

KEYWORD: Foreign Influence

DIGEST: Applicant is 60 years old, a U.S. citizen, and a 28-year employee of a company engaged in the health care management business. Applicant’s father and youngest sibling are resident citizens of Taiwan, the Republic of China. Applicant mitigated the foreign influence trustworthiness concern. His eligibility for a public trust position is granted.

CASENO: 06-01152.h1

DATE: 08/29/2007

DATE: August 28, 2007

In re:	)	
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SSN: -----	)	ADP Case No. 06-01152
	)	
Applicant for a Public Trust Position	)	
	)	

**DECISION OF ADMINISTRATIVE JUDGE  
PHILIP S. HOWE**

**APPEARANCES**

**FOR GOVERNMENT**

D. Michael Lyles, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is 60 years old, a U.S. citizen, and a 28-year employee of a company engaged in the health care management business. Applicant’s father and youngest sibling are resident citizens

of Taiwan, the Republic of China. Applicant mitigated the foreign influence trustworthiness concern. His eligibility for a public trust position is granted.

## STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On November 3, 2006, DOHA issued a Statement of Reasons<sup>1</sup> (SOR) detailing the basis for its decision—trustworthiness concerns raised under Guideline B (Foreign Influence) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006. Applicant answered the SOR in writing on November 10, 2006, and elected to have a hearing before an administrative judge. The case was assigned to me on March 20, 2007. On June 27, 2007, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government and the Applicant submitted exhibits that were admitted into evidence. DOHA received the hearing transcript (Tr.) on July 10, 2007.

## FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated here as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 60 years old, married with one adult son, and works for a defense contractor in the health care management business. He works in the information systems area. He has worked for this employer for 28 years. He was born on Taiwan, the Republic of China. He immigrated to the U.S. in 1971. He is a naturalized U.S. citizen since November 16, 1989. He obtained two masters' degrees in the U.S. His wife was born on Taiwan, but became a U.S. citizen in 1984. His mother became a U.S. citizen in April 2002. She lives in the U.S. Applicant and his wife own their own home in the U.S. and have since 1987. He does not own any property in Taiwan or any other foreign country. (Tr. 16, 18, 22, 26-28; Exhibits 1 and A)

Applicant's 93-year-old father lives on Taiwan. He is a citizen of the Republic of China. He is infirm, confined to a wheelchair, and suffers from cancer. Applicant does not expect him to live much longer because of his age and the variety of his ailments. Applicant's father is retired from the Central Bank of China, and receives a pension from the Taiwanese government. Applicant's brother is a resident and citizen of the Republic of China on Taiwan. He is four years younger than Applicant. He operates a trading company he owns. He has had this company for about 20 years. Applicant and his brother do not have a close relationship and they talk on the telephone only when Applicant travels to see his father on Taiwan. Applicant calls his brother before he departs from the U.S., and after he returns to it. He has a sister who lives in the U.S. with whom his mother lives. His younger sister came to the U.S. before Applicant did in 1971. Applicant traveled to Taiwan to visit his father in 1995, 2000, 2003, 2004, and 2005. No one from the Taiwanese government approached Applicant about obtaining any information Applicant might have from his work. All of his wife's family now lives in the U.S. (Tr. 15-21; Exhibit 1, Answer)

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<sup>1</sup>Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).

Applicant visited the People's Republic of China (PRC) in 2004 and 2006 for vacation purposes. He traveled with a group consisting of his wife, her sister and husband, and 10 people from Singapore. He hiked and saw various sites throughout parts of the PRC. Applicant has no business in the PRC. He told his supervisor and another superior that he was going to the PRC for two weeks vacation. He was not approached or contacted by anyone from the PRC seeking information during his visit. Applicant had workplace training regarding safeguarding sensitive material. (Tr. 18-26; Exhibit 1, Answer)

I take administrative notice of the island of Taiwan being the Republic of China, and not the PRC, which is located on the mainland of China. Taiwan and the PRC engage in industrial and military espionage designed to collect proprietary and classified information. The greater bulk of the information presented in the administrative notice documents pertains to the PRC activities in industrial and military espionage. Industrial espionage is intelligence gathering by a foreign country or a foreign company with its government's help against a private U.S. company to obtain commercial secrets. Taiwan collects primarily industrial information for commercial purposes. The administrative notice exhibit included two examples of Taiwan collecting, in one case, classified government data, and in the other collecting commercial information to enable one of its manufacturing companies to compete directly with a U.S. company. The U.S. has formal diplomatic relations with the PRC, but since 1979 has not had formal diplomatic relations with Taiwan. The U.S. sells Taiwan military equipment and does billions of dollars of trade with Taiwan annually. It also does billions of dollars of trade with the PRC annually. Taiwan is a multiparty democracy of 22 million people, with an elected president and legislature. The PRC is a one-party authoritarian government which has a record of human rights abuses. (Exhibit 2)

## POLICIES

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." *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information with Industry* §2 (Feb. 20, 1960). By direction of the Under Secretary of Defense for Counterintelligence and Security, adjudications of cases forwarded to DOHA by the Defense Security Service or the Office of Personnel Management (OPM) for a trustworthiness determination shall be conducted under the provisions of the Directive. Eligibility for a position of trust is predicated upon the applicant meeting the guidelines contained in the Directive and a finding it is clearly consistent with the national interest to do so. *See* Directive ¶ 2.3. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his trustworthiness determination." *See* Directive ¶ E3.1.15

The adjudication process is based on the whole person concept. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required. The decision to deny an individual eligibility to occupy a position of trust is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or.

