

KEYWORD: Foreign Influence

DIGEST: Applicant is a 65-year-old employee of a defense contractor who has been in the United States since 1964 and received a masters' degree from a U.S. university in 1966. Applicant became a U.S. citizen in 1972. He has held a security clearance since 1973 and worked for a major defense contractor for 28 years before retirement in 2000 when he was employed in his present position. Three sisters live in and are citizens of the Republic of China (Taiwan). Applicant has monthly contact by phone with one of his sisters who is single but no contact with the others. Applicant traveled twice to China in 1997 and 1998 to attend the funerals of his parents and reported both trips to his security officer. He owes no allegiance to Taiwan. Clearance is granted.

CASENO: 02-26681.h1

DATE: 04/08/2005

DATE: April 8, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-26681

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Sabrina Redd, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 65-year-old employee of a defense contractor who has been in the United States since 1964 and received a masters' degree from a U.S. university in 1966. Applicant became a U.S. citizen in 1972. He has held a security clearance since 1973 and worked for a major defense contractor for 28 years before retirement in 2000 when he was employed in his present position. Three sisters live in and are citizens of the Republic of China (Taiwan). Applicant has monthly contact by phone with one of his sisters who is single but no contact with the others. Applicant traveled twice to China in 1997 and 1998 to attend the funerals of his parents and reported both trips to his security officer. He owes no allegiance to Taiwan. Clearance is granted.

STATEMENT OF THE CASE

On June 14, 2004, the Defense Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry* as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated June 24, 2004, Applicant responded to the allegations set forth in the SOR, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on December 7, 2004. A complete copy of the file of relevant material (FORM), consisting of ten documents, was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He did so with six documents on January 10, 2005. The case was assigned to, and received by, me on January 25, 2005.

FINDINGS OF FACT

Applicant admitted some and denied some of the factual allegations pertaining to foreign influence under Guideline B but disputed some details and inferences drawn from them. The admissions are incorporated herein as findings of fact. After a complete review of the evidence in the record and upon due consideration of the record the following additional findings of fact are made:

Applicant is a 65-year-old employee of a small defense contractor who has been in the United States since 1964. Applicant has three sisters who live in and are citizens of the Republic of China (Taiwan). The Applicant's sworn statement mistakenly indicated that two are citizens of Taiwan and one of the Peoples Republic of China (PRC). The SOR so alleges. The FORM states that they are all citizens of the PRC where they were born. Applicant has shown through documentation in his most recent submission that neither statement is correct and that all three are citizens of and residents of Taiwan. Applicant apologizes for the errors in the statement and the resultant confusion.

Applicant has monthly telephone contact with one of his sisters who is single and lives in the family home. She recently retired from the Bank of America in Taiwan. The other two sisters have family and he has virtually no contact with them. The last contact with one sister was ten years ago and he has no contact with the other. His two brothers are citizens of and live in the U.S.

Applicant came to the U.S. over 40 years ago to study, find a better life, and participate in the democracy of the U.S. He became a citizen in 1964 and received a masters' degree from a U.S. university in 1966. He has held a security clearance since 1973 and worked for a major defense contractor for 28 years before he retired in 2000. He then was employed in his present position.

Applicant traveled to Taiwan in 1997 and 1998 to attend the funerals of his parents. He reported both trips to his security officer at the defense contractor for whom he then worked. Two earlier trips in 1969 and 1982 were to marry and visit parents who were still living.

Applicant has a wife and family in the U.S. including two children and two grandchildren. He owes no allegiance to Taiwan or its government.

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.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other 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) Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the 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. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive (E2.2.2.) "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b).

CONCLUSIONS

Based on the evidence of record, including Applicant's admissions, the Government has established reasons to deny him a security clearance because of foreign influence. Having established such reasons, the Applicant has the burden to establish security suitability through evidence which refutes, mitigates, or extenuates the disqualification and demonstrates that it is clearly consistent with the national interest to grant a security clearance. ISCR Case No. 99-0424, 2001 DOHA LEXIS 59 at 33-34 (App. Bd. Feb. 8, 2001).

"A security risk may exist when an individual's immediate family 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." Directive (E2.A2.1.1.) Having immediate family members who are citizens of,

and residing in a foreign country, may raise a disqualifying security concern. Directive (E2.A2.1.2.1.)

Applicant has offered substantial evidence to mitigate the allegations of Guideline B. While there is a heavy burden on an applicant to overcome the "clearly consistent with the national interest" standard it should not be impossible to do so. ISCR Case No. 02-04786 (June 27, 2003) at p. 7.

Under Guideline B, security concerns may be mitigated by a determination "that the immediate family members 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." (E2.A2.1.3.1)

Applicant came to the U.S. because of his interest in a better life. The fact that he has three sisters in Taiwan does not provide sufficient grounds to deny him a security clearance. His contact with two of them is non-existent and has minimal contact with the third who is a former employee of a major U.S. bank and not in a position to be exploited.

While the government presented a prima facie case, Applicant has sufficiently rebutted the presumption through evidence of his loyalty and dedication to the U.S., the status of his relatives, and his contacts with them. His trips to Taiwan have been few and for specific family reasons. He has strong links to the U.S. after over forty years living in the U.S. A security clearance should be granted.

FORMAL FINDINGS

Formal Findings as required by the Directive, (E3.1.25), are as follows:

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

After full consideration of all the facts and documents 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.

Charles D. Ablard

Administrative Judge