



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



In the matter of:)	
)	
)	ISCR Case No. 19-01945
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Tara Karoian, Esq., Department Counsel
For Applicant: Mark A. Meyers, Esq., Applicant’s Counsel

May 21, 2020

Decision

CEFOLA, Richard A., Administrative Judge:

Statement of the Case

On July 2, 2019, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline B. The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant’s security clearance.

Applicant answered the SOR on September 5, 2019; attaching thereto Applicant’s Exhibits (AppXs) A~D, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on November 8, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 19, 2019, scheduling the hearing for January 6, 2020. The hearing was convened as scheduled. The Government offered Exhibits (GX) 1 and 2, which were admitted without objection, and Hearing Exhibit (HX) I for Administrative Notice. Applicant testified on his own behalf. Applicant offered 16 documents, which I marked as AppXs D through T.

AppXs A~T were admitted into evidence. The record was left open until February 6, 2020 and extended until April 6, 2020, for receipt of additional documentation. On January 30, 2020, and April 1, 2020, Applicant offered AppXs U~X, which were also admitted into evidence. DOHA received the transcript of the hearing (TR) on January 14, 2020.

Procedural Rulings

At the hearing, the Government requested I take administrative notice of certain facts relating to Taiwan. Department Counsel provided a five-page summary of the facts, supported by 11 sets of Government documents pertaining to Taiwan, identified as HE I. The documents provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

Findings of Fact

Applicant admitted to the allegations in SOR ¶¶ 1.a, through 1.e. He denied SOR allegations ¶¶ 1.f. and 1.g. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 35-year-old employee of a defense contractor. (GX 1 at page 7, and TR at page 16 lines 5~6.) He has been employed with the defense contractor since August of 2018. (GX 1 at page 19.) Applicant was born in the United States; but as a child, he was taken to Taiwan by his Taiwanese parents. (GX 1 at page 7, and TR at page 16 line 7 to page 18 line 2.) He returned to the United States in 2016, has received a Master's Degree from an American university, and is pursuing a Ph.D. from that same university. (TR at page 18 line 3 to page 24 line 9.) He is married, and has one American born child, age 2. GX 1 at page 38.)

Guideline B - Foreign Influence

1.a. Applicant's parents are citizens and residents of Taiwan. (TR at page 25 line 6 to page 30 line 21.) However, "they have been separated for more than 30 year." (*Id.*) His mother is a retired nurse, having been retired "for more than 20 years." (TR at page 25 line 10 to page 26 line 10.) She never worked for the Taiwanese government, and he contacts her only about "four times a year." (TR at page 25 line 6 to page 30 line 21.)

Applicant's father is "a dentist." (TR at page 26 lines 11~19.) Apart from his mandatory military service, Applicant's father had no connection with the Taiwanese government. (TR at page 25 line 6 to page 30 line 21.) He contacts his father about "once every year." (TR at page 29 lines 7~18.)

1.b. Applicant's two sisters are citizens and residents of Taiwan. (TR at page 30 line 22 to page 34 line 6.) His oldest sister has mental health issues, and his youngest sister is a veterinarian. (*Id.*, and at page 71 lines 15~17.) Applicant has little contact with

his oldest sister, and only about four times a year with his youngest sister. (TR at page 30 line 22 to page 34 line 6.) Neither sister has any connection with the Taiwanese government.

1.c. Applicant's mother-in-law and father-in-law are citizens and residents of Taiwan. (TR at page 34 line 11 to page 36 line 3.) His mother-in-law is "a cook," and his father-in-law is "retired." (TR at page 71 lines 18~25.) Through his wife, Applicant has contact with these in-laws about four times a year. (TR at page 34 line 11 to page 36 line 3.)

1.d. Applicant's sister-in-law is citizens and resident of Taiwan. (TR at page 37 line 7 to page 39 line 8.) She is a "full-time mother," and their contact is limited to about twice a year. (*Id.*, and TR at page 72 at lines 1~3.)

1.e. Applicant maintains contact, about once or twice a year, with friends who are citizens of Taiwan, but for the most part reside in the United States. (TR at page 37 line 7 to page 39 line 8.) None are affiliated with the Taiwanese government, and he met them through his university schooling in the United States. (*Id.*)

1.f. Applicant denies that he owns any real property in Taiwan. He transferred ownership to his wife, who is in the process of selling said property. (TR at page 39 line 9 to page 43 line 13, at page 54 lines 7~16, and AppX A and B.) Furthermore, they are in the process of purchasing real property in the United States, as evidenced by documentation. (AppXs V and W.)

1.g. Applicant denies that he has two bank accounts in Taiwan, valued at about \$50,000. He has transferred said funds to the United States, as evidenced by documentation to that end. (TR at page 43 line 14 to page 45 line 21, and AppXs C, D, E~I.)

Notice

I take administrative notice as to certain facts regarding Taiwan: The United States recognizes Taiwan as part of the Peoples Republic of China. It perpetrates economic espionage.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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 AG ¶ 2 describing the adjudicative process. The

administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies for access to classified information seeks to enter 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order (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 relating to the guideline 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. Three 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

(f) substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest;

Applicant's parents, siblings and in-laws are citizens and residents of Taiwan. He also had a significant property interest and bank accounts in Taiwan. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 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 United States;

(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;

(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.

Applicant's contact with his Taiwanese relatives is infrequent at best. None have any connection with the Taiwanese government. For the most part, his Taiwanese friends live in the United States, and he has little contact with them. Furthermore, his former Taiwanese real-estate interests have been transferred to his wife, who is in the process of selling said property. They are also in the process of purchasing real-estate in the United States. The monies from his Taiwanese bank accounts have been transferred to the United States. Foreign Influence is found for Applicant.

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

Applicant has a distinguished history of working in the defense industry and is well respected, as evidenced by letters of support. (AppX J.) Furthermore, he performs well at his job. (AppX O and Q.) Applicant's wife and native-born American child live in the United States, and he is in the process of purchasing real estate here. He can be expected to resolve any conflict of interest in favor of the United States due to his ties here.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the Foreign Influence security concern.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline B: FOR APPLICANT

Subparagraphs 1.a~1.g: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant national security eligibility and a security clearance. Eligibility for access to classified information is granted.

Richard A. Cefola
Administrative Judge