

KEYWORD: Foreign Influence

DIGEST: Applicant, a naturalized citizen of the United States for the past 32 years, has lived, studied, worked, and raised a family in the U.S. continuously since 1967. He has three brothers, two sisters, a brother-in-law, and a sister-in-law who are citizens and residents of the Republic of China (Taiwan). He has mitigated the foreign influence security concern alleged in the Statement of Reasons. Clearance is granted.

CASENO: 02-25322.h1

DATE: 02/28/2005

DATE: February 28, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-25322

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

Juan J. Rivera, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a naturalized citizen of the United States for the past 32 years, has lived, studied, worked, and raised a family in the U.S. continuously since 1967. He has three brothers, two sisters, a brother-in-law, and a sister-in-law who are citizens and residents of the Republic of China (Taiwan). He has mitigated the foreign influence security concern alleged in the Statement of Reasons. Clearance is granted.

STATEMENT OF THE CASE

On January 23, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating they were unable to find 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 an answer to the SOR, dated March 23, 2004, that was deemed by DOHA to be incomplete because it was unsworn and did not indicate his intention concerning a hearing. He responded to DOHA letter informing him of the deficiencies on April 30, 2004, requested a hearing, and admitted all SOR allegations.

The case was assigned to me on December 6, 2004. A notice of hearing was issued on December 8, 2004, scheduling the hearing for December 28, 2004. The hearing was conducted as scheduled. The government submitted five documentary exhibits that were marked as Government Exhibits (GE) 1-5. GE 1 and 2 were admitted into the record and administrative notice was taken of the information contained in GE 3-5 without objection. Applicant testified but did not submit any documentary exhibits. The transcript was received January 7, 2005.

FINDINGS OF FACT

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

Applicant is a 64-year-old man who has been employed as an avionics technical manager by a defense contractor since December 1987. He was born in the Republic of China (Taiwan), and attended college there, receiving a bachelor of science degree in electrical engineering in 1965. He performed compulsory military service with the Taiwan military from 1963-64, serving as a second lieutenant in the Taiwan Air Force. He also participated in mandatory reserve officer training while in college.

From 1965-1967, Applicant worked for a private company in Taiwan. He was interviewed in Taiwan for employment with a United States company, was hired, and immigrated to New York City in May 1967. (2) He worked for a different company from 1973 until he was hired by his present employer in 1987. Applicant has possessed a secret security clearance since 1973, and there have been no complaints made alleging he has ever mishandled classified information.

Applicant has been married to the same woman, a native of Taiwan, since October 1969. He met his wife in Taiwan before he moved to the U.S. while she was still a college student. Following her college graduation in 1967, she was required to perform a two-year teaching assignment in Taiwan to repay her college expenses. She immigrated to the U.S. in 1969, and they were married in New York City. Applicant became a naturalized U.S. citizen in November 1972. His wife became a naturalized U.S. citizen in April 1976.

Applicant has two sons who were born in the U.S. The eldest is 31 years old, an electrical engineer, lives in a far western state, and recently quit his job. Applicant's youngest son is 25 years old and attending a prestigious medical school in the U.S. Applicant owns a house, valued at about \$237,000.00, and a condominium, valued at about \$95,000.00 in the U.S. His wife is employed as a civil court manager and lives in the house full-time. Applicant's employment is in the same state, but in a city somewhat distant from where his wife works, so he lives in the condo during the week and returns to the house on weekends. Applicant has approximately \$250,000.00 in a 401K account. Neither he nor his wife owns any property in Taiwan. He did inherit a share of a small farm parcel in Taiwan when his mother died in October 2002, but he signed his interest over to siblings residing in Taiwan.

Applicant has three brothers and two sisters who are citizens and residents of Taiwan. His parents are both dead, his father dying many years ago and his mother passing away in October 2002 at the age of 91. Applicant's oldest brother is a retired farmer. His other brothers are a retired factory worker and a retired school teacher. Applicant's oldest sister is a fruit tree farmer. His other sister is a nurse who is employed by the Taiwan national health institute. Her duties, as described by Applicant, are ordinary patient care. Applicant's brother-in-law is an architect by training whom presently works as a teacher. His sister-in-law's occupation is unknown.

Applicant's mother was severely injured in an auto accident seven or eight years ago that ultimately required her being placed in a nursing home. Applicant traveled to Taiwan on five occasions between 1997 and 2001 to visit with her in the nursing home, and in 2002 when she died. He provided about \$4,000.00 a year toward her expenses. He last visited Taiwan in 2003 to attend a service wherein his mother's remains were interred with those of his father. (3) Applicant's wife's only visit to Taiwan since she immigrated to the U.S. occurred about five years ago. His sons only trip to Taiwan was about ten years ago.

Applicant supported the nursing education of his sister many years ago by sending her approximately \$25.00 per month. Since his mother passed away, neither Applicant nor his wife provides support or other assistance to anyone in Taiwan. Applicant's only immediate relative to visit the U.S. was the nurse sister who visited with him during two trips she has made to the U.S. to attend training in connection with her employment. One of her trips was while she was still a student and the other was about six years ago. Applicant's mother-in-law resides in Canada. His sister-in-law

visits his wife in the U.S. about every other year. Applicant has minimal contact with his siblings living in Taiwan, consistently of monthly telephone contact.

