

KEYWORD: Foreign Influence

DIGEST: Applicant immigrated to the United States in 1982. He was born, grew up, and was educated in Taiwan. He became a naturalized U.S. citizen in 1999. Applicant's ties of affection and/or obligation and contacts with his parents and sister who are citizens and residents of Taiwan, pose an unacceptable security risk. His favorable information is not sufficient to mitigate the foreign influence security concerns. Clearance is denied.

CASENO: 06-19923.h1

DATE: 09/27/2007

DATE: September 27, 2007

In re:)	
)	
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SSN: -----)	ISCR Case No. 06-19923
)	
Applicant for Security Clearance)	

**DECISION OF ADMINISTRATIVE JUDGE
ROBERT J. TUIDER**

APPEARANCES

FOR GOVERNMENT
James F. Duffy, Esq., Department Counsel

FOR APPLICANT
Pro Se

SYNOPSIS

Applicant immigrated to the United States in 1982. He was born, grew up, and was educated in Taiwan. He became a naturalized U.S. citizen in 1999. Applicant's ties of affection and/or obligation and contacts with his parents and sister who are citizens and residents of Taiwan, pose an unacceptable security risk. His favorable information is not sufficient to mitigate the foreign influence security concerns. Clearance is denied.

STATEMENT OF THE CASE

On December 14, 2006, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) alleging facts and security concerns under Guideline B (Foreign Influence). The SOR informed Applicant that, based on available information, DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to grant him access to classified information and submitted the case to an administrative judge for a security determination.¹ Applicant answered the SOR and requested a hearing. DOHA received his answer to the SOR on January 8, 2007.

The case was assigned to me on May 24, 2007. On May 29, 2007, a Notice of Hearing was issued convening a hearing on June 20, 2007. The hearing was convened as scheduled. The government presented two exhibits, marked GE 1 and 2, to support the SOR. Applicant testified on his own behalf, and presented two exhibits, marked AE A and B. DOHA received the transcript (Tr.) on June 27, 2007.

FINDINGS OF FACT

Applicant admitted all the SOR allegations with explanations. His admissions are incorporated herein as findings of facts. After a thorough review of the record evidence, I make the following additional findings of fact.

Applicant is a 49-year-old senior systems (software) engineer who has worked for a Department of Defense (DoD) contractor since February 2004. He was born, raised, and educated in the Republic of China (Taiwan). In 1979, at age 22, he received a bachelor's degree in computer science from a Taiwanese university (Tr. 18). He then served two years of mandatory military service in the Taiwanese Army. Because of his education, he was assigned as a sergeant in a supply unit. He claimed he only performed administrative duties and supervised a squad of men. After his discharge, Applicant worked as a computer programmer for a shoe manufacturing company until December 1983 (Tr. 32).

Applicant met his wife in Taiwan, and they were married in December 1982. She was born in Taiwan, but had lived in the United States with her siblings since age 15. He and his wife emigrated to the United States in early 1984. Initially, they lived with his wife's siblings, who had emigrated to the United States in 1981 and were legal resident aliens. He and his wife became naturalized U.S. citizens in 1989. They have two sons, both of whom were born in the United States. The oldest son was born in March 1984. He works for a pharmaceutical and life science company conducting research. The young son was born in November 1989. He is a junior in high school. Applicant has taught his children to be loyal to the United States, and to be involved in their

¹ See Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992) (Directive), as amended. On August 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised adjudicative guidelines (AG) to all adjudications and other determinations made under the Directive in which the SOR was issued on or after September 1, 2006.

community by working as volunteers for the fire department and the rescue squad. His wife has worked at an elementary school as an administrative assistant for the last eight years (Tr. 50).

In February 1987, Applicant completed a master's degree in computer science at a U.S. university (Tr. 36). Since then, he has worked on the east coast of the United States with different companies, but always in the information technology field (software, and computer programming) (GE 1). In 2004, Applicant started working with his current employer. He was told his Taiwanese citizenship would adversely affect his ability to receive access to classified information. In December 2004, Applicant renounced his Taiwanese citizenship (AE A). In 2005, he was issued interim access to classified information by his employer, however, he never handled any classified information (Tr. 98).

He has traveled with his family to Taiwan three times since his arrival to the United States; in 1991 to celebrate his father's 70th birthday, in 1999 to visit with his family, and in 2001 to celebrate his father's 80th birthday.² They visited with his family in Taiwan for approximately two weeks each time.

