



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



In the matter of:)
)
) ISCR Case No. 14-02773
)
)
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: David Truong, Esq.

01/21/2016

Decision

CURRY, Marc E., Administrative Judge:

Applicant mitigated the financial considerations and foreign influence security concerns. Clearance is granted.

Statement of the Case

On February 27, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F, financial considerations, and B, foreign influence. 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).

Applicant answered the SOR on April 24, 2015, admitting all of the allegations and requesting a hearing. On August 21, 2015, the case was assigned to me. On September 9, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a

notice of hearing scheduling the case for September 28, 2015. I held the hearing as scheduled and considered three Government exhibits (GE), marked as GE 1 through 3, and one Applicant exhibit (AE), marked as AE A. Also, I took administrative notice of the facts set forth in 19 documents (Hearing Exhibits (HEs) I-XIX) concerning the People's Republic of China (PRC), and I took administrative notice of the facts set forth in 12 documents (HEs XX-XXXI)) concerning Taiwan. The transcript was received on October 6, 2015.

Findings of Fact

Applicant is a 63-year-old married man with one adult child from a previous marriage. He has been married to his current wife for 11 years.

Applicant was born and raised in Taiwan and has been a naturalized U.S. citizen since 1981. (GE 1 at 7) Applicant received a dual secondary education. Specifically, children in Taiwan are educated either through a traditional Chinese system or a U.S.-style system. The latter system is private. It caters to children of the U.S. military, U.S. government contractors, U.S. government employees, and other expatriates. Native Taiwanese children are typically educated through the Chinese system. (Tr. 63) Applicant was educated through both systems, receiving a high school diploma from the Chinese school in 1970, and a diploma from the U.S. school in 1971. (Tr. 63-64) Applicant preferred the U.S. school to the Chinese school because it encouraged creativity and individuality. In contrast, the Chinese curriculum overemphasized conformity and discipline. (Tr. 71)

Applicant is one of less than 12 people worldwide who have ever received such a dual education. (Tr. 65) His father, an intelligence officer in the Taiwanese department of defense, was visionary enough to recognize the value of an American education, and had the income to provide it for Applicant. (Tr. 65)

After Applicant graduated from high school, he took a standardized test that all Taiwanese citizens were required, at the time, to take. Students scoring in the top ten percent were admitted into the national college. Everyone else was required to serve in the military for two years. Applicant did not score high enough on the test to forego compulsory military service. Consequently, he was drafted in 1972, and served through 1974. (Answer at 5) He was a private at the time of his discharge. (Tr. 69)

Shortly after leaving the Taiwanese military, Applicant immigrated to the United States. Upon arriving, he took a job in a Chinese restaurant, initially working as a bus boy before being promoted to a waiter. In 1975, he entered a state university, graduating in 1979 with a dual degree in computer science and accounting. (Tr. 74) Applicant financed his college education with his income from waiting tables. (Tr. 73) While in college, he continued to work full time. (Tr. 75)

After graduating, Applicant took a job in the information technology field. He worked with this employer for eight years before leaving to start his business, a company

that provides health care information technology services to hospitals. (Tr. 77) Since starting the company in 1988, it has evolved into an enterprise with annual revenue ranging between \$60 and \$200 million, that employs approximately 425 people located in 40 states, and provides services to multiple government agencies. Applicant's company is a privately-held corporation. He is the sole shareholder.

According to the company's chief of human resources, who has worked for Applicant since 1992, the company's organizational philosophy is "helping customers solve their problems and ta[king] care of the people who help do that." (Tr. 30) As such, Applicant is very accommodating to his employees. When dealing with employees with personal hardships and crises, he tends to "err on the side of being generous." (Tr. 32) He values the "big camaraderie" involved in brainstorming with employees to provide government information technology solutions. (Tr. 86)

Applicant "is bombarded with requests" to buy his business. (Tr. 78) Although he has not completely ruled out selling the company, he currently does not want to sell it because he believes it would be akin to "sell[ing] off [his] people." (Tr. 79)

Applicant is a well-respected philanthropist. Over the past 17 years, Applicant has raised more than \$500,000 for cancer research through his annual charity golf tournament. (Answer, Attachment 11) He also has organized fundraisers to support U.S. troops stationed abroad with care packages, and to support impoverished children with toys for Christmas. (Answer, Attachment 11 at 2; Tr. 40) Over the years, his company has also matched contributions that employees have raised for various charities. (Tr. 40)

The majority of Applicant's clients are government agencies. In 2011, deep budget cuts led to the cancellation or reduction in scope of several of Applicant's government contracts. Consequently, his business suffered. His gross revenue decreased from \$6 million in 2010 to \$600,000 in 2011.

