

KEYWORD: Foreign Influence

DIGEST: Applicant, a naturalized citizen of the United States since 1992, has lived, studied, worked, and raised a family in the U.S. continuously since 1981. He has four brothers and two sisters who are citizens and residents of the Republic of China (Taiwan). He also has part interest in a number of properties in Taiwan that are worth about \$118,000.00. He has mitigated the foreign influence security concern alleged in the Statement of Reasons. Clearance is granted.

CASENO: 02-22461.h1

DATE: 01/05/2005

DATE: January 5, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-22461

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

Eric Borgstrom, Esq., Department Counsel

FOR APPLICANT

William D. Byassee, Esq.

SYNOPSIS

Applicant, a naturalized citizen of the United States since 1992, has lived, studied, worked, and raised a family in the U.S. continuously since 1981. He has four brothers and two sisters who are citizens and residents of the Republic of China (Taiwan). He also has part interest in a number of properties in Taiwan that are worth about \$118,000.00. He has mitigated the foreign influence security concern alleged in the Statement of Reasons. Clearance is granted.

STATEMENT OF THE CASE

On November 10, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.⁽¹⁾ The SOR, which is in essence the administrative complaint, alleges a security concern under Guideline B (foreign influence). Applicant submitted a response to the SOR, dated January 13, 2004, requested a hearing, and denied all SOR allegations.

The case was assigned to another administrative judge on July 15, 2004, and reassigned to me on July 22, 2004 after it was determined the hearing would be held in my region. A notice of hearing was issued on August 26, 2004, scheduling the hearing for September 16, 2004. Applicant's attorney filed a written request for a continuance on September 3, 2004, and, following a conference call with Applicant's attorney and Department Counsel, the request for a continuance was granted without objection. An amended notice of hearing was issued on September 10, 2004, rescheduling the hearing for October 20, 2004. The hearing was conducted as rescheduled. The government submitted ten documentary exhibits that were marked as Government Exhibits (GE) 1-10. GE 1 and 2 were admitted into the record and administrative notice was taken of the information contained in GE 3-10 without objection.⁽²⁾ Applicant testified, called two witnesses to testify on his behalf, and submitted 35 documentary exhibits that were marked as Applicant's Exhibits (AE) 1-35. AE 1-15, 17-32, and 35 were admitted into the record without objection. AE 16 was admitted into the record over the government's objection. AE 33 and 34, copies of the SOR and Applicant's answer to the SOR, were not admitted into the record based upon my own ruling. The transcript was received November 2, 2004.

FINDINGS OF FACT

After a thorough review of the pleadings, testimony, and exhibits, I make the following findings of fact:

Applicant is a 55-year-old man who has been employed as a principal scientist by a defense contractor since June 2000. He was born in the Republic of China (Taiwan), and attended college there, being awarded a bachelor of science degree in mechanical engineering in 1972. He performed compulsory military service with the Taiwan military from 1973-74, serving as a second lieutenant in a parachute division. From 1974-1977, he worked for a technology institute and as a university lecturer in Taiwan. His employment at the institute involved work for the Taiwanese military.

Applicant first came to the U.S. in 1977 to pursue a master's degree in mechanical engineering at a prestigious private university. He received the degree in 1978, and then returned to Taiwan where he worked for the same technology institute. He returned to the U.S. in 1981 to pursue a Ph.D. at a state university. Following the award of the Ph.D. in 1984, he remained at the university employed as an associate professor instructing graduate courses until 1985. He was hired by a nonprofit research and development organization in 1985, and continued to work there until he was hired by his present employer. Applicant is considered to be a nationally recognized expert in reliability probabilistic mechanics statistics, and has published 103 papers and 35 technical reports in various journals and professional publications. He has been awarded prestigious national and company awards for his scientific work.

