



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



In the matter of:)	
)	
-----)	ADP Case No. 14-04064
)	
Applicant for Public Trust Position)	

Appearances

For Government: Alison O'Connell, Esquire, Department Counsel
For Applicant: *Pro se*

06/30/2016

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

On October 20, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing concerns under Guideline B (Foreign Influence), Guideline C (Foreign Preference) and Guideline F (Financial Considerations). In a response dated November 2, 2014, and November 4, 2014, Applicant admitted all allegations under Guideline B and Guideline C, but denied two allegations under Guideline F. He also requested a hearing based on the written record. On July 9, 2015, the Government prepared a file of relevant material (FORM), which included 10 attachments ("Items"). Applicant timely responded to the FORM. I was assigned the case on September 17, 2015. Based on a thorough review of the case file, I find that Applicant carried his burden and is eligible for a public trust position.

Findings of Fact

Applicant is a 43-year-old man who moved to the United States with his family from Taiwan when he was 14 years of age. He was primarily raised and educated in the United States, ultimately earning a college degree in 1995. Married in 2000, he and his wife have three pre-teen children. Applicant has worked for the same U.S.-based entity since 2001. He became a United States citizen in 2002. He completed an electronic

questionnaire for investigations processing (e-QIP) in May 2013, commencing his first request for a Government investigation with the aim of employment.¹ Because of Applicant's nexus to Taiwan, the Government requested administrative notice of certain information regarding that country. It noted that Taiwan poses a "heightened risk . . . due to the fact that [it] is a country that is known to be one of the most active collectors of U.S. economic and proprietary information." (FORM at 6 of 10; Item 10)

In 2010, Applicant and his wife went to Taiwan for his brother's wedding. Applicant has three relatives who maintain ties to Taiwan: his middle brother, who is a U.S. citizen currently residing in Taiwan while working for a U.S. company there, and his parents, retired college professors, who are dual citizens of the United States and Taiwan.² The couple divides their time between the two countries in order to spend time with both their sons. During the trip, he and his wife thought that they could supplement their children's education by letting them spend sufficient time in Taiwan to learn the Chinese language and culture.

To that end, Applicant sought Taiwanese citizenship for his children so they could attend school there. He also acquired a mortgage to purchase a condominium valued at approximately \$640,000, of which, Applicant has invested approximately \$250,000.³ In addition, he opened a Taiwanese bank account and maintained a balance of approximately \$30,000 in it for the duration of their stay in order to meet his family's financial needs, tuition, and related home expenses. From December 2010 to August 2012, Applicant's wife and children lived and studied in Taiwan, with Applicant visiting when he could. After Applicant's wife and children returned to the United States, Applicant rented the Taiwanese home to a staff member from the Japanese Embassy. Neither Applicant nor his family has returned to Taiwan since that timeframe. The foreign home was sold with a closing date in September 2015. Applicant appended a copy of the sales contract to his FORM Response. He has no other assets in Taiwan.

In 2012, before his family returned to the United States, Applicant visited them in Taiwan. During that time, having never before voted in another country than the United States, he decided to experience the process first hand and participate in the upcoming Taiwanese election. At the time, Applicant was already a U.S. citizen. He was unaware that, although a dual citizen, this act might compromise his opportunity to attain a trustworthiness position. He wrote:

¹ Applicant has never before completed an e-QIP for the purposes of pursuing eligibility for a public trust position or seeking a security clearance.

² Applicant's parents were both born in the United State before ultimately entering academe and living in Taiwan, where two of their three sons were born. Their third and youngest son was born and resides in the United States. All three sons are in their 40s.

³ Applicant's Taiwanese property was not an onerous financial investment given the fact he has \$1.8 million or more in investments held in the United States.

The 2012 Taiwanese election was my first and only vote in Taiwan. I did this out of curiosity and as a result of the excitement surrounding the first ever-female candidate. I did not consider that this action would reflect my preference over [sic] United States. To set the record straight, I have no preference or allegiance to any country other than the United States. The United States is my home and country, it is where I work and live. It is where I met my wife, it is where all our children were born and attend school. Our life and allegiance is with the US. (SOR Response at 3 of 15)

Today, Applicant and his family are permanently settled in the United States. Both Applicant and his wife, who owns her own U.S. company, work in the United States, and maintain their substantial assets here. Their children go to U.S. schools. The family has lived in the same home for over a decade. All of Applicant's \$1.8 million or more in financial holdings are here in the United States.

