



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



In the matter of:)	
)	
)	ISCR No. 14-00122
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah A. Minster, Esq., Department Counsel
For Applicant: *Pro se*

07/23/2014

Decision

DAM, Shari, Administrative Judge:

Applicant was born and raised in Taiwan. He immigrated to the United States in 1981 and became a citizen in 1991. He has numerous family members who are residents and citizens of Taiwan, whom he visits regularly. He used a Taiwanese passport to travel there last year. Based upon a review of the record evidence, eligibility for access to classified information is denied.

History of Case

On July 17, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On March 7, 2014, the Department of Defense issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B and Guideline C. 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 effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on March 28, 2014, and waived his right to a hearing before an administrative judge. On April 23, 2014, Department Counsel prepared a File of Relevant Material (FORM) containing four Items and mailed Applicant a complete copy. Applicant received the FORM on April 30, 2014, and had 30 days from its receipt to file objections and submit additional information. He did not submit any additional information. On June 30, 2014, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Within the FORM, Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Taiwan. Attached to the FORM are documents marked as Exhibits (Ex.) I through XIX. Applicant did not object to my consideration of those exhibits as relating to Taiwan. Hence, the facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute. The facts administratively noticed are set out under the heading "Taiwan."

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations contained in Paragraph 1 and Paragraph 2 of the SOR. (Item 3.) His admissions are incorporated into the findings below.

Applicant is 63 years old. He was born in Taiwan. He attended a Taiwanese university from 1968 to 1974 where he earned a bachelor's and master's degree. He served in the Taiwanese army from July 1974 to June 1975, as mandated by the Taiwanese government. He has a Taiwanese passport that was issued in January 2013 and expires in January 2023. He used that passport in March 2013 to travel to Taiwan. He returns to Taiwan about once a year to visit his family. (Item 3, 4.) He also has a current U.S. passport that he did not use for travel to Taiwan.

Applicant immigrated to the United States in January 1981. He attended a U.S. university from August 1981 to December 1983 and earned a doctorate's degree. He became a naturalized U.S. citizen in May 1991. He considers himself a dual citizen of the United States and Taiwan. In January 1991 he started a position with a defense contractor. He owns a home in the United States. (Item 4.)

Applicant married his wife in June 1981 in Taiwan. She was born in Taiwan and is a naturalized U. S. citizen. She holds dual citizenship with both countries. They have two children. One child was born in Taiwan and is a naturalized U.S. citizen. The

second child was born in the United States. Applicant's elderly parents were born in Taiwan. Both suffer from illnesses. They are citizens and residents of Taiwan. Four of his sisters are citizens and residents of Taiwan. Another sister is a citizen of Taiwan and resident of Singapore, where she teaches. Applicant's elderly parents-in-law are citizens and residents of the Taiwan. Both suffer from illnesses. (Items 3, 4.)

Applicant provided no evidence concerning the quality of his professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. He submitted no character references describing his judgment, morality, trustworthiness, integrity, or reliability.

Taiwan

Taiwan is a multi-party democracy. The United States does not support Taiwan independence, in keeping with the One-China policy; however, it maintains strong and, unofficial relations with Taiwan in order to further peace and stability in Asia. The United States supports Taiwan's membership in appropriate international organizations where statehood is not a requirement for membership and encourages its meaningful participation in appropriate international organizations, such as the World Trade Organization, Asia-Pacific Economic Cooperation (APEC) forum, and the Asian Development Bank. Maintaining diplomatic relations with the People's Republic of China (PRC) has been recognized to be in the long-term interest of the United States by six consecutive administrations.

There are significant economic ties between Taiwan and the PRC, which are attributable to their physical proximity and history. Because of its location, Taiwan has a particular interest in information from the United States that could aid it in its own defense. Taiwan's primary defense goal is to deter invasion from the PRC. The PRC maintains intelligence operations in Taiwan through a bureau utilizing PRC nationals with Taiwanese connections. Unlike the PRC, however, the constitutional basis of the Taiwanese government suggests that resorting to coercive measures against its citizens to collect economic intelligence is unlikely.

The record references various cases involving the illegal export or attempted illegal export of U.S. restricted, dual-use technology to and/or through Taiwan. One report to the U.S. Congress concerns foreign economic collection and industrial espionage. That report notes that Taiwan was known to be an active collector of U.S. economic intelligence in 2008. The report ranked Taiwan, along with China, Japan, Israel, France, and Korea as an active collector of such information. (Ex. II.) Although some of the record information about Taiwan's intelligence activities targeting U.S. classified or sensitive information is more than 10 years old, several exhibits address more recent espionage by Taiwan's National Intelligence Bureau. There is evidence that Taiwan has specifically targeted U.S. citizens in the last five to seven years to obtain protected and classified information. (Exs. III to XIII.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the Adjudicative Guidelines. In addition to brief introductory explanations for each guideline, the Adjudicative Guidelines (AG) list potentially disqualifying and mitigating conditions, which are useful 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.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by an applicant or proven by Department Counsel and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline C, Foreign Preference

The security concern relating to the guideline for Foreign Preference is set out in AG ¶ 9:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

AG ¶ 10 describes a condition that could raise a security concern and be disqualifying in this case:

(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.

