

SYNOPSIS

Applicant is 44 years old and became a U.S. naturalized citizen in 1998. He has lived in the U.S. since 1987. His parents, brother, and sister are citizens and residents of Taiwan. He telephones his parents about once or twice a month. He has less frequent contact with his siblings. Earlier this year, Applicant renounced his Taiwanese citizenship, and submitted his passport toward accomplishing that goal. Applicant has strong ties to the U.S., including a child born in the U.S. He obtained his master's education here. He has ties to his community, including investment in real estate, retirement plans, and bank accounts. Applicant has successfully mitigated the security concerns related to foreign preference and foreign influence. Clearance is granted.

STATEMENT OF THE CASE

On March 29, 2004, Applicant applied for a security clearance and completed a Security Clearance Application (SF 86), which is unsigned.¹ On December 19, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, 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. The SOR detailed reasons under Guideline C (Foreign Preference) and Guideline B (Foreign Influence) 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 and recommended referral to an Administrative Judge to determine whether a clearance should be granted or revoked.

In a sworn, written statement, dated January 3, 2007, Applicant responded to the SOR allegations and requested a hearing. The case was assigned to me on February 1, 2007. A Notice of Hearing was issued on February 10, 2007, scheduling the hearing for February 26, 2007. The hearing was conducted as scheduled. At the hearing, the Government offered three exhibits, Exs. 1-3. Applicant offered 27 exhibits, Exs. A-Z, and AA. All exhibits were admitted into the record without objections. Prior to the hearing, the Government submitted 12 documents requesting that I take administrative notice of them. At the hearing, these documents were not objected to by Applicant and they were all admitted into the record, marked as Exs. I-XII. The transcript (Tr.) was received on March 9, 2007.

FINDINGS OF FACT

Applicant admitted the factual allegations pertaining to foreign preference under Guideline C, subparagraphs 1.a and 1.b. He also admitted the factual allegations pertaining to foreign influence under Guideline B, subparagraphs 2.a through 2.c. Those admissions are incorporated herein as findings of fact. He denied the factual allegation under subparagraph 1.c. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following findings of fact:

Applicant is 44 years old and has been employed as a senior software engineer by a defense contractor since April 2003.² He was born in Taiwan (Republic of China). While living in Taiwan,

¹Ex. 1 (Security Clearance Application, dated March 29, 2004, which is unsigned). The SF 86 had a handwritten note "0-7-05 re-cert." The Government stated that Applicant recertified the accuracy of this information as of that date. *See* Tr. 28.

²*Id.* at 1.

he fulfilled mandatory, military service from 1984 to 1986.³ After the service, he continued his college education in Taiwan and received a bachelor's degree in chemical engineering.⁴

Applicant immigrated to the U.S. on September 1, 1987, at the age of 27, to continue his studies.⁵ In 1987, Applicant attended a well-known university in the U.S. and was awarded a master's of science degree in June 1990.⁶ He became a naturalized U.S. citizen in October 1998.⁷ He is married and has one child, who was born in the U.S. in February 1998.⁸

Applicant exercised dual citizenship with Taiwan and the U.S. On November 6, 1998, he was issued a valid U.S. passport. On or about December 30, 2002, he was issued a Taiwanese passport, which expires December 10, 2012. He stated that his 2002 passport is a replacement of a previous passport, issued in December 1996 and expired December 10, 2012. In 1999, he visited Taiwan. He used his U.S. passport on that trip.⁹

Applicant's mother and father are citizens and residents of Taiwan. His parents are both retired and spend their time watching television and doing grocery shopping.¹⁰ His parents did not complete their elementary school education. They sold mushrooms in a local market for a living throughout their life.¹¹ His brother, who lives in Taiwan, helps to support them.¹² They receive no Taiwan government pension nor do they have connections to the Taiwan government.¹³ Applicant testified: "I talk to my mother once or maybe twice a month to check on her health and my father's health. My father has high blood pressure. It's usually a conversation about two minutes."¹⁴ He sends his parents about \$600 per year to assist with their expenses.

³Tr. 49.

⁴Tr. 72.

⁵Tr. 50, 71.

⁶Ex. C (Master of Science Degree).

