

KEYWORD: Foreign Influence

DIGEST: This 51-year-old Principal Engineer was born in Taiwan in 1951 and moved to the U.S. in the early 1980s, to attend college. He became an American citizen in 1991 and, in 1993, he married an American who had been born in the Peoples Republic of China (PRC). Applicant has extensive family ties on Taiwan and his wife's parents still reside in the PRC. These ties create a risk that has not been adequately mitigated or extenuated. Mitigation has not been shown. Clearance is denied.

CASENO: 03-16158.h1

DATE: 06/15/2005

DATE: June 15, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-16158

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

This 36-year-old Engineer/Scientist was born in Taiwan in 1968 and moved to the U.S. in about 1980. He became an American citizen in 1990 and, in 1993, he married a woman from Taiwan, who now lives with him in the U.S. His parents emigrated to the U.S. and he has two small children. His wife's parents and brother still reside in Taiwan, but have begun the process of emigrating to the U.S. Applicant has solid ties to the U.S. and almost none to Taiwan. Mitigation has been established. Clearance is granted.

STATEMENT OF THE CASE

On November 5, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding required under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether a clearance should be granted, denied or revoked.

On November 14, 2004, Applicant submitted responses to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge after a hearing. The case was assigned to me on January 10, 2005. A Notice of Hearing was issued on February 15, 2005, setting the hearing for March 3, 2005. At the hearing, the Government offered two exhibits (Government's Exhibits (GX) 1 and 2). Applicant testified, called three other witnesses and offered one exhibit (Applicant's Exhibit (AX) A). All exhibits were admitted without objection. The transcript was received on March 14, 2005.

FINDINGS OF FACT

This 36-year-old Engineer/Scientist was born in Taiwan in 1968 and came to the U.S. in 1980 with his parents. He became a U.S. citizen in 1990. He was married in 1998. His Taiwan-born wife is now a legal immigrant living with him. The November 8, 2004 SOR contains two allegations under Guideline B (Foreign Influence), 1.a., and 1.b. In his May 14, 2004 Response to the SOR, Applicant *admits* both allegations, 1.a and 1.b., with comments. The admitted parts of the allegations are accepted and incorporated herein as Findings of Fact.

After considering the totality of the evidence, I make the following additional FINDINGS OF FACT as to the status, past and present, of each SOR allegation:

Guideline B (Foreign Influence)

1.a. - Applicant's father-in-law, mother-in-law, and brother-in-law, are citizens of Taiwan, and currently reside in that country. However, Applicant's parents-in-law have been divorced for about 30 years and have almost no contact with each other. Applicant's wife rarely sees her father and they are not close. She strongly supports her husband (AX A).

1.b. - Applicant traveled to Taiwan in January 2002, December 1997 to January 1998, March 1997, and December 1995 to January 1996.

Applicant called three witnesses, a supervisor, a colleague at work, and his cousin, who have known him for varying periods of time and all have highly positive comments about Applicant's abilities and trustworthiness. All recommend him as being eligible for a security clearance (Tr at 18-32). To their knowledge, Applicant has never had any problems involving company proprietary information (Tr at 21, 22).

POLICIES

Each adjudicative decision must also include an assessment of nine generic factors relevant in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowing 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 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 (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

Because each security case presents its own facts and circumstances, it should not be assumed that the factors cited above exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable financial judgment and conduct.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of

whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. In reaching the fair and impartial overall common sense determination based on the "whole person" concept required by the Directive, the Administrative Judge is not permitted to speculate, but can only draw those inferences and conclusions that have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make

critical judgments as to the credibility of witnesses.

In the defense industry, the security of classified information is entrusted to civilian workers

who must be counted on to safeguard classified information and material twenty-four hours a day.

The Government is therefore appropriately concerned where available information indicates that an

applicant for a security clearance, in his or her private life or connected to work, may be involved

in conduct that demonstrates poor judgment, untrustworthiness, or unreliability. These concerns include consideration of the potential, as well as the actual, risk that an applicant may deliberately

or inadvertently fail to properly safeguard classified information.

An applicant's admission of the information in specific allegations relieves the Government

of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons. If the Government meets its burden (either

by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence

of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

A person seeking access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. As required by DoD Directive 5220.6, as amended, at E2.2.2., "any doubt as to whether access to classified information is clearly consistent with the interests of national security will be resolved in favor of the nation's security."

