



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



In the matter of:)	
)	
-----)	ISCR Case No. 05-00993
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Melvin A. Howry Esquire, Department Counsel
For Applicant: Martha D. Henderson, Esquire

September 25, 2008

Decision

MOGUL, Martin H., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on July 7, 2003. On April 9, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines C and B for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant replied to the SOR (RSOR) in writing on May 22, 2008, and requested a hearing before an Administrative Judge. I received the case assignment on July 11, 2008. DOHA issued a notice of hearing on August 4, 2008, and I convened the hearing as scheduled on August 27, 2008. The Government offered Exhibits 1 through 8, which were received with some objection to the documents used regarding Taiwan. Applicant testified on his own behalf and had two additional witnesses testify. Through counsel, he also submitted Exhibits A through O, which were received without objection. DOHA

received the transcript of the hearing (Tr) on September 12, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to the country of Taiwan. The request and the attached documents were admitted into evidence as Exhibit 8. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In his RSOR, Applicant admitted all of the SOR allegations 1.a. through e., and 2.a., through f., with explanations. The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, the admitted documents, the testimony of Applicant and the other witnesses, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant was born in Taiwan in 1953. He moved to the United States in 1977, and he has lived in the U.S. since that time, with the exception of a three month period in 2000. He had received a Bachelor of Science Degree in Chemical Engineering in Taiwan, and he came to the U.S. to pursue higher education in engineering and science. He received a Master of Science degree in Chemical Engineering from a U.S. university in 1979, and a Ph.D. degree from another U.S. university in Material Science and Engineering.

He became a naturalized United States citizen in 1988. Applicant is married, and his wife, who was also born in Taiwan, came to the United States in 2003, and became a United States citizen in 2007. Applicant and his wife have a five year old daughter.

Applicant's parents are deceased. His brother is a U.S. citizen and resident, and his sister is permanent resident of the U.S.

Applicant is employed as a research scientist by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

Paragraph 1 (Guideline C - Foreign Preference)

1.a. It is alleged in the SOR that Applicant exercised dual citizenship with Taiwan and the United States. Applicant contends that his only exercise of Taiwanese citizenship was to enter and exit Taiwan between 1998 and 2002 with a passport from Taiwan. Applicant began using his Taiwanese passport after he learned that he could

not stay in Taiwan longer than 60 days without leaving and traveling to Hong Kong to get an extension. He has not used his Taiwanese passport since 2003. Applicant does not consider himself to be a dual citizen of Taiwan and the United States, but only a U.S. citizen. Other than using his Taiwanese passport, he has not engaged in any of the responsibilities or duties, or received any privileges, from being a Taiwanese citizen.

1.b. As of October 9, 2007, Applicant continued to possess a Taiwanese passport that was issued on January 2, 2003. His Taiwan passport is not scheduled to expire until January 2, 2013. At the hearing, Applicant testified that he has renounced his Taiwanese citizenship and revoked his passport from Taiwan. Applicant submitted a Certificate of Renunciation of Nationality, dated June 4, 2008, from the Minister of the Interior, indicating that Applicant's renunciation of his Taiwanese citizenship has been accepted (Exhibit O). Applicant testified that at the same time that he applied for the citizenship renunciation, he also included his Taiwanese passport. At the hearing he submitted the passport to me, explaining and showing me that a corner of the passport had been cut off and it had been invalidated by the Taiwanese government.

1.c. Applicant applied for and was issued a Taiwanese passport, even though he had become a United States citizen in 1988, and held a valid United States passport since 1988. As discussed above, Applicant only did this so that he could stay in Taiwan for longer than 60 days, without having to leave the country to receive an extension to stay longer.

1.d. Applicant used his Taiwanese passport in lieu of his U.S. passport to enter and exit Taiwan until 2003, when his supervisor suggested to him that, since he was being considered for a security clearance, he should use only his U.S. passport. When Applicant learned that using his Taiwanese passport might be considered showing a preference for a country other than the United States, he stopped using it, and he has now renounced his Taiwanese citizenship and had his Taiwanese passport invalidated.

1.e. Applicant used his Taiwanese passport for travel to the People's Republic of China (PRC) in 2000, and he had retained the travel document that was issued by the PRC government to citizens of Taiwan for travel in the PRC. Applicant testified that he took two trips to the PRC when he worked for a Taiwanese company, to visit the company's plant in the PRC. This employment will be discussed in more detail under paragraphs 2.d. and 2.e., below. Applicant only kept the document because there was no requirement to return it. Exhibit E is a copy of this travel document with the first page translated, showing that the document expired in October 2005. Applicant has not traveled back to the PRC since 2000.

Paragraph 2 (Guideline B - Foreign Influence)

2.a. Applicant's mother-in-law is a citizen and resident of Taiwan. She visits Applicant and his wife, usually two times a year for three months at a time. She is 64 years old and is retired as a golf shop manager. She has recently received approval to receive an immigration visa from the U.S. When she receives it, she plans to move to the U.S. and to live with Applicant and his wife.

2.b. Applicant has one brother-in-law who is a citizen and resident of Taiwan. He is an officer in the Immigration Administration of the Interior Ministry of Taiwan. Applicant testified that his job is to check people's passports as they enter Taiwan. When Applicant's mother-in-law is staying with them, his brother-in-law calls approximately once a week, and when she is not in the U.S., he calls once a month. Applicant does not always speak to him when he calls.

2.c. Applicant has a second brother-in-law who is a citizen and resident of Taiwan. He is a chemical engineer for a private company in Taiwan. Applicant does see both brothers-in-law when he travels to Taiwan.

