

KEYWORD: Foreign Preference

DIGEST: Applicant is a 50-year-old software technical tester who has worked for the same defense contractor since June 2003. Born in Taiwan, Applicant has been a U.S. citizen since 1996. His wife, children, home, and investments are all in the U.S., but his mother and three of his siblings live in and remain citizens of Taiwan, and another brother lives in and is a citizen of Singapore. Even though his relationship to his foreign family is close and their contact is frequent, Applicant also established his more substantial ties to this country. In the process, he demonstrated that his foreign relatives do not pose an unacceptable risk. Eligibility for an ADP I/II position is granted.

CASENO: 04-08995.h1

DATE: 04/28/2006

DATE: April 28, 2006

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In re:

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SSN: -----

Applicant for Trustworthiness Determination

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ADP Case No. 04-08995

**DECISION OF ADMINISTRATIVE JUDGE**

**ARTHUR E. MARSHALL, JR.**

**APPEARANCES**

**FOR GOVERNMENT**

Ray T. Blank, Jr., Esq., Department Counsel

**FOR APPLICANT**

*Pro se*

**SYNOPSIS**

Applicant is a 50-year-old software technical tester who has worked for the same defense contractor since June 2003. Born in Taiwan, Applicant has been a U.S. citizen since 1996. His wife, children, home, and investments are all in the U.S., but his mother and three of his siblings live in and remain citizens of Taiwan, and another brother lives in and is a citizen of Singapore. Even though his relationship to his foreign family is close and their contact is frequent, Applicant also established his more substantial ties to this country. In the process, he demonstrated that his foreign relatives do not pose an unacceptable risk. Eligibility for an ADP I/II position is granted.

**STATEMENT OF THE CASE**

On October 18, 2004, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the basis for its preliminary determination that Applicant was not eligible for assignment to information systems positions designated ADP I/II. <sup>(1)</sup> The SOR alleges security concerns under Guideline B (Foreign Influence). It alleges that Applicant's mother (¶ 1.a), sister (¶ 1.b), and two brothers (¶ 1.c) are citizens of Taiwan currently residing in Taiwan. It also alleges that Applicant has a third brother (¶ 1.d) who is a citizen and resident of Singapore. It concludes by alleging that Applicant traveled to Taiwan in 1998 and 2002 to visit family members (¶ 1.e) and that he traveled to Singapore in 2002 (¶ 1.f).

In his notarized answer, dated November 9, 2004, Applicant admitted the SOR allegations and requested a hearing. In his SOR responses, Applicant admitted all the allegations under Guideline B. The case was assigned to me on May 5, 2005. A notice of hearing was issued on May 17, 2005, scheduling the hearing for June 9, 2005. The hearing was conducted as scheduled. The government submitted 14 exhibits, marked as Government Exhibits (GE) (GE 1-14), that were admitted into the record without objection. Applicant testified on his own behalf, presented one witness, and submitted no exhibits. DOHA received the hearing transcript (Tr.) on June 16, 2005.

## FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 50-year-old software technical tester who has worked for the same defense contractor since June 2003. His employer manages two U.S. Department of Defense (DoD) contracts to conduct independent software testing.<sup>(2)</sup> His current position does not call for access to secret information or classified information, but for testing software which may contain lab data or medical information. His position requires ADP II clearance because the data and information is derived from the military and may be maintained on secured or military facilities.

Born in Taipai, Taiwan, he worked for a private transportation company in Taiwan as an analyst after undergraduate school. In that position, he analyzed data and defined capacities for cargo. He also performed compulsory military service. In 1983, he entered the United States on a student visa. As a visiting student, he earned a master's degree and completed a doctoral program, but did not complete his dissertation. Instead, in 1988, he accepted employment within the technology field. In 1990, he became a permanent resident. On October 10, 1996, he became a naturalized United States citizen. In the process he renounced his Taiwanese citizenship and let his Taiwanese passport expire.<sup>(3)</sup> Today, his only citizenship is that of the United States and he travels on a United States passport without incident.

