

KEYWORD: Foreign Influence

DIGEST: The Applicant’s 80 year old brother retired from the Taiwanese navy 25~30 years ago. Their relationship is not close, as his brother is 26 years older than the Applicant. The Applicant has seen his brother only occasionally, when he has visited Taiwan. The Applicant also visited China on one occasion in 1999, on behalf of his U.S. company. His family connections, a spouse, two children, and a sister, are in the U.S. His financial interests are also in the U.S. Those who know and work with the Applicant think highly of him. As the Applicant has “longstanding relationships and loyalties in the U.S.,” it is unlikely that he “will be placed in a position of having to choose between the interests of . . . [his brother] . . . and the interests of the U.S.” Mitigation is shown. Clearance is granted.

CASENO: 06-12247.h1

DATE: 02/21/2007

DATE: February 21, 2007

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In Re:)	
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	SSN: -----)	
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Applicant for Security Clearance)	
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**DECISION OF ADMINISTRATIVE JUDGE
RICHARD A. CEFOLA**

APPEARANCES

FOR GOVERNMENT

Jeff A. Nagel, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant's 80 year old brother retired from the Taiwanese navy 25~30 years ago. Their relationship is not close, as his brother is 26 years older than the Applicant. The Applicant has seen his brother only occasionally, when he has visited Taiwan. The Applicant also visited China on one occasion in 1999, on behalf of his U.S. company. His family connections, a spouse, two children, and a sister, are in the U.S. His financial interests are also in the U.S. Those who know and work with the Applicant think highly of him. As the Applicant has "longstanding relationships and loyalties in the U.S.," it is unlikely that he "will be placed in a position of having to choose between the interests of . . . [his brother] . . . and the interests of the U.S." Mitigation is shown. Clearance is granted.

STATEMENT OF THE CASE

On October 23, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

Applicant filed an Answer to the SOR on November 13, 2006.

The case was received by the undersigned on January 10, 2007. A notice of hearing was issued on January 19, 2007, and the case was heard on February 7, 2007. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also submitted documentary evidence. The transcript (TR) was received on February 16, 2007. The issues raised here are whether the Applicant's alleged Foreign Influence militates against the granting of a security clearance. [The Applicant admits the underlying factual basis of the three allegations.]

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The Applicant is 54 years of age, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional Findings of Fact.

Guideline B - Foreign Influence

The Applicant's family fled China in 1949 to escape the Communists (TR at page 16 lines 7~20). He was born in Taiwan in 1952, but immigrated to the U.S. in 1986, more than 20 years ago (TR at page 1~23). The Applicant's spouse, two children, and a sister are all Americans, and live in the U.S. (TR at page 17 lines 13~18, and at page 24 lines 1~23). The Applicant's financial interests are all in the U.S. (TR at page 25 lines 3~20).

1.a. and 1.b. The Applicant's 80 year old brother is a citizen of and resides in Taiwan (TR at page 17 line 24 to page 18 line 4). His brother retired from the Taiwanese navy as a Captain 25~30 years ago (TR at page 18 line 4 to page 19 line 3). Their relationship is not close, as the Applicant's brother is 26 years older than the Applicant (TR at page 20 lines 7~17). The Applicant visited Taiwan, twice in 2003, three times in 2004, twice in 2005, and once in 2006 (Answer). He only visits his brother occasionally, when he is in Taiwan (TR at page 19 line 14 to page 20 line 6).

1.c. The Applicant also visited China on one occasion in 1999, on behalf of his U.S. company (TR at page 27 line 4 to page 28 line 1). He has no intention on visiting China other than on business (*Id*).

Taiwan has an elected democratic government. It has the 17th largest economy in the world 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 business. Although the U.S. now recognizes Taiwan as part of China as "one-China," it continues to maintain strong unofficial relations with Taiwan.

China, on the other hand, is run by the Communist Party, which controls all aspects of the Chinese government. China engages in espionage against the U.S. through an extensive network of businesses, personnel, and specific programs designed to acquire advanced U.S. military technology.

POLICIES

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern. Furthermore, as set forth in the Directive, each 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 in enclosure 2, including as appropriate:

- a. Nature, extent, and seriousness of the conduct, and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future."

The Administrative Judge, however, can only draw those inferences or conclusions that have

a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence that is speculative or conjectural in nature.

The Government must make out a case under Guideline B (Foreign Influence); which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who is subject to Foreign Influence, may be prone to provide information or make decisions that are harmful to the interests of the United States. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations at all times and in all places.

CONCLUSIONS

The Applicant's elderly brother is citizen of and resides in Taiwan. He also has occasional contact with this brother. The first and second disqualifying conditions are arguably applicable as this contact "creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion," and creates "a potential conflict of interests between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person . . . by providing that information." Under the facts of this particular case, however, these are clearly countered by the first and second mitigating conditions. The nature of the Applicant's relationship with his brother in Taiwan is "such that it is unlikely the individual will be placed in a position of having to choose between the interests of . . . [his brother] and the interests of the U.S." Also, the Applicant "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."

Furthermore, I am not limited to the mitigating conditions, delineated in the Directive, in deciding if an Applicant has demonstrated extenuation or mitigation. Here, those who know the Applicant best, speak most highly of his character, credibility and trustworthiness (Applicant's Exhibit A). The totality of the Applicant's conduct and circumstances, as set forth at length above, clearly warrants a favorable recommendation under the "whole person concept." Mitigation is shown. Guideline B is thus found for the Applicant.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his Foreign Influence. The Applicant has thus met the mitigating conditions of Guideline B, and of Section E.2.2. of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guideline B.

FORMAL FINDINGS

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Financial

FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

DECISION

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Richard A. Cefola
Administrative Judge