⁷Ex. 1, *supra*, note 1; Ex. G (Certificate of Naturalization, dated October 24, 1998); Tr. 51.

⁸Ex. R (Birth Certificate).

⁹Tr. 51.

¹⁰Tr. 61.

¹¹Tr. 76.

¹²Tr. 76.

¹³Tr. 61.

¹⁴Tr. 61, 73.

Applicant's brother and sister are citizens and residents of Taiwan. His sister is a senior marketing director of a music company since April 2006.¹⁵ From July 2005 to March 2006, she owned her own flower design business. From June 1998 to June 2005, she worked for various music firms in Taiwan. Since November 1998, his brother is chief of a company that makes games.¹⁶ Previously, from July 1989 to November 1997, he was a coordinator at a graphics company. Neither of his siblings has worked for the Taiwan government.¹⁷ Applicant talks to his siblings about once or twice a year.¹⁸

On January 31, 2007, Applicant wrote a letter to the U.S. Taipei Economic and Cultural Representative Office. In that letter, he renounced his Taiwanese citizenship, and submitted his passport toward accomplishing that goal.¹⁹

Applicant has strong ties to the U.S. Not only did he receive his master's degree from a well-known U.S. university, he owns real estate in the U.S.²⁰ He has bank accounts and retirement funds in the U.S.²¹ He also contributes to community organizations.²² He is registered to vote and has served as a juror in his local Circuit Court.²³ He has opened an education savings account for his daughter, as well as a prepaid college trust.²⁴ He does not have any financial or business interests in Taiwan.

Applicant submitted a character letter from a person who has known him through work since April 2003. His friend found Applicant to be a very hard-working, respectable, and trustworthy individual, who is honest and possesses "high integrity."²⁵

The government of Taiwan is an ally and conducts trade with the U.S. Taiwan is a stable democracy, and it has a strong and well-developed economy. The threat of economic and industrial espionage continues to be a matter of concern for the U.S. Foreign countries continue to target the U.S. to illegally obtain critical technology. Foreign collectors operate against U.S. economic interests. In 2000, Taiwan was one of the eight most active collectors of foreign economic

¹⁵Ex. M (Working Certification for Applicant's sister, dated January 19, 2007).

¹⁶Ex. N (Documents pertaining to Applicant's brother).

¹⁷Tr. 62-63.

¹⁸Tr. 62-63.

¹⁹Ex. I (Letter, dated January 31, 2007).

²⁰Ex. S (Assessment Notice for Residence).

²¹Ex. T (Brokerage Statement); Ex. U (IRA Statement)

²²Ex. V (Donation to Multiple Sclerosis); Ex. W (Miscellaneous donation checks).

²³Ex. X (Certification of Jury Duty); Ex. Y (Voter Registration, County Board of Elections).

²⁴Ex. Z (Education Savings Statement); Ex. AA (Prepaid College Trust Statement).

²⁵Ex. Q (Character letter, dated February 4, 2007).

information and industrial espionage in the world. There is no information showing that Taiwan exploits, harasses or pressures its citizens in an attempt to garner economic or industrial information.²⁶

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.²⁷ The Government has the burden of proving controverted facts.²⁸ The burden of proof is something less than a preponderance of evidence.²⁹ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.³⁰ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.³¹

²⁶Ex. VII (National Counterintelligence Center Annual Report to Congress on Foreign Economic Election and Industrial Espionage 2000) at 15.

²⁷ISCR Case No. 96-0277 (July 11, 1997) at 2.

²⁸ISCR Case No. 97-0016 (December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.

²⁹*Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³⁰ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.

³¹ISCR Case No. 93-1390 (January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.

No one has a right to a security clearance³² and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”³³ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.³⁴ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.³⁵ 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 clearance.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards, and I reach the following conclusions.

