

KEYWORD: Foreign Influence

DIGEST: Applicant is a native of the Republic of China (Taiwan) who became a naturalized United States citizen in June 1987. His parents, mother-in-law, and three siblings are resident citizens of Taiwan. The foreign influence concerns presented by their foreign citizenship and residency are mitigated as these family members are not agents of a foreign power nor are they in positions where they are likely to be exploited. Clearance is granted.

CASENO: 04-03977.h1

DATE: 12/05/2005

DATE: December 5, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-03977

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a native of the Republic of China (Taiwan) who became a naturalized United States citizen in June 1987. His parents, mother-in-law, and three siblings are resident citizens of Taiwan. The foreign influence concerns presented by their foreign citizenship and residency are mitigated as these family members are not agents of a foreign power nor are they in positions where they are likely to be exploited. Clearance is granted.

STATEMENT OF THE CASE

On April 4, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant which 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 for the Applicant. [\(1\)](#) DOHA recommended referral to an administrative judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked. The SOR was based on foreign influence (Guideline B).

On April 14, 2005, Applicant responded to the SOR allegations and requested a hearing before a DOHA administrative judge. The case was assigned to me on ay 23, 2005. On June 10, 2005, I scheduled a hearing for June 23, 2005, Applicant having waived the 15-day notice requirement. At the hearing, four government exhibits and three Applicant exhibits were admitted. Applicant testified, as reflected in a transcript received on July 6, 2005.

At the government's request, I agreed to take official notice of two U.S. State Department publications, *Overview of U.S. Policy Toward Taiwan*, dated April 21, 2004, and *Background Note: Taiwan*, dated January 2005; the National Counterintelligence Center's *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage* issued in 2000; and an article reporting on the Defense Personnel Security Research Center's Espionage Database Project titled *Espionage by the Numbers: A Statistical Overview*.

FINDINGS OF FACT

The SOR alleges foreign influence concerns because of the Taiwanese residency and citizenship of Applicant's parents, three of his four siblings, and his mother-in-law, and his travels to Taiwan in 1995 and 2002. In his Answer, Applicant denied the foreign citizenship and residency of these family members presented a security risk due to their elderly ages, their financial independence, and Taiwan's alliance with the U.S. He explained that his travels to Taiwan were to visit his ill father-in-law, who died in 2002. After a complete and thorough review of the evidence of record, and upon due consideration of the same, I make the following findings of fact:

Applicant's background

Applicant is a 53-year-old senior software engineer employed by a defense contractor since June 2001. Applicant held a secret-level security clearance from April 1988 to October 1995 for his prior employment with a federally-funded research and development corporation. Applicant seeks a security clearance.

Applicant is the youngest of five children born to natives of the People's Republic of China (PRC). His parents and siblings immigrated to Taiwan from the PRC before Applicant was born. His father performed mandatory military service in the Taiwanese army, and thereafter worked in a gun factory until he retired sometime in the 1960s. Applicant's mother never worked outside of the home.

After Applicant earned his undergraduate degree from a Taiwanese university, he served mandatory military service in the Taiwanese infantry from 1974 to 1976. Following his discharge, Applicant worked as a chemical engineer for a petroleum company in Taiwan until August 1979.

In about September 1979, Applicant came to the U.S. to pursue graduate studies. He subsequently earned two master's degrees from private universities in the U.S., in chemical engineering in 1981 and in computer science in 1983.

Applicant paid for his education with funds saved from his previous job in Taiwan.

After he finished his studies, Applicant spent two years at a U.S. company involved in nuclear power plant simulation. He then went to work for a computer science firm where he was assigned to a NASA project involving satellite orbit calculations. From February 1988, when he left the computer sciences company, until October 1995, Applicant was employed by a federally-funded research and development corporation where he held a secret-level security clearance for his duties involving airborne radar. In October 1995, Applicant returned to the nuclear industry where he was employed as a principal software engineer until May 2001.

Applicant married a PRC native in the U.S. in June 1982. They divorced seven years later. In April 1990, Applicant married a Taiwanese native who had acquired U.S. citizenship in March 1984. They met through her brother, who is Applicant's best friend and had worked with Applicant. Applicant and his spouse have two daughters, who were born in the U.S. in 1994 and 1996.

