

KEYWORD: Foreign Influence

DIGEST: Applicant, a naturalized citizen of the U.S. who has immediate family members and a mother-in-law who are citizens and residents of Taiwan, mitigates any potential risk to undue foreign influence concerns under Guideline B. Taiwan, while a country reported to gather economic and proprietary intelligence against the U.S. and its companies, retains strong mutual strategic interests with the U.S. and is a county with a history of democratic traditions and respect for human rights and the rule of law. Applicant's Taiwan family members are neither agents of the Taiwan government or shown to be in a position that could force Applicant to choose between loyalty to his family members and the U.S. Clearance is granted.

CASENO: 04-02572.h1

DATE: 11/30/2005

DATE: November 30, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-02572

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Jeff A. Nagel, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a naturalized citizen of the U.S. who has immediate family members and a mother-in-law who are citizens and residents of Taiwan, mitigates any potential risk to undue foreign influence concerns under Guideline B. Taiwan, while a country reported to gather economic and proprietary intelligence against the U.S. and its companies, retains strong mutual strategic interests with the U.S. and is a county with a history of democratic traditions and respect for human rights and the rule of law. Applicant's Taiwan family members are neither agents of the Taiwan government or shown to be in a position that could force Applicant to choose between loyalty to his family members and the U.S. Clearance is granted.

STATEMENT OF CASE

On March 4, 2005, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, 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, and recommended referral to an administrative judge for determination whether clearance should be granted or continued.

Applicant responded to the SOR on March 21, 2005, and elected to have his case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on July 8, 2005. Applicant did not respond to the FORM within the 30 days provided him with supplemental documentation regarding the foreign status of his family members. The case was assigned to me August 25, 2005.

SUMMARY OF PLEADINGS

Under Guideline B, Applicant is alleged to (a) have a mother, four sisters, and two brothers who are citizens and residents of Taiwan (Republic of China), (b) occasionally send \$100.00 to his sister for the care of his mother in Taiwan, (c) own approximately one-third of a residential lot and a small farm in Taiwan, (d) have a mother-in-law who is a citizen and resident of Taiwan, and (e) have traveled to Taiwan in 1993, 1995, 1997, 1999, 2002 and 2003. For his response to the SOR, Applicant admitted each of the allegations with explanations.

FINDINGS OF FACT

Applicant is a 47-year-old engineer for a defense contractor, where he has worked since 1990. He seeks to retain his security clearance. The allegations covered in the SOR and admitted by Applicant are incorporated herein by reference adopted as relevant and material findings. Additional findings follow.

Applicant's background

Applicant was born and raised in Taiwan to Taiwanese parents. He moved to the U.S. in 1979 at the age of 27 to pursue his graduate studies. While in graduate school he married his spouse, who was also born and raised in Taiwan. Both became naturalized U.S. citizens in January 1992. Together, they have two adopted children, who are U.S. citizens by birth.

Applicant has a mother who is a citizen and resident of Taiwan. His father (a citizen and resident of Taiwan for all of his life) passed away some years ago. Applicant has four sisters and two brothers who are citizens and residents of Taiwan. Each of his siblings is retired, except for his two brothers. One of his brothers is a college history professor. Additionally, Applicant has a mother-in-law who is both a citizen and resident of Taiwan. She is 80 years old and has few contacts with Applicant.

Since becoming a U.S. citizen in 1992, Applicant has made six trips to Taiwan. His first two visits (in 1993 and 1995) were to visit his sick father and attend his memorial service. His remaining four visits (in 1997, 1999, 2002 and 2003)

were made to participate in family reunions and vacations.

To aid one of his sisters who cares for his mother, Applicant occasionally sends the sister \$100.00 a month. He explains that Taiwan still doesn't have a good social security system. As a result, he follows the Taiwan tradition of reciprocating parental care by aiding parents in need.

Applicant owns one-third of a residential lot and a small farm. Both of these properties are situated in Taiwan and have a very small monetary value. Applicant inherited these properties from his late father.

