

DATE: January 31, 2007

In re:

SSN:-----

Applicant for Security Clearance

ISCR Case No. 06-16997

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

Candace L. Le'i, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 43 years old and has worked for a federal contractor since 2003. He was born in Taiwan and became a naturalized U.S. citizen in 2003. He renounced his Taiwan citizenship and surrendered his Taiwanese passport. He has not exercised any rights as a Taiwan citizen since becoming a U.S. citizen. Applicant has family members who are citizens and residents of Taiwan. After analyzing all of the facts and considering the whole person, Applicant has mitigated the security concerns under Guideline C, foreign preference and Guideline B, foreign influence. Clearance is granted.

STATEMENT OF CASE

On July 31, 2006, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating it was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. [\(U\)](#) The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline C, foreign preference, and Guideline B, foreign influence.

In a sworn statement dated August 14, 2006, Applicant responded to the SOR allegations. Applicant elected to have his case decided on the written record. Department Counsel submitted the government's file of relevant material (FORM) on October 13, 2006. The FORM was mailed to Applicant on October 16, 2006, and received on October 20, 2006. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant provided additional material on November 27, 2006. The Government did not object. The case was assigned to me on November 29, 2006.

FINDINGS OF FACT

Applicant is 43 years old and has worked for a federal contractor since 2003 as an engineer. He immigrated to the U.S. in 1988. He received his Ph.D from a prestigious American university in 1994, and worked for a federal contractor from

1994 to 2000. From 2000 to 2003, Applicant worked for a non-federal contractor. Applicant was born in Taiwan and became a naturalized U.S. citizen in 2003. His wife is also a naturalized citizen of the U.S. and their two daughters were born in the U.S.

Applicant possessed a Taiwanese passport that was issued on February 27, 2002, prior to when he became a U.S. citizen. The passport expires on the same day in 2012. Applicant provided a document "renouncing his passport" to the Taipei Economic and Cultural Office in Los Angeles (TECO) on August 7, 2006. (2) He stated in his Answer to the SOR, "The passport was issued 18 months before I became a naturalized citizen. The passport was never used after I took the oath, proving that I am honest and loyal." (3) He went on to say "I am willing to make additional efforts that may further mitigate the concern. Please advise what can be done." Applicant submitted an Affidavit to the Taiwanese Embassy "giving up the passport." (4) He defaced the passport, which was witnessed by two people and provided a copy of the defaced passport. (5) He then surrendered the original passport to the TECO and provided the registered mail receipt. (6)

Applicant does not consider himself a dual citizen and did not state on his security clearance application that he was a dual citizen. (7) However, he stated in his Answer to the SOR, "I renounce dual citizenship. When I swore in the naturalization process I had taken an oath to renounce dual citizenship." (8) Applicant provided a copy of the oath of allegiance that states, "I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, of whom or which I shall have heretofore, been a subject or citizen." (9) Applicant has not exercised any rights he may have had as a Taiwan citizen after becoming a naturalized U.S. citizen.

Applicant is one of three brothers who could potentially inherit property in Taiwan owned by his mother. The equity in the property and its net worth is approximately \$350,000, with a mortgage of \$150,000. If Applicant were to inherit one-third of the net worth, the inheritance value would be approximately \$116,000. Applicant estimates his current assets in the U.S. are valued at approximately \$800,000. Applicant filed an Affidavit with the Taipei Economic and Cultural Office in Los Angeles renouncing his inheritance rights of the property or of any money from the sale of the property owned by his mother. He specifically stated he willingly gives up the right to inherit any such property. Since that declaration he sought legal counsel and has attested to a new declaration that he has no knowledge of his mother's estate plans, nor has she made her intentions known to him about them. (10) He has not been told by his mother that he will inherit any of her property.

Applicant's mother, two brothers and three sisters-in-law are citizens and residents of Taiwan. One brother is an officer in the Taiwanese Coast Guard and one sister-in-law is employed by a Taiwanese Government Research Facility as a librarian. Applicant contacts his mother monthly and during the holiday season. (11) He has begun the process to obtain a green card for his mother and plans to relocate her to the U.S. Applicant's contact with his brothers are "more infrequent and sporadic." (12) He claimed he does not have a strong bond with his brothers. (13) He left the family after high school and for the past 25 years he has lived in different cities and then immigrated to the U.S. He does have contact with them, their wives and families when the family gathers at his mother's for holiday and festive occasions. His wife's sister resides in Taiwan and he has little contact with her, although his wife speaks with her monthly. He has made a conscious effort not to have unnecessary communications with his family. (14) Applicant does not discuss his job with his relatives. (15)

Applicant traveled to Taiwan in 1998, 1999, three times in 2000, approximately three times in 2001, and once in 2003. The trips in 1998 and 1999 were to visit his mother. The trips between 2000 and 2003, were for work related to his position as a research and development department manager for a non-federal contractor. (16) He visited his mother while on business in Taiwan. He has not been to Taiwan since working for his current employer. (17) He has intentionally avoided unnecessary foreign travel to reduce his chance of being exposed to any coercion. (18)

Taiwan separated from the Peoples Republic of China (PRC) in 1949, and has developed a strong economy since its separation. (19) There are criminal cases documenting Taiwan's active participation and collection of U.S. economic

intelligence.⁽²⁰⁾ Although Taiwan engages in industrial espionage, no evidence was presented that the country uses coercive measures to gain access to information. Taiwan does not have a questionable human rights record showing exploitation in this context.

