

DATE: December 27, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 06-01984

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esq., Department Counsel

Pamela Clay Benson, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 51 years old, married with three children, college degrees in computer sciences, and employed by a defense contractor. Applicant was born on Taiwan and immigrated to the U.S. for a masters degree. He became a U.S. citizen in 1990. His parents and siblings are citizens and residents of Taiwan. He donates money to help support his parents and his mother-in-law. Applicant has not mitigated the foreign influence security concern. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On March 27, 2006, DOHA issued a Statement of Reasons⁽¹⁾ (SOR) detailing the basis for its decision-security concerns raised under Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing on April 12, 2006 and elected to have a hearing before an administrative judge. The case was assigned to me on August 11, 2006. On August 30, 2006, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Applicant waived the 15 day notice period. (Tr. 5, 6). The Government and the Applicant submitted exhibits that were admitted into evidence. DOHA received the hearing transcript (Tr.) on September 12, 2006.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 51 years old, married with three children who were born in the U.S. He works in computer technology for a

defense contractor in the information technology area. He is well-regarded by his supervisor and co-workers for his professional competency and work ethics. He has a masters degree in computer science from a U.S. university. He received his bachelors degree from a Taiwanese university in 1977. He was born in Taiwan, and immigrated to the U.S. in 1979. He became a U.S. citizen in 1990. He surrendered his Taiwanese passport when he became a U.S. citizen and obtained a U.S. passport. In 1973 he served three months in the Taiwanese military because of the conscription law there. (Tr. 19, 22, 24, 29, 31, 41, 42, 51-53, 64, 68; Exhibit 1)

Applicant's father and mother are 72 years old. His father worked as a street vendor in Taiwan and is now retired. His mother worked in their home. Neither has more than an elementary school education. They are not connected to the Taiwanese government. Both have little savings and live now with one other son. They are citizens and residents of Taiwan. Applicant feels obligated to help support them and sends them \$6,000 annually. He intends to continue sending them this money in the future. He telephones his parents once a month. He does not discuss his job with his Taiwanese relatives. He would not succumb to coercion if confronted with that choice, choosing to protect his family in the U.S. first, and would report any inappropriate foreign contacts to the security office or agencies in the U.S. (Tr. 34-36, 56, 59, 62, 63-66; Exhibit 1)

Applicant's brother is a college graduate working in the computer operations for a clothing company in Taiwan. He is married with a child. Applicant's sister is married to a restaurant manager and helps him in that restaurant. Both are Taiwanese citizens and live there. He talks to his brother when he calls home, and to his sister on each Chinese New Year. (Tr. 36, 37, 56, 57; Exhibit 1)

Applicant's uncle, his mother's brother, is eight years older than Applicant. Applicant telephones him once or twice a year in Taiwan, where he lives and is a citizen. Applicant has a cousin who came to the U.S. from Taiwan to attend college. He is currently in the U.S. seeking employment and applying for permanent residency status. His cousin's mother is a U.S. citizen who spends part of her time in the U.S. and the remainder of her time in Taiwan. Applicant does not speak to his aunt. He has another cousin in Taiwan to whom he speaks once or twice a year. (Tr. 37-39, 56)

Applicant's wife, a software engineer, was born in Taiwan and became a U.S. citizen in 1990. Her mother lives in Taiwan where she is a citizen. She calls her mother every two weeks. Her father is deceased. Applicant's wife has a sister and two brothers who live in Taiwan. Her sister is a police officer, one brother is a dentist and the other brother is a private security guard. She and her sister speak to each other monthly. Applicant sends his mother-in-law \$2,500 yearly to help support her. Applicant intends to continue that support in the future. (Tr. 35, 50, 58, 59, 67, 68; Exhibit 1)

Applicant traveled to Taiwan in November/December 1997, December 1998 to January 1999, January 2000, and February 2005. The December 1998 to January 1999 visit was a family visit to see his parents and to have his children meet their Taiwanese relatives. That trip was not listed on his security clearance application (SCA), the SF-86. Applicant also went to the Peoples Republic of China (PRC) on business in March 1999. The 2000 trip was on business with a side visit to his parents in Taiwan. The February 2005 trip was made during the course of a business trip to Singapore. On the Chinese New Year of 2005 he went to Taiwan to visit his parents instead of sitting in his hotel room for a week while Singapore celebrated Chinese New Year. (Tr. 34, 43-49, 55, 56)

Taiwan has an elected democratic government. It engages in industrial and economic espionage. Proprietary information technology is high on the Taiwanese list of targeted information to be acquired by their agents from foreign governments and businesses. There are 23 million Taiwanese citizens. Their per capita income in 2005 was \$15,000, cited by their president in his New Year's speech as economic progress under his administration. (Exhibits 2 at 15, 3, 6, and 7)

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. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information with Industry*

§ 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." *See* ISCR Case No. 01-20700 at 3.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required.

In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 pertinent 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 (*See* Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. 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.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. *See* ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance." *See* ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." *See* 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* Exec. Or. 12968 § 3.1(b).

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:

Guideline B: Foreign Influence: The Concern: 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 are relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.
E2.A2.1.1

CONCLUSIONS

The Government showed Applicant and his wife immigrated from Taiwan and became U.S. citizens in 1990. They have

three children who are native-born U.S. citizens. The Government also proved , and Applicant's testimony confirmed, that Applicant's parents and siblings are citizens and residents of Taiwan.. Applicant sends \$6,000 annually to help support his aged retired parents, and a further \$2,500 to his mother-in-law annually. His sister-in-law is a Taiwanese police officer, a government employee.

Disqualifying Conditions (DC) DC 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. E2.A2.1.2.1), DC 3 (Relatives who are connected with any foreign government. E2.A2.1.2.3), and DC 6 (Conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government. E2.A2.1.2.6) apply to these facts.

Applicant has the burden of proof to persuade me that any Mitigating Condition (MC) applies to his case. With his present and continuing commitment to support his parents and mother-in-law financially while they are alive, and his sister-in-law's government position as a police officer, MC 1 does not apply. His frequent and regular contacts with his family in Taiwan by telephone means the contacts are not casual and infrequent, so MC 3 does not apply. None of the other three MC's are relevant under the facts. Therefore, no MC applies.

Under the whole person concept, Applicant's conduct, in addition to the aspects listed above, demonstrates his affection for his parents and motivates his financial gifts to them that will continue into the future. That affection and annual donation are recurring conduct, making him vulnerable to coercion, exploitation, or pressure by the Taiwanese government. This potential exploitation is heightened by that government's history of industrial and economic espionage in several business areas, especially information technology. Information technology is the area of business endeavor in which both Applicant and his wife work and have great experience. Therefore, I conclude the whole person concept and the foreign influence security concerns against Applicant, as I am not persuaded that he has met his burden of proof on these issues.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

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

Subparagraph 1.f: Against Applicant

DECISION

In light of all of the circumstances 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.

Philip S. Howe

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).