Taiwan's political and economic state

Taiwan is a constitutionally created democracy with a sophisticated legal system whose core norms reflect an abiding respect for human rights and the rule of law. Its recently confirmed structural policies embrace privatization, floating exchange rates, investment barriers in certain industries, and high tariffs and pricing structures on some goods, to better facilitate exploitation of the country's foreign trade advantages. Taiwan is a beneficiary of the US' Taiwan Relations Act of 1979. US policy declared in the Act is, *inter alia*, to help maintain, peace, security and stability in the Western Pacific; to consider any effort to determine the future of Taiwan by other than peaceful means, including by boycotts or embargoes, a threat to the peace and security of the Western Pacific area and of grave concern to the US; to provide Taiwan with arms of a defensive character; and to maintain the capacity of the US to resist any resort to force or other forms of coercion that would jeopardize the security, the social, or economic system of the people of Taiwan.

The National Counterintelligence Center's (NACIC) coordinated annual report to Congress in 2000 (*hereinafter* Annual Report) provides an in-depth analysis of economic intelligence collection activities directed against the U.S. public institutions and private commercial enterprises. The information these countries seek, according to the Annual Report, is not only technological data but also financial and commercial information calculated to give their countries a competitive edge in the global economy. In this report, Taiwan is listed as one of the countries that targets US companies for collection activities and that is on the list of countries who are the most active collectors of economic intelligence.

Just how reliable is the developed information on Taiwan's collection activities is unclear. For the assessments are based on distilled information drawn from unverifiable sources within the Intelligence Community and the subjective opinions of industrial security specialists from selected Fortune 500 countries drawn from diverse sectors of the U.S. economy (*see ex. 5*). Absent more definitive information and data to establish the foundation on which the Annual Report's public and private sources based their opinions about Taiwan's collection activities, only very limited weight can be accorded these unidentified sources under even the most liberal treatment of the hearsay rules of the Federal Rules of Evidence.

POLICIES

The Adjudicative Guidelines of the Directive (Change 4) list "binding" policy considerations to be made by judges in the decision making process covering DOHA cases. The term "binding," as interpreted by the DOHA Appeal Board, requires the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued, or denied. The Guidelines do not require the judge to assess these factors

exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E2.2 of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Foreign Influence

The Concern: A security risk may exist when an individual's immediate family, including co-habitants, 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.

Burden of Proof

By virtue of the precepts framed by the Directive, a decision to grant or continue an Applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw

factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a

security clearance. Rather, consideration must take account of potential risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of proof shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

CONCLUSIONS

Applicant immigrated to the US in 1979 on a student visa, and subsequently married. Both he and his spouse became naturalized U.S. citizens in 1992 and adopted two children who were born and raised in the U.S.. Both he and his spouse received their advanced education in the U.S. and appear to be highly regarded in their chosen fields. Each, though, has immediate family members in Taiwan, with whom they maintain regular, if not casual, contact.

Government urges security concerns over risks that Applicant's parents and siblings (citizens and residents of Taiwan) might be subject to undue foreign influence by Taiwanese authorities to access classified information in Applicant's possession or control. Because Applicant's mother, mother-in-law, and siblings currently reside in Taiwan, and Applicant owns real estate in the country, his family members present potential security risks covered by disqualifying condition E2.A2.1.2.1 (*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*) and E2.A2.1.2.8 (*A substantial financial interest in a country, or in any foreign-owned business that could make the individual vulnerable to foreign influence*) of the Adjudication Guidelines for foreign influence. The citizenship/residence status of these relatives, coupled with Applicant's financial assistance to his mother and his own inherited property interests in Taiwan, pose some potential concerns for Applicant because of the risks of undue foreign influence that could compromise classified information under Applicant's possession and/or control.

Because the Government did not elicit a signed, sworn statement or interrogatory from Applicant regarding his family

and property interests in Taiwan, available information about the status of his family members and property interests is quite limited. From what is known from Applicant's SF-86 and SOR answers, though, none of his immediate family residing in Taiwan have any financial or political affiliations with Taiwan's government, have any history to date of being subjected to any coercion or influence, or appear to be vulnerable to the same.

