

KEYWORD: Foreign Influence

DIGEST: Applicant mitigated security concerns over foreign influence. His wife and one sibling became naturalized citizens of the U.S. and reside in the U.S. His brother is a permanent resident of the U.S. since July 2001 and resides in the U.S. While Applicant represented a U.S. company in Taiwan, those business contacts ceased when he left their employ in 2000. His elderly relatives in Taiwan (Republic of China) have no ties to the government. He has not visited there since 1998. It is improbable that foreign pressure on these relatives would create a situation that could influence Applicant as he persuasively attests that his preference and loyalty is exclusively for the U.S. since he became a naturalized U.S. citizen in June 2000. Clearance is granted.

CASENO: 02-23860.h1

DATE: 01/21/2005

DATE: January 21, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-23860

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Nichole L. Noel, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant mitigated security concerns over foreign influence. His wife and one sibling became naturalized citizens of the U.S. and reside in the U.S. His brother is a permanent resident of the U.S. since July 2001 and resides in the U.S. While Applicant represented a U.S. company in Taiwan, those business contacts ceased when he left their employ in 2000. His elderly relatives in Taiwan (Republic of China) have no ties to the government. He has not visited there since 1998. It is improbable that foreign pressure on these relatives would create a situation that could influence Applicant as he persuasively attests that his preference and loyalty is exclusively for the U.S. since he became a naturalized U.S. citizen in June 2000. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) ⁽¹⁾ to the Applicant on October 20, 2003. The SOR detailed reasons why the Government could not find that it is clearly consistent with the national interest to grant him access to classified information. The SOR alleges specific concerns over foreign influence (Guideline B) in paragraph 1. Applicant replied to the SOR allegations in an Answer notarized on November 8, 2003, where he denied 1.a. and admitted 1.b, 1.c., and 1.d. He requested a decision without a hearing.

The case was assigned to Department Counsel who prepared a File of Relevant Material (FORM) on April 14, 2004, which was forwarded to Applicant. He received it on April 30, 2004, and submitted a response dated May 24, 2004, within the thirty day deadline outlined in the transmittal letter. (Exhibit A) On June 3, 2004, Department Counsel indicated she did not object to Exhibit A. On June 8, 2004, the case was assigned to me.

The Government offered for Administrative Notice four documents: a U.S. Department of State list of Independent

States in the World (Exhibits 5), a Background Note: Taiwan (Exhibit 6), The Annual Report to Congress on Foreign Economic Collection and Industrial Espionage from 2000 (Exhibit 7), and a case from the U.S. Court of Appeals for the Sixth Circuit: *U.S. v. Yang*, 281 F.3rd 534 (6th Cir. 2002) (Exhibit 8). Applicant objected to the consideration of the *Yang* case (Exhibit 8) as a racial profiling example. (Exhibit A)

While I have considered all four documents, I can give little weight to Exhibit 8 as there is nothing submitted by Department Counsel to provide a link between the facts of the *Yang* case and the material facts of this Applicant.

FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following additional Findings of Fact:

Applicant, a 41-year-old employee, began working for a defense contractor (Employer #1) in State #1 in July 2001. In August 2001 he completed a Security Clearance Application (Standard Form 86). (Exhibit 4)

Applicant did graduate work at a university in State #1 and completed an MS in May 1992. He became a naturalized U.S. citizen in June 2000 and was issued a U.S. passport in July 2000. (Exhibit 4)

Foreign Influence

Applicant married in May 1996 in the U.S., and his wife became a naturalized U.S. citizen in October 2003 and resides in the U.S. His sister became a naturalized U.S. citizen in December 1999 and resides in the U.S. His brother is a permanent resident of the U.S. since July 2001 and current resides in the U.S. (Exhibit 4; Answer)

When Applicant completed the SF 86 forms, he disclosed that his parents and parents-in-law are citizens of the Republic of China and reside there. He visited there in 1994 through 1998 for business and pleasure. (Exhibit 4) His trips were

primarily to take care of his elderly parents. His mother-in-law died in 1997. His parents and father-in law are both elderly, retired, and have no ties to the government. Applicant's father is 70; he had a tea business and was self-employed until he retired in 2000. His mother is 71 and a housewife. His father-in-law is 75 and retired from being a custom broker for 40 years. They are financially self-sufficient; indeed, they are eager to become permanent residents of the United States and eventually citizens. (Exhibit A) Given these facts, I conclude it is unlikely they would be exploited by the government in Taiwan in a way that could force Applicant to choose between loyalty to his parents and his father-in law and his loyalty to the United States.