2.d. Applicant resided in Taiwan from September 2000 to November 2000, and he was employed by a Taiwanese company that was owned by Applicant's friend, who is a citizen and resident of Taiwan. The company, for which he worked as a consultant, manufactured the material that was attached to cooking utensils to make them non-stick. Applicant's friend asked Applicant if he could come to Taiwan and help him with his business. Since Applicant's business in the U.S. was slow, he went for three months. Applicant has not worked for this company since 2000. His contact with this friend, who is not associated with the Taiwanese government, is infrequent.

2.e. Applicant traveled to the PRC in 2000 for site visits for the Taiwanese company, reviewed on 2.d., above. He visited the PRC on two occasions in 2000 and has not returned since that year.

2.f. Applicant traveled to Taiwan in the following years: 1998, and 2000 through 2007. His visits were for both personal and business reasons, including traveling while working for U.S. companies, attending the funeral of his mother, courting and marrying his wife, and the consulting work that has been discussed above.

Applicant owns a home in the United States, and he also has retirement accounts and other assets worth several hundred thousand dollars in the U.S. He owns no assets in Taiwan or any other country but the U.S. Since he became a U.S. citizen, he has voted in almost every election for which he had an opportunity. He also testified about his very strong feeling that the U.S. is his country, and he plans to remain here for the rest of his life.

Two witnesses testified on behalf of Applicant. The first is the director of a department and has been Applicant's supervisor since 2003. He described Applicant as a high quality worker, who is mature, hard working, and "completely trustworthy." This

witness also wrote a very positive character letter regarding Applicant (Exhibit H). The second witness first became associated with Applicant in 1984, when they were both graduate students at a U.S. university. They have now worked together at the same employer for four or five years. This witness extolled Applicant's virtues as "extremely hard working, of great integrity and does what is right for the program and the project." Additionally this witness wrote a very positive character letter regarding Applicant (Exhibit I).

Finally, Applicant submitted two additional strong character letters, which were very positive on his behalf (Exhibits J and K), a Commendation letter (Exhibit L), and an Employee Spot Award for his contributions to the company (Exhibit M).

Current Status of Taiwan

I take administrative notice of the following facts regarding Taiwan. Taiwan has an elected democratic government. It has the 17th largest economy that is a leading producer of high-technology goods. It engages in industrial and economic espionage. Proprietary information technology is high on the Taiwanese list of targeted information to be acquired by their agents from foreign governments and businesses.

There are 23 million Taiwanese citizens. Their per capita income in 2005 was \$15,000, cited by their president in a speech that he presented as economic progress under his administration. Although the United States now recognizes Taiwan as part of the People's Republic of China (PRC) as "one-China" it continues to maintain strong unofficial relations with Taiwan.

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's over-arching adjudicative goal is a fair, impartial and common sense 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 access to classified information will be resolved in favor of 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 applicant or proven by Department Counsel. . . .” The Applicant has the ultimate burden of persuasion as to obtaining 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 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 10865 provides that 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 C, Foreign Preference

Under AG ¶ 9 the security concern involving foreign preference arises, “[W]hen an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.”

Applicant’s application and receipt of an Taiwanese passport raises foreign preference concerns under Disqualifying Condition DC 10 (a), the exercise of the privilege of foreign citizenship.

However, Applicant did invalidate his foreign passport, by turning it over to a Taiwanese government representative, so that it could be cut and invalidated. Additionally, he renounced his Taiwanese citizenship to the proper Taiwan authorities and received confirmation that his renunciation of his Taiwanese citizenship has been accepted. Therefore, I find that Mitigating Conditions (MC) 11. (b) and (e) under this guideline apply to this case. After considering all of the evidence of record under Guideline C, I conclude that the mitigating evidence substantially outweighs the disqualifying evidence.

Guideline B, Foreign Influence

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AG ¶ 6 expresses the security concern regarding foreign influence:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying (DC). Those that could be applicable in this case include the following: (a) contact 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; (d) sharing 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 relatives, including his mother-in-law, and brothers-in-law, who are citizens and residents of Taiwan, make DC 7. (a) and (d) a concern to the Government.

AG ¶ 8 provides conditions that could mitigate security concerns (MC):

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.

I find that MC (b) is applicable to this Applicant and strongly controlling for the following reasons: Applicant, who is 55 years old, immigrated to the United States when he was 24 and has lived in the U.S. for 31 years, more than half of his life. He has been a U.S. citizen for 20 years, and he is married to a naturalized U.S. citizen. They have a six year old daughter, who is a U. S. citizen. His brother is a U.S. citizen and resident, and his sister is permanent resident of the U.S. Applicant received two college degrees in the U.S., and has worked here his entire adult life, with the exception of three months in 2000, when he worked in Taiwan. Applicant has considerable assets in the U.S. and none in Taiwan or any other country.

Applicant has taken the formal step of renouncing his Taiwanese citizenship. He has also had his Taiwanese passport invalidated. His contact with brothers-in-law is limited, and his mother-in-law plans to move to the United States shortly. Finally,

extremely positive testimony was offered on behalf of Applicant, and he had also received many laudatory recommendations from individuals in character letters. Based on all of this mitigating evidence, I conclude Guideline B 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 the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a): "(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) 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 the facts and circumstances surrounding this case. Based on all of the reasons cited above as to why the Mitigating Conditions apply under Guidelines C and B, I find that the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance under the whole person concept. For all these reasons, I conclude Applicant mitigated the 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 C:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	For Applicant

Subparagraph 2.e:
Subparagraph 2.f:

For Applicant
For Applicant

Conclusion

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

Martin H. Mogul
Administrative Judge