In the recent past, Applicant's credit report has reflected some potential financial issues. The Government provided evidence indicating that he was indebted to the Federal Government for delinquent taxes amounting to approximately \$42,723. Applicant explained that this erroneous amount was the result of an investment's cost basis being improperly reported to the Internal Revenue Service (IRS). After recalculation, it was determined that the amount owed was actually \$898.12, which was paid to the IRS on October 15, 2013, before the issuance of the SOR and the FORM. (SOR Response, IRS document of October 14, 2013, at 6-12 of 15)

Also at issue is a medical account balance alleged as delinquent for \$55. This issue was reflected in a May 2014 credit report. (FORM, Item 6 at 2 of 4) The credit report only references an incomplete account number, a notation that the collection effort is from 2013, and a note that it is an "outstanding balance; medical." No contact or other information is provided. Applicant was unaware of its existence until 2014, when it was brought to his attention while investigating the option of purchasing some property. He does not recognize the entry and cannot identify its origin. He notes, "I will need to figure out whom I need to pay this amount to." (FORM Response at 3 of 15).

Finally, Applicant's credit reports reflect two state tax liens. The first is for \$620 from 2012, while the second is from 2010 and is for \$7,643. Applicant concedes that his attempts to handle his own taxes were insufficient. Applicant stresses that the amended 2012 filing resulted in an overpayment. As well, he notes that an amended 2010 filing, which was necessitated due to an error based on an incorrect investment cost basis, has addressed the issue and he is now current on his 2010 state tax obligation. (Response to the SOR) Applicant has retained a certified public accountant (CPA) with a master's of business administration (MBA) to review the situation for accuracy and to work with the state if there are any residual issues. The CPA expected to have the matters confirmed or resolved by the end of August 2015. (FORM Response, attachment, CPA letter of August 13, 2015) Should any residual liability be determined, Applicant has sufficient cash reserves to satisfy any sum determined.

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 list potentially disqualifying conditions and mitigating conditions, which are used 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 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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. 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* EO 12968, Section 3.1(b).

Analysis

Guideline B, Foreign Influence

The 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.

Applicant and his brother are the children of U.S.-born professors who are dual citizens of the United States and Taiwan. Applicant's brother, a United States citizen, is presently employed in Taiwan by a U.S. company. The brothers' parents split their time between the two countries in order to spend time with both their sons. In addition, Applicant owned a condominium and maintained a bank account when his wife and children spent two years in Taiwan in pursuit of foreign culture and language skills. Given these facts, disqualifying conditions AG ¶¶ 7(a), (b), and (e) potentially apply:

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 coercion⁴;

AG ¶ 7(b) connection to a foreign person, group, government, or country that creates 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

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.

AG ¶ 8 provides conditions that could mitigate concerns under Guideline B. I considered all of the mitigating conditions under AG ¶ 8, and find the following apply:

AG ¶ 8(a) the nature of the relationship 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.;

⁴ I specifically note that AG ¶ 7(a) requires substantial evidence of a heightened risk. The heightened risk required to raise a disqualifying condition is a relatively low standard. Heightened risk denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or substantial assets in a foreign nation. As previously noted, Taiwan poses a heightened risk.

AG ¶ 8(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interests in favor of the U.S. interests; and

AG ¶ 8(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

As a threshold issue, Applicant divested himself of the condominium, in which he had invested approximately \$250,000 of his money, and the \$30,000 bank account maintained for his family while residing at the property. With no other foreign assets, it can be assumed that the proceeds have joined Applicant's other domestic holdings, which amount to or exceed \$1.8 million. Given these developments, AG ¶ 8(f) applies.

Applicant seems well tethered to the United States, both as his committed homeland and his preferred nation. He immigrated to the United States as a teen, remained in the United States, received his secondary and post-secondary education here, became a naturalized U.S. citizen, married a woman he met in this country, had and is raising his children in the United States, enjoys a profitable career, and has domestic financial holdings at or in excess of \$1.8 million. His wife owns her own company here. His family has been in their current home for a decade, where they seem to be firmly rooted. During much of the year, he enjoys the company of his dual-citizen parents, his youngest brother is a United States citizen and resident, and his middle brother, who is currently residing in Taiwan, remains a United States citizen despite his current work assignment abroad. In contrast, he has no foreign business, financial, or property interests in Taiwan. Only his middle brother's and his parent's transient periods of residency in Taiwan connect him to that country.