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.⁽⁴⁾ The government has the burden of proving controverted facts.⁽⁵⁾ The burden of proof in a security clearance case is something less than a preponderance of evidence,⁽⁶⁾ although the government is required to present substantial evidence to meet its burden of proof.⁽⁷⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁸⁾ 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.⁽⁹⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹⁰⁾

No one has a right to a security clearance⁽¹¹⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹²⁾ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.⁽¹³⁾

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 Condition (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 2: *Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists* 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 three brothers and two sisters are citizens and residents of Taiwan. DC 2 applies because Applicant's sister-in-law and brother-in-law are citizens and residents of Taiwan. Although his sister is employed by the Taiwan health institute, her employment is not of such a nature as to raise an independent security concern under DC 3: *Relatives, cohabitants, or associates who are connected with any foreign government.*

Once the government meets its burden of proving controverted facts⁽¹⁴⁾ the burden shifts to an applicant to present evidence demonstrating extenuation, mitigation, or changed circumstances.⁽¹⁵⁾ 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.⁽¹⁶⁾

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:

The 2004 presidential election was a testament to Taiwan's vibrant democracy. More than 80% of eligible Taiwan voters turned out to participate in a free and fair selection of their president.

We applaud the success of democracy in Taiwan and the dedication of Taiwan's people to the rule of law. This position is consistent with the deeply held values of the American people. . . .

Taiwan's implementation of the National Defense Law and the revised Ministry of National Defense Organization Law, which brought Taiwan's military command and administrative structures clearly under civilian control, was a signal achievement long sought by the United States. We continue to urge full implementation of civilian control over the military and the development of civilian expertise on security and military affairs. . . .

..

Taiwan is a strong partner in war on terror, which contributes in a very direct way to U.S. and global security. . . . We also deeply appreciate the immediate and heartfelt response of the people and the government of Taiwan after the attacks of September 11 and the contributions of Taiwan to reconstruction of Afghanistan and Iraq. . . .

We have built a strong unofficial relationship with Taiwan that emanates from a foundation of shared values and mutual interests. Our interactions with Taiwan are to our mutual benefit in the economic sphere, in bilateral security interests, and global security. Taiwan is a good friend to the United States, as we are to Taiwan. As such, Taiwan can count on sustained U.S. support as it addresses its many important challenges. This very much includes Taiwan's efforts to develop its democracy. And we expect Taiwan to respect our interests in stability embodied in the Taiwan Relations Act. On that basis of mutual acknowledgment of and respect for our interests, the road ahead is promising. . . . [\(17\)](#)

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;* and MC 3: *Contact and correspondence with foreign citizens are casual and infrequent.*

Applicant has limited contact with his siblings consisting of monthly telephone calls to check on each other's well-being. Although he frequently visited Taiwan in recent years, those visits were in connection with his mother's declining health, her death, and funeral arrangements. With her passing, and Applicant's own health problems, it is unlikely he will travel to Taiwan in the future. His wife and children have exhibited very little interest in visiting Taiwan, evidencing their lack of any bonds of affection to that country.

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. Of course, despite Taiwan's close and long-standing friendly relations with the United States, it also must be observed that Taiwanese citizens and business entities have been recognized as some of the most active participants in economic espionage directed at U.S. businesses. (GE 4) However, there is absolutely no evidence to indicate that either the Taiwanese government or any persons in Taiwan have ever attempted to exert any pressure or duress on any resident of Taiwan or their relatives abroad in an attempt to get them to participate in espionage activities directed against the United States or U.S. businesses.

More specific to the facts of this case, Applicant has been a resident of the United States for almost 38 years, a citizen for 32 years, and a security clearance holder for 31 years. His Taiwanese relatives have resided in that country during this time, and he, his wife, and his children have traveled to Taiwan on a 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 in 1967, 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 and his strong ties to the U.S. Considering all those factors, I am satisfied that MC 1 applies. The minimal contact he has with his Taiwanese relatives since the death of his mother also makes clear the applicability of MC 3.

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-g: 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. His testimony is unclear, but his employment in Taiwan may have been with a subsidiary of the U.S. company that hired him to work in the United States.
3. Religious beliefs mandated a one year waiting period following her death before they could be buried together.
4. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
5. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.

6. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
7. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
8. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
9. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
10. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
11. *Egan*, 484 U.S. at 528, 531.
12. *Id* at 531.
13. *Egan*, Executive Order 10865, and the Directive.
14. Directive, Additional Procedural Guidance, Item E3.1.14
15. Directive, Additional Procedural Guidance, Item E3.1.15
16. ISCR Case No. 99-0597 (December 13, 2000)
17. *Overview of U.S. Policy Toward Taiwan*, James A Kelly, Assistant Secretary of State for East Asian and Pacific Affairs, Testimony at a hearing on Taiwan, House International Relations Committee, April 21, 2004 (GE 3)