Applicant is married to a United States citizen who works for the U.S. federal government.<sup>(4)</sup> The couple has two children. Their daughter is a high school student who is active with her school swim team and her state youth orchestra. Their son recently entered middle school. The family has resided in the same area since Applicant started working in 1988. Applicant has bought the home in which his family resides; he also owns stock, including stock in his employer's company, and some mutual funds maintained in the United States. His 401(k) retirement fund and his IRA are both maintained in the United States, as well. Applicant has no foreign investments or property. A future interest through inheritance of a house in Taiwan has been renounced in favor of his sister in Taiwan.<sup>(5)</sup>

Applicant's mother and four siblings live abroad and are his only foreign contacts.<sup>(6)</sup> His mother, a sister, and two brothers are citizens of Taiwan and are financially self-sufficient. His mother is 85 years old, in declining health, and has a pacemaker. She has undergone a number of hospitalizations and was recuperating from a broken leg in 2005. A lifelong housewife and homemaker, she has never been involved in political activities and has no connection with a foreign government. She owns, and lives in, a four-bedroom condominium. Although she receives a minimal government stipend akin to Social Security, amounting to about \$100 a month, she lives off the proceeds of her late husband's estate, including approximately \$2,000 a month in rental income from rental properties.<sup>(7)</sup> Applicant speaks with his mother about once a week by telephone. These calls generally last 10 to 20 minutes in duration and usually concern issues of health and welfare.

Living with her is Applicant's 55-year-old sister. Disabled by polio since infancy, she is cared for by her mother. Like

her mother, she has never been active in political activities and she has no connection with a foreign government, except for about \$100 a month in disability income. When Applicant's mother is incapacitated or infirm, mother and daughter receive care from Applicant's brothers living in Taiwan.

One of Applicant's brothers in Taiwan retired from his position as a librarian at a local university<sup>(8)</sup>

over a decade ago. He is not involved in political activities and his only connection to a foreign government is his receipt of a state pension. The other brother retired four years ago from a private bank, from which he receives a pension from a privately controlled pension fund. This brother is not involved in political activities and has no connection with any foreign government. Each brother has two grown children. None of the children work for the government, although the male children each performed two weeks of compulsory military service.

A third brother lives in Singapore. After receiving his education in England, this brother accepted a job offer from a private Singapore engineering firm. He subsequently became a citizen of Singapore. He was most recently involved in a project regarding the expansion of Singapore's airport for his company. Because his children are grown and graduated from graduate school, he may soon retire. This brother similarly refrains from political activity and has no association with any foreign governments. Applicant's contact with his brothers is maintained by telephone, usually every two to three weeks.

Applicant describes his family as close.<sup>(9)</sup> In the past eight years, Applicant has visited his family in both Taiwan and Singapore.<sup>(10)</sup> In 1998, he visited Taiwan.<sup>(11)</sup> Accompanied by an old college friend who is a current co-worker in the U.S., the two men visited their families in Taiwan. After a two week stay, Applicant returned to the U.S. He returned in July 2002, accompanied by his family. They took the opportunity to visit Applicant's third brother in Singapore during a three-day layover, then proceeded to visit his mother and other siblings in Taiwan for two weeks. While in Taiwan, the family stayed with his mother.<sup>(12)</sup> In September 2004, Applicant again visited his mother for two weeks.<sup>(13)</sup> At the time of the hearing, a family trip to Taiwan was being planned for August 2005; Applicant had no plans, however, to visit Singapore in the foreseeable future.<sup>(14)</sup>

With the exception of \$100 sent to his sister for Chinese New Year, Applicant sends no money or support to his family abroad. His mother has no significant living expenses and lives off her late husband's private real estate investments.<sup>(15)</sup> Her children, except for Applicant, have future interests in her private real estate holdings. His brothers in Taiwan receive good retirements and, with their children grown and educated, have no significant expenses. His brother in Singapore has a professional's income and similarly has grown and educated children.

At issue are Appellant's contacts with family members living in two countries, Taiwan and Singapore. The majority of his contacts are in Taiwan. Most directly related to this case is Taiwan, a stable democracy with a strong and well-developed economy. The crime rate is considered low and tourists are mostly advised against the vice trades and markets.<sup>(16)</sup> As a democratic state, and as a nation included among those states actively collecting economic

information and conducting industrial espionage, Taiwan has been thoroughly assayed. <sup>(17)</sup>

Singapore is a small, stable, highly developed Parliamentary Republic which, in recent years, has attracted the attention of terrorists, Al Qaeda, and indigenous Islamic militant groups, drawn to its religiously and ethnically diverse population, geography, and wealth. <sup>(18)</sup> The government, however, generally respects human rights, although instances in which limitations to individual citizen's private rights were abridged occurred as the government deals with espionage, terrorism, narcotics, and organized crime. <sup>(19)</sup>

## POLICIES

To be eligible for assignment to sensitive duties, an applicant must meet the security guidelines contained in the Regulation. "The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security." <sup>(20)</sup> Appendix 8 of the Regulation sets forth the personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.

