



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
) ISCR Case No. 17-02892
)
Applicant for Security Clearance)

Appearances

For Government: Benjamin Dorsey, Esq., Department Counsel
For Applicant: Alan Edmunds, Esq.

01/02/2019

Decision

RIVERA, Juan J., Administrative Judge:

Applicant’s evidence is insufficient to mitigate the foreign influence security concerns raised by his and his family members’ contacts with their Taiwanese relatives. Access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on January 28, 2016. After reviewing the information gathered during the background investigation, the Department of Defense (DOD) was unable to grant Applicant a clearance. On October 5, 2017, the DOD Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline B (foreign influence).

Applicant answered the SOR on November 6, 2017, and requested a hearing before an administrative judge. The case was assigned to me on April 13, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on June 6, 2018, scheduling a hearing for June 28, 2018.

At the hearing, the Government offered two exhibits (GE 1 and 2). Applicant testified, presented the favorable testimony of a supervisor, and submitted Exhibit (AE)

1, comprised of Tabs A through S. All exhibits were admitted into the record as evidence without objections, except for GE 2 and AE 1, Tab S, both of which were admitted for the limited purpose of taking administrative notice. DOHA received the hearing transcript (Tr.) on July 9, 2018.

Procedural Rulings

Department Counsel and Applicant requested I take administrative notice of facts concerning Taiwan. (GE 2 and AE 1, Tab S) I took administrative notice as requested. The noted facts are outlined in the decision, *infra*.

Findings of Fact

In his response, Applicant admitted all of the SOR allegations with comments, except for SOR ¶ 1.i (owning property in Taiwan), which he denied. Applicant's SOR admissions, and those at his hearing, are hereby incorporated into my findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact:

Applicant is a 53-year-old mechanical engineer working for a federal contractor since 2014. This is his first clearance application. He was born, raised, and educated in Taiwan. He voted in Taiwanese elections in 1985. He received a bachelor's degree from a Taiwanese university in 1987.

While in college, Applicant participated in a Taiwanese military officer training program for a two-year period. Upon graduation from college, he was commissioned as a second lieutenant in the Taiwanese military. Applicant performed compulsory military service for two years and was discharged as a second lieutenant. He claimed he neither receives nor is entitled to any benefits from the Taiwanese military as a result of his service. Applicant denied maintaining any contact with anyone in the Taiwanese military or government.

Applicant entered the United States in 1990. He married a Taiwanese citizen in the United States in 1992. They have two daughters born in the United States, ages 23 and 20. Both of his daughters are dual citizens of Taiwan and the United States. Applicant sent his daughters to live in Taiwan with their grandparents during extended periods of time when they were babies. He and his wife were working and attending school and they needed help to care for their children. His daughters' Taiwanese citizenship allowed them to stay in Taiwan for extended periods.

Applicant obtained a master's degree from a U.S. university in 1993. He became a naturalized U.S. citizen and received his U.S. passport in 2007. When asked whether he had renounced his Taiwanese citizenship, Applicant responded he did not know he needed to renounce it. (GE 1) Applicant is a dual citizen of the United States and Taiwan. In his SOR answer, Applicant stated that his wife is a dual citizen of the United States and Taiwan. At hearing, he testified he was not sure whether his wife is a citizen

of Taiwan, or whether she has been or is a member of any foreign organization. (Tr. 30, 32, 48)

Applicant travelled to Taiwan to visit his family every year or every other year since he immigrated to the United States in 1990. (Tr. 63) He used his Taiwanese passport to travel to Taiwan in 2009, 2010, 2011, and twice in 2012. Applicant renewed his Taiwanese passport in 2011, through a Taiwanese agency in the United States. His Taiwanese passport will not expire until 2021. He surrendered his Taiwanese passport to his facility security officer (FSO) for safekeeping. When asked whether he could pick up his passport when needed, Applicant stated "I don't know if I can do that." However, he had recently picked up his Taiwanese passport from his FSO at the request of a government investigator before his background interview. Applicant and his wife travelled to Taiwan in 2016 and 2017 to visit family and friends. They travelled to China in 1989, 2014, and April 2018. (Tr. 64)

