



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



In the matter of:)
)
) ISCR Case No. 22-00814
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: Dale Andersen, Esq.

07/12/2023

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 August 4, 2022, 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 September 7, 2022, and requested a hearing before an administrative judge. The case was assigned to me on April 12, 2023. The hearing was convened as scheduled on May 17, 2023.

Evidence

Government Exhibits (GE) 1 and 2 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) B through K (there was no AE A), 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. (Hearing Exhibits (HE) I and II) Without objection, I have taken administrative notice of the facts contained in the requests. I have also considered the information submitted by Applicant. (AE F-H) 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's 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 is also targeted by China. Taiwanese interests have also been active collectors 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 46-year-old employee of a defense contractor. He has worked for his current employer since 2021. He served on active duty in the U.S. military from 1994 until he was honorably discharged after medical issues in 1997. He receives disability benefits from the U.S. Department of Veterans Affairs. He earned a bachelor's degree in 2020. He married in 2002, divorced in 2004, and married again in 2006. He has a child from his first marriage, and he and his current wife have three children. (Transcript (Tr.) at 17-23, 38-41, 69; GE 1, 2)

Applicant is a U.S. citizen by birth who grew up in a military family. His wife was born in Taiwan to Taiwanese parents. She came to the United States in 2005 for school and to study English. They met on a dating website for singles from their religion in 2006, and they married the same year. She became a U.S. citizen in 2012 while maintaining her Taiwanese citizenship. Their three children were born in the United States. They are U.S.-Taiwanese dual citizens. His wife has a business that helps to coordinate visits of Taiwanese youths to the United States and stay with American families so they can learn English and experience our culture. She is heavily involved in her children's activities, and she volunteers in her church and in her community. (Tr. at 17-23, 46-53; Applicant's response to SOR; GE 1, 2; AE C)

Applicant's father-in-law is deceased. His mother-in-law and his wife's brother, sister, and sister's husband are citizens and residents of Taiwan. His wife speaks with her mother about once a week. His mother-in-law does not speak English and Applicant does not speak Mandarin, so their contact is limited. She is retired, but she owns a building that has an apartment on the upper floor and a factory on the lower floor. She is financially independent, and there is no need for Applicant's wife to send her any support. (Tr. at 36-37, 42, 54-56, 67; Applicant's response to SOR; GE 1, 2; AE C, D)

Applicant believes that his wife's brother performed mandatory military service in Taiwan. Applicant has minimal contact with him because of the language barrier. He has not seen him since 2016, and he does not know what he does for a living. His wife remains close to her mother, but she is no longer close to her siblings, and they rarely talk. (Tr. at 33-35, 42, 44, 56-60, 66; Applicant's response to SOR; GE 1, 2; AE C, D)

Applicant has minimal contact with his wife's sister and her husband because of the language barrier. Their children attended college in the United States at a university close to where Applicant and his wife lived before Applicant's family moved for his current job. He met his wife's sister in Taiwan, and he met her husband when he traveled from Taiwan with his son to the university in the United States. Applicant believes his brother-in-law may work for the Taiwanese equivalent of the U.S. Fish and Wildlife Service. (Tr. at 26-32, 42, 44, 49, 60-65, 68; Applicant's response to SOR; GE 1, 2; AE C, D)

Applicant has traveled to Taiwan with his family several times since his marriage. His last trip was in 2016. His wife last visited Taiwan in about 2019. (Tr. at 43; Applicant's response to SOR; GE 1, 2)

Applicant expressed his undivided allegiance to the United States. He credibly testified that his wife's family in Taiwan could not be used to coerce or intimidate him into revealing classified information. (Tr. at 70; Applicant's response to SOR)

Applicant volunteers in his church and in his community. He submitted letters attesting to his reliability, patriotism, trustworthiness, integrity, and loyalty to the United States. (Tr. at 40; AE E)

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
- (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 is a dual citizen of the United States and Taiwan. His in-laws are citizens and residents of Taiwan. The United States and Taiwan enjoy a robust unofficial relationship. However, the United States does not support Taiwan's independence from China. China aggressively targets U.S. and Taiwanese sensitive and protected information. 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 Taiwanese family members create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion both individually 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. He is from a military family, and he served honorably in the U.S. military. His wife came to the United States in 2005; they married in 2006; she became a U.S. citizen in 2012; and their three children were born in the United States. His wife maintains contact with her mother, but her contact with her siblings is much less frequent. Her mother is financially independent. Applicant has very little contact with any of his in-laws because of the language barrier. He credibly testified that his wife's family 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 he 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 honorable military service and 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.d:	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