Applicant has held a interim security clearance for three years.⁽²¹⁾ His skills are valued by his employer and are important in furthering the success of a program that benefits the military.⁽²²⁾ His employer and supervisor believe he has demonstrated the highest standard of safeguarding classified information and he has been a respectful, loyal and ethical citizen.⁽²³⁾ He possesses a rare and valuable technical skill in his field.

Applicant professes to be deeply rooted in the U.S. He has traveled extensively throughout the U.S. and loves his adopted country. He takes exceptional pride in being a citizen of the U.S. and relishes the opportunity to prove his loyalty to it. He has a strong desire to make a significant contribution to the success of his assignment.⁽²⁴⁾ He is a loyal husband and father who considers himself stable, honest and of unquestionable integrity.⁽²⁵⁾ He is dedicated to using his talents to help his adopted country.⁽²⁶⁾

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. 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.

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.⁽²⁷⁾ The government has the burden of proving controverted facts.⁽²⁸⁾ The burden of proof is something less than a preponderance of evidence.⁽²⁹⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against

him.⁽³⁰⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽³¹⁾

No one has a right to a security clearance⁽³²⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽³³⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽³⁴⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽³⁵⁾ 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 consideration of all the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline C-Foreign Preference- a security risk may exist when an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interest of the United States.

Guideline B-Foreign Influence-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 obligations 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 interest in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

In accordance with a memorandum issued by Assistant Secretary of Defense for Command, Control, Communication, and Intelligence, Arthur L. Money, dated August 16, 2000, (Money memorandum), a security clearance must be denied or revoked for an Applicant with a foreign passport "unless the applicant surrenders the foreign passport...." Surrender of the passport contemplates returning it to the issuing authority.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guideline are set forth and discussed in the conclusions below.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards.

Based on all the evidence, I have considered Foreign Preference Disqualifying Condition (FP DC) E2.A3.1.2.1 (*The exercise of dual citizenship*), FP DC E2.A3.1.2.2 (*Possession and/or use of a foreign passport*), FP DC E2.A3.1.2.6 (*Using foreign citizenship to protect financial or business interests in another country*). Applicant presented considerable evidence that he has not exercised dual citizenship. Under these facts, passive possession of a foreign passport, which was issued prior to Applicant becoming a U.S. citizen, is not an exercise of dual citizenship. Therefore, I find FP DC E2.A3.1.2.1 does not apply. There is evidence that Applicant obtained a Taiwanese passport while he was a Taiwanese citizen and the passport expires in 2012. I find that because Applicant no longer possesses the passport, nor did he use it after becoming a U.S. citizen, FP DC E2.A3.1.2.2 does not apply. There is evidence that Applicant could potentially inherit property worth approximately \$116,000. Applicant has not done anything to protect a speculative inheritance interest. To the contrary, Applicant has renounced his foreign citizenship when he swore allegiance to the U.S. when he was naturalized and did so again in his answer to the SOR. Although his mother owns property in Taiwan, this property does not belong to Applicant, nor does he know how his mother will dispose of it upon her death. He initially renounced his potential inheritance rights and also provided an explanation that he is unaware that he actually has any prospective inheritance. I find FP DC E2.A3.1.2.6 does not apply.

Although I did not find any foreign preference disqualifying conditions applied I have nonetheless considered all the Foreign Preference Mitigating Conditions (FP MC) in the context of the factual scenario presented in this case. I considered FP MC E2.A3.1.3.2 (*Indicators of possible foreign preference (e.g., foreign military service) occurred before obtaining United States citizenship*), and FP MC E2.A3.1.3.4 (*Individual has expressed a willingness to renounce dual citizenship*) and conclude both apply in this case. Applicant obtained a Taiwanese passport while he was a Taiwanese citizen. Once he became a U.S. citizen he did not use the passport for foreign travel. He contacted the TECO in Los Angeles and renounced "possession of the passport." His Answer states that he submitted an Affidavit to the Taiwanese Embassy "giving up the passport." He defaced the passport and sent it by registered mail to the TECO. He stated, "I am willing to make additional efforts that may further mitigate the concern. Please advise what can be done." Applicant's affidavit, answer, and defaced passport that was witnessed and mailed to the TECO, are sufficient actions to support he does not have a foreign passport. He took affirmative action to disavow himself from his former country, by words and affidavit. I find he has done so with sufficient documentation to support both and he has complied with the Money Memorandum.

