

DATE: December 14, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 06-18400

**DECISION OF ADMINISTRATIVE JUDGE**

**MARTIN H. MOGUL**

**APPEARANCES**

**FOR GOVERNMENT**

Melvin A. Howry, Esq., Department Counsel

**FOR APPLICANT**

Robert H. Bohn, Esq.

**SYNOPSIS**

Applicant was born in the Republic of China (Taiwan) in 1981, moved to the United States in 1998 with his parents, and became a naturalized United States citizen in 2004. His mother and father have also become United States citizens. Applicant's sister and brother-in-law are citizens and residents of Taiwan. Neither of these family members belong to, participate in, or are active with any government agency of Taiwan. They are not in a position to be exploited by Taiwan in a way that could force Applicant to choose between loyalty to these family members and his loyalty to the United States. Mitigation has been shown. Clearance is granted.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4), issued a Statement of Reasons (SOR), dated August 31, 2006, 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. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted or denied. The SOR was based on Foreign Influence (Guideline B) concerns because of the foreign residency and/or citizenship of close family members.

Applicant filed a notarized response, dated September 20, 2006, to the allegations set forth in the SOR, and requested a hearing before a DOHA Administrative Judge. On October 19, 2006, the case was assigned to this Administrative Judge to conduct a hearing. Pursuant to formal notice, dated November 8, 2006, a hearing was held on November 29, 2006.

At the hearing, Department Counsel offered seven documentary exhibits (Government Exhibits 1-7) and no witnesses were called. Applicant offered 21 documentary exhibits (Exhibits A-U) and offered his own testimony. The transcript (Tr) was received on December 8, 2006.

## FINDINGS OF FACT

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline B (Foreign Influence) of the Directive. The SOR contains two allegations, 1.a., and 1.b., under Guideline B. Applicant admitted both of the SOR allegations. The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the admitted documents, and the testimony of Applicant, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 25 years old. He is employed by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

Applicant was born in Taiwan in 1981. He moved to the United States in 1998, with both of his parents, and he became a naturalized United States citizen in July 1, 2004. When Applicant received his United States citizenship, he petitioned to change his name to a more American sounding name (Exhibit L).

Applicant is unmarried and has no children. He received a Bachelor of Science degree in Electrical Engineering from a United States university in 2005 (Exhibit F). He is in the process of applying to United States universities to pursue a Masters of Business Administration degree.

Applicant's mother and father have also become naturalized United States citizens, residing in the United States. His mother is a retired housewife and lives with Applicant. His father works in the motel industry for Applicant's two uncles in the United States (Tr at 54).

### **Guideline B (Foreign Influence)**

Applicant's sister and brother-in-law are citizens and residents of Taiwan. His sister is a stay-at-home mother, and his brother-in-law owns and manages a private auto body shop. Neither of them belong to, participate in, or are active with any government agency of Taiwan, or receive any benefits from the Taiwanese Government. Their daughter was born in the United States and is a dual United States and Taiwanese citizen. Applicant speaks to his sister once a month, and sees her once a year, when she visits the United States. His sister and brother-in-law are in the process of applying for United States residency and citizenship. (Exhibits S and T).

Applicant visited Taiwan from December 2004 to January 2005, to see his sister and brother-in-law. He testified that during this trip, he saw no one else whom he knew, except these family members (Tr at 55-56).

Applicant does not have any financial interest in Taiwan. At this time he has limited financial holdings, but what he has is only in the United States (Exhibits G and H).

### **Mitigation**

Applicant submitted five letters from individuals who know him in different capacities in his place of employment. These letters all discussed Applicant in extremely positive terms as a hard working, conscientious and trustworthy individual (Exhibits A-E). He also introduced his 2005 Employee Performance Review for his first year of employment (Exhibit J). This first evaluation was fairly positive as all of his assessments met or exceeded expectations.

Finally, Applicant testified as to his strong feelings for the United States and his desire to remain here. He also stated that he has registered, as required, for Selective Service (Tr at 43-45).

## POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines that must be carefully considered in evaluating an individual's security eligibility and making the overall common sense determination required. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and

circumstances presented. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, etc.

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.

Each adjudicative decision must also include an assessment of: (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*).

### **BURDEN OF PROOF**

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance. Assessment of an applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of rehabilitation.

A person who seeks access to classified information enters into a fiduciary relationship with

the U.S. Government that is predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability, or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

### **CONCLUSIONS**

Under Guideline B, a security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he is bound by affection, influence or obligation, are not citizens of the United States or may be subject to duress. Based on the evidence of record, the Government has established an initial reason to deny Applicant a security clearance because of Guideline B (Foreign Influence).

Applicant's sister and brother-in-law are citizens and residents of Taiwan. The Taiwanese citizenship and residency of Applicant's family create the potential for foreign influence that could result in the compromise of classified information because it makes Applicant potentially vulnerable to coercion, exploitation, or pressure. The possession of such ties raises a security concern sufficient to require Applicant to present evidence in rebuttal, extenuation, or mitigation sufficient to meet his burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him. This Applicant has done.

The evidence of Applicant's family members, who are citizens and residents of Taiwan, comes within Disqualifying Condition (DC) E2.A2.1.2.1, "immediate family members, or persons to whom the individual has close ties of affection or obligation, who are citizens of, or resident in, a foreign country."

The primary factors in mitigation that I have considered include: Applicant's history since coming to the United States including receiving Bachelor of Science degree in Electrical Engineering from a United States university in 2005; becoming a U. S. citizen in 2004; the lack of government involvement of Applicant's family in Taiwan, who are in the process of moving to the United States; his devotion to his parents in the United States; and finally his strong feelings for this country.

Based on the nature of the overall record and the totality of the evidence, I have determined that his family in Taiwan does not constitute an unacceptable security risk, and Mitigating Condition (MC) E2.A2.1.3.1, "a determination that the immediate family member(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," applies.

After considering all of the evidence of record on these issues, I conclude that the mitigating evidence substantially outweighs the evidence supporting the SOR and even in the unlikely event pressure was exerted upon Applicant to compromise classified information, he would resist it and would report the incident to the proper authorities.

On balance, it is concluded that Applicant has overcome the Government's evidence opposing his request for a security clearance.

### **FORMAL FINDINGS**

#### **Paragraph 1. Guideline B: FOR APPLICANT**

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: 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.

Martin H. Mogul

Administrative Judge