Applicant's 79-year-old mother is wheelchair-bound. She retired as a high school teacher. His father, 85, takes care of his mother. Both are citizens and residents of Taiwan. Applicant's father served in the Taiwanese military for many years and retired with a high-level rank. According to Applicant's testimony, his father's work led him to official interactions with federal contractors and U.S. military personnel. On one of Applicant's exhibits, his father is identified as a Chinese colonel conducting negotiations with a federal contractor. (AE 1(M)) His parents visited Applicant in the United States about five years ago. (Tr. 28)

Applicant claimed he did not know how long his father served in the Taiwanese military before he retired, or what his father's duties were, other than repairing jet engines. When asked whether his father maintains any contact with anyone in the Taiwanese military or government, Applicant replied that he did not believe so, but that he did not know. (Tr. 55)

Applicant stated in his 2016 SCA that he communicates with his parents on a weekly basis via electronic and telephonic means, and his last in-person contact was in January 2016. At his hearing, Applicant testified that he communicates with his parents once every three months, and he last travelled to Taiwan in 2017. (Tr. 28)

Applicant has a sister, born in Taiwan, who is a naturalized U.S. citizen. She resides in the United States, is married, and works as a music teacher. His last in-person contact with her was in 2017, when they both travelled to Taiwan to visit their parents. He communicates with her once every three months via electronic and telephonic means. Applicant does not know whether his sister ever worked for the Taiwanese military or its government. (Tr. 58-59)

Applicant's mother-in-law is 78 years old. She is a widower and a resident-citizen of Taiwan. In his 2016 SCA, Applicant indicated that he communicates with his mother-in-law once every three months via electronic and telephonic means, and his last in-person contact was in 2017. His father-in-law is deceased. Applicant denied knowing what his father-in-law's occupation was before he died. He stated in his SOR answer

that his mother-in-law never worked. During his testimony, Applicant claimed not knowing how frequently his wife contacts her mother, whether his mother-in-law worked for the Taiwanese military or the Taiwanese government, or whether she owns any property in Taiwan. (Tr. 56-57, 64) He also claimed not knowing whether his wife has a Taiwanese passport. (Tr. 65)

Applicant performed volunteer work at a Chinese language school and an association, helping with their administrative workload. Both organizations teach Chinese language to Chinese people in the United States. According to Applicant, their objective is to “promote multi-culturalism in the United States.” (Tr. 29-30) He volunteered at the school between 1998 and 2017. He volunteered at the association between 2011 and 2013. Both organizations deal mostly with Chinese citizens living in the United States.

Applicant does not intend to return to live in Taiwan. He testified that his family (wife and daughters), his job, and his life are in the United States. He considers the United States his home. (Tr. 30) He noted that he has lived in the United States for 30 years and all of his assets and investments are in the United States (his and his wife’s job, their savings, real estate, and retirement accounts). Applicant has a pension from his employer, and large retirement and savings accounts in the United States. He denied owning any investments, properties, or bank accounts in Taiwan or any other foreign country.

Applicant stated in his 2016 SCA that he received a house in Taiwan as a gift, with an estimated value of \$10,000, in 1985. At hearing, he modified his statement and testified that he mistakenly believed his parents had purchased their residence in Taiwan under his name to avoid a possible inheritance tax. Applicant claimed that upon realizing the property raised security concerns, he asked his parents about the property. He claimed his parents informed him that they did not purchase their home under his name and that the house was not his property. (Tr. 39)

Applicant’s reference has known Applicant since June 2015. Initially, they worked together in several important projects, and later Applicant worked under his supervision. Applicant was described as meticulous, reliable, devoted to his family, and incredibly dedicated to his work. His reference believes Applicant and his family are good U.S. citizens and strongly supports approval of his clearance. (AE 1, S)

I take administrative notice of the following facts concerning the Republic of China (Taiwan). The 1979 United States – People’s Republic of China Joint Communique switched diplomatic recognition from Taipei to Beijing. In the Joint Communique, the United States recognized the government of the People’s Republic of China as the sole legal government of China, acknowledging the Chinese position that there is but one China and Taiwan is part of China. The Joint Communique also stated that the people of the United States will maintain cultural, commercial, and other unofficial relations with the people of Taiwan. The United States and Taiwan enjoy a robust unofficial relationship; however, the United States does not support Taiwan’s independence.

The Director of National Intelligence has determined that, in 2017, the leading state intelligence threats to U.S. interests will continue to be Russia and China, based on their services' capabilities, intent, and broad operational scope.

