

DATE: January 25, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-08560

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 Chinese passport to the proper authorities and it has been cancelled. He has also renounced his Chinese citizenship, in compliance with the Money Memorandum. His casual and infrequent contact with foreign persons pose no security risk. Clearance is granted.

STATEMENT OF THE CASE

On May 24, 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 7, 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 October 14, 2005, scheduling the hearing for November 30, 2005. At the hearing the Government presented seventeen exhibits. The Applicant presented five exhibits and testified on his own behalf. 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 Ph.D in Electrical Engineering. He is employed as a Systems Engineer 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 is a dual citizen of Taiwan, (the Republic of China) and the United States. He was born in Taiwan in 1962 and served in the Taiwanese Army from 1984 to 1986. He moved to the United States in 1986 on a student visa for graduate studies. He worked to obtain his doctorate degree in the United States from 1988 to 1992. After graduating, in 1992, he returned to Taiwan because his student visa was no longer valid. From 1993 to 1996, he worked as a contractor for the Taiwanese government, specifically for the Telecommunications Lab Transportation Administration, where he developed new technology for cellular telephones and base stations. Since then, he has had no contact with anyone he knew during his employment with the Taiwanese government.

In 1998, the Applicant resigned from his job in Taiwan, obtained a job in the United States and returned to the United States once and for all. In April 2003, he became a naturalized citizen and in July 2003, he was issued a United States passport.

In April 2002, before becoming a United States citizen, the Applicant applied for and was issued a Taiwanese passport in order to be able to travel. He did this because his previous Taiwanese passport had expired.

In May 2004, the Applicant was interviewed by a Special Agent from the Defense Security Service. During the interview the Applicant told the agent that he possessed a passport from the Republic of China that was issued to him in April 2002. This passport was not to expire until April 2012.

After learning of the provisions of the Money Memorandum, the Applicant indicates that he cut the corner of his passport from the Republic of China and made it invalid. He is quite willing to surrender his passport. He believes that he renounced his Taiwanese Citizenship when he took the oath to become a United States citizen.

The Applicant went to the Taipei Economic and Culture Office requesting to surrender his Taiwanese passport. He was told to write his request in Chinese and have it notarized. They would not accept the passport. (Tr. p. 45- 46 and Applicant's Exhibit C and D).

The record was left open following the hearing, to allow the Applicant an opportunity to comply with the Money Memorandum. The Applicant submitted a letter dated November 30, 2005, indicating that he destroyed his passport in front of the security officer at his company, witnessed by the security representative. A copy of the defaced passport is enclosed. (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 mother, mother-in-law and brother in-in-law are citizens of and reside in Taiwan. Before his father passed away he was a police officer. His mother is a retired school teacher. He contacts her by telephone on a monthly basis to check on her. His mother-in-law is also a retired school teacher and his brother-in-law is on disability. His wife contacts the family in Taiwan about once every two weeks by telephone. His sister is a citizen and resident of Indonesia. The Applicant contacts her by telephone about once every three months or so. None of the Applicant's family in Taiwan or Indonesia, are any longer affiliated in any way with the Taiwanese or Indonesian Governments. The Applicant stated unequivocally that if he was ever placed in a compromising situation that concerned classified information, under any circumstances he would immediately report the situation to his security department.

Using his Taiwanese passport, the Applicant traveled to Taiwan in August 1997, August 2001, and August 2003. He also traveled to Indonesia and Singapore in August 2003, but used his United States passport. On each occasion, the trips were taken vacation purposes or to visit family. If the Applicant chooses to travel abroad in the future, he will use

his United States passport.

The only asset the Applicant maintained in Taiwan was a small savings account with approximately \$400.00 United States dollars in it. With the Applicant's direction, the bank account was closed by his mother in July 2005. (*See Applicant's Exhibit E and Tr. p. 41*).

In the United States, the Applicant owns his own home worth approximately one million dollars. He also has a 401K and a Roth IRA. He is married to a United States citizen and they have three children who were born in the United States. (*Tr. p. 43*).

Mitigation.

A letter of recommendation from the Applicant's supervisor indicates that the Applicant is dependable, motivated, hardworking, honest and trustworthy. (*See Applicant's Exhibit A*).

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 Taiwan, (the Republic of China) and the United States who possessed a passport from the Republic of China. 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 destroyed his passport in front of his security officer. He 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 mother, mother-in-law and brother-in-law are citizens and residents of Taiwan, none of the individuals are any longer 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. Likewise, his sister in Indonesia is not a security threat. Furthermore, the Applicant's contacts with his foreign relatives are very limited, and are not of a nature to influence his security worthiness. The Applicant has cut all other ties with Taiwan. 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

Paragraph 2: For the Applicant.

Subparas. 2.a.: For the Applicant

2.b.: For the Applicant

2.c.: For the Applicant

Subparas. 2.d.: For the Applicant

2.e.: For the Applicant

2.f.: For the Applicant

2.g.: 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