

KEYWORD: Foreign Influence

DIGEST: Applicant's wife is a naturalized United States citizen, who was born in the Republic of China (Taiwan). Her three brothers are citizens and residents of Taiwan. Two of her brothers are private businessmen and one brother produces television commercials. He and his wife have worked up to 10 hours a month editing business documents written in English for one brother-in-law's wholesale marketing business. In the early 1990's, he helped this same brother-in-law set up his banking business in the United States. Applicant has mitigated the government's concerns under foreign influence. Clearance is granted.

CASE NO: 04-11947

DATE: 05/08/2006

DATE: May 8, 2006

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In re:

SSN:

Applicant for Security Clearance

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ISCR Case No. 04-11947

**DECISION OF ADMINISTRATIVE JUDGE**

**MARY E. HENRY**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Esq., Department Counsel

## FOR APPLICANT

*Pro Se*

### SYNOPSIS

Applicant's wife is a naturalized United States citizen, who was born in the Republic of China (Taiwan). Her three brothers are citizens and residents of Taiwan. Two of her brothers are private businessmen and one brother produces television commercials. He and his wife have worked up to 10 hours a month editing business documents written in English for one brother-in-law's wholesale marketing business. In the early 1990's, he helped this same brother-in-law set up his banking business in the United States. Applicant has mitigated the government's concerns under foreign influence. Clearance is granted.

### STATEMENT OF THE CASE

On November 14, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR 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 Applicant. Specifically, the SOR set forth security concerns arising under Guideline B (Foreign Influence) of the Directive. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Applicant submitted a notarized response to the allegations, which was received on December 5, 2005. He elected to have his case decided on the written record in lieu of a hearing.

Department Counsel prepared a File of Relevant Material (FORM) and provided Applicant with a complete copy on December 22, 2005. Applicant had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He did not submit a response or additional evidence. This case was assigned to me on March 28, 2006.

## FINDINGS OF FACT

Applicant admitted the allegations in subparagraphs 1.a. through 1.d. of the SOR.<sup>(1)</sup> Those admissions are incorporated here as findings of fact. After a complete review of the evidence in the record and upon due consideration, I make the following additional findings of fact:

Applicant is a 43-year-old senior test support engineer for a defense contractor.<sup>(2)</sup> He has worked for this contractor or its predecessor for more than five years.<sup>(3)</sup> He served twelve years in the United States Navy.<sup>(4)</sup> His current status is inactive reserve.<sup>(5)</sup> He completed a Security Clearance Application (SF 86) in May 2002.<sup>(6)</sup> He was granted a security clearance in 1992, while still in the Navy.<sup>(7)</sup>

After his discharge from the military, he received an associate degree from a United States (U.S.) technology school.<sup>(8)</sup> He married in 1986.<sup>(9)</sup> His wife was born in Taiwan, and had become a naturalized United States citizen prior to their marriage.<sup>(10)</sup> His parents and his wife's parents are deceased.<sup>(11)</sup> His wife's three brothers are citizens and residents of Taiwan.<sup>(12)</sup> He has never met one brother, who is a general contractor.<sup>(13)</sup> To his knowledge, his wife has not spoken with this brother in years.<sup>(14)</sup> Her second brother is a producer of television commercials.<sup>(15)</sup> Applicant has never met this brother.<sup>(16)</sup> Her third brother owns an international wholesale marketing business for lawn and garden tools and related products.<sup>(17)</sup> During his visit to the United States in 1998, this brother-in-law briefly met with Applicant and his wife at the airport.<sup>(18)</sup> Applicant also visited with this brother-in-law in 1991 in an unknown location.<sup>(19)</sup> His wife speaks monthly with her second and third brothers.<sup>(20)</sup> He rarely communicates with them.<sup>(21)</sup>

In 1991 or 1992, Applicant became involved in his brother-in-law's wholesale marketing business as a favor to his wife. He worked about 10 hours a month until 2002.<sup>(22)</sup> His wife has assumed his duties, working about 10 hours a month.<sup>(23)</sup> He and his wife primarily correct the grammar on business flyers, bills, contracts, and catalogues written in English by his brother-in-law's wife.<sup>(24)</sup> They do not translate documents from Mandarin Chinese to English or English to Mandarin Chinese.<sup>(25)</sup> He does not speak Mandarin Chinese.<sup>(26)</sup> At the time he gave his statement to the security investigator, he anticipated that her work for the business would decline as his brother-in-law had started using the internet to do most of his business.<sup>(27)</sup>

From 1991 until 1993, Applicant helped his brother-in-law set up a wire transfer process with U.S. banks.<sup>(28)</sup> His role was to make sure the banking process worked.<sup>(29)</sup> The wire transfers did not involve cash transfers. Instead, the wire transfer related to direct deposits.<sup>(30)</sup> His brother-in-law paid him a total of \$700.00 for his work during this three-year

period of time.<sup>(31)</sup> In the past, he also occasionally made air travel arrangements for his brother-in-law's trips to the U.S. Now his brother-in-law purchases the airline tickets on the internet.<sup>(32)</sup> On one occasion, his brother-in-law shipped products for a convention to Applicant, who then repackaged and mailed the products to the convention site.<sup>(33)</sup> Neither he nor his wife have any equity interest in this business.<sup>(34)</sup> There is no record evidence of any incident involving pressure, coercion or threat to his brothers-in-law or their businesses by individuals or foreign governments seeking security information from him.