"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." <sup>(21)</sup> Each eligibility determination must be a fair, impartial, and commonplace decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Regulation. <sup>(22)</sup> *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 individual's age and maturity at the time of the conduct; (5) the voluntariness of the 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.* <sup>(23)</sup>

*DoD contractor personnel are afforded the right to the procedures contained in DoD Directive 5220.6 before any final unfavorable access determination may be made.* <sup>(24)</sup> *In security clearance cases, the Government initially must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information.* <sup>(25)</sup> *Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.* <sup>(26)</sup> *An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."* <sup>(27)</sup> *"Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."* <sup>(28)</sup>

*The same rules apply to trustworthiness determinations for access to sensitive positions.*

## CONCLUSIONS

*"A security risk may exist when an individual's immediate family, . . . 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." (29) A disqualifying condition (DC), such as DC 1, may arise when 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." (30) Applicant's mother, sister, and two brothers live in and are citizens of Taiwan, and a third brother lives in and is a citizen of Singapore. I conclude DC 1 is established.*

*A mitigating condition (MC) may apply when a condition invoking disqualification arises. Specifically, MC 1 may apply if these is "a determination that the immediate family member(s), cohabitant, or associate(s) in question would not constitute an unacceptable security risk." (31) Moreover, MC 5 may apply where foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities." (32)*

*Applicant has offered evidence to support a determination that his mother and his siblings do not constitute an unacceptable security risk. The evidence demonstrates that none are agents of a foreign power, or politically inclined. Moreover, they are financially independent and free of dependence upon their states of allegiance. Applicant's mother is a life-long homemaker caring for a dependent daughter who has been disabled since infancy. Although both receive a nominal sum from the government, for social security and disability, respectively, the combined amount of approximately \$200 a month is dwarfed by their privately derived, property rental income of around \$2,000 a month. Two of Applicant's brothers are products of private enterprise. One is retired and affording his retirement through a privately held corporate retirement fund; the other is nearing retirement from a private engineering firm with the prospect of a similarly private retirement stipend.*

*It is true that a third brother, retired from academe, is supporting his retirement on a state sanctioned retirement fund. That fact, however, does not necessarily indicate that he is dependent on those funds. Like his siblings, he apparently has a future share in the two condominium homes his mother inherited from her late husband, a private educator and entrepreneur. That legacy can safeguard his future. Moreover, inasmuch as he helps with his mother's care, it can be assumed that he can also rely upon her good graces should he ever face a pension-less future. That bond between mother and child, and indeed, the closeness of the family overall, would more than likely safeguard him as well.*

*Applicant's depiction of his family abroad paints a portrait of a family quietly living out of the spotlights. Like characters from Thackeray or Galsworthy, they are comfortably living on the upper edge of the middle class; neither dependent upon the state, nor so affluent as to inspire notoriety. As such, they are not likely to be affected by government influence or held out as subjects of even subtle duress. Indeed, Applicant thus far has been able to visit his family with some regularity without bringing attention to either himself his relations. His mother has been free to visit her son in the United States with the same results. Despite their interactions, all concerned have been able to conduct their private lives without interference, notoriety, or comment. Therefore, I find that Applicant's family members abroad do not pose an unacceptable risk, and find that MC 1 applies.*

*Furthermore, Applicant has no financial holdings abroad. His wife, his children, his work, his friends, his house, and his investments are solely U.S.-based. Currently, the only money he sends out of the country is a token check to his sister for the Chinese New Year. His only future investment was a future interest in a share on one of his mother's condominium homes, which he renounced in favor of his sister. In the utter absence of foreign financial interests, I find that C 5 applies.*

*I have considered Applicant under the "whole person" concept based on the evidence in the record before me. He is a mature, married, father of two U.S.-born children, who has made his place in the American mosaic. He is a graduate of a United States university, owns and lives in an American home, and has all of his investments - financial, professional, and social - here in the United States. While the United States is his home of preference and allegiance, it does not preclude him from remaining an honorable son who monitors his mother's health and well-being and, in the process, maintains a bond with his siblings.*

*Similarly, I have considered the countries at issue. 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, with the primary mission of defending itself against the People's Republic of China. It is true that Taiwan is an active collector of defense, medical, economic, and computer information through industrial espionage. <sup>(33)</sup> However, there is no indication that it has used coercive measures against its own citizens, especially in cases where the goal was to extract industrial secrets from relatives living abroad. Indeed, given relations between Taiwan and the U.S., the prospect seems as unlikely.*

*Singapore is a parliamentary republic with a strong economy and a solid record for individual human rights. It is true that it also has a track record of suspending some private rights in its pursuit of certain groups and miscreants, but there is no indication that it seems to gather or extract industrial secrets from the West through its citizens or its citizens' kin. Admittedly, both Singapore and Taiwan pose some degree of risk, but none so unacceptable to constitute a security risk regarding this Applicant.*

*Having concluded that Applicant's family abroad does not pose an unacceptable security risk, that Applicant has no financial ties to any foreign nations, and that any risks posed by Taiwan or Singapore, in general, do not so impact*