In June 1987, Applicant became a U.S. naturalized citizen, taking the oath to renounce all foreign allegiances, to support and defend the U.S. Constitution and its laws, and to bear arms or perform noncombatant service or civilian service on behalf of the U.S. if required. Applicant obtained his first U.S. passport in September 1989. That passport was renewed most recently in May 2002. Applicant traveled to Taiwan in April 1995 to visit his family members.

Applicant executed an application (SF 86) for a secret-level security clearance on April 30, 2001. Applicant disclosed his Taiwanese birth and U.S. naturalization, the Taiwanese citizenship and residency of his parents and three of his four siblings (his two brothers born in 1938 and 1941, and his eldest sister born in 1933), and the Taiwanese citizenship and U.S. legal residency of his sister born in 1948. Applicant also listed his past military service for Taiwan from 1974 to 1976, but responded negatively to whether he had been employed by a foreign government, firm, or agency. Concerning foreign travel within the preceding seven years, he listed only one trip, which was taken on behalf of his former employer to the PRC in June 1997, during which Applicant and a coworker spent about ten days fixing a software problem for a power plant in Mongolia.

In June 2001, Applicant started working for his present employer as a senior software engineer II. On December 27, 2001, he completed a Questionnaire for Public Trust Positions (SF 85P) for his duties on an aircraft control system for the Federal Aviation Administration. Applicant included his travel to Taiwan for pleasure in April 1995.

In early 2002, Applicant's spouse traveled to Taiwan to take care of her father who was suffering from late-stage colon cancer. Her father passed away in 2002. Applicant traveled to Taiwan in July 2002 with his spouse to see his parents and mother-in-law. His U.S. passport bears entry and exit stamps consistent with a 25-day stay in Taiwan.

On November 14, 2002, Applicant completed another security clearance application (SF 86). Applicant provided updated address information for his siblings, and disclosed his travel to Taiwan for pleasure in July 2002. He also disclosed the Taiwanese residency and citizenship of his mother-in-law and his past employment with the petroleum company in Taiwan.

In early 2004, Applicant's spouse went to Taiwan for about two weeks to care for her mother, who suffers from dementia and requires nursing home care. In about July 2004, Applicant traveled to Taiwan with his spouse and daughters after his father suffered a minor stroke. [\(2\)](#)

As of June 2005, Applicant's parents, his brothers, his eldest sister, and his mother-in-law were still resident citizens of Taiwan. Applicant contacts his elderly parents by telephone about once a month. Applicant contacts his sister (age 72) in Taiwan once a year. Before she retired, she worked in a clothing factory. Her spouse, who had served at a low rank in the Taiwanese army, died about two years ago. Applicant does not contact his brothers in Taiwan. The older brother (age 67) spent his career in the Taiwanese navy before his retirement. His spouse, now deceased, had been an elementary school teacher in Taiwan. Applicant's other brother, who is 64 years old, was employed as a technician for a privately owned television station in Taiwan until he retired. His spouse worked as a high school teacher. Applicant's other sister has lived in the U.S. about ten years with her spouse. Both recently acquired U.S. citizenship. His sister works for a library while her spouse is retired. Applicant's mother-in-law, who is 92 years old, is in a nursing home in Taiwan. She never worked outside the home.

Applicant has no financial interests in Taiwan. He has lived in his current residence since August 1998. It is not clear from the record whether he owns his home. Applicant enjoys the freedom of living in the U.S. and he is willing to fight for the U.S. if necessary. He does not intend to return to Taiwan to live.

Taiwan's political and economic state

On January 1, 1979, the U.S. formally recognized the government of the People's Republic of China (PRC) as the sole legal government of China. The U.S. has since been committed to maintaining cultural, commercial and other nonofficial relations with Taiwan. [\(3\)](#) By formal act of Congress (Taiwan Relations Act of 1979), the U.S. is committed to provide Taiwan with arms of a defensive character in support of Taiwan's security and stability in the region. U.S. commercial ties with Taiwan have been maintained and have expanded since 1979. While Taiwan was reported to be an active collector of U.S. economic intelligence as of 2000, Taiwan has "taken dramatic steps to improve respect for human rights and create a democratic political system" since ending marital law.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. 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.

