

KEYWORD: Foreign Influence; Foreign Preference

DIGEST: Applicant, a 56-year-old employee of a defense contractor, mitigated one foreign preference security concern arising from holding a Taiwan passport by surrendering the passport to his corporate security office to be returned to him only when he no longer needs a security clearance. He failed to mitigate another relating to use of a Taiwan passport for two trips in 1999 and 2006 after obtaining a U.S. passport. He failed to mitigate foreign influence concerns arising from multiple trips to Taiwan and the PRC over ten times in the past 12 years. He did not mitigate foreign influence concerns relating to three siblings whom he rarely contacts since such relationships cannot be casual notwithstanding the limited contact. He mitigated concerns as to two females friends in the PRC with whom he cut all contact after obtaining his present employment. Clearance is denied.

CASENO: 06-24420.h1

DATE: 09/26/2007

DATE: September 26, 2007

In Re:

SSN: -----

Applicant for Security Clearance

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) ISCR Case No. 06-24420
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**DECISION OF ADMINISTRATIVE JUDGE
CHARLES D. ABLARD**

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a 56-year-old employee of a defense contractor, mitigated one foreign preference security concern arising from holding a Taiwan passport by surrendering the passport to his corporate security office to be returned to him only when he no longer needs a security clearance. He failed to mitigate another relating to use of a Taiwan passport for two trips in 1999 and 2006 after obtaining a U.S. passport. He failed to mitigate foreign influence concerns arising from multiple trips to Taiwan and the PRC over ten times in the past 12 years. He did not mitigate foreign influence concerns relating to three siblings whom he rarely contacts since such relationships cannot be casual notwithstanding the limited contact. He mitigated concerns as to two females friends in the PRC with whom he cut all contact after obtaining his present employment. Clearance is denied.

STATEMENT OF THE CASE

On April 18, 2007, 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 May 2, 2007, Applicant responded to the allegations set forth in the SOR, and requested a hearing. The case was assigned to me on June 6, 2007. A Notice of Hearing was issued June 7, 2007, for a hearing held on June 25, 2007. The Government introduced three exhibits at the hearing and requested that administrative notice be taken of 12 official government documents. The Applicant introduced six exhibits at the hearing and one post-hearing submission (Exh. G). All exhibits were admitted into evidence and notice was taken of facts identified in an administrative notice (AN) request. The Applicant testified on his own behalf. The transcript was received on July 6, 2007.

FINDINGS OF FACT

_____ Applicant admitted all allegations under Foreign Influence (Guideline B) and all but one allegation under Foreign Preference (Guideline C) with explanations for all allegations. 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 is a 56-year-old employee of a major defense contractor working as a principal software engineer since January 2006. Before his present employment, he worked in the telephone and communications industry (Tr. 66). He emigrated to the U.S. from the Republic of China (Taiwan) in 1986 after graduating from a private university in Taiwan with degrees in electrical

engineering and physics (Tr. 58). He pursued a graduate degree in the U.S. and obtained a Master's degree in 1988. He became a U.S. citizen in 1996 and obtained a U.S. passport in 1997 (Tr. 20).

Before coming to the U.S. Applicant served a two year military tour as an artillery officer in Taiwan. He was also married and divorced in Taiwan. He has two brothers in Taiwan with whom he has sporadic contact. One is a permanent resident of the U.S. but is a dentist in Taiwan. He saw him briefly in 2006 when Applicant was en route to Thailand on a tour and contacts him by phone every three years. The second brother is self-employed and he contacts him every six years. He has a sister in Taiwan whose husband is a teacher and moves often. She is a housewife but Applicant knows little about her. In the last 15 years he has seen her once and called her once (Tr. 24-36).

Applicant met two women in the Peoples Republic of China (PRC) via the internet and visited them in the PRC in 2005. He spent one day and evening with each of them and has had occasional contact with one of them since by e-mail. One works for a radio station and the other is a graduate student. Since assuming his present employment in the defense industry, he has not been in contact with them (Tr. 40-44).

Applicant traveled to Taiwan once each in 1994, 1996, 1999, and 2006. The trips were in connection with other travels to the far east. He has traveled to the PRC once in 1995, twice in 1996, once each in 1997 and 2000, three times in 2001 and once in 2005. The last one was after the issuance of the SOR. He used a Taiwan passport for the 1999 and 2006 trips (Exh. 2) but also used his U.S. passport in 2006. All of the trips in 2001 and several of the others to the PRC were with tour groups operated by a U.S. company (Tr. 59-61). The three 2001 trips occurred because his former employer had work slow-downs and he had excessive leave to use. The trips were very inexpensive and this was a large motivation for taking the tours.

Applicant holds a Taiwan passport which does not expire until 2015. Since the SOR raised security concerns relating to the passport, he has turned it over to the security office of his employer. It will be held by the company until Applicant no longer needs a security clearance (Exh. G). He has a one third interest with his brothers in two family-owned apartments in Taiwan that will someday be sold. He expects to inherit his share of the total value of the building estimated at between \$160,000 and \$180,000 (Tr. 51-52). To do so he will need to have a Taiwan passport and remain a dual citizen (Tr. 55). If he requests his Taiwan passport, such will be reported by his employer to the Defense Security Service.