*these facts and considerations so as to shift the situation into one that actually poses an unacceptable risk, I conclude that Applicant is entitled to a favorable eligibility determination.*

### **FORMAL FINDINGS**

*Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 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 in this case, it is clearly consistent with the national interest to grant Applicant's eligibility for assignment to sensitive duties. Eligibility for positions designated ADP I/II is granted.*

*Arthur E. Marshall, Jr.*

*Administrative Judge*

1. *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 procedural rules set out in the Directive for security clearance cases are applied to ADP trustworthiness determinations. The adjudicative guidelines set out in Department of Defense Regulation 5200-2R, Personnel Security Program (Jan. 1987), as amended and modified (Regulation), are used to make ADP trustworthiness determinations.*
2. *Tr. 28.*
3. *Tr. 32.*
4. *Applicant's wife is also originally from Taiwan, where she worked for Citibank before emigrating to the United States at age 25. Neither she nor her family are noted as raising security concerns in the SOR.*
5. *Tr. 41. Applicant's mother owns two condominium homes; as one of her four heirs, Applicant had an interest share in one of the homes which he has renounced in favor of his sister in Taiwan.*
6. *Tr. 24.*
7. *Tr. 35. The real estate is unencumbered, so the income is direct profit.*
8. *The university "basically is the state-run university, but in Taiwan education is basically private." Tr. 19.*
9. *Tr. 22.*
10. *Applicant's trips have not exceeded a month in duration, so he has not needed a visa for transit. Tr. 33.*
11. *Applicant apparently misspoke when, during the proceeding, he described his first trip back to Taiwan. During that description, he stated it was in 1988, rather than 1998.. Tr. 21.*
12. *Applicant's children had previous contacts with their grandmother. When they were very young, she would visit the U.S. to help with their care. Tr. 2.*
13. *Tr. 33.*
14. *Id.*
15. *Applicant's late father was a teacher who owned a private school. When he sold the school, he retired and lived off the rental income derived from a couple of houses he owned. Tr. 34. Applicant's mother inherited the remainder of those investments, two condominiums. Upon the death of the matriarch, her children will have shares in the two properties, with Applicant's share renounced in favor of his sister. Tr. 41-42.*
16. *GE 4 (U.S. Department of State, Consular Information Sheet: Taiwan, June 2004).*
17. *See., e.g., GE 3 (U.S. Department of State, Background Note: Taiwan, November 2004); GE 5 (U.S. Department of State, Country Reports on Human Rights Practices: Taiwan, February 2004); GE 6 (U.S. Department of State, Overview of U.S. Policy Toward Taiwan, April 2004); GE 11 (Congressional Research Service, Issue Brief for Congress: Taiwan: Recent Developments and U.S. Policy Choices, July 2003). Although subsequently up-dated and amended, the Government also points to GE 14 (National Counterintelligence Center, Annual Report to Congress on Foreign Economic Collection and Industrial Espionage - 2000).*

18. *See., e.g., GE 7 (U.S. Department of State, Background Note: Singapore, August 2004); GE 8 (U.S. Department of State, Consular Information Sheet: Singapore, July 2004); GE 9 (U.S. Department of State, Country Reports on Human Rights Practices: Singapore, February 2004); GE 10 (U.S. Department of State, U.S. Counterterrorism Policy for East Asia and the Pacific, October 2003); GE 12 (Defense Intelligence Agency, Statement for the Record, Senate Armed Services Committee: Current and Projected National Security Threats to the United States, February 2004); GE 13 (Congressional Research Service, Report for Congress: Terrorism in Southeast Asia, August 2004).*

19. *GE 9, noted, supra, footnote 18.*

20. *Regulation ¶ C6.1.1.1.*

21. *Regulation Appendix 8.*

22. *Id.*

23. *Id.*

24. *Regulation ¶ C8.2.1.*

25. *Directive, ¶ E3.1.14.*

26. *Directive ¶ E3.1.15.*

27. *ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).*

28. *Directive ¶ E2.2.2.*

29. *Regulation, Appendix 8.*

30. *Id.*

31. *Id.*

32. *Id.*

33. *GE 14, noted, supra, footnote 17. Interestingly, the 2000 Annual Report to Congress by the National Counterintelligence Center (NACIC) identified Taiwan as one of the "most active" practitioners of industrial espionage. Subsequent annual reports, available at [www.nacic.gov](http://www.nacic.gov), ceased identifying the most active practitioners of industrial espionage by name. It may well be that the "most active" practitioners can no longer be reliably identified because there are so many. In 2000, NACIC identified but seven countries as "most active." By 2001 the number had risen to 75 and, by 2002, nearly 100 were identified.*