As for Applicant's family members, Applicant's youngest brother is a natural born citizen and resident of the United States. His middle brother is a naturalized United States citizen who is presently residing in Taiwan only due to his current assignment with a U.S. company. Their parents, both U.S. born citizens, apparently acquired dual citizenship status with Taiwan during their years of collegiate academic work. They split their time between the two countries in order to spend time with all their sons.

In light of the timeline, the ages of Applicant's parents and siblings, and other facts, it seems highly unlikely any of these kin have provided foreign military service, and there is no indication any are employees of, or dependent on income from a foreign nation. None of these individuals are likely to be pawns for compromise by a foreign nation. Moreover, there is no apparent conflict of interest posed given Applicant's longstanding and extensive ties to the United States, his immediate family, his career, his wife's company, and Applicant's maturity and self-professed devotion to this country. In light of these considerations, I find that AG ¶ 8(a) and AG ¶ 8(b) apply.

Guideline C – Foreign Preference

The 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.

Disqualifying conditions that could raise significant issues under AG ¶ 10 are:

AG ¶ 10(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through foreign citizenship of a family member. This includes but is not limited to: (1) Possession of a current foreign passport; (2) Military service or a willingness to bear arms for a foreign country; (3) Accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country; (4) Residence in a foreign country to meet citizenship requirements; (5) Using foreign citizenship to protect financial or business interests in another country; (6) Seeking or holding political office in a foreign country; and (7) voting in a foreign election;

AG ¶ 10(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen;

AG ¶ 10(c) performing or attempting to perform duties, or otherwise acting, so as to serve the interests of a foreign person, group, organization, or government in conflict with the national security interest; and

AG ¶ 10(d) any statement or action that shows allegiance to a country other than the United States: for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship.

AG ¶ 10(a)(7) applies in Applicant's case because he voted in a Taiwanese election after becoming a United States citizen. Such an act is considered an exercise of foreign citizenship. Therefore, the Government's evidence and Applicant's admission raises public trust concerns under Guideline C, Foreign Preference. Consequently, as per Directive ¶ E3.1.15, the burden shifts to Applicant to produce evidence to rebut, explain, extenuate, or mitigate related concerns.

Guideline C also includes examples of conditions that could mitigate related concerns arising from foreign preference. The following mitigating conditions are available under Guideline C:

AG ¶ 11(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

AG ¶ 11(b) the individual has expressed a willingness to renounce dual citizenship;

AG ¶ 11(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;

AG ¶ 11(d) use of a passport is approved by the cognizant security authority;

AG ¶ 11(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated; and

AG ¶ 11(f) the vote in a foreign election was encouraged by the United States Government.

Although Applicant's eligibility to vote in the Taiwanese election was based on his dual citizenship with Taiwan, he exercised that right after becoming a naturalized U.S. citizen several years after reaching his majority. There is no evidence that Applicant's voting in the Taiwanese national election was encouraged by the U.S. Government. Rather, Applicant simply believed that it would be interesting, informative, and exciting to vote in another country with a different system, especially since it involved that country's first female candidate. At the time, he had never completed an e-QIP or contemplated pursuing either a public trust position or a position requiring a security clearance. He was unaware that such an exercise could be considered an act of foreign preference should he, in the future, be vetted for a public trust position.

While I cannot apply AG ¶ 11(f), I considered Applicant's motivation for voting in the foreign election under general whole-person factors. I also considered that Applicant's actions occurred before he submitted his e-QIP and request for a public trust position eligibility. Now that he is aware that voting in a foreign election raises legitimate Governmental concerns, he will not again vote abroad. For these reasons, I find Applicant mitigated applicable concerns under the guideline for foreign preference.

Guideline F – Financial Considerations

Under Guideline F, AG ¶ 18 sets forth that the concern under this guideline is that 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. An individual who is financially overextended is at risk of engaging in illegal acts to generate funds.

Here, the Government introduced evidence showing Applicant has a delinquent medical debt for \$55 and three tax-related debts. This is sufficient to invoke two of the financial considerations disqualifying conditions:

AG ¶ 19(a) inability or unwillingness to satisfy debts; and

AG ¶ 19(c) a history of not meeting financial obligations.

