

KEYWORD: Foreign Influence

DIGEST: Although his family ties to Taiwan raise a security concern, Applicant has successfully mitigated the concern because the totality of the facts and circumstances show his family ties do not pose an unacceptable risk of foreign influence. Clearance is granted.

CASENO: 02-19927.h1

DATE: 01/06/2005

DATE: January 6, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-19927

**DECISION OF ADMINISTRATIVE JUDGE**

**ROBERT J. TUIDER**

**APPEARANCES**

**FOR GOVERNMENT**

Edward W. Loughran, Esq., Department Counsel

**FOR APPLICANT**

### **SYNOPSIS**

Although his family ties to Taiwan raise a security concern, Applicant has successfully mitigated the concern because the totality of the facts and circumstances show his family ties do not pose an unacceptable risk of foreign influence. Clearance is granted.

### **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On October 27, 2003, DOHA issued a Statement of Reasons (SOR) <sup>(1)</sup> detailing the basis for its decision-security concerns raised under Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing on November 1, 2003, and elected to have a hearing before an administrative judge.

Department Counsel indicated he was ready to proceed on December 17, 2003, and the case was assigned to me on January 7, 2004. I issued a notice of hearing on January 8, 2004, scheduling the hearing for January 23, 2004. Applicant appeared without counsel and the hearing took place as scheduled.

The government offered three documents, which were admitted without objection as Government Exhibits (GE) 1 through 3. The Applicant offered six documents, which were admitted without objection as Applicant Exhibits (AE) A through F. DOHA received the transcript on February 3, 2004.

### **FINDINGS OF FACT**

In this Answer, Applicant admitted, with explanation, to SOR allegations 1.a. through 1.d., and denied SOR allegations 1.e. through 1.f. His admissions are incorporated into my findings. After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact:

Applicant testified during the hearing, and I find his testimony credible.

Applicant is a 40-year-old married man. He and his wife have a one-year-old daughter. He has a bachelor of science degree in mechanical engineering, awarded in 1988, and a master of science degree in industrial engineering, awarded in 1990.

He currently holds a temporary secret clearance, however, is seeking to upgrade his clearance to top secret to further advance his career. Tr. 24-25. He is employed as an engineer for a defense contractor. Applicant previously held a secret clearance when he was employed as general engineer for the Department of the Army from 1990 to 1997.

Applicant is a native born United States citizen and is ethnically Taiwanese. His parents were born and raised in the Republic of China (Taiwan). Before Applicant was born, they moved to the United States and became United States citizens. Applicant has two brothers, who are also native born United States citizens residing in the United States.

Applicant's father was a computer science college professor in the Midwest. Applicant is a graduate of the college where his father taught.

Applicant was introduced to his wife by one of his father's graduate students. At the time Applicant met his wife, she was a visiting student from Taiwan attending the college where Applicant's father taught. Applicant and his wife were married in January 1997.

Since their marriage, Applicant's wife has applied to become of United States citizen and as of the hearing, she had successfully passed her citizenship examination. On January 22, 2004, the Immigration and Naturalization Service officer, who interviewed her recommended her citizenship application for approval. (2) AE E, AE F. Applicant's wife was further notified her swearing in ceremony would be held in six to eight weeks. Tr. 19.

Applicant's paternal grandfather is a citizen resident of Taiwan and is a retired Taiwanese Army two star general. He is

over 100 years old, is hard of hearing, and in poor health. His grandfather speaks a very rare dialect understood only by Applicant's deceased father and his uncles and aunts. Applicant's father passed away in June 1988. Applicant's paternal grandfather's physical condition is so precarious, the family never informed him of his son's death. Tr. 13.

Applicant's mother is alive and is a citizen resident of the United States. All of Applicant's immediate family are citizen residents of the United States.

Applicant's mother-in-law, father-in-law, sister-in-law and two-brothers-in-law are citizen residents of Taiwan.

Applicant's father-in-law is a retired Taiwanese Army colonel. He is 80 years old, hard of hearing, and in poor health. He retired in the early 1980s, is depressed, and "waiting to die." Tr. 29. Applicant's mother-in-law has been a homemaker her entire married life. Tr. 29. Applicant's sister-in-law is a stockbroker, one brother-in-law is an electrical engineer employed by a private company and the other brother-in-law is unemployed. None of Applicant's in-laws are employed by or associated with the Taiwanese government. Tr. 30.

Applicant is unable to communicate with his in-laws intelligibly given his inability to speak Chinese. Tr. 14. Applicant's wife talks with her mother and sister monthly by telephone. Tr. 32.

Applicant traveled to Taiwan in January 1988 for one week, accompanied by his wife, to meet his in-laws. Tr. 14.

Applicant's parents-in-law have visited him and his wife in the United States on two separate occasions, the most recent visit occurring in June 1999.

Applicant is a valued and trusted employee of his company, who has made significant contributions in the area of national defense. Tr. 20-26.

Applicant owns a home with his wife in the United States, votes, and exercises all rights and privileges of United States citizenship.

## 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.

Enclosure (2) of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. 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, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

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.