Foreign Preference

Under Guideline C, a security risk may exist when an individual acts in such a way as to indicate a preference for a foreign country over the U.S. Such a person may be prone to provide information or make decisions that are harmful to the interests of the U.S. Applicant became a naturalized U.S. citizen in 1998. He possessed a passport from Taiwan that was to expire in 2012. He was in the Taiwan military while he lived there before immigrating to the U.S. and becoming a naturalized citizen. Moreover, his college education was obtained in Taiwan after he fulfilled his military obligation, and before he became a naturalized U.S. citizen. He attended a university in the U.S. to obtain his master’s degree. He does not have any financial or business interests in Taiwan. Thus, Foreign Preference Disqualifying Condition (FP DC) 10(a)(1) (*possession of a current foreign passport*) applies. Moreover, FP DC 10(a)(2) (*military service or a willingness to bear arms for a foreign country*), FP DC 10(a)(3) (*accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country*), and FP DC 10(a)(5) (*using foreign citizenship to protect financial or business interests in another country*) do not apply.

Various conditions can mitigate a security concern regarding foreign preference. On January 31, 2007, Applicant renounced his Taiwanese citizenship and surrendered his passport to the U.S. Taipei Economic and Cultural Representative Office. He last traveled to Taiwan in 1999 and used his U.S. passport. Thus, Foreign Preference Mitigating Conditions (FP MC) 11(a) (*dual citizenship is based solely on parents’ citizenship or birth in a foreign country*), FP MC 11(b) (*the individual has expressed a willingness to renounce dual citizenship*), and FP MC 11(e) (*the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated*) apply. Accordingly, allegations 1.a through 1.c of the SOR are concluded in favor of Applicant.

Foreign Influence

³²*Egan*, 484 U.S. at 531.

³³*Id.*

³⁴*Id.*; Directive, Enclosure 2, ¶ E2.2.2.

³⁵Executive Order 10865 § 7.

Under Guideline B, a security risk may exist if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or a government in a way that is not in the interests of the U.S., or is vulnerable to pressure or coercion by any foreign interest. Applicant's parents, sister, and brother are citizens and residents of Taiwan. Consequently, Foreign Influence Disqualifying Conditions 7(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*) applies.

Various factors can mitigate the foreign influence security concern. Even though he possessed a valid Taiwan passport, when Applicant traveled to Taiwan in 1999, he used his U.S. passport. He had since renounced his Taiwan citizenship and surrendered his passport. He has monthly telephone calls with his parents. His parents are retired and do not receive a pension from the Taiwan government. His sister and brother work for private companies that are not affiliated with the Taiwan government. He talks to his siblings no more than once or twice a year. Moreover, the fact that his parents, sister, and brother are citizens and residents of Taiwan does not constitute an unacceptable security risk. For the past 20 years, Applicant has developed strong ties to the U.S., which include real estate ownership, bank accounts and retirement plans, and a daughter born here. Applicant has a profession here that he is extremely proud of. He votes and serves jury duty. It is highly unlikely that Applicant would jeopardize his relationships and loyalties in the U.S. in any way. Applicant can be trusted to resolve any conflict of interest with relatives in Taiwan in favor of the U.S. Thus, Foreign Influence Mitigating Conditions (FI MC) 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 a foreign individual, group, organization, or government and the interests of the U.S.*) and FI MC 8(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*) apply. Accordingly, allegations 2.a through 2.c of the SOR are concluded in favor of Applicant.

I considered carefully all the potentially disqualifying and mitigating conditions in this case in light of the "whole person" concept, keeping in mind that any doubt as to whether access to classified information is clearly consistent with national security must be resolved in favor of the national security. Applicant is a mature individual who has lived in the U.S. for more than 20 years. He has strong ties to this country, which include his education, real estate, bank and retirement accounts. His daughter is a U.S. citizen by birth, and he is already saving and planning her higher education in the U.S. Applicant credibly testified that the U.S. is his home. Applicant can be trusted to resolve any conflict of interest with relatives in Taiwan in favor of the U.S. I conclude Applicant has mitigated the potential security concerns arising from his personal ties to Taiwan.

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 (Foreign Preference): FOR APPLICANT

 Subparagraph 1.a: For Applicant
 Subparagraph 1.b: For Applicant
 Subparagraph 1.c: For Applicant

Paragraph 2. Guideline B (Foreign Influence): FOR APPLICANT

 Subparagraph 2.a: For Applicant
 Subparagraph 2.b: For Applicant
 Subparagraph 2.c: For Applicant

DECISION

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

Jacqueline T. Williams
Administrative Judge