Applicant has been married to the same woman, a native of Taiwan, since June 1974. He and his wife both became naturalized U.S. citizens in September 1992. They have a 28-year-old daughter who was born in Taiwan, immigrated with them to the U.S. in 1981, and who also became a naturalized U.S. citizen in September 1992. Their daughter graduated from an Ivy League college and a nationally renowned private law school. She practices law in the U.S. Applicant and his wife also have a 17-year-old son who was born in the United States and is a high school junior residing with them.

Applicant has four brothers and two sisters who are citizens and residents of Taiwan. His parents are both dead, his father dying in September 2003. He also has two brothers who are citizens and residents of the U.S. Applicant's oldest brother in Taiwan is 69 years old, and is retired from the canned food factory that was owned by Applicant's father. His second brother in Taiwan is 67 years old and works for a canned food association. Applicant's third brother in Taiwan is about 60 years old, served in Taiwan's Navy as an enlisted man for 15 years, and presently works as a tutor from his home. His fourth brother in Taiwan is 58 years old, and works for an electric power company. Of his two brothers living in the United States, one is a retired engineer and the other is a practicing medical doctor. One of Applicant's sisters is retired from the family owned canned food factory, and the other is a teacher.

Applicant traveled to Taiwan for pleasure on four occasions between June 1994 and July 1996, and then not again until he went in 2003 to attend his father's funeral. He explained he was unable to visit Taiwan from 1996 to 2000 because of personal health problems, and since 2000 because he has been too busy in his current job. He has no plans to travel to Taiwan in the future, although he might in the event of serious health problems involving his family or their death.

Applicant has minimal contact with his siblings living in Taiwan. His primary contact is with his second oldest brother with whom he speaks by telephone maybe twice a year and exchanges e-mails with three to four times a year. His contact with his other siblings consists of the sporadic exchange of greeting cards. Applicant's mother-in-law and father-in-law are also citizens and residents of Taiwan. He estimates his wife speaks with them by telephone about once a year. Neither Applicant nor his wife provide financial support for anyone in Taiwan.

Applicant owns a number of parcels of real estate in Taiwan that were given to him by his father in about 1996. Those parcels are owned in joint tenancy with his siblings and other more removed relatives, with some parcels owned by as many as 30 joint tenants. He also owns shares of stock in the family canned food business that has not been operational for almost ten years. The business now consists primarily of an abandoned warehouse. Applicant originally estimated the value of his Taiwanese holdings to be approximately \$590,000.00 USD. However, he testified he miscalculated the exchange rate and valuation of the property when he provided that estimate, and that he researched the actual valuation while in Taiwan to attend his father's funeral. He also provided numerous Taiwanese records in support of his current valuation of about \$118,000.00 USD as the worth of his Taiwanese assets.

Applicant has been unsuccessful in efforts to sell off his Taiwanese assets because of a depressed real estate market in that country and the need to get the various joint tenants to agree to the sale of the properties. He has also been unsuccessful in efforts to have the joint tenants buy out his interest. Applicant has provided his second oldest brother a power of attorney authorizing him to sell Applicant's interest in all the property he owns in Taiwan in the event a buyer can be found. Applicant has also transferred a portion of the property to his daughter in an effort to divest himself of his foreign holdings, and plans to transfer the remaining property to his children over the next three to five years if buyers are not found. He does not want to transfer the property to his children sooner because of the tax liabilities that would be incurred.

Applicant's salary is \$130,000.00 per year. He estimates the current value of his financial interests in the U.S. to be about \$640,000.00. Included in that amount are \$105,000.00 equity in a home valued at \$385,000; \$225,000.00 in a retirement fund; \$55,000.00 in a 401K account; \$35,000.00 in stock of his employer; and \$64,000.00 in bank accounts. He also has \$300,000.00 in life insurance, \$300,000.00 in accidental death and disability coverage, and a \$6,000.00 per month long-term disability policy. He has earned enough credits to qualify for social security and disability benefits upon reaching retirement age.