Applicant became a U.S. citizen in May 1991. He admitted that he possesses a current Taiwanese passport that he either renewed or obtained in January 2013, and which expires in January 2023. He used it for travel to Taiwan in March 2013. Those facts are sufficient to raise a disqualification under AG ¶ 10(a)(1).

After the Government raised a disqualification, the burden shifted to Applicant to produce evidence and prove mitigation. AG ¶ 11 provides five conditions that could potentially mitigate security concerns raised under this guideline:

(a) dual citizenship is based solely on parents' 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 obligations 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.

Applicant is a mature adult who has chosen to continue holding dual citizenship. He has not expressed any intention to renounce his Taiwanese citizenship. He renewed his Taiwanese passport in 2013, years after becoming a U.S. citizen. The U.S. government has not authorized the use of the Taiwanese passport for purposes of travel. It has not been destroyed. None of the above mitigating conditions apply to the security concerns raised in this case.

Guideline B, Foreign Influence

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

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.

AG ¶ 7 describes two conditions that could raise a security concern and may be disqualifying in this case:

(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.¹

(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 desire to help a foreign person, groups, or country by providing information.

Applicant's parents, four sisters and parents-in-law are resident citizens of Taiwan. He visits his Taiwanese family every year. His family's presence in a country that consistently engages in espionage against the United States raises a significant security concern and generates a heightened risk of exploitation, pressure or coercion

¹ 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. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

of the Applicant. Those circumstances could place Applicant in a position of having to choose between his family members residing in Taiwan and the United States. The Government met its burden of production by raising the above disqualifying conditions and shifts the burden to Applicant to prove mitigation.

Three mitigating conditions under AG ¶ 8 are potentially applicable to the security concerns raised under this guideline:

(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

(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.

Because the record does not contain much evidence about the nature or scope of Applicant's relationships with his family members or their past or current positions and activities in Taiwan, a heightened risk of foreign exploitation, inducement, or coercion remains a concern. Hence, AG ¶ 8(a) does not apply. He indicated that he visits his family every year, which indicates that his communication with them is more than casual. AG ¶ 8(c) cannot apply.

Applicant did not provide sufficient persuasive evidence to establish his deep or longstanding relationships to the United States, which would warrant the application of AG ¶ 8(b). He provided information that he has lived in the United States since 1981; his wife and two children are U.S. citizens; he obtained an advanced degree from a U.S. university; and he has been employed by a defense contractor since 2009. He became a U.S. citizen in 1991. While those facts demonstrate some longstanding relationships to the United States, without further amplification they are not sufficient to find that he would resolve any conflict of interest in favor of the United States.

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 relevant 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.

In cases involving foreign influence, the Appeal Board requires the whole-person analysis address "evidence of an applicant's personal loyalties; the nature and extent of an applicant's family's ties to the U.S. relative to his [or her] ties to a foreign country; his or her ties social ties within the U.S.; and many others raised by the facts of a given case." ISCR Case No. 04-00540 at 7 (App. Bd. Jan. 5, 2007).

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. There is some evidence tending to mitigate the raised security concerns under the whole-person concept. Applicant is a mature person, who has lived in the United States since 1981. His wife and children are U.S. citizens. He attended a U.S. university. He owns a home here. He has worked for a defense contractor since January 2009. There is no evidence that he has ever taken any action that could cause potential harm to the United States.

Other circumstances weigh against Applicant in the whole-person analysis. First, China's government (the PRC) has strong connections to people in Taiwan. More importantly for security purposes, Taiwan is actively involved in industrial espionage against the United States, and may attempt to use émigrés such as Applicant for illegal purposes. Second, his parents, four siblings, and parent in-laws are resident citizens of Taiwan. Third, he maintains contact with his family as demonstrated by yearly visits. Fourth, though he became a naturalized U.S. citizen in 1991, he maintains, and has recently renewed, a Taiwanese passport that he used to travel there.

After weighing the disqualifying and mitigating conditions, all facts and circumstances in the context of the whole-person, and considering my inability to observe Applicant's demeanor or judge his credibility, I conclude he failed to mitigate the security concerns pertaining to foreign preference and foreign influence. Overall, the record evidence leaves me with questions as to Applicant's eligibility and suitability for a security clearance.

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: AGAINST APPLICANT

 Subparagraphs 2.a through 2.f: Against Applicant

Conclusion

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

SHARI DAM
Administrative Judge