## CONCLUSIONS

Under Guideline B for foreign influence, a security risk exists when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation, are not citizens of the United States or may be subject to duress. These situations could create the potential for foreign influence that could

result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Common sense suggests that the stronger the ties of affection or obligation, the more vulnerable a person is to being manipulated if the relative, cohabitant, or close associate is brought under control or used as a hostage by a foreign intelligence or security service. Concerning family ties, the language of Guideline B does not require a conclusion that an unacceptable security concern exists based solely on an applicant's family ties in a foreign country.<sup>(3)</sup> An administrative judge must consider the record evidence as a whole in deciding if the facts and circumstances of an applicant's family ties pose an unacceptable security concern under Guideline B.<sup>(4)</sup>

The government established by substantial evidence each of the allegations, as amended, in the SOR. DC E2.A2.1.2.1. While the

mere possession of family ties with persons in a foreign country is not, as a matter of law,

automatically disqualifying . . . [it] does raise a prima facie security concern sufficient to require an applicant to present evidence of rebuttal, extenuation or mitigation sufficient to meet the applicant's burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for the applicant.

ISCR Case No. 99-0424, 2001 DOHA LEXIS 59 at \*\*33-34 (App. Bd. Feb 8, 2001). It is a mitigating condition if the immediate family members or associates are not agents of a foreign power and are not in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to his family members and loyalty to the United States. MC E2.A2.1.3.1.

The record evidence does not establish that Applicant has strong or close ties of affection or obligation to any of the seven people alleged in the SOR. Those people are Applicant's (1) mother-in-law, (2) father-in-law, (3) sister-in-law, (4) two brothers-in-law, (5) paternal grandfather, and (6) father-in-law. Of the seven people, the only family member is Applicant's paternal grandfather, who is over 100 years old, hard of hearing, and is in poor health. Applicant does not share a common language with his grandfather. The presence of his grandfather in Taiwan does not pose a security concern given the rather distant nature of their relationship and lack of any close ties of emotional attachment or close ties of obligation to the grandfather by Applicant. Applicant has only met his in-laws three times, the most recent time being almost seven years ago. Moreover, he unable to communicate with them because of his inability to speak Chinese. His wife maintains contact with her mother and sister on a monthly basis by telephone.

Travel to a foreign country may raise a security concern or risk because it could make the individual vulnerable to coercion, exploitation, or pressure by that foreign government. But, that is not the case here. Applicant's one brief trip to

Taiwan in January 1988 was for the purpose of meeting his in-laws and has little, if any, security significance. Applicant's parents-in-law's two brief visits to the United States, the last occurring in June 1999 likewise has little, if any, security significance. Given these facts and circumstances, although Applicant's travel to Taiwan could have made him vulnerable in a general sense, the travel did not make him vulnerable to foreign influence within the meaning of Guideline B. <sup>(5)</sup> In short, Applicant's contact with his family members is casual and infrequent. E2.A2.1.3.3.

Applicant's grandfather and father-in-law have been retired from the Taiwanese military for many years and their connection to the Taiwanese government is limited to receipt of their pensions. Both gentlemen are in poor health and advanced in years. Applicant's grandfather and in-laws are not agents of a foreign power or in a position to be exploited by a foreign power His in-laws in Taiwan, who work, are all employed in the private sector. Given these circumstances, it is not likely his family ties might be exploited. <sup>(6)</sup>

Applicant was born and raised in the United States. Although he may be ethnically Taiwanese, he is culturally American. All of his immediate family members are citizen residents of the United States. Even though his wife was born and raised in Taiwan, she has embraced her life in the United States by taking the necessary steps to become a United States citizen. Her contact with her family is limited to monthly phone calls to her mother and sister.

In summary, the record evidence demonstrates Applicant has all the indicators of an industrious, mature, responsible, and trustworthy individual. After weighing the record evidence as a whole, it is my commonsense determination that the facts and circumstances show Applicant's ties to Taiwan do not pose an unacceptable risk or concern of foreign influence. In reaching my decision, I have considered the whole-person concept and the appropriate factors and guidelines in the Directive. And I have weighed the record evidence as a whole, and conclude the favorable evidence outweighs the unfavorable evidence. Under the totality of the facts and circumstances, I conclude Applicant has met his burden. Guideline B is decided for Applicant.

### **FORMAL FINDINGS**

Paragraph 1. Guideline B: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c: For the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: For the Applicant

## **DECISION**

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

**Robert J. Tuider**

**Administrative Judge**

1. Pursuant to Exec. Or. 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.
2. Applicant's SOR indicated his spouse was a citizen of Taiwan currently residing in the United States (§ 1.a.). This allegation is no longer accurate in view of Applicant's wife becoming a United States citizen.
3. ISCR Case No. 98-0419 (April 30, 1999) at p. 5.
4. *Id.*
5. Conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government. E2.A2.1.2.6.
6. Consistent with the whole-person concept, the security-clearance process is about risk management. With a few notable exceptions (for example 10 U.S.C. § 986), it is not a black-and-white process, but it depends upon adjudicators and administrative judges to make a fair and impartial commonsense determination on a case-by-case basis.