Applicant's salary is \$95,000 per annum.. He has assets of over \$1 million in the U.S. He owns a condominium with no mortgage (Tr. 18). He has never had a security clearance and has not had a desire to have one until it was suggested by his company (Tr. 64). He stated in his interrogatory (Exh. 2 at p. 48) and his testimony (Tr. 64) that he only wanted to do unclassified work since he traveled so much and did not want a classified job. He expressed some reluctance to have one, except for the interest of his employer (Tr. 63-64). Applicant indicates no loyalty to Taiwan or the PRC and is proud to be a citizen of the U.S.

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. (Revised Adjudicative Guideline (AG) ¶ 2 a) 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 a 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.” (AG ¶ 2 b) “[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).

CONCLUSION

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors and conditions above, I conclude the following with respect to all allegations set forth in the SOR:

Guideline B-Foreign Influence

_____ Conditions under Guideline B that could raise a security concern and may be disqualifying include contact with a foreign family member who is a citizen of, or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion (AG ¶ 7a). Based on the evidence of record, including Applicant’s family members living abroad, the Government established a basis for concern over foreign influence. 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 (App. Bd. Feb. 8, 2001).

By virtue of the relationships of the foreign family members, Applicant’s contacts, though infrequent, cannot be deemed casual. The fact that some relatives live in Taiwan and the history of that country as to its efforts in acquisition of economic and military information makes it of security concern. Mitigating conditions (MC) that might be applicable are a determination that the nature of the relationships with foreign persons, the country in which the persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed

in a position of having to choose between the interests of a foreign individual group or government and the interests of the U.S. (AG ¶ 8a).

The government stated at the hearing that the allegation in the SOR that Applicant's brothers were of lesser concern to those of the sister about whom little is known except that he has had the least contact with her of any of his siblings. The citizenship and residence of Applicant's siblings and Applicant's extensive travels to the PRC and Taiwan in the 1990's continuing until 2006 (Tr. 77-79) raises security concerns. Those concerns are compounded by his use of the Taiwan passport in 1999 and 2006 after he obtained a U.S. passport. The fact that his siblings are living in Taiwan raises a question of the risk of pressure that might be brought on him notwithstanding the limited contact he has with all three. The government conceded that the concerns relating to the female acquaintances in the PRC were lessened by virtue of minimal contact with them and complete cessation of contact once he started work in the defense industry. Thus, I conclude in his favor with regard to the two friends in the PRC but not as to his siblings in Taiwan.

Guideline C: Foreign Preference

The applicable guidelines for Foreign Preference Guideline C provide that an individual who acts in such a way as to indicate a preference for a foreign country over the United States may be prone to provide information or make decisions that are harmful to the interests of the United States (AG ¶ 9). Conditions that could raise a security concern and may be disqualifying include the possession of a current foreign passport and exercise the privileges of foreign citizenship (AG ¶ 10a 1).

Security concerns may be mitigated by a providing evidence that the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated (AG ¶ 11e). Applicant used his Taiwan passport for two trips to Taiwan in 1999 and 2006 after he obtained a U.S. passport. He also used the U.S. passport for the December 2006 trip. He used the U.S. passport, primarily to avoid payment of visa fees. I conclude from the evidence submitted showing that the passport has been turned over to his corporate security office, that the allegations under Guideline C of possession of the passport (SOR ¶ 2.a.) has been mitigated but not as to the use of the foreign passport (SOR ¶ 2.b.).

Whole Person Analysis

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. The "whole person" concept recognizes that we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

Applicant is a well-educated engineer who is doing an excellent job for his company (Exh. B). He provided sincere and credible testimony as to his relationship with his siblings, his motivations, and his loyalty to the U.S. He has established a successful life building financial and educational ties to the U.S. He has a strong financial stake in the U.S. His contacts with his family

living abroad are minimal. He has no deference to or loyalty to his country of origin.

There is evidence that Taiwan has engaged in economic and military espionage, and that the PRC seeks to use it as a source for information as shown in the official documents of which I have taken administrative notice (AN I and IX). However, efforts of the U.S. have been consistently in support of Taiwan's democratically elected government (Exh. II). The PRC is an acknowledged collector of military and defense information and this is a matter of concern to the U.S. as illustrated in the documents (AN IX, X, and XI). There is also evidence of human rights violations in the PRC about which the U.S. is concerned.

While Applicant has now spent over 20 years in the U.S. and has substantial investments in the U.S., he has a contingent financial interest in his family property in Taiwan. His large number of trips to the PRC and Taiwan as recently as December 2006 after going to work in the defense industry shows a continued interest in both Taiwan and the PRC.

Applicant has never held a security clearance before and expressed no great interest in having one. Thus, he had little occasion to develop particular knowledge of security requirements. While there is no indication that he is anything but a loyal U.S. citizen, it is premature to grant a clearance until more time has elapsed between the time of his travels and the filing of an application for a security clearance.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that it is not clearly consistent with the national interest to grant clearance to Applicant at this time. Clearance is denied.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

_____ Paragraph 1 Guideline B: AGAINST APPLICANT

 Subparagraph 1.a.: Against Applicant

 Subparagraph 1.b.: Against Applicant

 Subparagraph 1.c.: For Applicant

 Subparagraph 1.d.: For Applicant

 Subparagraph 1.e.: Against Applicant

_____ Subparagraph 1.f.: Against Applicant

 Paragraph 2 Guideline C: AGAINST APPLICANT

 Subparagraph 1.a.: For Applicant

 Subparagraph 1.b.: 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