

KEYWORD: Foreign Influence

DIGEST: Applicant, a naturalized citizen of the United States since 1999, has lived, studied, worked, and raised a family in the U.S. continuously since 1981. He has limited to no contact with his father, sister, and two brothers 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: 04-02379.h1

DATE: 08/15/2005

DATE: August 15, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-02379

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a naturalized citizen of the United States since 1999, has lived, studied, worked, and raised a family in the U.S. continuously since 1981. He has limited to no contact with his father, sister, and two brothers 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 March 4, 2005, 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 that was received by DOHA on March 31, 2005, in which he requested a hearing, and admitted both SOR allegations.

The case was assigned to me on May 25, 2005. A notice of hearing was issued on May 27, 2005, scheduling the hearing for June 14, 2005. The hearing was conducted as scheduled. The government submitted three documentary exhibits that were marked as Government Exhibits (GE) 1-3. GE 1 was admitted into the record and administrative notice was taken of the information contained in GE 2 and 3 without objection. Applicant testified and submitted five documentary exhibits that were marked as Applicant Exhibits (AE) 1-5. AE 1-4 were admitted into the record and administrative notice was taken of the information contained in AE 5 without objection. The transcript was received on June 28, 2005.

FINDINGS OF FACT

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

Applicant is a 48-year-old man who immigrated to the United States from Republic of China (Taiwan) in 1981 to complete his education. He was born and raised in Taiwan, and obtained a bachelor of science degree in chemical engineering and worked for one-year as a teaching assistant at a university in that country before he came to the U.S. He was exempted from the normal compulsory military service in Taiwan because he exhibits a continuing physical disability that resulted from his suffering from polio.

Applicant obtained a master of science degree in chemical engineering in the U.S. in 1984, and a Ph.D. in chemical engineering in 1988. He has worked continuously in the U.S. for U.S. businesses since completing his education. He was employed by the same employer from September 1988 until August 2000, lastly as a data service supervisor. He left that employment with the goal of advancing his career, and worked as an application consultant for a technology corporation from August 2000 until November 2000. He left that employment because of his dissatisfaction with the way employees were treated. He commenced his present employment as a staff system engineer with his present employer, a defense contractor, in November 2000.

Applicant submitted letters of recommendation from the president of the company he worked for throughout the 1990s, the deputy program manager of his present employer, a longtime co-worker, and a leader in his church. The authors of those recommendations opine that Applicant exhibits integrity and possesses of a strong work ethic. They emphatically establish his reputation as a reliable, honest, loyal, and trustworthy individual.

Applicant met his wife, a native of Taiwan, at a picnic in the United States, and they were married in July 1992. Unsuccessful in conceiving children themselves, Applicant and his wife adopted a daughter who was born in the People's Republic of China (PRC). The adoption and related travel were arranged through an adoption agency, and Applicant and his wife traveled with several other couples to the PRC to take custody of their daughter. The child is now four years old. Applicant became a naturalized U.S. citizen in October 1999, and his wife became a naturalized U.S. citizen in March 1997. Their daughter is a U.S. citizen by virtue of their citizenship and her adoption by them.

Applicant's father, a citizen and resident of Taiwan, is 90 years old. He worked in the human resources department of the Taiwan Mineral Bureau until he retired in 1981. Applicant's description of his attempts to communicate with his father indicate the father suffers severely from the effects of old age, including such things as wandering off and getting lost, inability to carry on a conversation because he cannot remember who he is speaking with, and significant hearing loss. Applicant has never been particularly close to his father, describing him as a shy person, and now rarely even attempts to communicate with him. Applicant does send his father about \$1,000.00 annually as a New Year's gift. Applicant was much closer to his mother and spoke with her on a relatively frequent basis, however, she died in 2002.

Applicant has two brothers and one sister who are citizens and residents of Taiwan. He had one other sister who died in 1982. Applicant's oldest brother is 61 years old, single, and employed as a professor at a university in Taiwan. Because of their age difference, Applicant has never developed a particularly close relationship with this brother, and only speaks with him by telephone a couple of times a year.

Applicant's second brother is 59 years old, widowed with two adult children, and employed as a vice president by a bank. Again, because of their age differences, Applicant has never developed a close relationship with this brother. Applicant does call this brother once every month or two simply to check on their father's well-being. Applicant's surviving sister has been estranged from the family for many years. Applicant estimates it has been somewhere between ten and twenty years since he has had any meaningful contact with her.

Applicant traveled to Taiwan in 1996 to attend his brother-in-law's wedding and to visit with his father-in-law who was recovering from surgery. He visited Taiwan twice in 1998, once to visit his parents and in-laws, and a second time to attend a chemical industry conference. He returned there in 1999 to visit his ailing mother, and in 2002 to attend his mother's funeral. He again traveled to Taiwan in 2003 to show off his new daughter, and in 2004 to attend his father-in-law's funeral. Applicant has no plans to travel to Taiwan in the foreseeable future.

Applicant recently purchased a home in the U.S. for \$710,000.00, financing \$390,000.00 of the purchase price. The down payment of \$320,000.00 consisted of the proceeds from a house he sold upon being transferred by his employer to his present state of residence. He estimates he has accumulated about \$70,000.00 in a 401k account, and another \$100,000.00 in an IRA. His wife has approximately \$80-90,000.00 in a 401k account, and they have about \$35,000.00 in savings and checking accounts. Applicant's annual salary is approximately \$100,000.00. His wife used to work as an accountant, but has now opted to stay at home and raise their daughter. They do not own any property in Taiwan, and Applicant does not believe he will inherit anything upon his father's death.

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.⁽²⁾ The government has the burden of proving controverted facts.⁽³⁾ The burden of proof in a security clearance case 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 classified information must be resolved in favor of protecting national security.⁽¹¹⁾

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;* 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 father, sister, and two brothers are citizens and residents of Taiwan. Once the government meets its burden of proving controverted facts⁽¹²⁾ the burden shifts to an applicant to present evidence demonstrating extenuation, mitigation, or changed circumstances.⁽¹³⁾ 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.⁽¹⁴⁾

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 father and siblings ranging from absolutely no contact with his sister, to telephone calls once every month or two to his brother to check on his father's obviously failing health. Although he visited Taiwan on a number of occasions in recent years, with the exception of trips to attend a professional conference, to introduce his infant daughter to her new family, and one trip just to visit in-laws, those visits were primarily to deal with family related deaths and illnesses. He has no immediate plans to travel to Taiwan, and, considering his relationship with his family members in Taiwan, and the demands upon his time in the U.S. it is likely he will not visit again except to attend the funeral of his father or an in-law.

The issue in this case under MC 1 is whether Applicant's relatives are in a position to be exploited by Taiwan. Taiwan is a stable democracy, has a strong and well-developed economy, and experiences a relatively low overall violent crime rate. (AE 5) 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 engaged in economic espionage directed at U.S. businesses. (GE 2) 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 24 years, and a citizen for five years. His Taiwanese relatives have resided in that country during this time, and he, his wife, and his child 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 1981 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 extremely 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 Applicant

Subparagraph a: For Applicant

Subparagraph b: For 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. 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, Item 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, Item E3.1.15.
8. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
9. *Egan*, 484 U.S. at 528, 531.
10. *Id* at 531.
11. *Egan*, Executive Order 10865, and the Directive.
12. Directive, Additional Procedural Guidance, Item E3.1.14
13. Directive, Additional Procedural Guidance, Item E3.1.15
14. ISCR Case No. 99-0597 (December 13, 2000)