

KEYWORD: Foreign Influence

DIGEST: Security concerns were raised regarding a 62-year-old naturalized U.S. citizen-Applicant, born in Taiwan, whose three retired brothers, three sisters, and a sister-in-law-remain citizens and residents of Taiwan. Applicant has resided in the U.S. for 35 years. Applicant married his wife, a naturalized U.S. citizen, in 1975 in the U.S. Applicant's two children were born and reside in the United States. The security concerns are mitigated by the evidence developed herein. Clearance is granted.

CASENO: 03-19242.h1

DATE: 08/05/2005

DATE: August 5, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-19242

DECISION OF ADMINISTRATIVE JUDGE

NOREEN A. LYNCH

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Security concerns were raised regarding a 62-year-old naturalized U.S. citizen-Applicant, born in Taiwan, whose three retired brothers, three sisters, and a sister-in-law-remain citizens and residents of Taiwan. Applicant has resided in the U.S. for 35 years. Applicant married his wife, a naturalized U.S. citizen, in 1975 in the U.S. Applicant's two children were born and reside in the United States. The security concerns are mitigated by the evidence developed herein. Clearance is granted.

STATEMENT OF THE CASE

On January 14, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Review Program* dated January 2, 1992, as amended and modified (Directive), issued a Statement of Reasons (SOR) to Applicant. The SOR 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, and recommended referral to an Administrative Judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated February 16, 2005, Applicant responded to the SOR allegations, and elected to have his case decided on the written record, in lieu of a hearing. Department Counsel submitted the government's File of Relevant Materials (FORM) dated March 21, 2005. Applicant received the FORM on April 15, 2005, and was given an opportunity to file objections and submit materials in refutation, extenuation, or mitigation. Applicant submitted his wife's Certificate of Naturalization, and U.S. passport, along with his university transcripts. The case was assigned to me on June 22, 2005.

FINDINGS OF FACT

Applicant admitted all the factual allegations of the SOR. Those admissions are incorporated as findings of fact.⁽¹⁾ After a complete and thorough review of the evidence in the record, I make the following findings of fact.

Applicant is 62 years old, and was born and raised in Taiwan (the Republic of China) in 1942. He has been employed in the defense industry since 1987 as an engineer. Applicant is seeking to obtain a security clearance for the first time, in conjunction with his employment.⁽²⁾ Applicant is employed as a principal engineer/scientist for a large company, and he has worked for this company since 1989. Applicant became a U.S. citizen in 1983.⁽³⁾

Applicant received a bachelor of science degree in 1966 from a Taiwan university. He does not maintain contact with any of his classmates from the university.⁽⁴⁾ Applicant came to the U.S. in 1970 and took several courses from an American university. He received a masters of science degree in engineering from an American university in 1972.⁽⁵⁾ Applicant married his wife, a native-born Taiwan citizen, in 1975 in the U.S. Applicant's wife became a naturalized citizen of the U.S. in 1983.⁽⁶⁾ Applicant and his wife have two children who are both native-born U.S. citizens.⁽⁷⁾

Applicant's parents are deceased. His parents-in-law are deceased. Applicant has three brothers and three sisters who are citizens and residents of Taiwan.⁽⁸⁾ His three brothers, in their late 60's to mid 70's, are retired. His sisters are in their 60's and have always been housewives. Applicant's three sisters-in-law, also housewives for their entire life, also live in Taiwan.⁽⁹⁾ Applicant's relatives are not political activists.⁽¹⁰⁾

Within the last 35 years, Applicant traveled to Taiwan three times. He visited in November 2002, June 1994 and March 1976.⁽¹¹⁾ Each visit lasted approximately one and a half weeks and the purpose was to visit family. Applicant does not have any business dealings with the Science Division, Taipei Economic and Culture Office Technology.⁽¹²⁾

Applicant remains in touch with a former co-worker from the Division of Taipei Economic and Culture Office. His contact is limited to Christmas and holiday greetings. This friend retired from the Taipei Ministry in 2003.⁽¹³⁾

I have taken official notice of certain facts concerning Taiwan. Taiwan is one of the most active collectors of economic information and Taiwan is one of several countries that have significant intelligence operations targeting the U.S.⁽¹⁴⁾

However, Taiwan is an ally of the United States and a significant trading partner, with extensive mutual military ties. [\(15\)](#)

POLICIES

Enclosure 2 of the Directive, *Adjudicative Guidelines For Determining Eligibility For Access To Classified Information*, sets forth the criteria which must be evaluated when determining security clearance eligibility. The adjudicative guidelines specifically distinguish between those factors that are considered in denying or revoking an employee's request for access to classified information (Disqualifying Conditions), and those factors that are considered in granting an employee's request for access to classified information (Mitigating Conditions). By acknowledging that individual circumstances of each case are always different, the guidelines provide substantive standards to assist an administrative judge in reaching fair and impartial common sense decisions.

The adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at meritorious decisions. Section E2.2 of Enclosure 2 of the Directive describes the essence of scrutinizing all appropriate variables in a case as the "whole person concept." In evaluating the conduct of the applicant and the circumstances in any case, the factors an administrative judge should consider pursuant to the concept are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (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 the participation; (6) the presence or absence of rehabilitation and other pertinent 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.

Protecting national security is the paramount concern in reaching a decision in any case, and is dependent upon the primary standard that issuance of a clearance must be clearly consistent with the interests of national security. Granting an applicant's clearance for access to classified information is predicated on a high degree of trust and confidence in the individual. Accordingly, decisions under the Directive must include consideration of not just the *actual* risk of disclosure of such information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information in any aspect of his or her life. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information. [\(16\)](#) The decision to deny a security clearance request to an individual is not necessarily a determination of the loyalty of the applicant. [\(17\)](#) It is merely an indication the applicant has not met the strict guidelines established by the Department of Defense for issuing a clearance.