After a complete review of the evidence of record, the following adjudicative guideline is most pertinent to an evaluation of Applicant's security suitability:

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. (¶ E2.A2.1.1.)

CONCLUSIONS

Having considered the evidence in light of the appropriate legal precepts and factors, and having assessed the credibility of the Applicant, I conclude the government has established its case with respect to Guideline B, foreign influence.

Applicant's parents, three of his four siblings, and his mother-in-law are resident citizens of Taiwan. Applicant telephones his parents about once a month, and he traveled to Taiwan to see them in 1995, 2002, and 2004. His contact with his eldest sister is limited to once a year and he does not telephone his brothers in Taiwan. While Applicant may well be at less of a risk of undue foreign influence with regard to his siblings, I am unable to conclude based on the available record that his relationship with his siblings is casual, even though his correspondence with them is infrequent or nonexistent.⁽⁴⁾ Furthermore, the DOHA Appeal Board has held it reasonable for the administrative judge to consider the significance not only of an applicant's ties, but also of his spouse's ties to a foreign country and the possible effect they may have on Applicant's contacts under Guideline B (*see* ISCR Case No. 01-02452, App. Bd. Nov. 21, 2002). Applicant's spouse took leave from her job to travel to Taiwan in early 2004 to ensure that her mother was being cared for. Disqualifying conditions ¶ 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.A2.1.2.2. *Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists,* apply.

The foreign influence concerns raised by these family connections in Taiwan may be mitigated where it can be determined that they 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 Applicant to choose between loyalty to them and the United States (*see* C ¶ E2.A2.1.3.1.).⁽⁵⁾ Applicant's eldest sister worked in a clothing factory and one brother was a technician for a private television station. Applicant's father worked in a weapons factory for the Taiwanese army, and his other brother was a low-ranking career sailor in the Taiwanese navy before they retired. The evidence does not establish that the family members who worked outside of the home before they retired are or ever were foreign agents.⁽⁶⁾

However, the inquiry in a foreign influence case is not limited to consideration of whether the foreign contacts or connections are agents of a foreign power. The foreign contacts or connections must also be evaluated in terms of whether they place an applicant in a position of vulnerability, even if there is no evidence that a foreign country has sought to exploit that vulnerability. (*See* ISCR Case No. 00-0628, Feb. 24, 2003) As long as there is a tie of obligation or affection to a person who is subject to a foreign government's jurisdiction/laws and/or is within physical reach of the foreign authorities, undue foreign influence remains possible. Common sense suggests that the stronger the ties of affection or obligation, the more vulnerable a person is to being manipulated if the relative is improperly influenced, brought under control, or even used as a hostage by a foreign intelligence or security service.

Although not specifically stated in the adjudicative guideline, the particular foreign country of which the close relative or associate is a citizen or resides is relevant in determining the likelihood of undue influence being brought to bear on its citizens/residents. Countries with strong democratic institutions and respect for the rule of law are generally regarded as presenting less of a risk than totalitarian regimes with a record of human rights abuses, support for terrorist activities, or hostility to the U.S. Reports of Taiwan targeting U.S. economic and proprietary interests in 2000⁽⁷⁾ are counterbalanced by Taiwan's partnership in a defense pact with the U.S. and Taiwan's progress in achieving democratic elections, civil liberties, and stable, viable governmental institutions. As reported by the U.S. State Department in January 2005, Taiwan has taken dramatic steps to improve respect for human rights and create a democratic political system since ending marital law in 1987. Almost all restrictions on the press have ended, restrictions on personal freedoms have been relaxed, and the prohibition against organizing new political parties has been lifted. Taiwan also has a history of favorable relations with the U.S. While the U.S. does not support independence for Taiwan and is committed to a one China policy, under the Taiwan Relations Act, signed into law on April 10, 1979, the U.S. is

obligated to help Taiwan defend itself, including making available defensive arms and defensive services to Taiwan. U.S. commercial ties with Taiwan have been maintained and expanded since 1979, and Taiwan is now the eighth-largest trading partner of the U.S. Taiwan is not likely to jeopardize its relationship with the U.S. by overly pressuring its citizens.