Applicant's witnesses were his immediate supervisor and a co-worker, both of whom hold security clearances and are aware of the security concerns that exist. They unhesitatingly recommend Applicant be granted a clearance based upon their close observation of his character. They consider him to be an excellent employee and scientist who does not pose a threat to the national interest. Applicant testified he has never been contacted by representatives of a foreign government and has not attended an international conference since 1992.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not

outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline B, pertaining to foreign influence with its respective DC and MC, is most relevant in this case.

BURDEN OF PROOF

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽³⁾ The government has the burden of proving controverted facts.⁽⁴⁾ The burden of proof in a security clearance case is something less than a preponderance of evidence,⁽⁵⁾ although the government is required to present substantial evidence to meet its burden of proof.⁽⁶⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁷⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁽⁸⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁹⁾

No one has a right to a security clearance⁽¹⁰⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹¹⁾ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.⁽¹²⁾

CONCLUSIONS

Foreign Influence. A security risk may exist 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.

Based upon the allegations in the SOR, Disqualifying Conditions (DC) 1: *An 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*; and DC 8: *A substantial financial interest in a country, or in any foreign-owned or -operated business that could make the individual vulnerable to foreign influence* must be evaluated in determining whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant under Guideline B:

DC 1 applies in this case because Applicant's four brothers and two sisters are citizens and residents of Taiwan. DC 8 applies because Applicant's financial interests in Taiwan, totaling approximately \$118,000.00, are not insubstantial when compared with the value of property he owns in the

United States.

Once the government meets its burden of proving controverted facts⁽¹³⁾ the burden shifts to an applicant to present evidence demonstrating extenuation, mitigation, or changed circumstances.⁽¹⁴⁾ Further, the government is under no duty to present evidence to disprove any Adjudicative Guideline mitigating conditions, and an Administrative Judge cannot assume or infer that any particular mitigating condition is applicable merely because the government does not present evidence to disprove that particular mitigating condition.⁽¹⁵⁾

The following information about Taiwan and its relations with the United States that was administratively noticed at the government's request is significant in determining whether a security concern exists under the known facts in this case:

Taiwan is a stable democracy and it has a strong and well-developed economy. . . . Although Taiwan is considered a medium risk location for crime, the overall violent crime rate in Taiwan remains relatively low. (GE 3)

An opposition candidate for the first time won the presidential election on March 18, 2000. The peaceful transfer of office from the Kuomintang to the Democratic Progressive Party validated Taiwan's democratic political system. . . . Since ending martial law (in 1987), Taiwan has taken dramatic steps to improve respect for human rights and create a democratic political system. Almost all restrictions on the press have ended, restrictions on personal freedom have been relaxed, and the prohibition against organizing new political parties has been lifted. (GE 4)

Despite the differences between Taiwan and the PRC (People's Republic of China), contact between the two sides of the Taiwan Strait has grown significantly over the past decade. . . . China is Taiwan's third-largest trading partner, and Taiwan is China's fourth-largest. Taiwan investment on the mainland is an estimated \$70 billion, making Taiwan the second-largest source of investment after Hong Kong. (GE 4)

On January 1, 1979 . . . the United States recognized the Government of the People's Republic of China as the sole legal government of China and acknowledged the Chinese position that there is but one China and Taiwan is part of China. . . . However, the United States has continued the sale of appropriate defensive military equipment to Taiwan in accordance with the Taiwan Relations Act. . . . U.S. commercial ties with Taiwan have been maintained and have expanded since 1979. (GE 4)

The following Mitigating Conditions (MC) must be evaluated in determining whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant under Guideline B: MC 1: *A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitants, or associate(s) in question 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;* MC 3: *Contact and correspondence with foreign citizens are casual and infrequent;* and MC 5: *Foreign financial interests are minimal and not sufficient to affect the individuals security responsibilities.*

Applicant has limited or no contact with most of his siblings, and only speaks and exchanges e-mails with one brother infrequently. He has not visited Taiwan in more than eight years, and then only for the purpose of attending his father's funeral. He has no plans to travel to Taiwan in the future, although he acknowledges he may visit there if one of his siblings becomes seriously ill or dies. Neither Applicant nor his wife provide financial support for anyone in Taiwan.

