



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



In the matter of:)	
)	
)	ISCR Case No.14-01640
)	
)	
Applicant for Security Clearance)	

Appearances

For the Government: Philip J. Katauskas, Esq., Department Counsel
For Appellant: *Pro se*

02/12/2015

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the case file, hearing testimony, and the exhibits, I conclude that Applicant provided adequate information to mitigate the security concerns for foreign influence under Guideline B. Eligibility for access to classified information is granted.

Statement of the Case

On March 1, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance for his employment with a defense contractor. The Office of Personnel Management (OPM) conducted a background investigation. After reviewing the results of the background investigation, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On June 19, 2014, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for foreign influence under Guideline B. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 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 July 17, 2014. He admitted five of the six allegations that concerned relatives and friends who are citizens and/or residents of Taiwan. He denied SOR allegation 1.f, concerning a Taiwan bank account. Department Counsel was prepared to proceed on November 12, 2014, and the case was assigned to me on November 14, 2014. DOD issued a notice of hearing on December 9, 2014, received by Applicant on December 15, 2014, scheduling a hearing for January 7, 2015. I convened the hearing as scheduled. The Government offered four exhibits that I marked and admitted into the record without objection as Government Exhibits (Gov. Ex.) 1 through 4. Applicant and one witness testified. Applicant offered three letters of recommendation that I marked and admitted into the record without objection as Applicant Exhibits (App. Ex.) A through C. I received the transcript of the hearing (Tr.) on January 16, 2015.

Procedural Issues

Department Counsel requested that I take administrative notice of certain facts concerning Taiwan, and provided U.S. Department of State documents, court decisions, reports to Congress, and U.S. Department of Commerce documents concerning Taiwan. (GX 3) I will take administrative notice of facts concerning Taiwan as noted in my Findings of Fact.

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is 29 years old and has been a systems engineer for a defense contractor since 2013. He was born in the United States when his father was a doctoral student at a U.S. university. His mother and father were and are Taiwanese citizens. His father had a stroke and his parents returned to Taiwan to receive more affordable medical care. Applicant was a young child so he returned to Taiwan with his parents. He continued to live with them while he went to school. Applicant received a bachelor's and master's degrees from a Taiwan University. In 2009 after completing his college education in Taiwan, he returned to the United States to continue his education for a master's degree in systems engineering at a United States university. Since Applicant was born in the United States, he is a native-born United States citizen. He is single and has no children. (Tr. 11-13; GX 1, e-QIP, dated March 1, 2013)

The SOR alleges that Applicant's mother (SOR 1.a), and father (SOR 1.b), are citizens and residents of Taiwan. The SOR alleges that Applicant's girlfriend (SOR 1.c) and his second roommate (SOR 1.d) are citizens of Taiwan. The SOR also alleges that Applicant maintains contact with various friends who are citizens and/or residents of Taiwan (SOR 1.e), and that he has a bank account in Taiwan valued at \$1,000 (SOR 1.f). Applicant admitted the allegations except for the bank account which has been closed. In his response to the SOR, Applicant presented proof that the account was closed on July 4, 2014. (Tr. 36; Response to SOR, dated July 17, 2014, attachment)

Applicant's mother is a housewife and his father works for the Taiwan lottery which is not a government agency. He talks to them using electronic media at least once a week for approximately 30 minutes. (Tr. 33-34, 37-38; GX 1, e-QIP, dated March 1, 2013; GX 2, Personal Subject Interview, dated March 27, 2013)

Applicant's girlfriend is a citizen of Taiwan, but resides in the United States. Applicant and his girlfriend live together and he sees her daily. She is a certified public accountant and entered the United States on a work visa. She is applying through her employer for permanent resident status. She has no contact with any representatives of the Taiwanese Government. (Tr. 33-35, 38-40; GX 2, Personal Subject Interview, dated March 27, 2013)

