

KEYWORD: Foreign Influence; Security Violations

DIGEST: Applicant, a lead engineer with a major defense contractor born to naturalized U.S. citizens from Taiwan, mitigated security concerns of foreign influence arising from his parents-in-law and brother-in-law who are citizens of Taiwan. His parents-in-law have had U.S. green cards for five years. They have lived in the U.S. half of the year in five of the past six years and all of the past year to prepare to become U.S. citizens. Applicant is fully integrated into U.S. society and has little contact or interest in the country of his parents origin. Applying the whole person analysis I conclude in his favor. Applicant also mitigated allegations regarding security violations in 1994 and 2000 that were minor in nature and did not result in divulging of information or documents. Clearance is granted.

CASENO: 03-02313.h1

DATE: 06/30/2007

DATE: June 30, 2007

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In Re:)
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Applicant for Security Clearance)
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ISCR Case No. 03-02313

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

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq. , Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a lead engineer with a major defense contractor born to naturalized U.S. citizens from Taiwan, mitigated security concerns of foreign influence arising from his parents-in-law and brother-in-law who are citizens of Taiwan. His parents-in-law have had U.S. green cards for five years. They have lived in the U.S. half of the year in five of the past six years and all of the past year to prepare to become U.S. citizens. Applicant is fully integrated into U.S. society and has little contact or interest in the country of his parents origin. Applying the whole person analysis I conclude in his favor. Applicant also mitigated allegations regarding security violations in 1994 and 2000 that were minor in nature and did not result in divulging of information or documents. Clearance is granted.

STATEMENT OF THE CASE

On March 30, 2006, the 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, received April 24, 2006, Applicant responded to the allegations set forth in the SOR, and requested a hearing. The case was assigned to me on February 13, 2007. A Notice of Hearing was issued April 11, 2007 for a hearing held on April 25, 2007. Applicant waived the 15 day notice requirement. The Government introduced three exhibits and Applicant introduced ten exhibits. All offered exhibits were accepted into evidence. The government requested that administrative notice be taken of twelve official government documents (Exhs. I - XII). Three (Exhs. V, VI, and XII) were excluded from consideration upon objection of Applicant. Applicant and three others testified on his behalf. The transcript was received on May 8, 2007.

The record was left open at the request of Applicant for 30 days for receipt of additional evidence. Applicant submitted additional evidence on in the form of three documents which were admitted without objection into the record.

FINDINGS OF FACT

_____ Applicant admitted all allegations under Foreign Influence-Guideline B and Security Violations-Guideline K with explanatory information. Those 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 38-year-old employee of a major defense contractor working as an engineer. He was born and educated in the U.S. of parents from Taiwan who were naturalized U.S. citizens.

He speaks a little Mandarin, the language of his parents, but insufficiently to hold a serious conversation. He holds bachelor's (summa cum laude) and master's degrees in electrical engineering from two major U.S. universities. He has worked for his employer since his graduation in 1991 and has held a security clearance for the past 14 years. The current application for security clearance (SF 86) is for a ten year renewal and was filed in 1999 (Exh. 1). He was interviewed by a defense investigator in 2002 (Exh. 2).

Applicant was married in 1994 to another student at their undergraduate university and she is also an engineer with the same defense contractor working for the same program. They work on one of several subsystems of a weapons system for the Navy. His annual income is \$110,000 and their combined annual income is \$190,000. Each has a 401(k) valued at over \$100,000. They own their own home with no mortgage which is valued at approximately \$350,000. All of their assets are in the U.S. They have little or no cultural interest in or contact with Chinese society or history.

Applicant and his fiancé who became his wife traveled to Taiwan on three occasions in 1993, 1997, and 2001 on family matters related to their courtship and birthday events for their parents. He advised his company of each trip.

Applicant's parents-in-law and a brother-in-law are citizens of Taiwan. His father-in-law retired from an electric power company where he worked as an accountant. He received a lump sum on retirement and gets nothing further from the company. His mother-in-law was a homemaker. His parents-in-law visited in the U.S. with Applicant and his wife for several weeks each year during the first years of their marriage. Since 2002 they have spent half of each year in the U.S. as they were applying for citizenship. Each has had a green card for the past five years. They have lived in the U.S. permanently for the past year as they prepare to take the examination for citizenship (Exhs. I and J). They own a condo in Taiwan and a house in the U.S. which they purchased to provide income for their daughter while she was in school. The property is rented.