Taiwan is a multiparty democracy, a U.S. ally, and a major trading partner. Its Constitution provides its citizens with many rights similar to those provided to U.S. citizens.<sup>(35)</sup> It has a good human rights record. It maintains a large military establishment whose primary mission is to the defense of Taiwan against the Peoples Republic of China. The Taiwan Relations Act, 22 U.S.C. §§ 3301-3316, is the legal basis for the unofficial relationship between the U.S. and Taiwan.<sup>(36)</sup> On the other hand, Taiwan is an active collector of defense, medical, economic, and computer information through industrial espionage.<sup>(37)</sup> With the relocation of labor-intensive industries to other countries, Taiwan is transforming to a high technology and service-oriented economy.<sup>(38)</sup>

## POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the adjudicative process provision in Paragraph E2.2., Enclosure 2 of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Included in the guidelines are disqualifying conditions and mitigating conditions applicable to each specific guideline. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. In addition, each security clearance decision must be based on the relevant and material facts and circumstances, the whole-person concept, and the factors listed in the Directive. Specifically, these are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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>(39)</sup>

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>(40)</sup> The government has the burden of proving controverted

<sup>(41)</sup>

<sup>(42)</sup>

facts. The burden of proof is something less than a preponderance of the evidence. Once the government has met its burden, the burden shifts to the applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.<sup>(43)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(44)</sup>

No one has a right to a security clearance,<sup>(45)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(46)</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>(47)</sup> Section 7 of Executive Order 10865 specifically provides 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." The decision to deny an individual a security clearance is not necessarily a determination as to the allegiance, loyalty, and patriotism of an applicant.<sup>(48)</sup> It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guideline most pertinent to an evaluation of the facts of this case:

**Foreign Influence - Guideline B: A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the United States or 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.**

## CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to the allegations set forth in the SOR:

Applicant's wife was born in Taiwan and is now a U.S. citizen, living with him. Her three brother are citizens and residents of Taiwan. Immediate family members include a spouse, father, mother, sons, daughters, brothers, and sisters.<sup>(49)</sup> Although the definition of family member does not include in-laws, the Appeal Board has opined that it includes a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse.<sup>(50)</sup> Thus, these presumed ties of affection "could create the potential for foreign influence that could result in the compromise of classified information."<sup>(51)</sup> The mere possession of family ties with a person in a foreign

country is not, as a matter of law, disqualifying under Guideline B.<sup>(52)</sup> However, such ties do 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 him.<sup>(53)</sup> The government has established its case under Disqualifying Condition Foreign Influence (DC FI) 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*), and DC FI E2.A2.1.2.2. (*Sharing living quarters with a parent or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists*). Likewise, the government has established that DC FI E2.A2.1.2.6. (*Conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government*) applies. He and his wife have worked for her brother's business on a limited basis for a number of years. Because this business is in Taiwan, the potential for adverse foreign influence or duress exists.

Applicant bears the burden of demonstrating that his family members in Taiwan are not in a position where they could be exploited by a foreign power in a way that could force him to choose between loyalty to those relatives and the U.S. In order to met his burden of proof at Foreign Influence Mitigating Condition (FI C) 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 notwithstanding its facially disjunctive language, Applicant must establish that his family members, cohabitants or associates are not agents of a foreign power, and are not in a position to be exploited by a foreign power in a way that could force Applicant to chose between the person(s) involved and the U.S.<sup>(54)</sup> As his wife is a U.S. citizen, she would not be subject vulnerable to exploitation, pressure or duress from a foreign government, nor is she an agent of a foreign government. None of his brothers-in-law work for the government of Taiwan or an agency of the Taiwanese government. Two are self-employed businessmen, and the third is in the entertainment business. Thus, they are not agents of the Taiwanese government.

In determining whether his brothers-in-law are in a position to be exploited by the government of Taiwan, the character of the Taiwanese government and its relationship with the U.S. is an important factor. Taiwan is a democracy, a strong U.S. ally, and a major U.S. trading partner. It is, however, an active collector of defense, medical, economic, and computer information. There is no history of the Taiwanese government exploiting or using influence, pressure, force, incentive, or coercion against its citizens or residents for the purpose of making the holder of a security clearance in the U.S. act adversely to the U.S. In the last 15 years, no pressure has been exerted on Applicant's brothers-in-law for classified information accessible by Applicant.