According to the National Counterintelligence Executive, "Chinese actors are the world's most active and persistent perpetrators of economic espionage," and are considered "aggressive and capable collectors of sensitive U.S. economic information and technology." Importantly, "China's intelligence services, as well as private companies and other entities, frequently seek to exploit Chinese citizens or persons with family ties to China who can use their insider access to corporate networks to steal trade secrets using removable media devices or e-mail."

There have been multiple cases involving the illegal export, or attempted illegal export, of U.S. restricted, dual-use technology to Taiwan. The dual-use technologies that have been targeted include: classified materials; Bryant center hole grinder, LED road lights, and an oil pump (in support of North Korea's weapons of mass destruction and advanced weapons programs); drones, surveillance airplanes, and stealth technology relating to fighter planes exported to China; circuit boards; weapons-grade carbon fiber; U.S. missile components (circular hermetic connectors and glass to metal seals) were exported to Iran by way of Taiwan.

Taiwan is a global partner to the United States and shares much of the same human rights and economic views.

Policies

The SOR was issued under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the *National Security Adjudicative Guidelines* (AG), promulgated by the Director of National Intelligence in Security Executive Agent Directive (SEAD) 4 (December 10, 2016), which are applicable to all adjudicative decisions issued on or after June 8, 2017.

Eligibility for access to classified information may be granted "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person's suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense

consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Foreign Influence

AG ¶ 6 explains the security concern about "foreign contacts and interests" stating:

[I]f the individual has divided loyalties or foreign financial interests, [he or she] may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 indicates two conditions that could raise a security concern and may be disqualifying in this case:

(a) contact with a foreign family member, business or professional associate, friend, or other person 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; and

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information.

Applicant was born, raised, and educated in Taiwan. His parents and mother-in-law are citizens and residents of Taiwan. His wife, two daughters, and sister are dual U.S. - Taiwanese citizens residing in the United States. He is close to his parents and mother-in-law (through his wife) and has frequent contact with them.¹ Applicant denied having any financial accounts or property in Taiwan.

Applicant's relationships with residents of Taiwan create a concern about Applicant's "obligation to protect sensitive information or technology" and his desire to help his relatives who live in Taiwan. For example, if foreign intelligence agents or government officials wanted to subject Applicant to coercion, they could exert pressure on his relatives residing in Taiwan. Applicant would then be subject to coercion through his relatives and classified information could potentially be compromised.

An applicant's possession of close family ties with their family living in a foreign country are not, as a matter of law, disqualifying under Guideline B. However, if an applicant has a close relationship with even one relative, living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See *generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

The nature of a nation's government, its relationship with the United States, its history of intelligence gathering, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government or the country is known to conduct intelligence collection operations against the United States. The relationship of Taiwan with the United States, and its "history of conducting espionage against the United States, puts a heavy burden of proof on Applicant" to demonstrate that his relationships with family members living in Taiwan do not pose a security risk. See ISCR Case No. 12-04780 at 3 (App. Bd. Nov. 13, 2013). Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist relatives living in Taiwan.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to

¹ See ISCR Case No. 09-03114 at 2-3 (App. Bd. Oct. 22, 2010) (contact once a month is considered to be "frequent" under AG ¶¶ 7 and 8).

those of the United States.” ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002).

There is no evidence that intelligence operatives from any foreign country seek or have sought classified or economic information from or through Applicant or his relatives living in Taiwan. Nevertheless, it is not possible to rule out such a possibility in the future. Applicant’s relationships with family members living in Taiwan create a potential conflict of interest because these relationships are sufficiently close to raise a security concern about his desire to assist relatives in Taiwan by providing sensitive or classified information. Department Counsel produced substantial evidence of Applicant’s contacts or relationships with family living in Taiwan, raising the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a) and 7(b) are established and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists four conditions that could mitigate foreign influence security concerns including:

- (a) the nature of the relationships with foreign persons, the country in which these 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, organization, or government and the interests of the U.S.;
- (b) there is no conflict of interest, either because the individual’s sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;
- (c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation; and
- (f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

The Appeal Board concisely explained Applicant’s responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant’s security clearance eligibility, there is a strong presumption against the grant or maintenance

of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.” Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

There is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members. See *generally* ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at *8 (App. Bd. Feb. 20, 2002). Applicant has ties of affection for his parents, extended family, and by marriage to his in-laws, as indicated by his frequent contact with them.