In accordance with the Directive, the government bears the initial burden of proof in the adjudicative process to establish conditions which indicate it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. [\(18\)](#) When the government meets this burden, a heavy burden of persuasion

then falls on the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the position of the government, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance.⁽¹⁹⁾

Based upon consideration of all the evidence submitted in this matter, the following adjudicative guideline is appropriate for evaluation with regard to the facts of this case:

Guideline B - Foreign Influence: 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.

The Guideline B disqualifying and mitigating conditions, raising either raising security concerns or mitigating security concerns applicable to this case, are set forth and discussed in the Conclusions sections below. The decision reached in this case is drawn from conclusions I have found to be reasonable, logical and based upon the evidence contained in the case record.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

The government has established its case under Guideline B. Applicant is susceptible to foreign influence because members of his immediate family or persons to whom he is bound by affection, influence, or obligation- in this instance, his three brothers and sister-in-law are citizens and residents of Taiwan. These situations raise the potential for vulnerability to coercion, exploitation, or pressure, and the exercise of foreign influence that could result in the compromise of classified information. However, the mere possession of family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. Whether an applicant's family ties in a foreign country pose a susceptibility to foreign influence depends on a common sense evaluation of the overall facts and circumstances of those family ties.⁽²⁰⁾ Applicant has strong personal and professional ties to the United States.

Foreign Influence Disqualifying Condition (FI DC) E2.A2.1.2.1.1. (*An immediate family member or person to whom the individual has close ties of affection or obligation, is a citizen, or, a resident or present in, a foreign country*), applies because Applicant has immediate family members (his three brothers and three sisters) who are citizens of and residents in Taiwan. He visited his family three times in 35 years. There is no record of any other communications. Although Applicant has a blood relationship, three visits in 35 years does not constitute a close family tie. There is nothing in the record to suggest any other communications with his brothers, sisters, and sister-in-law. I find that in this case there are no strong ties of affection or obligation. His three bothers are retired and there is nothing in the record to suggest that

Appellant supports them or is obligated to them. The remaining FI DCs do not apply.

I reviewed the Foreign Influence Mitigating Conditions (FI MC) under Guideline B and conclude that FI MC E2.A2.1.3.1. applies. (*A determination that the immediate family member(s), spouse, father, mothers, sons, daughter, brothers, sisters), cohabitant or associates(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*). Applicant's immediate family members are retired and his sisters are and have been housewives. His brothers and sisters and sister-in-law are in their 60's to 70's. Applicant asserts that none of them are political activists. This assertion has not been rebutted by the government. There is no evidence in the record that any of the Applicant's relatives has the power or the means to leave the country at will. Under these circumstances, the opportunity for adverse influence against these relatives in Taiwan is *de minimus*. Applicant's other family members live in the U.S. Given these circumstances, his immediate family members are not in a position to be exploited by a foreign power. His closest family members are his wife, who is a naturalized citizen, and children, who are U.S. born. They live in the U.S. with him, thus, negating any vulnerability from pressure or duress being applied to these family members. Second, FI MC E2.A2.1.3.3. (*Contact and correspondence with foreign citizens are casual and infrequent*), applies to Applicant's former co-worker who receives a Christmas card each year. This is infrequent and casual.

I have considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I am persuaded by the totality of the evidence in this case, that Applicant is not vulnerable to pressure or duress from a foreign power or government of Taiwan. Applicant has lived in the U.S. since 1970, and has been a law-abiding U.S. citizen since 1983. He has earned a master's degree in the U.S. and has worked in his field of expertise in the U.S. His employment in the defense industry has been with one company for many years. His wife is a naturalized U.S. citizen and his children are native-born U.S. citizens. Applicant considers the U.S. as his home. Applicant has made only three trips to Taiwan in 35 years. The record is silent as to any other communications with his family.

Applicant has met his burden of presenting evidence of refutation, extenuation, or mitigation sufficient to overcome the case against him and his burden of persuasion to obtain a favorable clearance decision. In reaching my decision, I have considered the record evidence as a whole, the whole person concept, the clearly-consistent standard, and the appropriate factors and guidelines in the Directive. Accordingly, allegations 1.a. through 1.c. of the SOR are concluded in favor of Applicant.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

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

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.

Noreen A. Lynch

Administrative Law Judge

1. Item 3 (Applicant's Answer, dated February 16, 2005) at 1.
2. Item 5 (Security Clearance Application (SF 86), dated June 7, 2002) at 1-4.
3. Item 4 (Questionnaire For National Security Positions (SF 86), dated May 30, 2002) at 2.
4. *Id.* at 2.
5. *Id.*

6. Item 6 (Applicant's Reply to Interrogatories, dated December 30, 2003) at 4.
7. Item 5, *supra* note 2, at 2.
8. Item 3, *supra* note 4, at 1.
9. *Id.*
10. *Id.* at 1.
11. *Id.*
12. Item 7 (Applicant's Reply to Interrogatories, dated December 29, 2004) at 2.
13. Item 3, *supra* note 1, at 2.
14. Item 8 (National Counterintelligence Center, *Annual Report To Congress on Foreign Economic Collection and Industrial Espionage 2000*, undated), at 15.
15. *Id.*
16. *Department of Navy v Egan*, 484 U.S. 518, 517 (1988).
17. Executive Order 10865, Section 7.
18. ISCR Case No. 96-0277 at 2 (App. Bd. Jul, 1997).
19. ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.
20. ISCR Case No. 98-0419 at 5 (App. Bd. Apr 30, 1995).