

KEYWORD: Foreign Influence

DIGEST: Applicant, who is 50 years old, was born in Taiwan, immigrated to the U.S. in 1983, and became a U.S. citizen in 1991. He is employed as a senior testing engineer and seeks a non-critical/sensitive level of trust designation. While Applicant is trustworthy and reliable, his close familial relationships with his mother and seven siblings, who are citizens and residents of Taiwan, constitute an unacceptable security risk. Applicant's eligibility for assignment to a sensitive position is denied.

CASE NO: 04-09305.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. 04-09305

**DECISION OF ADMINISTRATIVE JUDGE**

**JOAN CATON ANTHONY**

**APPEARANCES**

**FOR GOVERNMENT**

Daniel F. Crowley, Esq., Department Counsel

## FOR APPLICANT

*Pro Se*

### SYNOPSIS

Applicant, who is 50 years old, was born in Taiwan, immigrated to the U.S. in 1983, and became a U.S. citizen in 1991. He is employed as a senior testing engineer and seeks a non-critical/sensitive level of trust designation. While Applicant is trustworthy and reliable, his close familial relationships with his mother and seven siblings, who are citizens and residents of Taiwan, constitute an unacceptable security risk. Applicant's eligibility for assignment to a sensitive position is denied.

### STATEMENT OF THE CASE

On December 22, 2003, Applicant submitted an application for a position of public trust. The Defense Office of Hearings and Appeals (DOHA) declined to grant the application under Department of Defense Regulation 5200.2-R, *Personnel Security Program*, (Jan. 1987), as amended (the "Regulation"), and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (the "Directive"). On June 7, 2005, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under Guideline B, Foreign Influence, of the Directive.

Applicant answered the SOR in writing on June 21, 2005. He elected to have a hearing before an administrative judge.

The case was assigned to me on December 1, 2005. With the concurrence of the parties, I conducted the hearing on January 23, 2006. At the hearing, Applicant affirmed his waiver of the 15-day notice provision found at ¶ E3.1.8. of Enclosure 3 of the Directive. The government introduced two exhibits, which were identified as Exhibits (Ex.) 1 and 2. The government also offered four official documents of the U.S. government for administrative notice; these documents were identified as I through IV. The Government's exhibits and documents for administrative notice were admitted to the record without objection. Applicant introduced no exhibits, presented the testimony of one witness, and testified on

his own behalf. DOHA received the transcript on January 27, 2006.

## FINDINGS OF FACT

The SOR contains two allegations of disqualifying conduct under the Foreign Influence Guideline of Appendix 8 of DoD 5200.2-R. In his answer to the SOR, Applicant admitted the two allegations and noted mitigating conditions. His admissions are incorporated as findings of fact.

Applicant is 50 years old and employed as a senior testing engineer by a defense contractor. (Ex. 1 at 3.) In his job, Applicant works on unclassified computers and does not have access to classified information. He tests subsets of data in software to be used in the military health care system. The software databases tested contain medical information related to claims and electronic records protected by the Privacy Act. Applicant carries out the testing by remote access to password protected accounts. He has been trained in the use of proper security measures to protect the sensitive data. (Tr. 30-36.) His employer seeks a noncritical/sensitive level of trust (ADP-II) designation for Applicant (Tr. 31.)

Applicant was born in the Republic of China (Taiwan). He left Taiwan and immigrated to the U.S. in 1983 to advance his education. He earned a master's degree in computer science in 1985. (Ex. 1; Tr. 38-39.) He became a U.S. citizen in 1991. (Ex. 1.)

Applicant and his wife were married in February 1988. (Ex. 1.) Applicant's wife was also born in Taiwan and immigrated to the U.S. to pursue an education. (Tr. 47.) She became a U.S. citizen in 1985. Applicant's wife's family members are U.S. citizens. (Ex. 2 at 1-2.) Applicant and his wife are the parents of two teen-aged children, both of whom are native-born U.S. citizens. (Ex. 1.)

Applicant's mother, two brothers, and five sisters are citizens and residents of Taiwan. Applicant's mother is 86 years old. Her husband, now deceased, was a farmer. She helped her husband with the farm work and raised their eight children. She now lives with one of Applicant's brothers, who is approximately 60 years old and a retired glass factory worker. Applicant's second brother is nearly 60 years old and a retired farmer. Both brothers supplement their retirement incomes with occasional side jobs. One works occasionally as a plumber and the other does construction work. (Tr. 41-42.)

