



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



In the matter of:

Applicant for Security Clearance) ISCR Case No. 12-09672
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Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: *Pro se*

12/23/2015

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the case file and pleadings, I conclude that Applicant failed to provide adequate documentation to mitigate security concerns for foreign preference under Guideline C. HEligibility for access to classified information is denied.

Statement of the Case

Applicant submitted Electronic Questionnaires for Investigations Processing (e-QIP) to obtain a security clearance for his employment with a defense contractor on May 4, 2012 (Item 6), and October 1, 2013 (Item 4). On January 14, 2014, Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM). (Item 5) After reviewing the results of the interview, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On April 28, 2015, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for foreign influence under Guideline B and foreign preference under Guideline C. (Item 1) 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 adjudicative guidelines (AG) effective in the DOD on September 1, 2006.

Applicant answered the SOR on June 17, 2015. He admitted all allegations under both guidelines. He elected to have the matter decided on the written record. (Item 3) Department Counsel submitted the Government's written case on August 25, 2015. Applicant received a complete file of relevant material (FORM) on September 29, 2015, and was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. He did not provide any additional information in response to the FORM. I was assigned the case on December 1, 2015.

Procedural Issues

Applicant was advised in the FORM that the summary of the Personal Subject Interview with an OPM agent (Item 5) was not authenticated and could not be considered over his objection. He was further advised that he could make any corrections, additions, or deletions to the summary to make it clear and accurate, and he could object to the admission of the summary as not authenticated by a Government witness. He was additionally advised that if no objection was raised to the summary, the Administrative Judge could determine that he waived any objection to the admissibility of the Personnel Subject Interview summary. Applicant did not respond to the FORM, so he waived any objection to the admissibility of the Personal Subject Interview summary. I will consider information in the Personal Subject Interview in my decision.

Department Counsel requested that I take administrative notice of certain facts concerning Taiwan, and provided references for U.S. Department of State documents, court decisions, reports to Congress, and U.S. Department of Commerce documents concerning Taiwan. (Item 7) I will take administrative notice of facts concerning Taiwan as noted in my Findings of Fact.

Findings of Fact

I thoroughly reviewed the case file and the pleadings. I make the following findings of fact.

Applicant is 48 years old. He was born and educated in Taiwan, receiving a bachelor's degree in 1992, and a master's degree in 2004 from Taiwanese universities. He served the compulsory two years of military service for Taiwan from July 1981 to July 1983. He married in Taiwan on June 25, 2001. He and his wife separated on February 16, 2013. He shares custody of their two children with his wife. Applicant entered the United States on August 8, 2003. Applicant became a United States citizen on December 11, 2008. He received a United States passport on January 5, 2009. He has been employed as a data base architect by his present defense contractor employer since October 2013. Prior to this employment, he worked for various defense contractors as a data base analyst since May 2005. (Item 4, e-QIP, dated October 1,

2013; Item 4, Interview Summary, dated January 14, 2014; Item 6, e-QIP, dated May 4, 2012)

The SOR alleges under Guideline C that Applicant, after being granted United States citizenship in December 2008, applied for and was issued a Taiwanese passport on February 23, 2012, with expiration date of February 23, 2022. The SOR alleges under Guideline B that Applicant's father, mother, sister, brother (SOR 2.a), and mother-in-law (SOR 2.d) are citizens of Taiwan residing in Taiwan. Under Guideline B, it is alleged that Applicant's spouse and children are dual citizens of Taiwan and the United States residing in the United States. (SOR 2.b) It is further alleged that Applicant has a sister who is a citizen of Taiwan but resides in the United States with an Alien Registration Card (SOR 2.c). Applicant admitted the foreign preference and foreign influence allegations. (Item 3, Response to SOR; dated June 17, 2015)

