

DATE: August 31, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 06-01889

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Rita C. O'Brien, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a software engineer for a major defense contractor, failed to mitigate foreign influence security concerns since his parents and one sister live in Taiwan where they are citizens and another sister lives in the PRC. No evidence was offered concerning their activities or work in Taiwan. Clearance is denied.

STATEMENT OF THE CASE

On March 13, 2006, the Defense Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry* as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified issued a Statement of Reasons (SOR) to 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 Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated March 22, 2006, Applicant responded to the allegations set forth in the SOR, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on May 23, 2006. A complete copy of the file of relevant material (FORM), consisting of nine documents, was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. None was received. The case was assigned to, and received by, me on July 28, 2006.

FINDINGS OF FACT

Applicant is a 40-year-old employee of a defense contractor since 2004 working as a senior software engineer. He admitted the factual allegations pertaining to foreign influence under Guideline B in the SOR and offered certain explanatory information. The admissions are incorporated herein as findings of fact. After a complete review of the

evidence in the record and upon due consideration of the record the following additional findings of fact are made:

Applicant came to the U.S. in 1991 from Taiwan and graduated from a major U.S. university with a degree in computer sciences in 1994. Both parents and one sister live in Taiwan. His parents are 75 and 67 respectively. He sponsored his parents for permanent residency in the U.S. and it has been granted. However, they choose to live in Taiwan until they can obtain U.S. citizenship because of lack of inexpensive health insurance in the U.S.. He applied for permanent residency in the U.S. for an older sister who is a citizen of Taiwan now living in the PRC to send her daughter to a university there. An older brother who is a citizen of Taiwan lives in the U.S. Applicant has had little contact with him since he came to the U.S. He would have sponsored his sister in Taiwan for permanent residency but INS has a limit on the number of sponsorships one person may undertake. Thus, he has been instrumental in assisting his family obtain permanent residency and is working to obtain citizenship for all of them

Applicant has traveled only twice to Taiwan in the last 15 years since coming to the U.S. The trips were in 1998 and 2002 each for a two-week period. The reason for both trips was vacation and to visit his family.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, 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." *Id.* at 527.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (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. Directive. (E2.2.1) Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "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.) "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b).

CONCLUSIONS

Based on the evidence of record, including Applicant's admissions, the Government has established reasons to deny him a security clearance because of foreign influence. Having established such reasons, the Applicant has the burden to establish security suitability through evidence which refutes, mitigates, or extenuates the disqualification and demonstrates that it is clearly consistent with the national interest to grant a security clearance. ISCR Case No. 99-0424, 2001 DOHA LEXIS 59 at 33-34 (App. Bd. Feb. 8, 2001).

Under Guideline B, foreign influence, "A security risk may exist when an individual's immediate family 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." (E2.A2.1.1.) Having immediate family members who are citizens of, and residing in a foreign country, may raise a disqualifying security concern. (E2.A2.1.2.1.)

Under Guideline B, security concerns may be mitigated by a determination "that the immediate family members 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." (E2.A2.1.3.1)

The government has offered evidence in the form of official documents (Exhs. 8 and 9) to show that the government of Taiwan actively seeks economic intelligence through an office it maintains in the U.S. Two cases are identified showing the activities of Taiwan in economic intelligence gathering from U.S. citizens. The first involved a Taiwanese company and the second

concerned a senior official of the Department of State who had a relationship with a Taiwanese woman and divulged classified information to her. Neither case has any relevance to the facts in this case save to show that economic intelligence gathering does occur and is sponsored by the government of Taiwan, a fact otherwise established through U.S. government official documents.

The evidence in this case is very sparse since it is submitted on the written record. There is no evidence as to the work, if any, being done by Applicant's family in Taiwan, and whether any of them work, or ever worked, for the government of Taiwan. The same is true as to his sister in the PRC and his brother in the U.S. There is no evidence about the Applicant that could be used to justify application of the whole person analysis. Absent such evidence, I must conclude based on the relationship of the Applicant to his family and his involvement with their well being, that his family ties are sufficient to disqualify him from holding a security clearance at this time so long as his family continues to reside in Taiwan and the PRC.

After considering all the evidence in its totality, and as an integrated whole to focus on the whole person of Applicant, I conclude the status of Applicant's family members justifies a finding that it is not clearly consistent with the national interest to grant him a security clearance.

FORMAL FINDINGS

Formal Findings as required by the Directive, (E3.1.25), are as follows:

Paragraph 1. Guideline B AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

DECISION

After full consideration of all the facts and documents presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Charles D. Ablard

Administrative Judge