Based on all the evidence, I have considered Foreign Influence, Disqualifying Condition (FI DC) 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*), FI DC E2.A2.1.2.2 (*Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists*), FI DC E2.A2.1.2.3 (*Relatives, cohabitants, or associates who are connected with any foreign government*) and FI DC E2.A2.1.2.8 (*A substantial financial interest in a country, or in any foreign-owned or operated business that could make the individual vulnerable to foreign influence*). Applicant's mother, two brothers and three sisters-in-law are residents and citizens of

Taiwan. Hence, FI DC E2.A2.1.2.1 applies. One of Applicant's brothers is a Taiwanese Coast Guard Officer and a sister-in-law works as a librarian for a government agency. Both relatives are connected in some form with the Taiwanese government. Therefore, FI DC E2.A2.1.2.3 applies. Applicant obviously shares living quarters with his wife and his wife maintains contact with her sister in Taiwan. Therefore FI DC E2.A2.1.2.2 applies. Applicant's mother owns property in Taiwan. If Applicant's mother were to leave him a share of the property after she died, he potentially would have a financial interest in Taiwan. That interest does not exist at this point and is merely speculative. The mere possibility of obtaining an inheritance sometime in the future is not an actual financial interest in the country. Therefore, I find FI DC E2.A2.1.2. 8 does not apply.

I have considered all the mitigating conditions and specifically considered Foreign Influence Mitigating Condition (FI MC) 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 away that could force the individual to choose between loyalty to the person(s) involved and the United States*) and FI MC E2.A2.1.3.2 (*Contacts and correspondence with foreign citizens are casual and infrequent*). Applicant's mother, two brothers and three sisters-in-law are citizens and residents of Taiwan. Two of these relatives have jobs with the government and are agents of a foreign power. Applicant's relationship with his mother is more than casual and infrequent. He maintains regular monthly contact and contacts her on special occasions. Regarding the other relatives, Applicant has some contact with them but it is infrequent. However, because it is for family gatherings it is not casual. Therefore, I must find FI MC E2.A2.1.3.2 does not apply.

The Whole Person

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I considered all the evidence provided and also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I considered Applicant's contributions to his company and his reputation. I considered Applicant's allegiance and loyalty to the U.S. I also considered his efforts to renounce his former citizenship and do all he was required. He has lived in the U.S. for 18 years, is married and his two daughters were born and are being raised in the U.S. His substantial assets are all in the U.S. He has purposely not returned to Taiwan so as not to raise security concerns. He is a high level engineer with specialized talents that he has used to further the United States' military mission. He has held an interim security clearance for three years working with classified material and has been conscientious and careful in its handling and has not had any adverse reports. To the contrary, his supervisors praise his attention in this area. He does not have a criminal background, or a history of financial difficulties or poor employment record. His employers have provided letters attesting to his status as a most valued employee. Most of Applicant's trips to Taiwan were for business prior to working for a federal contractor. His contact with his relatives, other than his mother, is minimal. Applicant's contact and correspondence with his in Taiwan are infrequent, but are more than casual. I have considered that Taiwan has conducted industrial espionage, but their human rights record does not show they use coercion on their citizens or others to gain information. I have exhaustively considered all of the evidence and the whole person when analyzing the security concerns in this case. Based on his background and substantial ties to the U.S. Applicant's potential for exploitation is low. I find Applicant has successfully mitigated the security concerns raised by the foreign preference and foreign influence security concerns. Therefore, I am persuaded by the totality of the evidence in this case, that it is clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guideline C and Guideline B are decided for 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 Foreign Preference (Guideline C) FOR APPLICANT

Subparagraph 1.a. For Applicant

Subparagraph 1.b. For Applicant

Paragraph 2 Foreign Influence (Guideline B) FOR APPLICANT

Subparagraph 2.a. For Applicant

Subparagraph 2.b. For Applicant

Subparagraph 2.c. For Applicant

Subparagraph 2.d. For Applicant

Subparagraph 2.e. For 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 Applicant. Clearance is granted.

Carol. G. Ricciardello

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

2. GE 3.

3. *Id.*

4. GE 3.

5. Supplemental response dated November 27, 2006.

6. *Id.*

7. GE 4, Question 3.

8. GE 3.

9. GE 3.

10. Supplemental response dated November 27, 2006 at page 6.

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.* at 3.

15. GE 3.

16. Supplemental response dated November 27, 2006.
17. *Id.*
18. *Id.* at 5.
19. GE 10.
20. GE 7; *U.S. v. Keyser*, Case No. 1:04M803, United States District Court, Eastern District of Virginia, Alexandria Division.
21. GE 5 at 2.
22. GE 5.
23. GE 5.
24. Supplemental response dated November 27, 2006 at 5.
25. *Id.*
26. *Id.*
27. ISCR Case No. 96-0277 at 2 (App. Bd. Jul. 11, 1997).
28. ISCR Case No. 97-0016 at 3 (App. Bd. Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.
29. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
30. ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.
31. ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.
32. *Egan*, 484 U.S. at 531.
33. *Id.*
34. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
35. Executive Order 10865 § 7.