AG ¶¶ 8(a), 8(b), and 8(c) are not applicable. Applicant has frequent contact with his parents and mother-in-law, who are citizens and residents of Taiwan. He has telephonic or computer communication with his parents weekly (based on his 2016 SCA) or quarterly (based on his hearing testimony). Since immigrating to the United States in 1990, Applicant travelled to Taiwan every year or every other year. He became a naturalized U.S. citizen and was granted a U.S. passport in 2007. He used his Taiwanese passport to travel to Taiwan in 2009, 2010, 2011, and twice in 2012. Applicant and his wife travelled to Taiwan in 2016 and 2017 to visit family and friends. They travelled to China in 1989, 2014, and 2018. He denied knowing how frequently his wife communicates with her mother. He and his wife have visited Taiwan frequently since 1990, when he immigrated.

Applicant renewed his Taiwanese passport in 2011, and surrendered it to his facility security officer when made aware of the security concerns it may raise. He has not renounced his Taiwanese citizenship. It appears that his wife and children continue to use their Taiwanese citizenship privileges and passport for their ease of travel. Applicant’s father retired as a high-ranking military officer in Taiwan. He does not know whether his father has any contact with Taiwanese military or government personnel. Considering the record as a whole, Applicant failed to meet his burden of showing there is “little likelihood that [his relationships with family living in Taiwan] could create a risk for foreign influence or exploitation.”

AG ¶ 8(b) partially applies. A key factor in the AG ¶ 8(b) analysis is Applicant’s “deep and longstanding relationships and loyalties in the U.S.” Applicant’s relationship with the United States must be weighed against the potential conflict of interest created by his relationships with family living in Taiwan.

I considered the positive economic and long-standing security partnership between the United States and Taiwan based on shared values. The United States has a vested interest in maintaining its strong, unofficial relations with Taiwan and assisting

Taiwan in maintaining its defensive capability. There is no evidence that the Taiwanese government or those conducting espionage have approached or threatened Applicant or his family to coerce Applicant for classified or sensitive information.

Applicant has established strong connections to the United States. He immigrated in 1990, and became a U.S. citizen in 2007. His wife and children live with him in the United States. He owns a home and all of his financial interests are in the United States, including his job, a pension, and retirement and savings accounts. He also has a strong connection to a co-worker and supervisor.

Notwithstanding, Applicant also has maintained his strong connections to his family members living in Taiwan, as evidenced by his frequent travels to Taiwan, his daughters living with their grandparents for extended periods of time, his frequent contacts with family members there, and his wife and daughters maintaining and using their Taiwanese passports and exercising their Taiwanese citizenship privileges. Applicant used his Taiwanese passport to travel to Taiwan after he was issued his U.S. passport in 2007, and he visited a Taiwanese government office in the United States to renew it in 2011.

I considered Applicant's father's high-ranking officer position in the Taiwanese military. I also evaluated his father's age and that he retired many years ago. Notwithstanding, Applicant's lack of answers about his father's position in the military, his father's possible contacts with Taiwanese military or government personnel, his wife's maintaining a Taiwanese passport, and his testimony denying any knowledge of his wife's contacts with her mother, or whether his wife belongs to a foreign organization or association, create doubts on his favorable evidence.

Considering the evidence as a whole, I find that Applicant's connections to the United States are outweighed by his connections to Taiwan in the security analysis. Foreign influence security concerns under Guideline B are not mitigated.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. (AG ¶¶ 2(a) and 2(c)) I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG were addressed under that guideline, but some warrant additional comment.

Applicant entered the United States in 1990, and was naturalized as a U.S. citizen in 2007 along with his wife. His wife and U.S.-born daughters are dual U.S.-Taiwanese citizens. He has worked for several federal contractors over the years, and for his current employer and clearance sponsor since 2014. This is his first SCA.

A Guideline B decision concerning a foreign country must take into consideration the geopolitical situation and dangers in that country including from intelligence agents. Notwithstanding the U.S. – Taiwanese long-standing positive relations and strong trade

relationship, the danger of coercion from the Taiwanese or Chinese governments or their intelligence agents is possible. Applicant's favorable evidence is insufficient to mitigate the foreign influence security concerns. The weight of the evidence does not support granting Applicant's clearance.

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, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a – 1.c:	Against Applicant
Subparagraphs 1.d – 1.i:	For Applicant

Conclusion

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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

JUAN J. RIVERA
Administrative Judge