Another factor to consider is the vulnerability of Applicant's brothers-in-law to exploitation by foreign powers in Taiwan. His wife's brothers are not employees of the Taiwan government, but rather commercial businessmen. Because of the nature of their businesses - entertainment, lawn and garden products, and building, they are less vulnerable to any potential government threat because their business products are not related to the information collected by the Taiwanese government. FI MC E2.A2.1.3.1.

Applicant has not met two of his brothers-in-law and does not talk with either of them. In the last 15 years, he has visited with the third brother-in-law twice, in 1991 and 1998. The last visit took place at an airport in the United States and was for a very short period of time. He does not talk with any of his brothers-in-law on the telephone, although his

wife speaks monthly by telephone with two of her brothers. He has established that his contacts with his brothers-in-law are casual and infrequent. FI MC E2.A2.1.3.3.

Applicant and his wife provided one brother, a small business owner, with editing assistance for company brochures, bills, contracts, and catalogues by correcting English grammar errors. Neither have translated any documents from Mandarin Chinese to English or visa versa. He has stopped his editing work for the company, although his wife continues to do some editing work for it. Neither he nor his wife have never received any financial remuneration for this work, nor have they been given an equity interest in this family company for their work.

For two years in the early 1990s, Applicant acted as an intermediary between this brother-in-law and U.S. banks to help his brother-in-law set up direct deposit business accounts in the U.S. He never handled any business transactions; rather, he made sure that the entire process worked properly. He did receive a small financial payment for his work. He has not done any additional work related to his brother-in law's U.S. banking needs in at least 15 years. In the years he did this work, he was not been threatened by anyone connected with the Taiwanese government or other foreign governments. FI MC E2.A2.1.3.5.(*Foreign financial interests are minimal and not sufficient tp affect the individual's security application*) applies. Applicant has mitigated the government's concerns under Guideline B. Accordingly, for the reasons stated, I find that it is clearly consistent with the national interest to grant a security clearance to Applicant.

### **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 (Foreign Influence): FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

## **DECISION**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant a security clearance for Applicant. Clearance is granted.

Mary E. Henry

Administrative Judge

1. Item 3 (Response to SOR, signed November 25, 2005) at 1-2.
2. Item 4 (Applicant's security clearance application, dated May 28, 2002) at 1-2.
3. *Id.* at 2.
4. *Id.* at 6.
5. *Id.*
6. *Id.* at 1.
7. *Id.* at 6, 10.
8. *Id.* at 2.
9. *Id.* at 4.
10. *Id.* at 4-5. His wife became a U.S. citizen in 1979.
11. *Id.*; Item 5 (Applicant's signed statement, dated on October 14, 2003) at 4.
12. Item 5, *supra* note 11, at 4.
13. *Id.*
14. *Id.*



15. *Id.*
16. *Id.*
17. *Id.*
18. *Id.*; Item 4, *supra* note 2, at 7.
19. Item 5, *supra* note 11, at 4.
20. *Id.*
21. *Id.*
22. *Id.* at 1-2.
23. *Id.* at 2.
24. *Id.*
25. *Id.*
26. *Id.*
27. *Id.*
28. *Id.* at 3.
29. *Id.*
30. *Id.*
31. *Id.*
32. *Id.*
33. *Id.* at 2.
34. *Id.* at 3.
35. Item 8 (United States Department of State, Background Note: Taiwan, dated December 2005) at 12.
36. *Id.* at 4-8.
37. Item 6 (Annual Report to Congress on Foreign Economic Collection and Industrial Espionage - National Counterintelligence Center) at 5-11.
38. Item 8, *supra* note 35, at 11.
39. Directive, Enclosure 2, ¶ E2.2.1.1. through E2.2.1.9.
40. ISCR Case No. 96-0277 (July 11, 1997) at 2.
41. ISCR Case No. 97-0016 (App. Bd., December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.
42. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

43. ISCR Case No. 94-1075 (App. Bd., August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.
44. ISCR Case No. 93-1390 (App. Bd. Decision and Reversal Order, January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.
45. *Egan*, 484 U.S. at 531.
46. *Id.*
47. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
48. Executive Order No. 10865 § 7.
49. Directive, Enclosure 2, ¶ E2.A2.1.3.1.
50. *See* ISCR Case No. 02-31154, at 4, fn 4 (citing ISCR Case No. 01-03120 (Feb. 20, 2002))(Sept. 25, 2005).
51. Directive, ¶E2.A2.1.1.
52. ISCR Case No. 99-0424, 2001 DOHA LEXIS at 33-34 (App. Bd. Feb. 8, 2001)
53. *Id.*
54. ISCR Case No. 02-31154 (App. Bd. Sept. 22, 2005) at 5-6; *see* 50 U.S.C. § 1801(b) (defining "agent of a foreign power").