Applicant admits in his e-QIPs and the personal subject interview that he is a dual citizen of Taiwan and the United States, and that he possesses a Taiwanese passport issued on February 23, 2012, with expiration date of February 23, 2022. He uses the passport to ease his travels to Taiwan. Applicant travels to Taiwan approximately every two years to visit his family. He traveled to Taiwan in 2005, 2008, 2009, and 2012. Applicant stated that he would be willing to renounce dual citizenship and his passport if required. He has not presented any information to show he renounced his Taiwanese citizenship or relinquished control of the passport. (Item 4, e-QIP, dated October 1, 2013; Item 5, Report of Personal Subject Interview, dated January 14, 2014, at 1; item 6, e-QIP, dated May 4, 2012)

Applicant admits that his father, mother, sister, brother, and mother-in-law are citizens and residents of Taiwan. Applicant's father is a retired businessman having owned a manufacturing company. His mother is a retired government contractor employee in environmental protection and recycling programs. They have no affiliation with the Taiwanese government. He talks to them both weekly on skype. (Item 5, Personal Subject Interview, dated January 17, 2014 at 2)

Applicant's brother is a resident and citizen of Taiwan and is employed as an engineer. Applicant has one sister who is a citizen and resident of Taiwan and is unemployed. His siblings in Taiwan have no connection to the government. He talks to them frequently in December and January each year as they celebrate his parents' birthdays, Christmas, and the Chinese New Year. He speaks to them quarterly the rest of the year. In response to the SOR, he admits he has a sister that is a citizen of Taiwan but resides in the United States with an alien registration (green card). In the personal subject interview, which preceded the SOR, she is listed as a resident of Taiwan. Since the SOR is the latest document, I conclude that his sister now resides in the United States as alleged in SOR 2.c. There is no information in the file concerning his mother-in-law.

During World War II and after, a civil war was fought on the mainland of China between the Chinese Communist Party and the Nationalist Chinese. In 1949, the

Chinese Communist party was victorious and established a government on the mainland. The Nationalist Chinese fled to the island that is now Taiwan and established a government. Taiwan has developed steadily since then and is now the world's 17th largest economy. Taiwan became a member of the World Trade Organization in 2002, further expanding its trade opportunities and further strengthening its standing in the global economy. This prosperity established economic and social stability.

Until 1968, Taiwan's political system was effectively controlled by one party, the Kuomintang. Since ending martial law in 1987, Taiwan has taken dramatic steps to improve respect for human rights and created a democratic political system. The United States has been committed to maintaining cultural, commercial, and other nonofficial relations with Taiwan since January 1979, when it formally recognized the government of the People's Republic of China (PRC) as the sole legal government of China. By formal act of Congress (Taiwan Relations Act of 1979), the United States is committed to provide Taiwan with military defensive arms in support of Taiwan's security and stability in the region. The United States also stated it would maintain cultural, commercial, and other unofficial relations with the people of Taiwan. Despite the United States clear and consistent position that Taiwan and the mainland are part of one China, the United States expanded commercial ties with Taiwan and is supportive of Taiwan's membership in international organizations, such as the World Trade Organization and the Asian Development Bank. (See, United States Department of State Background Notes: Taiwan, dated November 3, 2010)

The Government claims in its request for Administrative Notice that Taiwan poses a threat to national security because in the past, it was one of the countries most actively engaged in industrial espionage and the collection of foreign economic information. The request cites to the annual Report to Congress on Foreign Economic Collection and Industrial Espionage of 2000. The report lists Taiwan as one of the most active collectors of industrial and economic intelligence. However, the Government also noted the more recent Annual report from 2008. That report does not list Taiwan as being one of the biggest collectors of economic and industrial espionage. It does list the PRC and Russia as the most active collectors. The report states the United States is targeted by a large number of foreign countries for economic and industrial espionage. The report notes that the Taiwan private sector is the most active collector of this type of economic and industrial intelligence, but there is ample evidence that foreign intelligence services and other government organizations remain aggressive in collecting information by using the private sector to collect information for them and by their own continued direct intelligence gathering operations.

