decided to come to the United States to pursue his advanced education in 1988. He so enjoyed the freedoms and opportunities of this country, he became a naturalized United States citizen in September 1996, and decided to make the United States his home. He was issued a United States passport in October 1996.

After becoming a United States citizen, the Applicant applied for and was issued a Taiwanese passport in April 1997. He maintained this passport in order to travel to Taiwan to be able to handle, manage and sell the house he inherited in Taiwan from his father when he died. In 1997, the Applicant traveled to Taiwan to sell his house and used the profits from the sale to pay down his mortgage on his house he owns in the United States. The value of the Applicant's home in the United States is approximately \$350,000. He also has a 401(k) and an IRA that collectively amount to about \$115,000. He has no asset whatsoever in Taiwan.

Upon learning of the provisions of the Money Memorandum, the Applicant surrendered his Taiwanese passport to the Taipei Economic and Cultural Office in Los Angeles, California and renounced his Taiwanese citizenship, witnessed by a notary. (See Applicant's Post-Hearing Exhibit).

Paragraph 2 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant's eight siblings, mother-in-law and brother-in-law are citizens and residents of Taiwan. One of his brothers works for city hall in the personnel department, one is retired from a chemical plastics company, another is about to retire from a street cleaning job. The fourth brother works for a company that makes boat parts. His four sisters are housewives. Their husbands work as a street cleaner, for an insurance company, a chemical byproduct company and one is deceased. None of them work for any companies that are affiliated with the Taiwanese Government. None of the Applicant's family in Taiwan are members of the Communist Party.

The Applicant's brother-in-law works for the Taiwanese Army. He has some sort of desk job. He has been in the military between fifteen and eighteen years. The Applicant has no contact with him and he does not know what the Applicant does except that he works in the computer field. The Applicant's wife contacts with her brother on his birthday. His mother-in-law is retired, and his wife contacts her by telephone about once every couple of months and she sends her a total of \$1,000 a year. His father-in-law was a cook before he retired.

The only contact the Applicant has with anyone in Taiwan is with one of his sisters with whom he speaks by telephone about once every month or two. (Tr. p. 46). On very rare occasions he might call another sister if he can't locate the one he usually talks to. (Tr. p. 47). The Applicant's mother was a housewife before she passed away in 1999. Beside his trip to Taiwan in 1997, the Applicant traveled one other time to Taiwan, in 1999 when his mother passed away.

The Applicant has no intentions of returning to Taiwan at this time, but if he decides to travel anywhere he will use his United States passport. He testified that if he is ever confronted by anyone seeking access to classified information or anyone who tries to blackmail or coerce him or his family in Taiwan, he will immediately report it to his supervisor.

Letters of recommendation from previous employers, professional associates and friends of the Applicant indicate that the Applicant is loyal, hardworking, reliable, sensible, and intellectual. He is dedicated to his work, his family and his

community duties. He has the highest ethical standards and will take the utmost care in protecting classified information. (See Applicant's Exhibit C).

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Foreign Preference

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 interests of the United States.

Conditions that could raise a security concern:

1. The exercise of dual citizenship;
2. Possession and/or use of a foreign passport;

Conditions that could mitigate security concerns:

1. Dual citizenship is based solely on parent's citizenship or birth in a foreign country;
4. Individual has expressed a willingness to renounce dual citizenship.

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: (1) not citizens of the United States or (2) 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.

Condition that could raise a security concern:

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;

Condition that could mitigate security concerns:

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 the loyalty of the person(s) involved and the United States.
3. Contact and correspondence with foreign citizens are casual and infrequent.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

The Government must make out a case under Guideline C (foreign preference) and Guideline B (foreign influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates a foreign preference and has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The mere possession of a foreign passport raises legitimate questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSIONS

Having considered the evidence in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR, and that Applicant's foreign contacts have a direct and negative impact on his suitability for access to classified information.

The Applicant was a dual citizen of the Taiwan (Republic of China) and the United States who possessed a Taiwanese passport. Disqualifying Conditions, (1) *The exercise of dual citizenship* and (2) *Possession and/or use of a foreign passport* apply. However, Mitigating Conditions (1) *Dual citizenship is based solely on parent's citizenship or birth in a foreign country* and (4) *Individual has expressed a willingness to renounce dual citizenship* are applicable.

Since learning that possession of a foreign passport is not permitted when holding a security clearance, in compliance with the provisions of the Money Memorandum, he surrendered his foreign passport to the Taipei Economic and Cultural Office. He has also renounced his Taiwanese citizenship. Under the circumstances, the Applicant has done everything possible to be in compliance with the requirements of the directive and the Money Memorandum. Accordingly, he has clearly demonstrated an unequivocal preference for the United States. Under the circumstances of this case, I find for the Applicant under Guideline C.

With respect to Guideline B, the evidence establishes that he is not vulnerable to foreign influence. Disqualifying Condition (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. However, Mitigating Conditions (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 the loyalty of the person(s) involved and the United States* and (3) *Contact and correspondence with foreign citizens are casual and infrequent* are applicable. Although the Applicant's eight siblings, mother-in-law and brother-in-law are citizens and residents of Taiwan, they are not associated with the Taiwanese government or in a position to place foreign influence on the Applicant, or in a position to be exploited by the Taiwanese Government in a way that could force the Applicant to choose between loyalty to them and loyalty to the United States. Furthermore, the Applicant's contact is with only one or two of his foreign relatives, and is very limited, and are not of a nature to influence his security worthiness. The Applicant has cut all ties with Taiwan, except his very infrequent contact with his sister. It is clear that the Applicant understands his responsibility to the United States in holding a security clearance. Based on the foregoing, the Applicant does not raise a security concern and Guideline B is found for the Applicant.

Considering all the evidence, the Applicant has met the mitigating conditions of Guideline C and Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guidelines C and B.

FORMAL FINDINGS

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.

Subparas. 1.a.: For the Applicant

1.b.: For the Applicant

1.c.: For the Applicant

Paragraph 2: For the Applicant.

Subparas. 2.a.: For the Applicant

2.b.: For the Applicant

2.c.: For the Applicant

DECISION

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson

Administrative Judge