

DATE: May 3, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 04-09892

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

B. Daniel Lynch, Esquire

SYNOPSIS

The Applicant's parents are citizens and residents of the Republic of China (Taiwan). They are not agents of the Taiwanese government, or in a position to be exploited by that government. The rest of his extended family, except for one uncle, live in the United States and are American citizens. 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 May 26, 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 June 15, 2005, and requested the case be decided without a hearing. On August 23, 2005, the Applicant, through his attorney, requested a hearing. The case was received by the undersigned on September 7, 2005, and a Notice of Hearing was issued on October 11, 2005.

A hearing was held on October 21, 2005, at which the Government presented three documentary exhibits. Testimony was taken from the Applicant, who called three additional witnesses and also submitted three exhibits. The transcript was received on November 3, 2005.

FINDINGS OF FACT

The Applicant is 27, single and has a Master's degree. He is employed by a defense contractor as a Staff Engineer, 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 Taiwan in 1978. He emigrated from Taiwan in 1996, when he was 18, in order to continue his studies in the United States. The Applicant became a naturalized American citizen in June 2002.

Since he moved to the United States, the Applicant has traveled three times to Taiwan. These trips occurred in December 1999, August 2002 and December 2002. The last two trips were after he became an American citizen, and he used his United States passport. Since he began work for his current employer in June 2003, the Applicant has not traveled to Taiwan. He has no current plans to travel there. (Transcript at 49.)

The Applicant's parents both are citizens of Taiwan and live there. His father is a retired university professor and his mother a retired junior high school teacher. They live on their savings and retirement. The Applicant does not send his parents money, and he has no financial interests in Taiwan. He contacts his parents by telephone about once a month. (Transcript at 44-45, 48-49.) His only other relative in Taiwan is an uncle. He has no contact with this relative, last seeing him 15 years ago.

All of the Applicant's other close relatives live in the United States and are American citizens. This includes his older brother, who is a native born American citizen. (Government Exhibit 1, question 9.) The Applicant also has two aunts and two uncles who live in the United States, are American citizens, and have children who are native born American citizens. (Transcript at 42-43, 46-48, 54-55; Applicant's Exhibit C at 2-3.) None of these relatives are agents of a foreign power and one of his cousins also works in the United States defense industry.

The Applicant was asked what he would do if he was approached by a foreign intelligence service. He stated, "I would report to my Superior Office at work and then the FBI." (Transcript at 50.)

Mitigation.

The Applicant submitted letters of recommendation from people who know him in, and out, of the defense industry. These letters describe the Applicant as "a very reliable and trustworthy person," (Applicant's Exhibit A at 1); "an extremely responsible and diligent person who possesses a strong sense of moral values and loyalty to the country," (Applicant's Exhibit A at 2); and "a man possessing both a high sense of honor and a strong moral code," (Applicant's Exhibit A at 5). All of the correspondents strongly support granting the Applicant a security clearance.

Three of his co-workers also testified for the Applicant, including his supervisor. The Applicant is described as being "diligent" and "dedicated." (Transcript at 18.) The supervisor describes the Applicant as "responsible," and "self-motivated." (Transcript at 32.) These people also believe the Applicant should be granted a security clearance.

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 be subject to foreign influence 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 parents are retired educators who are not agents of the Taiwanese government, or in a position to be exploited by that government. He has not traveled to Taiwan since he began working for the defense industry and only talks to his parents once a month. It is difficult to call any family relationship "casual and infrequent," but this one comes close. Except for one uncle, the

remainder of his extended family, including his brother, all live in the United States and are American citizens. The possibility that the Applicant can be coerced by his family is virtually nil.

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*).

The evidence shows that the Applicant is a patriotic American citizen. The Applicant eloquently testified about his pride in being an American citizen and a member of the defense industry. He is knowledgeable about security and understands his responsibility. Using the whole person standard, the Applicant has mitigated the security significance of his foreign connections and is eligible for a security clearance. In making this decision, I have considered the documentary evidence set forth in Government Exhibits 2 and 3.

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.

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 the Applicant.

Wilford H. Ross

Administrative Judge