



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



In the matter of:)
)
) ISCR Case No. 20-01984
)
Applicant for Security Clearance)

Appearances

For Government: Bryan Olmos, Esq., Department Counsel
For Applicant: Lance Renfro, Esq.

09/07/2021

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 February 10, 2021, 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 March 1, 2021, and requested a hearing before an administrative judge. The case was assigned to me on June 15, 2021. The hearing was convened as scheduled on July 20, 2021.

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 requested that I take administrative notice of certain facts about Taiwan and the People's Republic of China. Without objection, I have taken administrative notice of the facts contained in the requests. The pertinent facts are summarized in the written requests and fact sheets and will not be repeated verbatim here. Of note is that China is an authoritarian state dominated by the Chinese Communist Party, with a poor record with respect to human rights. Taiwan is a democracy. The United States and Taiwan enjoy a robust unofficial relationship. However, the United States does not support Taiwan independence from China.

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.

Findings of Fact

Applicant is a 24-year-old engineer employed by a defense contractor since 2019. He is applying for a security clearance for the first time. He has a bachelor's degree, which he earned in 2019. He is single without children. (Transcript (Tr.) at 16-18; GE 1, 2; AE E, N)

Applicant is a U.S. citizen by birth. He was born in Taiwan to an American father and a Taiwanese mother. His parents are professionals; they both had jobs in Taiwan; and Applicant was educated through high school in Taiwan. Applicant moved to the United States in 2015 to attend college. His father moved back to the United States at about the same time. (Tr. at 16-19, 42-43, 52; Applicant's response to SOR; GE 1, 2)

Applicant's mother remained in Taiwan as a citizen and resident. She worked for a period for a banking and financial company that was incorporated in China. Her duties required her to travel periodically to China, and she would stay there for extended periods. She left that employment and returned to Taiwan, where she works for a different financial company that was founded in the United States, but now operates internationally. Applicant's father is sponsoring her to immigrate to the United States. The immigration petition is pending. (Tr. at 21-25, 50-54; Applicant's response to SOR; GE 1, 2; AE C, P)

Applicant has an older half-brother on his father's side who was born in Taiwan, but is a citizen and resident of the United States. Applicant's maternal grandfather is a citizen and resident of Taiwan. His maternal grandmother is a dual citizen of the United States and Taiwan and a resident of Taiwan. His uncle is a dual citizen of the United States and Taiwan and a resident of Taiwan. His uncle completed mandatory service in the Taiwan military when he was younger. None of the above family in Taiwan have any direct ties to the Taiwanese government. (Tr. at 21, 25-26, 31-34, 55-58; Applicant's response to SOR; GE 1, 2)

Applicant has a family friend who is a citizen and resident of Taiwan. He worked with Applicant's mother, and Applicant became friendly with his son. The family friend works for a banking and financial company. He completed mandatory service in the Taiwan military when he was younger. He does not have any direct ties to the Taiwanese government. (Tr. at 28-30, 46, 58; Applicant's response to SOR; GE 2)

When Applicant was in college, his family friend helped Applicant receive an unpaid internship at the financial company where he worked over the winter break in December 2016 to 2017. He helped Applicant receive another internship at an airline in Taiwan during part of the summer of 2018. Applicant had another internship at an aviation company in Taiwan in the summer of 2018. (Tr. at 34-37, 47; Applicant's response to SOR; GE 1, 2)

Applicant's parents gave him monetary gifts over the years. The money was maintained in a bank in Taiwan. The accounts grew to the equivalent of about \$100,000 in U.S. currency. Applicant, with his mother's assistance, has been moving the funds to a U.S. account. The Taiwanese accounts now have the equivalent of about \$3,000. Applicant intends to close the accounts the next time he is in Taiwan. He does not own any other foreign assets. (Tr. at 26-28, 49-50; Applicant's response to SOR; GE 1, 2; AE A, B, J)

Applicant has about \$463,000 in his U.S. bank account. Applicant's father bought a condominium in the city where Applicant went to college, and placed it in both of their names. They recently sold the condominium. Applicant received \$350,000 from the sale, which went to his U.S. bank account and was the largest contribution to the \$463,000 total in that account. (Tr. at 39-40, 44-45; AE I, O)

Applicant could have become a dual citizen of Taiwan, but he declined to do so. He has been associated with the Boy Scouts of America for much of his life and attended summer camps in the United States. He expressed his undivided allegiance to the United States, which he considers his home. He stated: "I've grown up American and I will remain American until the day I die." He credibly testified that his family, friends, and assets in Taiwan could not be used to coerce or intimidate him into revealing classified information. (Tr. at 19-20, 31, 40-41; AE F)

Applicant submitted documents and letters attesting to his excellent job performance and strong moral character. He is praised for his reliability, judgment, dependability, loyalty, work ethic, dedication, and "intense love of the United States." (AE F, L)

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, 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
- (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 mother, maternal grandfather, and a close family friend are citizens and residents of Taiwan. His maternal grandmother and uncle are dual citizens of the United States and Taiwan and residents of Taiwan. The United States and Taiwan enjoy a robust unofficial relationship. However, the United States does not support Taiwan independence from China. 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 family and friend in Taiwan create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. AG ¶¶ 7(a) and 7(b) have been raised by the evidence.

Applicant's bank accounts in Taiwan would have established AG ¶ 7(f) when he had about \$100,000 in them. The accounts have been reduced to about \$3,000, which is not a significant financial interest that could subject him to a heightened risk of foreign influence or exploitation or personal conflict of interest. AG ¶ 7(f) is not applicable. SOR ¶ 1.c is concluded for Applicant.

I do not find that Applicant's internships in Taiwan when he was in college raise any security concerns independent of the concerns raised by his family and friend in Taiwan. SOR ¶ 1.f is concluded for Applicant.

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 who turned down every opportunity to become a dual citizen of Taiwan. He has been associated with the Boy Scouts of America for much of his life and attended summer camps in the United States. He moved to the United States in 2015 to attend college and remained. He expressed his undivided allegiance to the United States, which he considers his home. His father is in the United States and is petitioning for his mother to immigrate to the United States. Applicant

stated: "I've grown up American and I will remain American until the day I die." He credibly testified that his family, friend, and assets in Taiwan could not be used to coerce or intimidate him into revealing classified information.

I find that Applicant's ties to Taiwan are outweighed by his deep and long-standing relationships and loyalties in the United States. 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 Applicant 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 favorable 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
Subparagraphs 1.a-1.f:	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