Applicant's oldest sister, who is approximately 66 years old, and his second-oldest sister, now about 64 years old,

married farmers and did farm work. Both sisters are now retired. Applicant's third-oldest sister, a housewife, is married to a tailor. His fourth-oldest sister is about 52 years old and a homemaker. Her husband works for a water irrigation company. Applicant's youngest sister, a housewife, works part-time for a toy manufacturer. Her husband works for a motorcycle manufacturing company. (Tr. 41-45.) None of Applicant's family members has been employed by the Taiwanese government. Applicant has no financial interests in Taiwan, and he does not maintain contact with any other relatives or associates who are not U.S. citizens. (Ex. 2.)

Applicant speaks with his family members in Taiwan at least once a month by telephone. (Ex. 2.) He traveled to Taiwan to visit his mother and siblings in 1995, 1998, 1999, 2001, and 2004. When he travels to Taiwan, Applicant visits his mother and siblings for approximately two weeks. (Tr. 45-46.) Applicant's mother has visited him twice in the U.S. Two of his sisters have visited him once. (Tr. 46.)

Applicant's supervisor, a retired officer in the U.S. military, testified on Applicant's behalf at his hearing. The supervisor stated he had daily contact with Applicant and Applicant had worked under his supervision for approximately three years. The supervisor stated Applicant was a model worker who performed his technical, non-classified duties very well. The supervisor found Applicant to be "totally trustworthy" and "very competent." (Tr. 31-34.)

I take administrative notice that the U.S. has strong commercial ties with Taiwan, a multiparty democracy of approximately 23 million citizens who enjoy a high standard of living in an atmosphere of on-going tensions between Taiwan and the People's Republic of China (PRC). Taiwan seeks to become an independent State, an aspiration which is strongly opposed by the PRC, which sees Taiwan as a province of the PRC. While the U.S. sells certain defensive military equipment to Taiwan in accordance with the Taiwan Relations Act, it does not support Taiwan independence, and it opposes any unilateral attempt by Taiwan or the PRC to alter the status quo. (U.S. Department of State: Background Note: Taiwan, September 2005: Government Document I for Administrative Notice.) Additionally, I take administrative notice of Taiwan's active and historic roles as collector of competitive information and perpetrator of industrial espionage against U.S. companies producing militarily critical technologies such as information systems, sensors and lasers, and electronics. (Annual Report to Congress on Foreign Economic Collection and Industrial Espionage: 2000, Government Document III for Administrative Notice.)

## POLICIES

The President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). In Executive Order 12968, *Access to Classified Information*, § 3.1(b) (August 4, 1995), the President provided that eligibility for access to classified information shall be granted only to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to

abide by regulations governing the use, handling, and protection of classified information."

To be eligible for assignment to sensitive duties, an applicant must meet the security guidelines contained in DoD 5200.2-R. "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." DoD 5200.2-R, ¶ C6.1.1.1. Appendix 8 of the Regulation sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guideline at issue in this case is:

**Foreign Influence:** A security risk may exist when an individual's immediate family, including cohabitants, or 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.

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

"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." DoD 5200.2-R, Appendix 8. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. *Id.* An administrative judge should consider the following factors: (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 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. *Id.*

DoD contractor personnel applying for positions of trust are afforded the right to the procedures contained in DoD Directive 5220.6 before any final unfavorable access determination may be made. DoD 5200.2-R, ¶ C8.2.1. Initially, the Government 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. Directive, ¶ E3.1.14. Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. Directive, ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2.

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to

classified information.

## CONCLUSIONS

In the SOR, DOHA alleged that Applicant's mother, brothers, and sisters are citizens and residents of Taiwan (¶ 1.a.), and that Applicant traveled to Taiwan in at least 1995, 1998, 1999, and 2001. (¶ 1.b.)

