

KEYWORD: Foreign Influence

DIGEST: Applicant is 34 years old and has been employed as a software engineer by a defense

contractor since January 2001. In 2000, Applicant married a citizen of the Republic of China (Taiwan) while she was in the United States studying law, and the couple visited Taiwan in 2001. Although she is currently an applicant for full United States citizenship, her parents and three brothers remain in, and are citizens of, Taiwan. Additionally, from 2001-2004, Applicant's wife sent her parents some of her earnings to satisfy a portion of the loan secured to finance her American education. Because Applicant presented minimal evidence regarding his wife and scant information regarding his in-laws, he has failed to meet his burden in mitigating the security concerns raised by his foreign wife and relatives. Clearance is denied.

CASENO: 04-03075.h1

DATE: 08/22/2005

DATE: August 22, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-03075

DECISION OF ADMINISTRATIVE JUDGE

ARTHUR E. MARSHALL, JR.

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 34 years old and has been employed as a software engineer by a defense contractor since January 2001. In 2000, Applicant married a citizen of the Republic of China (Taiwan) while she was in the United States studying law, and the couple visited Taiwan in 2001. Although she is currently an applicant for full United States citizenship, her parents and three brothers remain in, and are citizens of, Taiwan. Additionally, from 2001-2004, Applicant's wife sent her parents some of her earnings to satisfy a portion of the loan secured to finance her American education. Because Applicant presented minimal evidence regarding his wife and scant information regarding his in-laws, he has failed to meet his burden in mitigating the security concerns raised by his foreign wife and relatives. Clearance is denied.

STATEMENT OF THE CASE

On March 10, 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 Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR). That SOR detailed why, pursuant to Guideline B (Foreign Influence), it 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. In his response, dated March 26, 2004, Applicant admitted to the four allegations contained in the SOR, but denied that a security risk was existent owing to his foreign contacts. Additionally, he requested an administrative determination based on the written record.

The government's case was submitted on June 9, 2005, and a complete copy of the file of relevant material (FORM) [\(U\)](#) was provided to him. Applicant received a copy of the FORM on June 20, 2005, and was afforded the opportunity to file

objections and submit evidence in refutation, extenuation, or mitigation. Applicant chose not to submit further rebuttal. I was assigned this case on August 1, 2005.

FINDINGS OF FACT

Applicant has admitted to the four allegations set forth in the SOR. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant is 34 years old and has been employed as a software engineer by a defense contractor since January 2001. He was born and raised in the United States. In 1998, he finished his collegiate studies by attaining a Master of Science degree. In that same year, a woman four years his junior came to America from her native Republic of China (Taiwan) to study law in the same state in which Applicant had received his degree. The two were married in the United States in April 2000.

Applicant's wife applied for permanent resident status shortly after their marriage and received conditional permanent resident status in January 2002. Permanent resident status was obtained in June 2004, and, after holding that status for three years, she applied for citizenship in January 2005. In the interim, she completed her law program and commenced her career. She took it upon herself to devote much of her personal salary to help repay her parents for the loan they secured on her behalf to enable her to attend a private graduate program in the United States, and to provide her with room, board, and a car. [\(2\)](#)

This repayment was voluntary and unsolicited. The remainder of her salary supplemented that of her husband in maintaining their lifestyle. Those repayments are now complete and no other funds are sent to his wife's family.

Applicant's mother-in-law, father-in-law, and two brothers-in-law remain citizens of Taiwan. His parents-in-law, however, are in the process of seeking immigrant visas to relocate in the United States with the intent of seeking permanent resident status here. Applicant presents no other evidence which might further define these relations. He does, however, state that his in-laws have never asked him to do anything that he considered to pose a security risk, and that he has never felt any coercion, exploitation, or pressure from either them or his wife that could lead to a security risk.

A year after his marriage and a year before commencing the job for which he now seeks a security clearance, Applicant and his wife went to Taiwan between December 18, 2002, and December 30, 2002, to see her parents. It was Applicant's only foreign travel for the seven years preceding his February 2003 application for a security clearance, and there is no evidence of foreign travel since then.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, these adjudicative guidelines are subdivided into those that may be considered in deciding whether to deny or revoke one's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to determine one could still be eligible for access to classified information (Mitigating Conditions).

In application, an Administrative Judge is not strictly bound to the adjudicative guidelines. As guidelines, they are but one set of factors for the Administrative Judge to consider in assessing an applicant in light of the circumstances giving rise to the SOR, as well as in assessing the applicant as a whole. The concept of the "whole person" means that all available, reliable information about the person - whether it is good or bad, present or past - should be considered in making a fair, impartial, and meaningful decision as to his or her suitability to hold a security clearance. To that end, Enclosure 2 also sets forth factors to be considered during this part of the adjudicative process, including: (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 participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

After a full and thorough examination, however, the final assessment must comport with the considerable gravity of the final decision. There is no right to a security clearance,⁽³⁾

and one seeking access to classified information must be prepared to enter into a fiduciary relationship with the United States Government that is inherently predicated on trust and confidence. Therefore, when the facts proven by the government raise doubts as to an applicant's judgment, reliability, or trustworthiness, the applicant has the heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽⁴⁾ Therefore, any doubts will be resolved in favor of the national security, not the applicant.