Applicant's brother-in-law lives in Taiwan and works as a lineman for a telephone company which has been privatized. The government still holds a minority interest in the company with most of the stock held by commercial financial entities (Exh. J 2). He did mandatory two years of military service in Taiwan. He visited Applicant and his wife in the U.S. once in 2006 for a sight-seeing trip. He speaks very little English so Applicant and his brother-in-law have no common language. He is married with a young son. As soon as Applicant's parents-in-law become citizens they intend to sponsor the family to come to the U.S. (Tr. 167).

Applicant had two security violations over the 14 years since he obtained a security clearance. The first occurred in 1994 and concerned two shrink wrapped documents classified Confidential that he left on his desk overnight in violation of requirements of the Department of Defense Industrial Security Manual for Safeguarding Classified Information. When they were discovered the documents were still shrink wrapped. The second violation occurred in 2000 concerning two classified documents that were unaccounted for since Applicant failed to obtain receipts for them when he turned them in for destruction. This was in violation of the NISPOM, and he was given verbal counseling and required to attend a refresher security briefing. No disclosure or leaks of information occurred as a result of either violation.

A witness for Applicant at the hearing with decades of security experience with the same

company testified that these violations, on a scale of 1-10 for seriousness, would be categorized as category 2 or 3 violations (Tr. 115). Neither violation resulted in any heightened attention given to Applicant by his employer. He receives regular annual briefings on security issues from his company. He regrets the incidents and is embarrassed about them. However, their occurrence has heightened his attention to security concerns so these incidents have increased his security awareness and attention to security requirement.

Applicant is highly regarded for his diligence, integrity, and excellent engineering work in his job by his supervisors and colleagues who testified for him (Exhs. A-H). He has excellent work ethic and top engineering skills. He is regarded as a key member of the engineering staff. He is regarded as a model citizen with a reputation for honesty and integrity. He follows the rules of the company in all matters and knows security regulations and requirements. He knows that any possible breach of security requires 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 the applicant’s 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).

“A security risk may exist when an individual’s immediate family and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information.” Directive, ¶ E2.A2.1.1. Having immediate family members who are citizens of, and residing in a foreign country, may raise a disqualifying security concern. Directive, ¶ E2.A2.1.2.1.

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 Foreign Influence Guideline B that could raise a security concern and may be disqualifying include having an immediate family member, or a person to whom the individual has close ties of affection or obligation, who is a citizen of, or resident in a foreign country. (E2.A2.1.2.1.) Based on the evidence of record, including Applicant's admissions, the Government established reasons to raise security concerns because of foreign influence. Having established such reasons, 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).

Mitigating conditions that might be applicable to allegations relating to his family are a determination that the individuals in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the persons involved and the U.S.(E2.A2.1.3.1.), and contacts and correspondence with foreign citizens are casual and infrequent. (E2.A2.1.3.3.) While his relatives are not agents of a foreign power, by definition parents and siblings are persons with close ties of affection. The same applies to close family in-laws. Thus, the specific mitigating conditions are not applicable.

Conditions under Security Violations Guideline K that could raise a security concern and be disqualifying include violations that are multiple or due to negligence (E2.A11.1.2.2.). Possible mitigating conditions that could mitigate security concerns include actions that were inadvertent (E2.A11.1.3.1.), were isolated or infrequent (E2.A11.1.3.2.), or demonstrate a positive attitude towards discharge of security responsibilities (E2.A11.1.3.4.). In view of the time spread between the two violations and the fact that the second and last one was seven years ago, both were inadvertent. Applicant has shown in his conduct, as stated at the hearing by himself and his supervisors and colleagues, a positive attitude towards his security responsibilities and extensive training in security requirements, I conclude that all mitigating conditions are applicable.

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 has had a responsible position of trust and has done an excellent job for his company for 16 years. He provided sincere and credible testimony as to his relationship with his family, his motivations, and his loyalty to the U.S. He was

born in the U.S., educated in the U.S., and is totally integrated into U.S. culture. He has no cultural contact with his parent's country of origin. The status of his parents-in-law in becoming U.S. citizens within months certainly lessens any likelihood of coercion or pressure from them adversely affecting security interests. He has little contact with his brother-in-law and, because of Applicant's limited ability to speak any of the Chinese languages, cannot converse with him.

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. IV, and XI), efforts of the U.S. are consistent in support of Taiwan for its democratically elected government (Exh. II). 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.

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 B: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Paragraph 2 Guideline K: 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