Five conditions could mitigate these finance-related security concerns:

AG ¶ 20(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

The Government provided evidence indicating that Applicant was indebted to the Federal Government for delinquent taxes amounting to approximately \$42,723. Applicant showed that, due to an error related to an investment's cost basis, incorrect sums were reported to the IRS. After recalculation, it was determined that the amount owed was actually \$898, which he promptly paid to the IRS nearly three years ago.

Applicant's credit reports also reflect two state tax liens. One is for \$620 from 2012, and the other is for \$7,643 from 2010. Applicant takes responsibility for these apparent errors, noting that he was probably ill equipped for handling his state tax return filings on his own. He filed an amended 2012 tax return, which resulted in an overpayment. As for the 2010 lien, he believes it is also related to an incorrectly cited investment cost basis, which he has since endeavored to correct. At the time he responded to the FORM, Applicant had a CPA reviewing his tax situations and working with his state to assure that he had no residual tax obligations or issues. As previously

noted, should any residual liability be determined, he has sufficient cash reserves to satisfy any sum determined.

Also at issue is a \$55 medical account balance culled from a May 2014 credit report. Applicant has researched the issue in order to satisfy the balance. The credit report, however, reveals no information about the debt which might help Applicant decipher its origin. Consequently, Applicant has little more to do than continue to persevere in determining to whom this *de minimis* debt is owed.

Given Applicant's considerable financial holdings, and considering the isolated nature of these debts, these financial issues appear to be aberrant and isolated incidents. In abdicating responsibility for his taxes to a seasoned CPA, he has helped assure that future mistakes are unlikely to recur and that additional research regarding the \$55 medical balance is done professionally. As well, although there is no indication Applicant received financial counseling, it is clear that he made not just good faith, but successful efforts to address and resolve his debts and get his financial situation back under control. Consequently, I find that AG ¶ 20(a), (c), and (d) apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position by considering the totality of the applicant's conduct and all relevant circumstances, considering the adjudicative factors listed at AG ¶ 2(a). Some of those factors were addressed have been addressed, particularly those raised under Guideline C, but some warrant additional comment.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant has lived in the United States since his early teenage years. He was educated here, married here, and remains close to his parents and siblings here. Applicant has established a professional life in the United States, and his wife owns her own company in this country. His assets are at or exceed \$1.8 million. The couple is raising their three children in the United States, where they go to American schools and have lived in the same house for at least a decade. In contrast, his only nexus today with Taiwan is the transient movement of his American-born parents and middle sibling, who only stay in that country for visits and for work with a U.S. company, respectively. Such facts, combined with Applicant's credible testimony, reveal volumes. I have no doubt that he has actively chosen the United States to be his preferred nation and residence.

Applicant has demonstrated that he has actively worked to address the financial issues raised in the SOR. He has divested himself of any foreign assets. To assure no future questions concerning his credit report or taxes arise in the future, Applicant now has his accounting performed by a professional CPA. Remaining is the concern raised by his having voted in a foreign election in 2012. This act occurred before he had applied for public trust eligibility. He believed he was simply joining in on the excitement of one of Taiwan's early direct elections, made particularly stellar due to the presence of

a female candidate. He now understands that such an act can be interpreted as an act of foreign preference, that it could jeopardize any public trust position eligibility or security concern granted in the future, and may have other unforeseen consequences concerning his relationship with the United States Government. In the future, he will not vote in foreign elections.

As previously noted, while Applicant has family members who are United States citizens residing or visiting Taiwan for the reasons noted, his immediate family members and all of his investments are located in the United States. Applicant's longstanding ties in the United States indicate that Applicant can be expected to resolve any conflict in favor of U.S. interests. Consequently, I find that Applicant has mitigated the concerns raised and is eligible for a public trust position.

Formal Findings

FOREIGN INFLUENCE	FOR APPLICANT
Allegations 1.a-1.e:	For Applicant
FOREIGN PREFERENCE	FOR APPLICANT
Allegation 2.a:	For Applicant
FINANCIAL CONSIDERATIONS	FOR APPLICANT
Allegations 3.a-3.d:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a public trust position. Eligibility for a public trust position is granted.

Arthur E. Marshall, Jr.
Administrative Judge