There is no evidence to suggest that Applicant's family members are, or ever have been, Taiwanese agents, so the issue under MC 1 is whether they are in a position to be exploited by Taiwan. Taiwan is a country that has been and continues to be friendly with the United States, even after the U.S. recognized the PRC as the sole legal government of China and that Taiwan is part of China in 1979. Further, there is no indication that Taiwan has ever attempted to exploit any resident of Taiwan for the purpose of compromising a security clearance holder within the United States.

More specific to the facts of this case, Applicant has been a resident of the United States for more than 23 years, and a citizen for 12 years. His Taiwanese relatives have resided in that country during this time, and he and his wife have traveled to Taiwan on a limited number of occasions. The best predictor of whether Applicant's relatives are in a position to be exploited in the future is the Taiwan government's past conduct. Since Applicant came to the United States temporarily in 1977, and returned to stay in 1981, there is no evidence that any action has ever been taken by the Taiwanese government to exploit his relationship with relatives in Taiwan.

Still, the Applicant bears the burden of demonstrating his family ties with relatives living in Taiwan do not pose a security risk. To that end he has introduced evidence of his minimal contacts with his relatives in Taiwan, his strong ties to the U.S., and the recommendations of responsible security clearance holders who work with him on a daily basis. Considering all those factors, I am satisfied that MC 1 applies. The minimal contact he has with his Taiwanese relatives also makes clear the applicability of MC 3.

As noted earlier, despite having considerable assets and a very comfortable income in the U.S., Applicant's financial interests in Taiwan are not minimal. Still, he is entitled to some consideration under MC 5. He has expended his best efforts in an attempt to divest himself of all foreign assets, and has begun to liquidate those assets by gifting a portion of them to his daughter. He has provided his brother a power of attorney to facilitate a sale of the properties if a buyer(s) can be found, and anticipates being rid of all the foreign property within the next three to five years. While MC 5 may not technically apply because of the conjunctive language contained therein, it is clear the facts of this case demonstrate Applicant's foreign financial interests are not sufficient to affect his security responsibilities.

Applicant also receives credit under the "whole person" concept for his 15 years of commendable employment with a nonprofit research and development organization and four and one-half years work with a major defense contractor, during which time he has published numerous scholarly works and professional papers and earned several prestigious national awards. Likewise, his earning three college degrees, gaining the personal and professional respect of his supervisors and co-workers, stable family life, significant financial acquisitions, and the academic accomplishment of his daughter are all indicators of a mature, steady, responsible, and trustworthy individual.

In all adjudications the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I am satisfied that Applicant has presented sufficient evidence of refutation, extenuation, and mitigation to overcome the case against him. Accordingly, Guideline B is decided for Applicant.

FORMAL FINDINGS

SOR ¶ 1-Guideline B: For the Applicant

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: For the 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 or continue a security clearance for Applicant. Clearance is granted.

Henry Lazzaro

Administrative Judge

1. This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. The copies of GE 8 and GE 10 offered at the hearing were incomplete, apparently because of copying errors. Department Counsel was given leave to substitute complete copies of those exhibits after the close of the hearing without objection. Complete copies were received, with notice and copies having been sent to Applicant's attorney. No objection to the substituted copies was received, and those copies were marked as GE 8a and GE 10a and added to the record.
3. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
4. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
5. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
6. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
7. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
8. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

9. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15

10. *Egan*, 484 U.S. at 528, 531.

11. *Id.* at 531.

12. *Egan*, Executive Order 10865, and the Directive.

13. Directive, Additional Procedural Guidance, Item E3.1.14

14. Directive, Additional Procedural Guidance, Item E3.1.15

15. ISCR Case No. 99-0597 (December 13, 2000)