The report lists a number of factors that could cause concern for the United States. Among the concerns are the numbers of foreign visitors from any country to United States sensitive sites, the numbers of non-immigrant persons from a country that are admitted as visitors to the United States, and the number of requests from a country for visits to military and defense industry sites. There are a large number of visitors from Taiwan to the United States for business, pleasure, or other purposes. Taiwan does not

appear to be any more active in the collection of economic and industrial intelligence than many other allied countries.

The Government noted information concerning individuals in the United States convicted of engaging in espionage practices on behalf of Taiwanese companies or officials, as well as companies that violated export control requirements in sending items to Taiwan. Some of these cases involve individuals in the United States, both native born and foreign born and both citizens and non-citizens of the United States, that formed friendships with Taiwan intelligence agents and then provided the agents with classified information. While the Government presented information only on Taiwan cases, it is not difficult to assume that there are cases that pertain to other countries as well. The fact that there are cases of Taiwan intelligence agents accepting intelligence information from sources in the United States, no matter how obtained, does raise security concerns.

The relationship between the United States and Taiwan is defined in the Taiwan Relations Act which recognizes Taiwan. (Public Law 96-8) Taiwan has a long history of friendly relations with the United States, including substantial levels of foreign trade. Taiwan is an ally and friend but can also pose a security threat because of its activities and efforts to obtain economic, industrial, and national security information.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered 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 overarching adjudicative goal is a fair, impartial, and commonsense 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.

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 for 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

Foreign Preference

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he may be prone to provide information or make decisions that are harmful to the interests of the United States. (AG ¶ 9) The principal goal of the foreign preference assessment is to determine the risk, based on foreign associations, that information may be compromised if access to sensitive information is granted. It is not a measure of Applicant’s loyalty to the United States.

Applicant was born in Taiwan and entered the United States with his wife and children using Taiwanese passports in 2003. He became a United States citizen in 2008, and received a United States passport in 2009. In 2012, he applied for and received a new updated Taiwanese passport to use to ease his entry into Taiwan. The passport does not expire until 2023. These facts raise the following Foreign Preference Disqualifying Conditions under AG ¶ 10

- (a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to: (1) possession of a current foreign passport; and
- (b) action to acquire or obtain recognition of a foreign citizenship by an American citizen.

I considered Foreign Preference Mitigating Conditions under AG ¶ 11:

(a) dual citizenship is based solely on parent's citizenship or birth in a foreign country);

(b) the individual has expressed a willingness to renounce dual citizenship;

(c) exercise of the rights, privileges, or obligation of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;

(d) use of a foreign passport is approved by the cognizant security authority; and

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

These mitigating conditions do not apply. Applicant was a U.S. citizen when he applied for and received a new Taiwanese passport. He indicated that he would renounce his dual citizenship with Taiwan and relinquish his Taiwanese passport. He has not taken either action. The Taiwanese passport is current and in his possession and not due to expire until 2022. While Applicant states he will always be a U.S. citizen, his seeking to renew his Taiwanese passport shows a potential preference for Taiwan. Applicant has not mitigated security concerns for foreign preference.

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 the U.S. interest, 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 consideration 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)

Guideline B is not limited to countries hostile to the United States. The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States. Even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. The nature of a nation's government and its relationship with the United States are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country

has an authoritarian government, a family member is associated with or dependent upon government, or the country is known to conduct intelligence operations against the United States. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue.

The SOR alleges, and Applicant admits, that his mother, father, brother, sister, and mother-in-law are citizens and residents of Taiwan. He admits that his wife and children are dual citizens of the United States and Taiwan but reside in the United States. He admits he has a sister who is a citizen of Taiwan but resides in the United States with an alien registration card.

Three disqualifying conditions are relevant to the security concerns raised in the SOR under AG ¶ 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;
- (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; and
- (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.