Applicant's mother is 69 years old. She was born in the People's Republic of China (China) (Tr. 54). She has been a citizen and resident of Taiwan since around 1949. She lived with Applicant for many years babysitting his children while he and his wife worked. She used to spend approximately half of the year in the United States and the other half in Taiwan. In 1990, she became a permanent resident alien of the United States (Tr. 56). Her husband developed cancer of the vocal cords and she moved back to Taiwan to take care of him. As of the day of the hearing, she was living in Taiwan. Applicant claimed that it is not likely his mother will return to the United States because she is too old, and they don't have the money for her airplane fare. She has been retired for 17 years. She used to work for a private company as a telephone operator. According to Applicant, his mother does not have any relatives in China, except for a sister-in-law with whom she does not have contact. Applicant has contact with his mother approximately once a week when she is in Taiwan (AE B).

Applicant's father is 85 years old. He was born in China, but is now a citizen and resident of Taiwan (Tr. 63). According to Applicant, his father emigrated to Taiwan in 1949 as part of the Chiang-Kai-shek's led movement out of China. He served in the Taiwanese Air Force, and was trained to be a fighter pilot by the U.S. military around 1944. He retired holding the rank of colonel in 1972. He receives a military pension from the Taiwanese government. After his retirement, he worked for a private airline company. Applicant testified that all his father's siblings are dead, and his father no longer has contact with any members of his family living in China (Tr. 70). Applicant has contact with his father every two or three years when he visits Taiwan or his father visits the United States. They have telephone contact once a week.

Applicant has a 47-year-old sister who is a resident and citizen of Taiwan. She is divorced, has a 13-year-old child, and works as a nurse in a private hospital. She lives with Applicant's parents. Applicant has contact with his sister when he calls his parents. He also has a 40-year-old brother residing on the west coast of the United States, who is a naturalized U.S. citizen. Applicant

² I note one of Applicant's contacts stated in his interview with a government investigator (AE B) that Applicant traveled to Taiwan in 2005.

has telephone contact with his brother once a month, and personal contact every two or three years (Tr. 75).

Applicant's mother-in-law was born in China. She resides in the United States with her two sons and two daughters. To Applicant's knowledge, all of his siblings in-law and his mother-in-law are naturalized U.S. citizens (Tr. 76). Applicant's mother-in-law has visited China several times. The last time was two years ago when she and two of her children visited China for approximately three weeks (Tr. 80).

Applicant claimed he has no contact with anyone in Taiwan or China, except for his family. He has no financial ties or economic interests outside of the United States. He and his wife have voted in U.S. elections since 1992.

I take administrative notice of the following facts. Taiwan is a stable multi-party democracy, its government is friendly to the United States, and it has a good human rights record. Since the end of World War II, Taiwan has developed into a major international trading power and has become the world's 17th largest economy. There are on-going tensions between Taiwan and China. Taiwan seeks to become an independent State, an aspiration which is strongly opposed by China, which sees Taiwan as a province of China. Despite their differences, contact between the two sides has grown significantly over the last decade. China is Taiwan's largest trading partner, and Taiwan is China's fifth largest. The United States has recognized China as the only legal government of China, and that Taiwan is part of China. Exs. I through XIII.

Additionally, I take administrative notice of Taiwan's active and historic roles as collector of competitive information and perpetrator of industrial espionage against U.S. companies producing militarily critical technologies such as information systems, sensors and lasers, and electronics.

POLICIES

The Directive sets forth adjudicative guidelines (AG) which must be considered in evaluating an Applicant's eligibility for access to classified information. The administrative judge must take into account both disqualifying and mitigating conditions under each AG applicable to the facts and circumstances of the case. The guidelines are not viewed as inflexible ironclad rules of law. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. Each decision must reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive, and the whole person concept.³ Having considered the record evidence as a whole, I conclude Guideline B (Foreign Influence) is the applicable relevant AG.

³ AG ¶ 2(a). "... The adjudication process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. . . ." The whole person concept includes the consideration of "the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the extent to which participation is voluntary; the presence or absence of rehabilitation and other permanent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; and the likelihood of continuation or recurrence. . . ."

BURDEN OF PROOF

The purpose of a security clearance decision is to determine whether it is clearly consistent with the national interest to grant or continue an applicant's eligibility for access to classified information.⁴ A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest to ensure each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own.

The government has the initial burden of proving controverted facts alleged in the SOR. To meet its burden, the government must establish by substantial evidence⁵ a *prima facie* case that it is not clearly consistent with the national interest for the applicant to have access to classified information. The responsibility then shifts to the applicant to refute, extenuate or mitigate the government's case. Because no one has a right to a security clearance, the applicant carries a heavy burden of persuasion.⁶ The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of protecting national security.⁷

The scope of an administrative judge's decision is limited. Nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. Executive Order 10865, § 7.

CONCLUSIONS

Under Guideline B (Foreign Influence), the government's concern is that foreign contacts and interests may be a security concern. If the individual has divided loyalties or foreign financial interests, he or she 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 ¶ 6.