The government's evidence and Applicant's admissions constitute evidence of a potentially disqualifying condition under the Foreign Influence Guideline of Appendix 8 of DoD 5200.2-R. The Regulation provides that it may be a disqualifying condition if "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." The Regulation does not define the phrase "immediate family member," but the Directive, ¶ E2.A2.1.3.1, defines the phrase to include a spouse, father, mother, sons, daughters, brothers, and sisters. Applicant's mother, two brothers, and five sisters are citizens and residents of Taiwan.

These circumstances "could create the potential for foreign influence that could result in the compromise of classified information." DoD 5200.2-R, Appendix 8, Foreign Influence. While the

mere possession of family ties with persons in a foreign country is not, as a matter of law, automatically disqualifying . . . [it] does raise a prima facie security concern sufficient to require an applicant to present evidence of rebuttal, extenuation or mitigation sufficient to meet the applicant's burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for the applicant.

ISCR Case No. 99-0424, 2001 DOHA LEXIS 59 at \*\*33-34 (App. Bd. Feb. 8, 2001).

The security concerns raised by Applicant's relatives who are citizens and residents of Taiwan may be mitigated where it is determined that "the immediate family member(s) . . . or associate(s) would not constitute an unacceptable security risk." DoD 5200.2-R, Appendix 8, Foreign Influence. The Regulation does not provide a definition or explanation for the phrase, "unacceptable security risk." However, in similar circumstances, ¶ E2.A2.1.3.1. of the Directive provides that it may be mitigating where the relatives 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 involved and the United States."

Applicant's mother, two brothers, and five sisters are not "agents of a foreign power." *See* 50 U.S.C. § 438 (requiring the application of the 50 U.S.C. § 1801(b) definition of "agent of a foreign power" in determining access to classified information). They are not employees of the Taiwanese government, or otherwise associated with a "foreign power."

In assessing whether relatives are vulnerable to exploitation, it is helpful to consider several factors, including the character of the government of the relevant foreign country. Taiwan is a democratic state in which its citizens enjoy economic prosperity and a relatively high standard of living. Additionally, Taiwan and the PRC are engaged in an ongoing struggle regarding Taiwan's political and economic autonomy and identity. In their efforts to gain strategic or economic advantage, some individuals and groups in Taiwan could seek to obtain, through illegal methods, militarily critical technologies such as information systems, sensors and lasers, and electronics from companies doing business as government contractors in the United States. These actions would threaten U.S. security interests.

It is important to consider the vulnerability to duress of Applicant's relatives. Applicant's mother is elderly and retired. Several of his older siblings are also retired. Under these circumstances, Applicant's mother and retired siblings could be vulnerable to exploitation, pressure or duress by a government intent on obtaining information perceived as necessary for its survival. While the government of Taiwan and the U.S. government have a mutually cooperative relationship, the security interests of the two countries are not synonymous.

Another factor that can mitigate security concerns identified in the Foreign Influence Guideline is a finding that an applicant's contact and correspondence with foreign citizens are casual and infrequent. Applicant's frequent and regular contacts with his family members in Taiwan are based on strong familial ties of affection and obligation. These contacts raise the issue of Applicant's vulnerability to pressure or duress applied indirectly through his ties with his relatives. Applicant's ties of affection and obligation could be exploited by a government seeking sensitive information or technologies.

Nothing in Applicant's testimony or demeanor suggested he was not a loyal American citizen and credit to his adopted country. 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 decision as to Applicant's allegiance, loyalty, or patriotism.

In arriving at my conclusion, I balanced all the factual circumstances and applied them to the adjudicative criteria established in the Regulation in light of the whole person concept. I considered the likelihood that the government of Taiwan or a foreign power in that country would exploit Applicant's relatives. I have also considered the relatives' vulnerability to pressure, coercion, or duress, and Applicant's ties of affection or obligation to them and to the United States. I conclude that Applicant has not mitigated the Foreign Influence security concerns arising from his close family

ties to relatives who are citizens and residents of Taiwan. Accordingly the allegations in subparagraphs 1.a. and 1.b. of the SOR are concluded against the Applicant.

### **FORMAL FINDINGS**

My conclusions as to each allegation in the SOR are:

Paragraph 1, Foreign Influence: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

### **DECISION**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant's eligibility for assignment to sensitive duties. Eligibility is denied.

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Joan Caton Anthony

Administrative Judge

