

DATE: May 31, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-01708

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR GOVERNMENT

Jeff A. Nagel, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant has one sibling who is a citizen and resident of Taiwan. His mother-in-law is also a citizen and resident of Taiwan. They are not agents of the Taiwanese government, or in a position to be exploited by that government. The Applicant's recent trips to Taiwan were to visit his ill father and attend his funeral. 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 August 11, 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 29, 2005, and requested a hearing. The case was received by the undersigned on September 28, 2005, and a Notice of Hearing was issued on October 13, 2005.

A hearing was held on November 14, 2005, at which the Government presented six documentary exhibits. Testimony was taken from the Applicant, who also submitted one hearing exhibit and three post-hearing exhibits. The transcript was received on November 30, 2005.

FINDINGS OF FACT

The Applicant is 59, married and has a Master's degree in electrical engineering. He is employed by a defense contractor as an 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 Mainland China 1946. His family moved to Taiwan in 1949. He emigrated from Taiwan in 1970 in order to continue his studies in the United States. The Applicant became a naturalized American citizen in April 1984. His wife was born in Taiwan, and she became a naturalized American citizen in July 1982. They were married in 1975, and have two American born children. (Government Exhibit 1, Transcript at 33-34.) They have about \$1,500,000 in assets in the United States. (Applicant's Exhibit B, Transcript at 35-36.)

The Applicant has traveled three times to Taiwan, once in 2002 and twice in 2004. The first two trips were to see his father, who was very ill. The Applicant's father passed away in October 2004. The Applicant went to Taiwan to attend the funeral. (Transcript at 23-25.) The Applicant has always told his co-workers and supervisors about his trips to Taiwan. (Transcript at 31-32.) He has no plans to move to Taiwan permanently. (Transcript at 37.)

He has one sister who continues to live in Taiwan, a second who is a Japanese citizen and lives in the United States, and a third sister who is an American citizen and also lives in the United States. The sister who lives in Taiwan is a retired college administrator. The Taiwanese sister is not an agent of the Taiwanese government. He speaks to this sister very rarely, two or three times a year. (Transcript at 25-29.) In 1984, the Applicant successfully applied for an immigrant visa for this sister, but she chose not to emigrate to the United States. (Applicant's Exhibit A.)

The Applicant's mother-in-law is a citizen of Taiwan and lives there. She speaks a dialect which the Applicant does not understand. His wife is the only one who communicates with her. The mother-in-law is suffering from Alzheimer's, so she does not even recognize her daughter's voice. (Transcript at 29-30.)

The Applicant was asked what he would do if he was approached by a foreign intelligence service. He stated that he would not submit to any such attempt. (Transcript at 37.) He has received appropriate security training from his employer. (Applicant's Exhibit C.)

Mitigation.

The Applicant has been part of the defense industry for many years, and is very proud of the work he does. (Transcript at 46-48.) His manager submitted a letter on the Applicant's behalf. He states, "[The Applicant's] work ethic is of the highest standard." The manager also states that the Applicant has "earned my trust and confidence." He recommends the Applicant for a position of trust. (Applicant's Exhibit D.)

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 parents are deceased. The evidence shows that the Applicant's relationship with his sister in Taiwan is not terribly close. He has not traveled to Taiwan since his father's death and he only calls his sister on an infrequent basis. It is difficult to call any family relationship "casual and infrequent," but this one comes close. His wife's mother is in extremely poor health, suffering from Alzheimer's disease. Finally, neither the Applicant or his wife have family members in Taiwan who are an agent of the government or, in my opinion, in a position to be exploited by the Taiwanese government. The

possibility that the Applicant can be coerced by his family is virtually nil.

I have specifically considered the evidence of Taiwan's history of attempting to wrongfully obtain technology. (Government Exhibits 3 through 6.) On the other hand, Taiwan is a multi-party democracy. There is little or no information that the Taiwanese government has threatened or attempted to intimidate it's citizens to force Americans to reveal technological information or trade secrets.

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 Adjudicated Guidelines mitigating conditions when deciding whether an applicant has demonstrated extenuation or mitigation."⁽¹⁾ 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.

The record shows that the Applicant has been a patriotic American citizen for many years, he has substantial financial assets in the United States, as are almost all of his immediate family (especially his wife and children). 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 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.

Subparagraph 1.a.: For the Applicant.

Subparagraph 1.b.: For the Applicant.

Subparagraph 1.c.: 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. ISCR Case No. 03-17620 at 4 (App. Bd. Apr. 17, 2006).