

KEYWORD: Foreign Influence

DIGEST: Applicant is a 57-year-old naturalized citizen. He has lived in the U.S. since 1973, and became a U.S. citizen in 1987. He has held a security clearance continuously since 1991, and has had no violations or infractions. Applicant's parents, brother, sister and mother-in-law are citizens and residents of Taiwan. He has infrequent and casual contact with all his relatives in Taiwan, except his parents. Applicant has successfully mitigated the security concerns raised by his family in Taiwan. Clearance is granted.

CASENO: 03-16848.h1

DATE: 01/24/2005

DATE: January 24, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-16848

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 57-year-old naturalized citizen. He has lived in the U.S. since 1973, and became a U.S. citizen in 1987. He has held a security clearance continuously since 1991, and has had no violations or infractions. Applicant's parents, brother, sister and mother-in-law are citizens and residents of Taiwan. He has infrequent and casual contact with all his relatives in Taiwan, except his parents. Applicant has successfully mitigated the security concerns raised by his family in Taiwan. Clearance is granted.

STATEMENT OF THE CASE

On May 10, 2004, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline B, foreign influence considerations.

In a sworn statement, dated June 25, 2004, Applicant responded to the SOR allegations, and elected to have his case decided on the written record in lieu of a hearing. In his SOR response, Applicant admitted allegation 1.a., and denied allegation 1.b., contained in the SOR. Department Counsel submitted the government's case on October 22, 2004. A complete copy of the file of relevant material (FORM) was received by Applicant on October 29, 2004. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the FORM, and did not provide any additional material. The case was assigned to me on December 15, 2004.

PROCEDURAL MATTERS

The SOR starts with paragraph 2 vice paragraph 1. It is amended to start with paragraph 1 and proceed sequentially.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR, are incorporated herein. In addition, after a thorough review of the pleadings and exhibits, I make the following findings of fact:

Applicant is 57 years old, and came to the U.S. from Taiwan in 1973 to attend school. He completed his education in 1980, and earned a masters degree and PhD. He became a naturalized citizen in 1987. Applicant has been married since 1984. His wife, also from Taiwan, became a naturalized citizen in 1991. Applicant has two daughters who were born in the United States. Applicant and his wife intend to continue to raise their American daughters in the United States. Applicant has worked for the same defense contractor since 1988, and has held a security clearance since 1991.

Applicant's mother is 80 years old and his father is 85 years old. They are both citizens and residents of Taiwan. They visit Applicant in the U.S. every two to three years. Applicant's brother and sister also are citizens and residents of Taiwan, as is his mother-in-law. Applicant's father-in-law is deceased. Applicant is unaware of where his mother-in-law resides in Taiwan, but is aware that she visits her son in the U.S. and stays with him for long periods of time since her husband's death. She is considering applying for an immigrant visa. Applicant does not have regular contact with either his brother or sister. Over the past thirty years he has contacted his sister between 3 and 4 times total, and he has contacted his brother less frequently. Applicant does not recall what he and his brother spoke about the last time they talked. Applicant does communicate with his parents more regularly. His conversations revolve around their health and family topics. Applicant's parents are considering applying for immigrant visas and moving to the U.S. . Applicant's sister has two daughters that reside in the U.S. and his brother has one daughter who resides in the U.S.

Applicant does not exercise any rights of citizenship in Taiwan and is not a dual national. Applicant's Taiwanese passport expired in 1996 and he has not renewed it, and has no intention of renewing it. Applicant does not own property, or have any financial, business, educational, political, medical, retirement or military ties to Taiwan.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Considering the evidence as a whole, Guideline B, pertaining to foreign influence, with its respective DC and MC, applies in this case. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. 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.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽²⁾ The government has the burden of proving controverted facts.⁽³⁾ The burden of proof is something less than a preponderance of evidence,⁽⁴⁾ although the government is required to present substantial evidence to meet its burden of proof.⁽⁵⁾ Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.⁽⁶⁾ 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.⁽⁷⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁸⁾

No one has a right to a security clearance⁽⁹⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹⁰⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽¹¹⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽¹²⁾ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSION

Under Guideline B, 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 interest in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure." (13)

Taiwan is an ally and conducts trade with the United States. Taiwan is a stable democracy and it has a strong and well-developed economy. The threat of economic and industrial espionage continues to be a matter of concern for the U.S. Foreign countries continue to target the U.S. to illegally obtain critical technology. Foreign collectors operate against U.S. economic interests. In 2000, Taiwan was one of the eight most active collectors of foreign economic information and industrial espionage in the world. There is no information showing that Taiwan exploits, harasses or pressures its citizens in an attempt to garner economic or industrial information.

Based on the allegations in the SOR, 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,* must be evaluated in determining whether it is clearly consistent with the national interest to grant a security clearance to Applicant under Guideline B. In this case, DC 1 applies because Applicant's parents, brother, sister and mother-in-law are citizens of and reside in Taiwan.

I have considered all the potentially mitigating conditions under Guideline B in this case. I specifically considered MC 1: *A determination that the immediate family members(s), (spouse, father, mother, sons, daughters, 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,* and conclude it does not apply. I have also specifically considered MC 3: *Contact and correspondence with foreign citizens are casual and infrequent,* and conclude it applies, with regard to Applicant's brother, sister, and mother-in-law. Applicant's contact with his siblings over a thirty-year period is very infrequent and is not considered in the normal sense as having close family ties with them. Applicant has infrequent contact with his mother-in-law and does not know where she lives. This also reflects that his contact with her is casual and infrequent.

Applicant maintains contact with his parents on a more regular basis. Applicant's parents are elderly and are interested in applying for an immigrant visa. Applicant's relationship with his parents is more than casual, and MC 3 does not apply regarding them.

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 life to make an affirmative determination that the person is eligible for a security clearance. Indeed the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and various other variables. 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 have considered all the evidence in this case, and the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. Applicant has been in the U.S. since 1973, and a U.S. citizen since 1987. He has worked for a defense contractor since 1988, and held a secret security clearance since 1991. How someone conducts himself in the past is often an indicator of how they may conduct themselves in the future. Applicant held a clearance for more than 13 years without any evidence of any discrepancies. Although Applicant's parents' citizenship creates a certain vulnerability, it is outweighed and mitigated by the totality of Applicant's background and consistent conduct. When considering the whole person, I find Applicant has successfully mitigated any security concerns. I am persuaded by the totality of the evidence in this case, that it is clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guideline B is decided for 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

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.

Carol G. Ricciardello

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
3. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, ¶ E3.1.14.
4. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
5. ISCR Case No. 01-20700 (December 19, 2002) at p.3 (citations omitted).
6. ISCR Case No. 98-0761 (December 27, 1999) at p.2.
7. ISCR Case No. 94-1075 (August 10, 1995) at pp.3-4; Directive, Enclosure 3, ¶ E3.1.15.
8. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, ¶ E3.1.15
9. *Egan*, 484 U.S. at 531.
10. Id.
11. Id., Directive, Enclosure 2, ¶ E2.2.2.
12. Executive Order 10865 § 7.
13. Directive, ¶ E2.A2.1.1.