

KEYWORD: Foreign Influence

DIGEST: Applicant's parents, sister, mother-in-law, brother-in-law, and sister-in-law are citizens and residents of Taiwan. Applicant contacts his parents by telephone monthly and his spouse contacts her mother and siblings twice monthly. Applicant visited his parents every five years until 2002 and again in 2004 when his father was hospitalized. Applicant maintains monthly e-mail contact with college classmates in Taiwan. Security concerns based on foreign influence are mitigated. Clearance is granted.

CASENO: 02-29658.h1

DATE: 01/13/2005

DATE: January 13, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-29658

DECISION OF ADMINISTRATIVE JUDGE

LEROY F. FOREMAN

APPEARANCES

FOR GOVERNMENT

Kathryn Antigone Trowbridge, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's parents, sister, mother-in-law, brother-in-law, and sister-in-law are citizens and residents of Taiwan. Applicant contacts his parents by telephone monthly and his spouse contacts her mother and siblings twice monthly. Applicant visited his parents every five years until 2002 and again in 2004 when his father was hospitalized. Applicant maintains monthly e-mail contact with college classmates in Taiwan. Security concerns based on foreign influence are mitigated. Clearance is granted.

STATEMENT OF THE CASE

On January 16, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny Applicant a security clearance. This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive). The SOR alleges security concerns under Guideline B (Foreign Influence) arising because Applicant's immediate family, in-laws, and some of his college classmates with whom he maintains contact are citizens and residents of Taiwan.

Applicant answered the SOR in writing on February 18, 2004. He admitted most but not all of the allegations, offered explanations, and requested a hearing. The case was assigned to me on September 23, 2004, and on the same day DOHA issued a notice of hearing setting the case for October 20, 2004. The case was heard as scheduled. DOHA received the transcript (Tr.) on October 28, 2004.

FINDINGS OF FACT

Applicant's admissions in his answer to the SOR and at the hearing are incorporated into my findings of fact. I also make the following findings:

Applicant is an engineer for a defense contractor. He has worked for his present employer for 20 years. He was born in Taiwan in 1953. He went to college and performed two years of mandatory military service in Taiwan. He came to the U.S. in 1979, attended graduate school, and received a master's degree in mechanical engineering in 1980. He became a naturalized U.S. citizen in 1989. He has held a security clearance since 1990.

In 1978 Applicant married a citizen and resident of Taiwan. His spouse became a naturalized U.S. citizen in 1989. Applicant and his spouse have a 23-year-old daughter and a 18-year-old son, both native-born U.S. citizens. Applicant and his spouse own a home in the U.S. They have no foreign property or investments. They both have U.S. passports, and neither claims dual citizenship.

Applicant's parents and sister are citizens and residents of Taiwan. His parents are more than 75 years old. His sister is legally blind and nearly deaf. Applicant sends his parents about \$5,000.00 per year. He contacts his family by telephone once a month. He visited his family once every five years until he submitted his latest security clearance application in January 2002. He visited Taiwan in the summer of 2002 to attend his grandmother's funeral. He visited Taiwan again in January 2004 when his father was hospitalized.

Applicant's mother-in-law is a citizen of Taiwan. She has been widowed for about 40 years. She resides with Applicant half the time and in Taiwan half the time so she can visit all her children and grandchildren every year.

One of Applicant's brothers-in-law and his sister-in-law are citizens and residents of Taiwan. Applicant's spouse is close to her siblings, and she has twice monthly contact with them, but Applicant has virtually no contact with them.

When Applicant submitted his security clearance application, his other brother-in-law was a citizen of Taiwan residing in the U.S. This brother-in-law is now a U.S. citizen.

Applicant maintains monthly e-mail contact with about 40 classmates from college. Some reside in Taiwan, 20 classmates reside in the U.S., and one resides in Canada. The content of the e-mail is social: seasonal greetings, announcements of awards and accomplishments, and changes of address. Applicant sends only individual e-mails, not messages to the entire group. Because he is on the mailing list, he receives considerable passive e-mail whenever a group member decides to distribute an announcement. Occasionally, a small group of classmates socializes in the U.S.

None of Applicant's classmates are employed by the Taiwan government, except for six to eight professors employed by Taiwan National University. None of the classmates work in the defense industry.

Taiwan is a multiparty democracy, a U.S. ally, and a major U.S. trading partner. It has a good human rights record. Taiwan maintains a large military establishment, and its primary mission is the defense of Taiwan against the Peoples Republic of China. The Taiwan Relations Act, U.S.C. §§ 3301-3316, is the legal basis for the unofficial relationship between the U.S. and Taiwan and the U.S. commitment to ensuring Taiwan's defensive capability.⁽¹⁾ On the other hand, Taiwan is an active collector of defense, medical, economic, and computer information through industrial espionage.⁽²⁾

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander-in-Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6.

In evaluating an applicant's conduct, an administrative judge should consider: (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 applicant's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent 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. Directive ¶¶ E2.2.1.1 through E2.2.1.9.