According to the chief financial officer of Applicant's company, this drastic profit decrease generated an income tax problem. Specifically, Applicant's company employs the cash basis method of income tax accounting. Under this method, the company did not report the income that they received for the service contracts that they procured in 2010. Instead, they reported it when the services were actually performed in 2011. Many large companies that perform service contracts report their income in this manner, so as to prevent large fluctuations in income tax liabilities from year to year. (Tr. 55, 58-61) Here, however, the opposite occurred, as Applicant's 2011 tax return reflected an illusory profit, leaving his company with a federal income tax debt of \$1.5 million and a state income tax debt of \$107,000 that it was unable to pay. (GE 3) Subsequently, these debts became delinquent. Because Applicant's company is structured as an IRS subchapter S-corporation, he was personally liable for these debts.

Applicant gradually began paying this delinquency through installments, beginning in April 2011. (Answer, attachment 2) By July 2013, he had satisfied the state income tax

delinquency. (Answer, attachment 4) By September 2015, he had satisfied the federal income tax delinquency. (AE A; Tr. 47)

Applicant's company has a \$13 million line of credit, personally guaranteed by Applicant. During the 2011 business slowdown, the company defaulted on the loan. (Answer at 8) In April 2014, Applicant's company entered into a forbearance agreement with the bank. (Answer, Attachment 5) Under the terms of the agreement, the company pledged to pay down the principal and reduce its expenses. Per the chief financial officer, the company has fulfilled its responsibilities under the forbearance agreement and refinanced its line of credit with another bank that has extended the company a lower interest rate. The new credit line is in good standing. (Tr. 52)

Applicant's company has completely recovered from the 2011 economic downturn. His individual net worth is \$63 million. (Answer, attachment 11 at 4)

Over the years, Applicant's company has attempted to "break into the electronic health records software and related services industry in Hong Kong, China, and Taipei," a lucrative and competitive market that many U.S. companies are also exploring. (Tr. 88) He has conducted extensive research, attending business seminars in the region, meeting government officials, and meeting industry professionals in the process. (Answer at 3) One such trip occurred as part of Applicant's participation in a trade commission, organized by his state governor, to nurture commerce between Applicant's home state and various Asian countries. (Tr. 100)

In 2011, Applicant established a holding company in Hong Kong. (Answer at 3) He is its director and chairman. Applicant's holding company owns a PRC business, a wholly foreign-owned subsidiary (WFOE) specializing in health information technology market research and development. (Tr. 89) Applicant structured his venture in this manner because working through holding companies is a legal prerequisite for developing a PRC client base. (Tr. 89; Answer at 3) Applicant does not have a direct ownership interest in the WFOE, and his U.S. company has neither an ownership interest in the holding company, nor the WFOE. (Answer at 3) Thus far, the WFOE has received no contracts and has generated no revenue. (Tr. 90)

Applicant has two brothers who are U.S. citizens. One brother has been living in Hong Kong since the 1990s. He is a real estate developer. He has a detailed knowledge of the PRC business market, and is helping Applicant with business development for his health information systems venture. (Tr. 102-103; Answer at 4) Applicant communicates with this brother approximately once per month.

Applicant's other brother moved from the U.S. after he retired, and splits his time between PRC and Taiwan. Applicant communicates with him about four times per year. They do not discuss the details of Applicant's work. (Answer at 4; Tr. 92)

Both of Applicant's parents are deceased. Applicant's father was an intelligence officer who worked within Taiwan's department of defense. (Tr. 104) He retired in the

1990s and passed away approximately 15 years ago. (Answer at 5) Applicant has never been contacted by any Taiwanese officials about his father's government service. (Answer at 5) Applicant has three other living siblings. All of them are U.S. citizens and residents. (Tr. 104)