Taking Applicant's explanations about his immediate family and limited property interests in Taiwan at face value, any risk of undue foreign influence on Applicant and/or his immediate family would appear to be insubstantial and clearly manageable. Taiwan, although a country reported by unidentified sources within the Intelligence Community and private sector to have targeted U.S. economic and proprietary interests in the past, enjoys a special protective relationship with the U.S. through the Taiwan Relations Act of 1979, and is a democratic government with a history of respect for human rights and the rule of law.

The Adjudicative Guidelines governing collateral clearances do not dictate *per se* results or mandate particular outcomes for applicants with relatives who are citizens/residents of foreign countries in general. What is considered to be an acceptable risk in one foreign country may not be in another. While foreign influence cases must by practical necessity be weighed on a case-by-case basis, guidelines are available for referencing in the supplied materials and country information about Taiwan, both in the exhibit file and under the Adjudication Desk Reference (as here).

The special relationship that has existed between the U.S. and Taiwan over the past half-century has been one marked by mutually reconcilable political and economic interests. Reports of Taiwan intelligence gathering against U.S. companies are counterbalanced by Taiwan's history of friendly relations and partnership in a defense pact formalized in 1979. The mutually supportive bonds that have linked Taiwan's special relationship with the U.S. have not been weakened by either the Taiwan Relations Act, or the geopolitical forces that have shaped the US's evolving relationship with the People's Republic. Whatever potential security risks arise as the result of Applicant's having immediate family with citizenship and residency in Taiwan, and some real estate in the country, are by every reasonable measure mitigated.

Taiwan remains a friend of the U.S. and is a country whose democratic institutions are not incompatible with our own traditions and respect for human rights and the rule of law. While the foreign influence provisions of the Adjudicative Guidelines are ostensibly neutral as to the nature of the subject country, they should not be construed to ignore the geopolitical aims and policies of the particular foreign regime involved. Taiwan, while reported to target the U.S. and its companies in the past for economic and proprietary information, is still a country with no known recent history of hostage taking or disposition for exerting undue influence against family members to obtain either classified information, or unclassified economic and proprietary data.

As for security concerns associated with the presence of Applicant's immediate and extended family members and minimal property interests in Taiwan (a country whose interests have recently been and continue to be friendly to those of the U.S.), any potential risk of a hostage situation or undue foreign influence brought in the hopes of eliciting either classified information or economic or proprietary data out of Applicant becomes an acceptable one.

Mitigation benefits set forth in E2.A2.1.3.1 (*A determination that the immediate family members, co-habitant or associate 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 persons involved and the United States*) of the Adjudicative Guidelines are fully available to Applicant. True, Applicant retains inherited property in Taiwan that at face value appears to be significant. Quite possibly, its relative value when compared to Applicant's U.S. financial interests is small. But without a DSS statement or any more financial information covering Applicant's U.S. portfolio, a relative assessment cannot be made.

Overall, though, any potential security concerns attributable to Applicant's family members in Taiwan are sufficiently mitigated to permit safe predictive judgments about Applicant's ability to withstand risks of undue influence attributable to his familial relationships in Taiwan. Favorable conclusions warrant with respect to the allegations covered by Guideline B.

In reaching my recommended decision, I have considered the evidence as a whole, including each of the factors and conditions enumerated in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive.

FORMAL FINDINGS

In reviewing the allegations of the SOR in the context of the FINDINGS OF FACT, CONCLUSIONS and the FACTORS and CONDITIONS listed above, I make the following separate FORMAL FINDINGS with respect to Applicant's eligibility for a security clearance

GUIDELINE B: (FOREIGN INFLUENCE): FOR APPLICANT

Sub-para. 1.a: FOR APPLICANT

Sub-para. 1.b: FOR APPLICANT

Sub-para. 1.c: FOR APPLICANT

Sub-para. 1.d: FOR APPLICANT

Sub-para. 1.e: 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 Applicant's security clearance.

Roger C. Wesley

Administrative Judge