

DATE: January 18, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-09189

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 49-year-old engineer for a defense contractor was born in Taiwan in 1956. He came to the United States in the early 1980s to attend college. He has been working for the same company since 1984 (21 years) and first obtained a security clearance in 1991. He has not had any security-related problems. He has elderly parents and a sister in Taiwan and visits them once every year or two, but has no other ties to Taiwan. He has established close ties to the U.S. and considers himself to be a U.S. citizen only. Mitigation has been established. Clearance is granted.

STATEMENT OF THE CASE

On June 7, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding required under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether a clearance should be granted, denied or revoked.

On June 27, 2005, Applicant submitted a response to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge after a hearing. The matter was assigned to me on August 17, 2005. A Notice of Hearing was issued on September 16, 2005, setting the hearing for October 14, 2005. The Government offered five documents (Government's Exhibits (GX) 1-5). Applicant testified on his own behalf. The transcript was received on October 27, 2005.

STATEMENT OF FACTS

Applicant is 49 years old. He was born in the Republic of China (Taiwan) in 1956, came to the U.S. in 1981, and graduated from college. He obtained a Green Card, and began working for his present employer in 1984. He obtained/ a DoD security clearance in 1991 (GX 1 and Tr at 29). He became a citizen in 1988 and obtained a U.S. passport that

same year. The SOR contains two allegations, 1.a. and 1.b., under Guideline B (Foreign Influence). In his response, he admitted, with explanations, both allegations. The admissions are accepted and incorporated as Findings of Fact.

After considering the totality of the evidence of record, I make the following Findings of

Fact as to each SOR allegation:

Guideline B (Foreign Influence)

1.a. - Applicant's mother, sister, and father are citizens of and resident in Taiwan.

1.b. - Applicant traveled to Taiwan in 1990, twice in 1993, 1994, 1995, 1996, 1997, 1998, 2000, and 2001.

POLICIES

Each adjudicative decision must also include an assessment of nine generic factors relevant

in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding

the conduct, to include knowing 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 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, E.2.2. 1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of

whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving

those controverted facts alleged in the Statement of Reasons. If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security

concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence

of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

CONCLUSIONS

Applicant came to the U.S. in 1981, to attend college (GX 2). He became a U.S. citizen in 1988 and obtained a U.S. passport that same year. He last used his Taiwan passport in 1986, before he became a U.S. citizen. He considers himself to be an American citizen only (GX 3 and Tr at 21-23). His cited travels are mostly to visit his parents family in Taiwan (some company business-related), and he has always used his U.S. passport since becoming a U.S. citizen. He has worked for the same company for 21 years and has held a DoD security clearance since 1991 (Tr at 18).

His last visit was in 2001. Both parents are retired. All visits were for the purpose of social contact with his family. They

do not talk politics or about what Applicant does for a living. He has no other ties of any kind to Taiwan. Applicant avers he has never had any improper contacts and would promptly report any such in the future, regardless of the source (GX 3).

The record contains two sworn statements provided by Applicant, one in 1991 (GX 2) and one in December 2003 (GX 3). Applicant was granted a DoD security clearance in 1991 (GX 1). Each sworn statement contains substantially the same disclosures about his visits to family in Taiwan, and his feelings about the United States vis-a-vis Taiwan. From the record, it appears that nothing of substance has changed except that Applicant has been in this country for 14 years longer than he was in 1991, and that no security-related problems of any kind have occurred (Id.).

Applicant's post hearing submission (AX A) contains uniformly positive letters from individuals who have known him through his church (AX A1 and AX A3), and work. Everyone speaks highly of him. Two letters are from men (who also hold security clearances) who have worked with Applicant for 10 - 21 years and describe him as "one of the most ethical, gracious, and honest men I know. [He] is very diligent and dependable in all that he says and does . . ." (AX A2; see, also AX A4 and AX A5).

The DOHA Appeal Board has held that: "an applicant with immediate family members living in a country hostile to the United States should not be granted a security clearance without a very strong showing that those family ties do not pose a security risk" (Appeal Board Decision, DISCR Case No. 01-26893 (October 16, 2002)). Taiwan is not considered by the U.S. Government to be "hostile" to the United States (GX 4 and GX 5). However it is a country known to have an active intelligence operation in the United States. In any case, Appeal Board guidance states that: "family ties in [any] foreign country raise a prima facie security concern" that requires an applicant "to present evidence of rebuttal, extenuation or mitigation sufficient to meet the burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him" (Appeal Board Decision, ISCR Case No. 02-06478 (May 19, 2003)).

Considering the totality of the evidence, the family ties cited in the SOR establish a risk in

the abstract, in that the absence of problems in the past does not mean there will not be any in the future, but such absence must be taken into account with all other relevant evidence. There is no evidence suggesting that Applicant's family members are agents of a foreign government. In addition, even if they might be pressured to ask Applicant to act improperly, he strongly avers that he would promptly report any improper contacts. I conclude that Applicant would not feel himself forced to decide where his loyalties lie.

Guideline C - "The Concern: A security risk may exist when [members of]an individual's

immediate family.. . are (1) not citizens of the United States or (2) may be subject to duress. These

situations may create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of foreign countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure."

Disqualifying Condition - (1) "an immediate family member.. . is a citizen of, or resident or present in, a foreign country." Mitigating Condition (MC) 1, "the immediate family members. . . , are not agents of a foreign power or are in a position to be exploited by a foreign power in a way that could force the individual to choose between his loyalty to the persons involved and the U.S." is applicable.

All of the evidence shows Applicant to be a man of integrity, and one who understands his

responsibilities to his country, the United States. Based on the totality of the evidence, I conclude that Applicant does possess the good judgment, reliability, and trustworthiness required of anyone seeking access to the nation's secrets.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are

hereby rendered as follows:

Guideline B (Foreign Influence) For the Applicant

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the 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 or continue a security clearance for Applicant.

BARRY M. SAX

ADMINISTRATIVE JUDGE