CONCLUSIONS

Applicant is a 36-year-old Engineer/Scientist for a major defense contractor. He was born in Taiwan in 1968 and came to the U.S. in 1980, at age 12, with his parents (Tr at 28). He grew up here and completed his high school and university studies in American schools. He became a U.S. citizen in February 1990 and obtained a U.S. passport in July 1992. Applicant and his wife knew each other as children. He renewed childhood contacts with his wife to be in Taiwan in 1995 and they were married in 1998. She retains her Taiwan citizenship but is a legal resident of the United States. She stays home to care for their two small U.S.-born children. Applicant's father and mother and most family members are citizens of and resident in the United States (GX 1). Per the SOR, it is the status of Applicant's in-laws that are of security concern. According to Applicant's cousin, it is Applicant's wife that communicates with her mother in Taiwan. Her parents visit the U.S. "about every year" and are applying for "Green Cards," so they can remain in the U.S. (Tr at 30) and live with Applicant and his wife (Tr at 33). Applicant's in-laws were scheduled to meet with U.S. authorities in Taiwan to begin the emigration process shortly after the March 2005 hearing (Tr at 45).

Applicant's parents and parents-in-law have been friends for many years. Applicant made the cited trips to Taiwan to allow him to visit with the woman who would become his wife and then to solidify their decision to marry and for her to move to the U.S. The last trip was about three years ago (Tr at 43) and he has no intention of traveling to Taiwan in the future (Tr at 44).

Up to now, Applicant's relationship with his in-laws "is not close" (Tr at 32). He has met them on only a few occasions and they have shown no interest in what he does for a living (*Id.*, and 38). Based on the totality of the record, including the comments of his work colleagues, I accept his averment that he would promptly report any improper contacts related to his security obligations (Tr at 46-48).

Under Guideline B, a security risk may exist when [members of]an individual's immediate family . . . are (1) not citizens of the United States or (2) may be subject to duress. These situations may create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of foreign countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

The DOHA Appeal Board has held that: "an applicant with immediate family members living in a country hostile to the United States should not be granted a security clearance without a very strong showing that those family ties do not pose a security risk ((Appeal Board Decision, ISCR Case No. 01-26893 (October 16, 2002): The Government has not suggested that Taiwan should be considered a "hostile" country. However, I do take official notice that Taiwan is listed by the U.S. government as being among the most active of intelligence gathers in the U.S. (GX 2). Appeal Board guidance states that: "family ties in [any] foreign country raise a *prima facie* security concern that requires an applicant "to present evidence of rebuttal, extenuation or mitigation sufficient to meet the burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him" (Appeal Board Decision, ISCR Case No. 02-06478 (May 19, 2003)).

Disqualifying Conditions - (1) an immediate family member . . . is a citizen of, or resident or present in, a foreign country; and (3) relatives who are connected with any foreign government.

Mitigating Conditions - MC 1 requires a determination that the immediate family members . . . would not constitute an unacceptable security risk.

The government must always establish a case with evidence that supports SOR allegations under specific guidelines. It is axiomatic in the security clearance process, however, that the ultimate burden of proof is always on the applicant to demonstrate that he or she is eligible to hold a security clearance and not on the government to prove otherwise. In this case, I have considered the totality of the record, specifically the presence of three in-laws in Taiwan.

I find significant mitigation in Applicant's long history in the United States and his contributions to the national defense. The concerns stated in the SOR are restricted to just two points: (1) the existence and presence of his in-laws in Taiwan

and (2) his travels there. Considering the travel issue first, the record indicates it was primarily to meet his present wife and to work on the process of bringing her to the U.S., where they were married and began their family. I find no current security significance in his travels to Taiwan.

On balance, I conclude the in-laws are not agents of a foreign government and are not likely to be asked to apply pressure on Applicant. Even more importantly, I conclude that Applicant has become American to the core, with many deep ties to this country, including the presence of his own wife, parents, and children. and almost no ties to Taiwan. Even these minor ties will just about vanish when his in-laws complete the process of emigrating to the U.S., to be near their daughter and grandchildren. Considering his deep ties to the United States, I conclude Applicant has demonstrated that he is not vulnerable to improper pressure, even from his own in-laws. Further, I conclude he can be relied upon to protect U.S. security interests.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Guideline B (Foreign Influence) For the Applicant

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. 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.

BARRY M. SAX
ADMINISTRATIVE JUDGE