

DATE: June 26, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-09564

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant's wife and in-laws are citizens of Taiwan. His in-laws continue to live there. They are not agents of the Taiwanese government, or in a position to be exploited by that government. There is no reasonable possibility of coercion in this case. The Applicant is knowledgeable about his security responsibilities, and shows that he can fulfill them. Sufficient mitigation is shown. Clearance is granted.

STATEMENT OF THE CASE

On July 22, 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 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 August 21, 2005, and requested a hearing. The case was assigned to another Administrative Judge on September 22, 2005, and a Notice of Hearing was issued on November 8, 2005. The case was received by the undersigned on November 29, 2005.

A hearing was held on November 30, 2005, at which the Government presented three documentary exhibits. Testimony was taken from the Applicant, who also submitted 38 exhibits. The transcript was received on December 19, 2005.

FINDINGS OF FACT

The Applicant is 40, married and has a Bachelor of Science degree in Computer Science. He is employed by a defense contractor as a software configuration manager, and he seeks to obtain a Secret-level DoD security clearance in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a security clearance, based upon the allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR. They are based on the Applicant's Answer to the SOR, the exhibits and the live testimony.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant may have foreign connections which potentially make him vulnerable to coercion, exploitation or pressure.

The Applicant was born in Oregon in 1965. His parents were born in China, immigrated to the United States to continue their education, and became naturalized American citizens in 1971. (Government Exhibit 1 at 11-12.) The Applicant has lived his entire life in the United States, and speaks no other language fluently but English. (Applicant's Exhibit 29; Transcript at 36.)

The Applicant's wife was born in Taiwan in 1969, and immigrated to the United States to continue her education in 1991. She has received two advanced degrees from American universities, and works in an education related field. (Applicant's Exhibits 3, 4 and 5.) The Applicant and his wife were married in 2002, and are expecting their first child. (Applicant's Exhibits 7, 23.) The Applicant and his wife have recently established a small business, which is in her education related field. (Applicant's Exhibits 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22; Transcript at 40-41, 46-50.) They have over \$400,000 in assets in the United States. (Applicant's Exhibits 8, 9, 10, 11, 12, 25, 26, 27 and 28.) She is a lawful permanent resident of the United States, and anticipated filing for her American citizenship in January 2006. (Applicant's Exhibits 1 and 2.)

The Applicant's parents-in-law are citizens and residents of Taiwan. His father-in-law is a semi-retired music professor and his mother-in-law is a housewife. Neither of them have worked for the Taiwanese government in any way. They are financially self-sufficient in Taiwan. Neither one of them speaks English, and the Applicant's contact with them is very superficial, since he only speaks English. (Transcript at 50-59.) During his one trip to Taiwan, in December 2002 and January 2003, the Applicant's wife had to translate virtually all of his conversations. (Transcript at 61-62.) His wife contacts her parents every two or three months. The Applicant and his wife have no current plans to travel to Taiwan, and his in-laws do not plan on traveling to the United States. (Transcript at 67-68.)

The Applicant did not travel to the People's Republic of China in 1995 and 1997. He only traveled to Hong Kong and Macau. Those places were colonies of the United Kingdom and Portugal at those times. (Transcript at 59-61.)

The Applicant stated, "[I]f any one asks me or try to coerce me or anything to try to gain access to unauthorized information through coercion or non-coercive means, I would definitely report that to the proper authorities as soon as possible." (Transcript at 62.)

Mitigation.

The Applicant and his family have been part of the defense industry for over 30 years, and is very proud of the work they have done. In addition, both the Applicant and his parents discussed his family's "culture of not talking about what's going on at work." (Applicant's Exhibits 29 and 30; Transcript at 63-65.)

His manager submitted a letter on the Applicant's behalf. He states that the Applicant is "hard working, dedicated, honest and tenacious." The manager recommends the Applicant for a position of trust. (Applicant's Exhibit 24 at 2.)

Applicant's Exhibit 34 is the State Department's 2004 "Country Reports on Human Rights Practices" for Taiwan. This report starts out saying, "Taiwan is a multiparty democracy." The report went on to say that while there were problems in some areas, "The authorities generally respected the human rights of citizens." This was true in such areas as arbitrary arrests or detention and torture. (Applicant's Exhibit 34 at 1-2.) Also noted was the statement on page 5, "The authorities did not restrict freedom of internal travel. Foreign travel by passport holders was common." Finally, the report states on page 7, "A wide variety of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials were often cooperative and responsive to their views."

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. 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 will be set forth under CONCLUSIONS, below.

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 factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- 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 guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may have foreign connections that could lead to the exercise of poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a 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."

CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the granting of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant has foreign connections which could cause a security concern (Guideline B).

The Applicant, on the other hand, has successfully mitigated the Government's case. The Applicant's wife is from Taiwan, but she has established deep roots in the United States. She is a professional woman of independent means. As of the date of the hearing, she was eligible to apply for American citizenship in January of 2006.

His visits to Hong Kong and Macau have no security significance. The Applicant has made one trip to Taiwan since his marriage to visit his in-laws. The fact that he only speaks English makes it impossible to have a relationship with them. His wife's relationship with her parents appears to be dutiful, but nothing more. His relationship with the in-laws is certainly "casual and infrequent." Finally, none of her family in Taiwan is an agent of the government or, in my opinion, in a position to be exploited by the Taiwanese government. In this regard, the report from the State Department on human rights practices in Taiwan (Applicant's Exhibit 34) is very worthwhile. The reasonable possibility that the Applicant can be coerced by his wife's family is virtually nil.⁽¹⁾

Disqualifying Condition E2.A2.1.2.1. (*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*) is the only one which applies on its face. Under the particular facts of this case, the following Mitigating Conditions apply: E2.A2.1.3.1. (*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 loyalty to the person(s) involved and the United States*), and E2.A2.1.3.3. (*Contact and correspondence with foreign citizens are casual and infrequent*).

"[A] Judge is not limited to Adjudicative Guidelines mitigating conditions when deciding whether an applicant has demonstrated extenuation or mitigation."⁽²⁾ The application of the Directive's General Factors to the Applicant's foreign connections also justifies granting the Applicant a security clearance. The Applicant is eligible for clearance under relevant General Factor h. The totality of this Applicant's conduct and circumstances, as set forth at length above, including the virtually non-existent potential for exploitation, still warrants a favorable finding under the whole person standard. (See Applicant's Exhibit 34.)

The record shows that the Applicant has been a patriotic American citizen his entire life, he has substantial financial assets in the United States, as are all of his immediate family (his parents, wife and unborn child). The Applicant has a favorable character reference, and he is alert to the security concerns presented by his particular circumstances and the responsibilities incumbent upon him. The Applicant testified about the importance of his family in the United States, and his pride in being an American citizen and a member of the defense industry. Using the whole person standard, the Applicant has mitigated the security significance of his foreign connections and he is eligible for a security clearance.

On balance, it is concluded that the Applicant has successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

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.

Subparagraphs 1.a.: For the Applicant.

Subparagraphs 1.b.: For the Applicant.

Subparagraphs 1.c.: For the Applicant.

Subparagraphs 1.d.: 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 the Applicant.

Wilford H. Ross

Administrative Judge

1. I have considered Government Exhibit 2 in reaching this conclusion.
2. ISCR Case No. 03-17620 at 4 (App. Bd. Apr. 17, 2006).