The mere existence of foreign relationships and contacts is not sufficient to raise the above disqualifying conditions. AG ¶¶ 7(a) and 7(d) requires substantial evidence of a "heightened risk." The "heightened risk" required to raise one of these disqualifying conditions is a relatively low standard. "Heightened risk" denotes a risk greater than the normal risk inherent in having a family member or contacts living under a foreign government. I find that Applicant's family members who are residents of the United States do not create a "heightened risk of foreign exploitation, inducement, or manipulation. Applicant's parents and siblings who are citizens or residents of Taiwan are a foreign influence security concern for Applicant. Under AG ¶ 7(b), Applicant's potentially conflicting loyalties may be weighed to determine if an applicant can be expected to resolve any conflict of interest in favor of the U.S. interest.

The nature of Applicant's contacts and relationships must be examined to determine whether it creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. One factor that may heighten the risk in Applicant's case is Taiwan's collection of economic and industrial intelligence and the potential use of Taiwanese citizens to obtain such information. The Government has established that Applicant may be under a "heightened risk" of security concern because of the

intelligence activities of the Taiwanese government and Taiwanese businesses to obtain industrial and commercial information. An applicant with foreign family or friendship ties to a country that presents a heightened risk has a heavy burden of persuasion to show that neither he nor the family members and friends are subject to influence by that country. The totality of an applicant's family and friends ties to a foreign country as well as the tie to the country for each individual person must be considered. There is a potential risk presented because Applicant's parents and siblings are either citizens or residents of Taiwan, and Taiwan is a known collector of intelligence information from foreigners.

Applicant raised facts to mitigate the security concerns arising from his parents and siblings connection to Taiwan. I have considered the following Foreign Influence Mitigating Conditions under AG ¶ 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.;

(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;

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

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from foreign countries.

In evaluating the potential conflict of interests between Applicant's parents and siblings that are citizens and/or residents of Taiwan, I considered that Taiwan is a strong ally of the United States with mutual defense and strategic interests. It is a substantial trading partner of the United States. A friendly relationship is not determinative, but it makes it less likely that a foreign government would attempt to exploit a United States citizen through relatives or associates in that country. Even friendly countries may engage in espionage against the United States' economic, scientific, or technical interest. Even though Taiwan is not a hostile country and its interests are not inimical to the United States, it is reasonable to consider that elements in Taiwan could take an action that may jeopardize their friendly position with the United States if they needed trade and defense information from sources in the United States.

There are strong indications that elements in Taiwan could seek economic and sensitive information from contacts in the United States.

I have considered Applicant's relationship with his parents and siblings in Taiwan. Taiwan is not known to coerce their citizens to gain security information. Applicant talks to his parents weekly and to his siblings monthly. He visits them every two years. Thus the communications between Applicant and his family members are not casual or infrequent and it could create a risk for foreign influence or exploitation. However, his parents are retired business people and his brother is an engineer. His sister is unemployed. In balancing all of the factors mentioned and considered above, I am satisfied that Applicant's family members are not in positions that make it likely that Applicant will be placed in a position of having to choose between the interests of his family members and the interests of the U.S. The mitigating conditions in AG ¶ 8(a) applies.

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) the 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 access to sensitive information 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. The whole-person concept requires consideration of all available information about Applicant, not single items in isolation, to reach a determination concerning Applicant's eligibility for access to classified information.

Applicant has frequent and close contact with his parents and siblings in Taiwan. However, they are not in positions that create a heightened risk of foreign exploitation, manipulation, or inducement. However, Applicant applied for and received an updated current Taiwanese passport after he became a United States citizen. He has not relinquished control of that passport. Applicant's actions concerning the passport

indicate that he has a preference for Taiwan. These facts leave me with questions and doubts about Applicant's eligibility and suitability for access to classified information. For all these reasons, I conclude Applicant has met the heavy burden of mitigating potential security concerns arising from parents and siblings in Taiwan. However, he has not mitigated security concerns arising from applying for and possessing a foreign passport. Eligibility for access to classified information is denied.

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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a – 2.d:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

THOMAS M. CREAN
Administrative Judge