Applicant and his girlfriend had a roommate that returned to Taiwan as noted below. Applicant has a new roommate who assists them in paying the rent. The new roommate is a citizen of Taiwan but a resident of the United States. He is a doctoral student at a United States university. As a doctoral student, he also works as a research assistant at the university. He had previously been a medical researcher at a U.S. government health agency. Applicant has known this roommate for over four years. He has contact with him also daily. As far as Applicant knows, this roommate has no contact with the Taiwanese government. Applicant reported the change in roommates, as a change in foreign contact information, to his facility security officer. (Tr. 35-36)

Applicant admitted in the personal subject interview that he had contacts with friends that were citizens/or residents of Taiwan. He stated in the interview that one friend is a citizen of Taiwan but resides in the United States. Applicant had weekly telephone contact with him. Since the personal subject interview in 2013, the friend moved so Applicant no longer has as frequent contact with him. The contact is now about four times a year. In the personal subject interview, Applicant noted monthly electronic contact with a friend in Taiwan. The contact has been reduced now to about once a year. Another friend, who was a friend of his girlfriend and a former roommate, has moved back to Taiwan and they are no longer in contact. Applicant listed as a foreign contact a friend who is a Taiwanese citizen but resident of Australia. At the time of the personal subject interview, he and Applicant were in contact electronically about four times a year. They now have electronic contact about once a year. He has another friend who is a citizen and resident of Taiwan with whom he has electronic contact on social media about four times a year. None of these friends work for any foreign government. (Tr. 26-33; GX 2, Personal Subject Interview, dated March 27, 2013)

A senior principal engineer, who is the manager for the integration and test department of Applicant's employer, testified that he previously served for 12 years in the Air Force as a master sergeant (E-7) and is eligible for access to classified information. Applicant has worked for him on various jobs in the company for the last two years. The witness stated that Applicant is in the top five percent of engineers in the company. He is conscientious and meticulous. He performs all tasks on time and in an exceptional manner. He became a subject matter expert and has trained other engineers. Applicant managed company proprietary information within the prescribed

protocols. He considers Applicant to be loyal to the United States, trustworthy, with good judgment, and reliable. He has no concerns with Applicant being granted access to classified information. (Tr. 20-25; AX B, Letter, dated January 5, 2015)

Applicant presented three character references. A coworker wrote that he has worked with Applicant on various projects for the last two years. He opined that Applicant is very reliable and trustworthy. His attention to detail and his follow through make him a valuable employee. Applicant manages company proprietary and confidential information without an issue. He trusts Applicant and recommends he be granted eligibility for access to classified information. (AX A, Letter, dated December 10, 2014) A systems engineer manager from Applicant's employer wrote that he has known Applicant for over two years. Applicant has been a trustworthy, intelligent, and hardworking employee. The witness has seen how Applicant embraced the culture, history, and way of life of the United States. Applicant discussed with him his growing up in the United States while his father was in school and how he liked the United States. The witness believes Applicant is loyal to the United States and recommends he be granted eligibility for access to classified information. (AX C, Letter, dated January 5, 2015)

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 foreign 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 to obtain 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

Guideline B: 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 the 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 and father are citizens and residents of Taiwan. He admits that his live-in girlfriend and his other roommate are citizens of Taiwan and residents of the United States. He admits that he has other friends that he is in contact with who are citizens and/or residents of Taiwan. He established that he does not have an account in a Taiwanese bank. Applicant's parents and friends who are citizens or residents of Taiwan are a foreign influence security concern for Applicant.

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.