The United States and Taiwan enjoy a "robust unofficial relationship. (HE XXIII at 1) Taiwan is the United States' tenth largest trading partner. (HE XXIII at 1) In 2012, two Taiwanese nationals were charged with allegedly seeking to export sensitive U.S. military technology to PRC. (HE XXX at 1) In October 2014, a Taiwanese-American man pleaded guilty to conspiracy to defraud the United States in its enforcement of regulations targeting proliferators of weapons of mass destruction. (HE XXVI at 1)

The PRC is a totalitarian country that competes with the United States for military, technological, and financial influence worldwide. To achieve its strategic objectives, the PRC aggressively conducts espionage against the United States government and U.S. businesses. (HE IV at 2) PRC's intelligence services, as well as private companies and other entities, frequently seek to exploit Chinese citizens or persons with family ties to China who can use their insider access to corporate networks to steal secrets. (HE I) The growing need for medical care by aging populations in countries such as PRC is likely to drive interest in collecting valuable U.S. healthcare and related information. (HE I at 17)

Policies

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

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied together with the factors listed in the adjudicative process. 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."

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.

Analysis

Financial Considerations

Under this guideline, “failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified information.” (AG ¶ 18) Applicant’s 2011 income tax delinquency and credit line default trigger the application of AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.”

Applicant’s financial problems stemmed from a business downturn in 2011 when his company’s revenue decreased by 90 percent. As his company recovered from the downturn, Applicant gradually began paying his income tax delinquencies in installments. By September 2015, he had satisfied both the state and federal income tax delinquency. Similarly, he paid his credit line delinquency and refinanced it with a lower interest rate credit line. Currently, both Applicant and his company are thriving financially.

The following mitigating conditions are applicable:

(b) the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant has mitigated the financial considerations security concerns.

Guideline B, Foreign Influence

Under this guideline, “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 United States interests, or is vulnerable to pressure or coercion by any foreign interest.” Moreover, “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)

Applicant's service as a draftee in the Taiwanese army occurred more than 40 years ago. His father, a former Taiwanese military intelligence officer, died approximately 15 years ago, and Applicant has never been contacted by anyone from the Taiwanese government regarding his father's occupation. I conclude that these allegations do not generate any security concerns.

One of Applicant's brother's is living in Taiwan and PRC, splitting his time between both countries, and another brother is living year-round in PRC. AG ¶ 8(a), "contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or a resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion," applies.

Applicant only talks four times per year to his brother living in Taiwan, and their conversations do not concern work. If Taiwan were the only country in question, AG ¶ 8(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," would apply. However, Applicant's brother splits his time living in Taiwan and PRC. Given the pervasive nature of PRC's espionage against the United States, and its disrespect for human rights, AG ¶ 8(c) does not apply. Given the nature and frequency of Applicant's contacts with brother living in PRC with whom he shares a business relationship, AG ¶ 8(c) is inapplicable to their relationship, also.

Applicant's business in PRC has neither generated any contracts, nor any revenue. However, the effort that Applicant has spent developing this business and structuring it so that it can compete with other multinational U.S. companies seeking to penetrate the PRC information technology market render it a substantial interest regardless of whether it has generated revenue. AG ¶ 7(e), "a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation," applies.

Applicant's wife, adult child, and three of his siblings live in the United States. He has lived in the United States for more than 40 years and has been a naturalized citizen for nearly 35 years. In that time, he has risen from a busboy to the owner of \$200 million company with 425 employees nationwide. Currently, he is a pillar of his community who has positively impacted the lives, not only of his employees, but of the cancer victims, impoverished children, and U.S. troops whom have benefitted from his charitable endeavors.

In sum, Applicant's experience since immigrating to the U.S. epitomizes the American Dream. Considering the totality of Applicant's U.S. contacts, and the depth of his integration into the social, charitable, and commercial fabric of the United States, I conclude that AG ¶ 8(b) applies, set forth below, as follows:

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," applies. he would resolve any conflict of interest posed by his business in PRC and his relatives living in PRC in the U.S. interest.

Applicant has mitigated the Guideline B security concern.

Whole-Person Concept

Under the whole-person concept, 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.

I considered these whole-person factors in my application of the mitigating conditions.

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 F:	FOR APPLICANT
Subparagraphs 1.a - 1.c:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a - 2.e:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

MARC E. CURRY
Administrative Judge