The particular circumstances of each applicant must be taken into account. There is nothing about his parents' or siblings' present situations which lead me to conclude that they are at greater risk of undue foreign influence than they were in 1988, when Applicant was granted a secret-level security clearance for his duties with a former employer and Taiwan was not the stable democracy it is today. Applicant not only has shown he can be entrusted with classified information, but he is firmly rooted in the U.S., where he is invested financially, personally, and professionally. A U.S. citizen since 1987, he has made his home here since 1979 and is "willing to fight for our interest, our flag, and our freedom." (*See Answer*) I am persuaded Applicant would act consistent with U.S. interests in the event of any attempt to gain undue influence through his family members. SOR ¶¶ 1.a., 1.b., and 1.c. are resolved in his favor.

FORMAL FINDINGS

Formal findings as required by Section 3. Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

Paragraph 1. Guideline B: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: 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.

Elizabeth M. Matchinski

Administrative Judge

1. The SOR was issued under the authority of Executive Order 10865 (as amended by Executive Orders 10909, 11328, and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4).

2. The copy of Applicant's passport entered as Exhibit 4 bears no evidence of the trip to Taiwan. While it is conceivable that the passport was obtained by the government before the Applicant's latest trip to Taiwan, there is no evidence on that issue.

3. See the U.S. Department of State's *Background Note: Taiwan*, dated January 2005.

4. Applicant was able to provide updated address information for his siblings when he completed his latest SF 86 and he was aware of their former occupations. Applicant testified that when he traveled to Taiwan in 1995, it was to see "all [his] relatives."

5. See MC E2.A2.1.3.1. *A determination that the immediate family members(s), (spouse, father, mother, sons, daughters, brothers, sisters) 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.* The mitigating condition is bifurcated in nature ["A determination that the immediate family member(s). . . are not agents of a foreign power or in a position to be exploited by a foreign power. . . ."]. To construe the conjunction "or" as "and" would be against the plain language. While MC E2.A2.1.3.1. can be applied if an applicant satisfies only one of the two parts, a given adjudicative condition (either disqualifying or mitigating) cannot be read in such a way to be inconsistent with other adjudicative conditions. Under Guideline B, if foreign relations, who are not government agents or employees, are in a position to be exploited then MC E2.A2.1.3.1. does not mitigate the foreign influence concerns.

6. See 50 U.S.C. §1801, which defines agent of a foreign power as:

(1) any person other than a United States person, who-

(A) acts in the United States as an officer or employee of a foreign power, or as a member of a foreign power as defined in subsection (a)(4) of this section;

(B) acts for or on behalf of a foreign power which engages in clandestine activities in the United States contrary to the interests of the United States when the circumstances of such person's presence in the United States indicate that such person may engage in such activities in the United States, or when such person knowingly aids or abets any person in the conduct of such activities or knowingly conspires with any person to engage in such activities; or

(2) any person who-

(A) knowingly engages in clandestine intelligence gathering activities for or on behalf of a foreign power, which activities involve or may involve a violation of the criminal statutes of the United States;

(B) pursuant to the direction of an intelligence service or network of a foreign power, knowingly engages in any other clandestine intelligence activities for or on behalf of such foreign power, which activities involve or are about to involve a violation of the criminal statutes of the United States;

(C) knowingly engages in sabotage or international terrorism, or activities that are in preparation therefor, for or on behalf of a foreign power;

(D) knowingly enters the United States under a false or fraudulent identity for or on behalf of a foreign power or, while in the United States, knowingly assumes a false or fraudulent identity for or on behalf of a foreign power; or

(E) knowingly aids or abets any person in the conduct of activities described in subparagraph (A), (B), or (C) or knowingly conspires with any person to engage in activities described in subparagraph (A), (B), or (C).

Under federal law, the terms foreign power and agent of a foreign power have the same meanings with respect to national security and access to classified information. *See* 50 U.S.C. § 438.

7. *See* the National Counterintelligence Center's Annual Report to Congress on Foreign Economic Collection and Industrial Espionage for 2000.