Under the old adjudicative guidelines, a disqualifying condition based on foreign family members or other contacts in a foreign country could not be mitigated unless an applicant could establish that the family members or contacts were not in a position to be exploited. The Appeal Board consistently applied this mitigating condition narrowly, holding that an applicant should not be placed in a position where he or she is forced to

make a choice between the interests of the family member and contacts and the interests of the United States. Thus, an administrative judge was not permitted to apply a balancing test to assess the extent of the security risk. Under the new guidelines, however, the 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 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. 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 risk presented because Applicant’s parents and his friends are either citizens or residents or both 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 friends 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 friends 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 friends that are citizens or residents of Taiwan. I have also considered the Taiwanese Government's significant intelligence and security actions. Taiwan is a known collector of security information, but they are not known to coerce their own citizens to gain security information. They conduct a significant security apparatus because of the threats from mainland China. There is a rebuttable presumption that contacts with an immediate family member in a foreign country are not casual. Factors such as an applicant's relatives' obscurity or the failure of foreign authorities to contact them in the past do not provide a meaningful measure of whether an applicant's family circumstances post a security concern. Applicant talks to his parents weekly. Thus the communications between Applicant and his parents are not casual or infrequent and it could create a risk for foreign influence or exploitation. Because of Taiwan's significant intelligence and security concerns and functions, it cannot be said that it is unlikely Applicant will be placed in a position of having to choose between his parents and the U.S. interests.

Applicant's relationship with his girlfriend and roommate are frequent and constant, but the girlfriend and roommate reside in the United States and not Taiwan. The girlfriend and roommate have no connection to the Taiwanese government and their positions and occupations in the United States are not sensitive and not conducive for intelligence gathering. Applicant's relationships with his other Taiwanese friends are casual and infrequent. While citizens of Taiwan, they all do not reside in Taiwan. His contact with them is very infrequent and casual since it is only by electronic means. AG ¶ 8 (a) and (c) do not apply to his parents but they do apply to his friends and contacts.

Applicant has strong ties to the United States. He has been a U.S. citizen for his entire life. He was only a youngster when he left the United States to return to Taiwan with his parents. His parents returned to Taiwan so his father could receive affordable medical care rather than because of strong feelings for Taiwan. When he had earned his college degrees in Taiwan, Applicant returned to the United States to continue his education and work. Another factor to consider is that Applicant returned to the same area of the United States where he was born and originally lived. This is an indication that he has firm ties to the United States and considers it home. He again embraced the culture, history, and life style of the United States.

Applicant has been open and candid about his foreign contacts. When he changed roommates, he notified his facility security officer as required. He also made his employer aware of all of his foreign contacts. Applicant's loyalty to the United States is unquestioned. Applicant has established through his actions that it is unlikely that he could be placed in a position to choose between any sense of loyalty or obligation to his parents in Taiwan and his Taiwanese friends and his sense of loyalty or obligation to the United States. In balancing all of the factors mentioned and considered above, I am satisfied Applicant's loyalty to the United States is such that he can be expected to resolve any conflict of interest in favor of the United States interest. There is no risk to the national interest if Applicant has access to classified information. The mitigating conditions in AG ¶¶ 8(b) and (e) apply.

As noted above, Applicant has no financial interests in Taiwan. He established that he closed a bank account in Taiwan. AG ¶ 8(f) applies.

Applicant has met his heavy burden to show that his parents in Taiwan and his friends who are citizens and/or residents of Taiwan do not cause a security concern. I conclude that Applicant has mitigated security concerns for foreign influence.

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. I have considered the recommendations of his coworkers and supervisor that he be granted access to classified information.

Applicant has frequent and close contact with his parents in Taiwan. He has infrequent and causal contact with others who are citizens of Taiwan but residents of the United States or other friendly countries. Applicant established that he has such deep and longstanding relationships and loyalties in the United States that he can be expected to resolve any conflict of interest in favor of the United States. While access to classified information is not based on a finding of loyalty in the United States, Applicant has a deep and abiding commitment to the protection of United States interests. Applicant is solely a United States citizen and not a citizen of Taiwan. These facts leave me without 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 in Taiwan and his friends who are citizens and/or residents of Taiwan. Applicant mitigated security concerns arising from foreign influence and access to classified information is granted.

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 B:	FOR APPLICANT
Subparagraphs 1.a – 1.f:	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 access to classified information. Eligibility for access to classified information is granted.

THOMAS M. CREAN
Administrative Judge