



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



In the matter of:)
)
) ISCR Case No. 18-02646
)
Applicant for Security Clearance)

Appearances

For Government: Michelle P. Tilford, Esq., Department Counsel
For Applicant: Mark A. Myers, Esq.

05/23/2019

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the foreign influence security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On November 26, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B, foreign influence. Applicant responded to the SOR on December 11, 2018, and elected to have the case decided on the written record in lieu of a hearing. On January 25, 2019, he changed his request to a hearing before an administrative judge. The case was assigned to me on February 28, 2019. The hearing was convened as scheduled on May 8, 2019. Department Counsel amended the SOR at the hearing by withdrawing SOR ¶ 1.a.

Evidence

Government Exhibits (GE) 1 and 2 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through Q, which were admitted without objection.

Department Counsel and Applicant both requested that I take administrative notice of certain facts about Taiwan. Without objection, I have taken administrative notice of the facts contained in the requests. The facts in the written requests will not be repeated verbatim in this decision, but are summarized in the Findings of Fact, below.

Findings of Fact

Applicant is a 40-year-old prospective employee of a defense contractor. His job is contingent upon him receiving a security clearance. He has a bachelor's degree. He is married with one child.¹

Applicant was born in the United States to parents who had emigrated from Taiwan. His two siblings were also born in the United States. One sibling works for the U.S. military. His parents became U.S. citizens while retaining their Taiwanese citizenships. Applicant's parents and siblings live in the United States.²

Applicant has worked for a U.S. company since 2002. His job required him to travel throughout the world, and he worked for the company in Taiwan from 2003 to 2005. He has worked in the United States since 2005.³

Applicant's wife is a Taiwanese citizen. They met when he was visiting Taiwan in 2009. He sponsored her to immigrate to the United States. They married in the United States. She is a permanent resident (green card holder), and she plans to apply to become a U.S. citizen. Their child was born in the United States.⁴

Applicant's mother-in-law is deceased. His wife's father and her three siblings are citizens and residents of Taiwan. None of Applicant's in-laws work for the Taiwanese government. His father-in-law owned a small business before he retired. Applicant does not provide financial support to his in-laws. He talks to his father-in-law about once a week when his wife talks to him. He talks to his wife's siblings less often.⁵

¹ Tr. at 14-16; GE 1; AE A, B, D.

² Tr. at 15; Applicant's response to SOR; GE 1, 2; AE A.

³ Tr. at 29; GE 1, 2; AE A.

⁴ Tr. at 17-19; Applicant's response to SOR; GE 1, 2; AE A, M.

⁵ Tr. at 19-26; Applicant's response to SOR; GE 1; AE C, P.

Applicant does not own any property or other assets in Taiwan. He owns a home and other assets in the United States. He estimated his net worth at \$600,000. He credibly testified that his in-laws in Taiwan could not be used to coerce or intimidate him into revealing classified information, and that he would report any attempt to do so.⁶

Applicant is active in his community. He submitted documents and letters attesting to his strong moral character and outstanding job performance. He is praised for his honesty, trustworthiness, dependability, dedication, reliability, work ethic, integrity, and loyalty to the United States.⁷

Taiwan

The United States and Taiwan enjoy a robust unofficial relationship. The 1979 U.S.-P.R.C. Joint Communiqué switched diplomatic recognition from Taipei to Beijing. In the Joint Communiqué, 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 Communiqué also stated that the people of the United States will maintain cultural, commercial, and other unofficial relations with the people of Taiwan. The American Institute in Taiwan (AIT) is responsible for implementing U.S. policy toward Taiwan.

The United States does not support Taiwan independence. Maintaining strong, unofficial relations with Taiwan is a major U.S. goal, in line with the U.S. desire to further peace and stability in Asia. The 1979 Taiwan Relations Act provides the legal basis for the unofficial relationship between the United States and Taiwan, and enshrines the U.S. commitment to assist Taiwan in maintaining its defensive capability. The United States insists on the peaceful resolution of cross-Strait differences, opposes unilateral changes to the status quo by either side, and encourages both sides to continue their constructive dialogue on the basis of dignity and respect.

The United States faces a serious threat to its national security from Chinese intelligence operations. China aggressively targets U.S. sensitive and protected information and Chinese actors are the world's most active perpetrators of economic espionage. Taiwan has also been an active collector of U.S. economic technologies that have sensitive military applications. Numerous cases have arisen involving the illegal export or attempted export of sensitive, dual-use technology to Taiwan.

Policies

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2,

⁶ Tr. at 22-23, 27-28; Applicant's response to SOR; AE H.

⁷ AE A, C, G.

1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

The security concern for foreign influence is set out in AG ¶ 6:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. The following are potentially applicable in this case:

(a) contact, regardless of method, 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;

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

(e) shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

Applicant's wife's father and her three siblings are citizens and residents of Taiwan. Taiwan has been an active collector of U.S. economic technologies that have sensitive military applications. Numerous cases have arisen involving the illegal export or attempted export of sensitive, dual-use technology to Taiwan. Applicant's foreign contacts create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion, both directly and through his wife. AG ¶¶ 7(a), 7(b), and 7(e) have been raised by the evidence.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

(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 United States; and

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.

I considered the totality of Applicant's ties to 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 those of the United States.

The distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly. 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. The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. 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, the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism.

Applicant is a loyal U.S. citizen. His parents and two siblings are U.S. citizens and residents. One sibling works for the U.S. military. His wife is a permanent resident of the United States with plans to apply to become a U.S. citizen. Their child was born in the United States. All of Applicant's assets are in the United States. None of his in-laws work for the Taiwanese government.

I find that Applicant's ties to Taiwan are outweighed by his deep and long-standing relationships and loyalties in the United States. His closest family, life, home, assets, and professional career are in the United States. Taiwan collects U.S. intelligence, as does other U.S. allies, but it does not have a poor human rights record, and there is no indication that it uses coercion in its intelligence operations. I find that it is unlikely Applicant will be placed in a position of having to choose between the interests of the United States and the interests of Taiwan. There is no conflict of

interest, because he can be expected to resolve any conflict of interest in favor of the United States. AG ¶¶ 8(a) and 8(b) are applicable.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (1) The nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guideline B in my whole-person analysis. I also considered Applicant's strong character evidence.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the foreign influence security concerns.

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:	For Applicant
Subparagraph 1.a:	Withdrawn
Subparagraphs 1.b-1.c:	For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge