

KEYWORD: Foreign Influence; Foreign Preference

DIGEST: Applicant, a 51-year-old engineer with a leading defense contractor, mitigated security concerns for foreign preference arising from a father and four siblings residing in Taiwan by showing his extensive U.S. education since his arrival here in 1987, his security awareness, and strong financial and educational ties to the U.S. He also mitigated foreign preference allegation concerning his Taiwan passport by proof of its surrender to his corporate security office. Clearance is granted.

CASENO: 06-23890.h1

DATE: 07/31/2007

DATE: July 31, 2007

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In Re:)	
)	
-----)	ISCR Case No. 06-23890
SSN: -----)	
)	
Applicant for Security Clearance)	
_____)	

**DECISION OF ADMINISTRATIVE JUDGE
CHARLES D. ABLARD**

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

_____Applicant, a 51-year-old engineer with a leading defense contractor, mitigated security concerns for foreign preference arising from a father and four siblings residing in Taiwan by showing his extensive U.S. education since his arrival here in 1987, his security awareness, and strong financial and educational ties to the U.S. He also mitigated foreign preference allegation concerning his Taiwan passport by proof of its surrender to his corporate security office. Clearance is granted.

STATEMENT OF THE CASE

On February 9, 2007, the Defense Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry* as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated February 21, 2007, Applicant responded to the allegations set forth in the SOR, and requested a hearing. The case was assigned to me on April 4, 2007. A Notice of Hearing was issued May 8, 2007, for a hearing held on June 1, 2007. The Government introduced three exhibits at the hearing and requested that administrative notice be taken of eleven official government documents. The Applicant introduced one exhibit. All exhibits were admitted into evidence. The Applicant testified on his own behalf. The record was left open for submission of additional materials by Applicant and three additional documents were submitted on July 12, 2007, and admitted in evidence. The transcript was received on June 13, 2007.

FINDINGS OF FACT

_____Applicant has denied all allegations under Foreign Preference (Guideline C) and under Foreign Influence (Guideline B), and offered explanatory information at the hearing and in his post-hearing submission. The admissions are incorporated herein as findings of fact. After a complete review of the evidence in the record and upon due consideration of the record the following additional findings of fact are made:

Applicant is a 51-year-old employee of a principal defense contractor working as a mechanical engineer on structural analysis. He served a mandatory two year period of military service from 1978-1980 in the Republic of China (Taiwan) as a maintenance officer before entering a Taiwan university from which he received a bachelor's degree. He emigrated to the U.S. in 1987 to study until 1993 at a leading engineering school in the U.S., from which he received both a Master's degree and Ph.D. He continued in a faculty research position for four years and became a citizen in 2003. Since then he has worked for two hi-tech companies. He applied for a security clearance on November 11, 2005, and held an interim clearance until this proceeding was initiated.

Applicant's father, brother, and three sisters are citizens of Taiwan. His father is 86 years old and retired. His brother operates a family business, started by their father, manufacturing machines to make packing material which he sells in southeast Asia. One of his sisters works in the family company, the second is a part-time bookkeeper, and the third is retired. He gives a gift of \$2,500 a year to his relatives, although they are self sufficient and do not need help. None of his relatives worked for the Taiwan government. His father and oldest sister visited him in the U.S. in 2005. His principal contacts with his relatives are telephone calls 2-3 times a year.

Applicant held a passport of Taiwan after he became a U.S. citizen but used only his U.S. passport to travel. He did not realize the possible security consideration of the passport until this matter arose. His last trip to Taiwan to visit family was in 2005. He also traveled there four times in 2003-2004 because of an accident, illness, and death of his mother. He may return again sometime soon to visit his father. The record was left open to provide him an opportunity to provide evidence of surrender of his passport. He established that he had surrendered and invalidated his Taiwan passport with the security office of his employer (Exh. B 2 and 3).

Applicant is married to a college professor with the state university system in their state of residence. They have no children. His salary is \$118,000 per annum and he has assets of approximately \$500,000, including the equity in his home, and savings accounts. He has no financial interests in Taiwan. His hobbies are tennis and music.

Applicant has been fully briefed on security requirements by his company and has a keen interest in preserving U.S. technology, particularly against encroachments by the PRC (Tr. 56). He loves his work, and is very proud of his U.S. education. He appreciates the responsibilities which he has been given. He is proud to be giving something in return for his citizenship. He is well regarded by his colleagues (Exh. A). He follows the rules in the company for all matters and knows the rules for possible security issues require immediate reporting to security officers.

POLICIES

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has “the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position that will give that person access to such information.” *Id.* at 527

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other 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. Directive, ¶ E2.2.1. Security clearances are granted only when “it is clearly consistent with the national interest to do so.” Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the

evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue a clearance. “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.” Directive, ¶ E2.2.2. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b).

CONCLUSION

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors and conditions above, I conclude the following with respect to all allegations set forth in the SOR:

_____ Conditions under Guideline B that could raise a security concern and may be disqualifying include contact with a foreign family member 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 (AG ¶ 7a). Based on the evidence of record, including Applicant’s acknowledgment of family members living abroad, the Government established a basis for concern over foreign influence. The Applicant had the burden to establish security suitability through evidence which refutes, mitigates, or extenuates the disqualification and demonstrates that it is clearly consistent with the national interest to grant a security clearance. ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

By virtue of the relationships of the foreign family members, Applicant’s contacts, though infrequent, cannot be deemed casual. Mitigating conditions (MC) that might be applicable are a determination that the nature of the relationships with foreign persons, the country in which the persons are located, or the positions or activities of those persons in that country are such that is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual group or government and the interests of the U.S. (AG ¶ 8a). The other relevant MC is that the individual has such deep and longstanding relationships and loyalties in the U.S., that he can be expected to resolve any conflict of interest in favor of the U.S. (AG ¶ 8b). While Applicant’s father lives in Taiwan, he is an octogenarian and fully retired. His sisters and brother are either retired or in commercial activities totally unrelated to the government of Taiwan. The government acknowledged that the type of work done by the family provides a lesser security risk than that found in the usual foreign influence case (Tr. 52). I find that both mitigating conditions are applicable.

_____ While there is evidence that Taiwan has engaged in economic and military espionage, and that the PRC may use it as a source of information as stated in official documents (Exhs. VII, X, and XI), the U.S. has consistently supported the democratically elected government of Taiwan for its efforts at pluralization and multi-party elections (Exh. II). The U.S. regards Taiwan as a key ally in Asia. Applicant shows no loyalty to Taiwan or the PRC and is a competent professional who knows how to deal with any pressures that might be brought against him by an agent of a foreign government.

_____ The applicable guidelines for Foreign Preference Guideline C provide that an individual who

acts in such a way as to indicate a preference for a foreign country over the United States may be prone to provide information or make decisions that are harmful to the interests of the United States (AG ¶ 9). Conditions that could raise a security concern and may be disqualifying include the possession of a current foreign passport (AG ¶ 10a 1). Security concerns may be mitigated by a providing evidence that the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated. (AG ¶ 11e). I conclude from the evidence submitted showing surrender of the passport to security authorities by Applicant, that the allegation has been mitigated.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person’s trustworthiness and fitness for access to classified information. The “whole person” concept recognizes that we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

Applicant is a person of substance and veracity who is highly educated. He has a responsible position of trust, and is doing a good job for his company. He provided sincere and credible testimony as to his relationship with his family, his motivations, and his loyalty to the U.S. He has established a successful life here building financial and scholarly ties to the U.S. He has a strong financial stake in the U.S. and none to Taiwan. His contacts with his family are minimal and only to continue his family obligations. He has no deference to or loyalty to his country of origin.

While the U.S. has had concerns regarding industrial espionage from Taiwan as stated in official documents (Exhs. III, V, and XI), Applicant shows no loyalty to Taiwan. He is a competent professional who expresses a knowledge of how to deal with any pressures that might be brought against him by or through an agent of a foreign government. Other official documents of the U.S. reflect a continuing need and desire for cooperation with Taiwan on a variety of social and technological fronts (Exh. II).

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that it is clearly consistent with the national interest to grant clearance to Applicant.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

_____ Paragraph 1 Guideline C:	FOR APPLICANT
Subparagraph 1.a.:	For Applicant
Subparagraph 1.b.:	For Applicant
Subparagraph 1.c.:	For Applicant
Paragraph 2 Guideline B:	FOR APPLICANT

Subparagraph 2.a.: For Applicant
Subparagraph 2.b.: For Applicant

DECISION

After full consideration of all the facts and documents presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Charles D. Ablard
Administrative Judge