Finally, it must be noted that Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Therefore, nothing in this Decision should be construed to suggest I have based it, in whole or in part, on any express or implied determination as to this Applicant's allegiance, loyalty, or patriotism.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guideline most pertinent to an evaluation of the facts of this case:

Guideline B - 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. (S)

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to this adjudicative guideline, are set forth and discussed below.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all legal precepts, factors, and conditions, I find the following with respect to the allegations set forth in the SOR:

With respect to Guideline B (Foreign Influence), the government established its case. Applicant admits that his wife, his parents-in-law, and his two brothers-in-law are citizens of Taiwan. The citizenship of these family members raises a security concern with regard to Foreign Influence Disqualifying Condition (FI DC) E2.A2.1.2.1 (*[a]n 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*).

When, as here, the government's initial burden has been met and a disqualifying condition raised, the burden shifts to the Applicant to go forward with evidence in rebuttal, explanation, or mitigation which is sufficient to overcome or outweigh the government's case. With regard to his wife, Applicant has stated that she is neither an agent of a foreign power nor in a position to be exploited by a foreign power in a way that could force her husband to choose loyalty between her and the United States. While he has explained her reason for coming to this country and her resultant career, and carefully detailed her steps toward achieving full United States citizenship, he has presented no information as to her past, her associations, her relationship with family and friends yet remaining in Taiwan, or any other information relevant to an assessment of her pursuant to Foreign Influence Mitigating Condition (FI MC) E2.A2.1.3.1 (*[a] determination that the family member(s), (spouse, father, mother, sons, daughters, brothers, sons), cohabitant, 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). Moreover, because Applicant has failed to provide any additional facts regarding his in-laws, including such basic information as where they work, what they do, and whether they have any relationship with any government, there is even less evidence upon which a similar assessment can be made. Therefore, I must similarly find that FI MC E2.A1.1.3.1 does not apply to any of his in-laws.

Applicant has failed to present evidence regarding, or a description of, the nature and extent of his relationship with his in-laws. Similarly, he has failed to detail his wife's relationship with her family in such a way as to discern whether her contact and correspondence with her family is casual and infrequent.⁽⁶⁾ Moreover, although information is lacking with regard to the frequency of telephonic or written contact, there is evidence regarding a trip made to Taiwan that indicates their relationship is not simply casual and evidence of regular payments being sent to his wife's parents which indicates that some form of contact has been relatively frequent.⁽⁷⁾

Based on the scant evidence proffered, mitigation under FI MC E2.A2.1.3.3 (*[c]ontact and correspondence with foreign citizens are casual and infrequent*) cannot be applied. No other mitigating circumstance applies.

I have considered both the record evidence and the Applicant in light of the "whole person" concept. Applicant is an educated professional whose answers demonstrate candor, character, and integrity. That does not preclude the government from considering whether his facts and circumstances pose a security risk.⁽⁸⁾

Applicant failed to fully define his wife, as well as both his in-laws and his relationship to them. Consequentially, he has failed to carry his burden and allay the doubts and concerns that these relationships raise. Inasmuch as any doubts must be resolved in favor of the national security, I find against Applicant with regard to the remaining allegations set forth at Paragraph 1 of the SOR.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.2.5 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B: AGAINST THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.c: Against the Applicant

Subparagraph 1.d: Against the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant a security clearance for Applicant. Clearance is denied.

Arthur E. Marshall, Jr.

Administrative Judge

1. ⁰ The government submitted seven items in support of its case.
2. Applicant's wife sent between 10 to 15 thousand U.S. dollars to her parents toward this loan. *See* Item 3 (Applicant's Response to the SOR, dated March 26, 2005), at 3.
3. ⁰ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).
4. ⁰ *Id.*, at 531.
5. Directive, Enclosure 2, Attachment 2, Guideline B, ¶ E2.A2.1.1.
6. Such consideration is relevant owing to the rebuttable presumption that Applicant has ties of affection for or obligation to his spouse's family. ISCR Case. No 01-26893 (App. Bd., Feb. 20, 2002).
7. The government cites to payments made by Applicant's wife to her parents and characterizes them as financial support to bolster this argument. Applicant, however, argues that these payments were made to help repay the loan undertaken to finance her American education. Without additional facts pertinent to the loan, itself, I am unable to determine whether his wife's obligation was to the loan, rather than to her parents. Therefore, I find that the payments further support the government's argument.