⁴ See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁵ ISCR Case No. 98-0761, at 2 (App. Bd. Dec. 27, 1999)(Substantial evidence is more than a scintilla, but less than a preponderance of the evidence); ISCR Case No. 02-12199, at 3 (App. Bd. Apr. 3, 2006)(Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record); Directive, ¶ E3.1.32.1.

⁶ *Egan*, *supra* n.8, at 528, 531.

⁷ See *Id.*; AG ¶ 2(b).

AG ¶ 7 sets out conditions that could raise a security concern and may be disqualifying in this case, including:

(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;

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information;

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country, and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.⁸ Applicant has frequent contacts and a close relationship of affection and/or obligation with his parents and sister, who are residents and citizens of Taiwan. These contacts create a heightened risk of foreign pressure or attempted exploitation because there is the possibility that Taiwanese or Chinese agents may exploit the opportunity to obtain intelligence, classified, or economic information about the United States. His connection to his family members also create a potential conflict of interest because his relationships are sufficiently close to raise a security concern about his desire to help them or the governments of Taiwan or China by providing sensitive or classified information.

The government produced substantial evidence raising these two potentially disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove a mitigating condition. The burden of disproving a mitigating condition never shifts to the government.

Three foreign influence mitigating conditions under AG ¶ 8 are potentially applicable to these disqualifying conditions:

(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 a foreign individual, group, organization, or government and the interests of the U.S.;

(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; and

⁸ See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

After considering the totality of the facts and circumstances in Applicant's case, I conclude that none of the mitigating conditions apply. The evidence shows Applicant has strong feelings of affection and a strong sense of obligation to his parents and sister. The closeness of the relationship is shown by Applicant's telephone contacts with his parents and sister. His travels to Taiwan underscore his deep feelings of affection and/or obligation to his family. Applicant's mother's travels to the United States to assist Applicant raising his children also indicated the closeness of the familial relationship.

In deciding whether Applicant's family members are in a position to be exploited, I considered Taiwan's and China's forms of government.⁹ Taiwan is a multi-party democracy. Its government is friendly to the United States, and has a good human rights record. Notwithstanding Taiwan's desire for independence, the United States has recognized China as the only legal government of China, and that Taiwan is part of China. China is a nuclear power and its government is a rival of the United States. China is an authoritarian, Communist state with a poor human rights record. More importantly for security purposes, China aggressively seeks classified and industrial/economic information from the United States. Chinese agents may attempt to use Applicant's family living in Taiwan to obtain such information. Additionally, Taiwan's historically active role as a collector of competitive information and perpetrator of industrial espionage against United States, coupled with Taiwan's trading interests, and their trading relationship with China, heighten the security concerns.

Considering the totality of the circumstances, Applicant did not establish it is unlikely he will be placed in a position of having to choose between the interests of his family and the interests of the United States. His frequent contacts and close relationship with his family could potentially force him to choose between the United States and Taiwan. Applicant's parents are known to the Taiwanese and Chinese government, because of his status as a retired colonel in the Taiwanese Army, Applicant's resignation of his Chinese citizenship in 2004, and his mother-in-law travels to China. Applicant's family in Taiwan remains vulnerable. He did not meet his burden of showing there is little likelihood that his relationship with his family could create a risk for foreign influence or exploitation.

AG ¶ 8(b) partially applies because Applicant has developed a sufficient relationship and loyalty to the United States, that he can be expected to resolve any conflict of interest in favor of the United States' interest. He has lived in the United States for approximately 23 years. He and his wife are naturalized U.S. citizens, and their two sons were born in the United States. All of his financial and business interests are in the United States, and he has embraced the American way of life. Although this mitigating condition is partially applicable, these facts are insufficient to overcome the security concerns.

I have carefully weighed all evidence, and I applied the disqualifying and mitigating conditions as listed under the applicable AGs. I specifically considered Applicant's answers to the

⁹ The focus is not the country or its people, but its rulers and the nature of the government they impose. This approach recognizes that it makes sense to treat each country in accordance with the level of security concern or threat it presents to the United States.

SOR, his testimony, his favorable information in his report of investigation (AE B), that he and his wife have been naturalized U.S. citizens for 18 years, and their sons were born in the United States. I also considered that there is no evidence that he has ever mishandled or cause the compromise of classified information. Considering all available information, and the whole person concept, I find Applicant has not mitigated the foreign influence security concern.

FORMAL FINDINGS

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

Paragraph 1, Foreign Influence	AGAINST APPLICANT
Subparagraphs 1.a -1.d	Against Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Robert J. Tuider
Administrative Judge