10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a such a determination.

In evaluating the trustworthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶2 of the Adjudicative Guidelines. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 pertinent 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 (See Directive, Enclosure 2). Because each case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible to occupy a position of trust. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's trustworthiness suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at \*\*6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. See Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his trustworthiness determination. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "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

Based upon a consideration of the evidence as a whole, I find the following adjudicative guideline most pertinent to an evaluation of the facts of this case:

Guideline B: The Concern: 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. ¶6

## CONCLUSIONS

**Foreign Influence:** Applicant's connection to Taiwan results from his birth, and his 93-year-old father, and his younger brother, continuing to live there. Applicant has contact with his father out of familial obligations. His contact with his brother is limited to telephone calls about Applicant's travel to and from Taiwan for the family visits, and contact with him while Applicant visits their father. Applicant has no financial or property interests in Taiwan or the PRC. Applicant's contact with the PRC occurred in 2004 and 2006 on personal trips he took with a group for site-seeing purposes only.

Under the above facts, the condition that could raise a security concern and may be disqualifying, which is applicable here is ¶7.a (contact with a foreign family member who is a citizen of or a resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion).

The mitigating conditions ¶8.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 the foreign individual and the interests of the U.S.), and ¶8.b (there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person 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. interests) apply. Applicant is not going to be placed in any position by his father, confined to a wheelchair suffering from cancer and retired from work, and forced to make a choice between the Taiwanese government and the U.S. His father is not involved in any business or government activity. He is trying to stay alive, and Applicant's visits are the actions of a dutiful son toward his dying father. Applicant's brother is in a private business with no visible connection to the health care business for which Applicant works. Neither relative is involved in any activity which might benefit from any U.S. trustworthiness information.

Furthermore, Applicant has been a U.S. citizen for 24 years, and lived in the U.S. for 33 years. He has worked for the same employer for 28 years. His mother and sister live in the U.S. and are citizens of the U.S. His wife is a U.S. citizen since 1984. Applicant's son was born in the U.S. Applicant owns a home in the U.S. His ties to these people in the U.S., and to the U.S. by himself, are obviously stronger than his ties to his father and brother who remained in Taiwan. The same analysis applies to Applicant's two pleasure trips to the PRC, where no one approached him about his health care business employment. I give great weight to Applicant's sincere and frank presentation, and the depth of his connections to the U.S. over Taiwan or the PRC.

### **Whole Person Analysis**

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." AG ¶2(a). "Each security clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy." Directive ¶6.3. "Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination." AG ¶2(a). In evaluating Applicant's case, I considered the adjudicative process factors listed in the AG ¶2(a). Because

foreign influence does not involve misconduct, only the eight factor (the potential for pressure, coercion, exploitation or duress) is relevant.

There are many countervailing positive attributes to Applicant's life as a U.S. citizen that weigh in favor of granting him a security clearance. He has extensive and long-term contacts with the U.S. He has lived here since 1974, and been a citizen since 1984. His wife became a U.S. citizen in 1984. His mother and sister immigrated to the U.S. and became citizens. He has worked for the same employer for 28 years. He owns a home in the U.S., and has no property or financial interests in any other country. His son was born in the U.S. He is a loyal American committed to his family and his job in the U.S.

Applicant's visits to his father are not serious misconduct, or misconduct of any type. They are merely visits to a dying parent. Applicant has minimal contact with his younger brother during these visits. His visits to his father are voluntary, based on what he thinks his family obligations are as the oldest child. His father is 93 and confined to a wheelchair. When his father dies his visits will cease. There is no likelihood of coercion or pressure because his father cannot put any pressure on him due to his illness, age, retired status, and struggle to stay alive. Applicant's brother is not in the health care business, so he would have no interest in any information on the computers that Applicant maintains for his employer. Applicant does not have the type of new industrial or military developments within his job that any espionage would be directed to collect. It is not likely that the Taiwanese or PRC governments would coerce Applicant to get information on patient health care.

In addition to the above facts, trustworthiness determinations are predictive judgments and the best predictor of future performance is past performance. Based on a review of his history and substantial ties to the United States, I conclude Applicant's potential for exploitation by Taiwan, a democratic ally of the United States, appears low and unlikely to occur.

Therefore, I conclude the foreign influence trustworthiness concern for Applicant. I conclude the "whole person" trustworthiness concern for Applicant.

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraphs 1.a to 1.d: For Applicant

### **DECISION**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue eligibility for assignment to sensitive duties. His application for eligibility for a public trust position is granted.

Philip S. Howe  
Administrative Judge