From May 1995 to May 1998 and again from August 1999 to February 2000, Applicant worked for a commercial U.S. company that conducted a product export business. He had five business trips to represent his employer for business purposes and has had no subsequent contact with these clients since 2000 when he stopped working for that employer. Indeed he has not traveled to Taiwan since February 1998. (Exhibit A)

Applicant was born in Taiwan which is an independent multiparty democratic government with formal diplomatic relations with 27 countries and a close diplomatic and commercial relationship with the U.S. since the end of World War II. When Applicant became a naturalized U.S. citizen in 2000, he solemnly took the oath of allegiance to the United States. He attests he will not be pressured or influenced by any foreign power or by foreign relatives. (Exhibit A)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below :

Guideline B - Foreign Influence

The concern: 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: (1) not citizens of the United States or (2) 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.

Conditions that could raise a security concern and may be disqualifying include:

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;
3. Relatives, cohabitants, or associates who are connected with any foreign government;

Conditions that could mitigate security concerns include:

1. A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, 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;
3. Contact and correspondence with foreign citizens are casual and infrequent;

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Applicant mitigated the Government's security concerns over possible foreign influence raised by Applicant's close ties of affection to his wife and siblings, his elderly parents and father-in-law, his travel to Taiwan from 1995-1998, and his work for a U.S. company where he was a consultant on developing business opportunities in Taiwan. He overcame the security concern under Guideline B, Foreign Influence, that a security risk may exist when an individual's immediate family. . . and other persons to whom he may be bound by affection, influence, or obligation are: (1) not citizens of the United States, (3) or have relatives who are connected with any foreign government who may be subject to duress. While I have considered these concerns and the documents submitted for administrative notice, I conclude Applicant has presented evidence to meet the burden these circumstances present. These security concerns are mitigated by several facts: Applicant's wife in October 2003 became a naturalized citizen of the U.S. and resides in the U.S. His sister became a naturalized citizen of the U.S. in 1999 and resides in the U.S. His brother in July 2001 became a permanent resident of the U.S. and is waiting to meet the eligibility requirements to be naturalized (five years as a permanent resident).

In addition, Applicant's only family ties to Taiwan are his elderly relatives with whom he has limited contact; he has not visited Taiwan since February 1998. Thus, any risk of foreign duress or influence on Applicant and/or his immediate family would appear to be slight and clearly manageable. Thus, I find there is no substantial likelihood that he would be subject to duress merely because of these family ties as they are financially self-sufficient and have no ties to the government. It is unlikely they or he could be exploited by the government in Taiwan in a way that could force Applicant to choose between loyalty to his parents and his father-in law and his loyalty to the United States.

While he traveled to Taiwan on business and made business contacts for a U.S. company, that travel by itself to a U.S. commercial ally does not raise a security concern. Further, his business contacts in Taiwan on behalf of a U.S. company ceased when he left their employ in 2000. Contacts with citizens of other countries are relevant to security determinations only if they make an individual potentially vulnerable to coercion, exploitation, or pressure through threats against those foreign relatives. After considering the Adjudicative Process factors and the Adjudicative Guidelines, I conclude these ties are not of such a nature as to create any tangible risks of undue pressure on Applicant, so foreign influence security concerns are mitigated. Thus, I resolve SOR paragraph 1 and subparagraphs 1.a. through 1.d. in Applicant's favor.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline B FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: 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 or continue a security clearance for the Applicant.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by DoD Directive 5200.6, dated January 2, 1992 (Directive).