The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the

President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

CONCLUSIONS

A security risk may exist when an applicant's immediate family, or other persons to whom he may be bound by affection, influence, or obligation, are not citizens of the U.S. or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Directive ¶ E2.A2.1.1. A disqualifying condition (DC 1) may arise when "[a]n immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country." Directive ¶ E2.A2.1.2.1.

The totality of an applicant's family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). Applicant's wife's ties to Taiwan and the possible effect they may have on Applicant's conduct are relevant considerations under Guideline B (Foreign Influence). ISCR Case No. 01-02452 at 8 (App. Bd. Nov. 21, 2002). "[T]here is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse." ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at * 8 (App. Bd. Feb. 20, 2002). Furthermore, a disqualifying condition (DC 2) may arise if an applicant is "[s]haring living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists." Applicant's admission that his parents and sister are citizens and residents of Taiwan establishes DC 1, and his admission that some of his in-laws are citizens and residents of Taiwan establishes DC 2.

In cases where an Applicant has immediate family members who are citizens or residents of a foreign country or who are connected with a foreign government, a mitigating condition (MC 1) may apply if "the immediate family members

(spouse, father, mother, sons, daughters, brothers, sisters) . . . are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States." Directive ¶ E2A2.1.3.1.

Notwithstanding the facially disjunctive language of MC 1("agents of a foreign power **or** in a position to be exploited"), it requires proof "that an applicant's family members, cohabitant, or associates in question are (a) not agents of a foreign power, **and** (b) not in a position to be exploited by a foreign power in a way that could force the applicant to chose between the person(s) involved and the United States." ISCR Case No. 02-14995 at 5 (App. Bd. Jul. 26, 2004); *see* 50 U.S.C. § 1801(b) (defining "agent of a foreign power"). Since the Government has produced substantial evidence to establish DC 1, the burden has shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15.

Guideline B is not limited to countries that are 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." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Although Taiwan historically has been regarded as friendly to the U.S., the distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly.

Furthermore, even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know that even friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. *See* ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). Nevertheless, the nature of a nation's government, its relationship with the U.S., and its human rights record 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 U.S.

None of Applicant's immediate family or in-laws are agents of a foreign power. His parents are elderly, retired, and in poor health. His sister is partially disabled. Applicant's mother-in-law is elderly, widowed, and not associated with government or business. Her ties are equally divided between the U.S. and Taiwan. No one in his immediate family or his spouse's family is associated with government or businesses involved in economic espionage. Their social, economic, and political positions make them unlikely targets of exploitation or duress. I conclude MC 1 is established for Applicant's immediate family and his spouse's immediate family (SOR ¶¶ 1.a., 1.b., 1.d., 1.e., 1.f.).

Applicant's sole motivation for visiting Taiwan is to comfort his elderly and ailing parents. I conclude that any security concerns based on Applicant's travel to Taiwan are mitigated (SOR ¶ 1.c.).

Contrary to the allegation in the SOR ¶ 1.g., Applicant's brother-in-law is not a citizen of Taiwan. After Applicant filed his security clearance application, his brother-in-law became a naturalized U.S. citizen. I conclude Applicant has rebutted the allegation in the SOR ¶ 1.g.

A mitigating condition (MC 3) may apply if "[c]ontact and correspondence with foreign citizens are casual and infrequent." Directive ¶ E2.A2.1.3.3. Applicant has little contact with his brother-in-law and sister-in-law in Taiwan. I conclude MC 3 is established for these in-laws (SOR ¶ 1.f.).

Applicant's college friends are scattered throughout Taiwan, the U.S., and Canada. None are involved in national defense. Their contacts are casual and purely social. I conclude Applicant's ties to his college classmates are mitigated (SOR 1.h.).

I have considered Applicant's spontaneous expression of patriotism at the hearing. Applicant was so moved when a friend's son enlisted in the United States Marine Corps that he asked himself, "[I]f he's making this kind of sacrifice, then where is my sacrifice?" Applicant testified that he was willing to give up his clearance to make the country and his friend's son safer. He explained, "[I]f I can make him feel safer, or you know, like removing my security clearance would make somebody over there or the military people or anybody feel safer while they're doing the country's duty, by all means." (Tr. 13) After considering all the disqualifying conditions and mitigating conditions and applying the whole-person concept, I conclude the security concerns under Guideline B are mitigated.

FORMAL FINDINGS

The following are my findings as to each allegation in the SOR:

Paragraph 1. Guideline B (Foreign Influence): FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant a security clearance to Applicant. Clearance is granted.

LeRoy F. Foreman

Administrative Judge

1. U.S. Department of State Background Note: Taiwan, September 2004; U.S. Department of State Country Reports on Human Rights Practices, February 25, 2004. These documents are available on the internet at www.state.gov.

2. National Counterintelligence Center (NACIC), *Annual Report to Congress 15* (2000) available on the internet at www.nacic.gov. The NACIC Annual Reports for 2001, 2002, and 2003 did not identify the most active practitioners of industrial espionage by name. In 2000, NACIC identified seven countries as "most active." The number of countries targeting the U.S. rose to 75 in 2001 and over 90 in 2002.