

KEYWORD: Foreign Influence

DIGEST: Applicant was born in the Republic of China (Taiwan) in 1966. He became a United States citizen in 1996, and continues to reside in the United States. His father and siblings are citizens and residents of Taiwan. Security concerns arising from possible foreign influence are not mitigated. Clearance is denied.

CASENO: 04-04310.h1

DATE: 08/26/2005

DATE: August 26, 2005

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 04-04310

**DECISION OF ADMINISTRATIVE JUDGE**

**MARY E. HENRY**

**APPEARANCES**

**FOR GOVERNMENT**

Jason Perry, Esq., Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant was born in the Republic of China (Taiwan) in 1966. He became a United States citizen in 1996, and continues to reside in the United States. His father and siblings are citizens and residents of Taiwan. Security concerns arising from possible foreign influence are not mitigated. Clearance is denied.

### **STATEMENT OF THE CASE**

On April 27, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR details 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 Applicant. Specifically, the SOR set forth security concerns arising under Guideline B, Foreign Influence, of the Directive. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On May 12, 2005, Applicant submit a notarized response to the allegations. He elected to have his case decided on the written record in lieu of a hearing.

Department Counsel prepared a File of Relevant Material (FORM) and provided Applicant with a complete copy on June 16, 2005. Applicant had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He did not submit additional evidence. This case was assigned to me on July 19, 2005.

### FINDINGS OF FACT

Applicant admitted the allegations in Subparagraphs 1.a and 1.c of the SOR.<sup>(1)</sup> Those admissions are incorporated here as findings of fact. He denied the remaining allegation. After a complete review of the evidence in the record and upon due consideration, I make the following additional findings of fact:

Applicant, who is 38 years old, has worked for the last four years as a senior consultant for a defense contractor.<sup>(2)</sup> He received a Master of Science degree from a U.S. university in 2002. Applicant completed a security clearance application (SF 86) in March 2003.<sup>(3)</sup>

Applicant was born in the Republic of China (Taiwan),<sup>(4)</sup> but has lived in the United States (U.S.) since at least 1992.<sup>(5)</sup> He became a naturalized U.S. citizen in 1996.<sup>(6)</sup> He denies citizenship of any country other than the U.S.<sup>(7)</sup> He has adopted an American name which he uses.<sup>(8)</sup> He has a U.S. passport, and has not held an active foreign passport since 1997.<sup>(9)</sup> His wife, who was born in Taiwan, has been a naturalized U.S. citizen since 1992.<sup>(10)</sup> They married in 1993 and have two children, now ages 4 and 7, who are U.S. citizens.<sup>(11)</sup> Applicant never served in the military forces of any country.<sup>(12)</sup>

His mother and father were born in Taiwan.<sup>(13)</sup> His mother died in 2002.<sup>(14)</sup> His 79-year-old father lives in Taiwan with his oldest brother.<sup>(15)</sup> Applicant is the youngest of seven children, all of whom were born in Taiwan.<sup>(16)</sup> His three brothers and three sisters live in Taiwan and are citizens of Taiwan.<sup>(17)</sup> His mother-in-law and father-in-law were born in the U.S., are citizens of the U.S., and reside with him in the U.S.<sup>(18)</sup> Applicant calls his father occasionally to check on his health and well-being.<sup>(19)</sup> Their conversations are limited in scope to discussions required by common courtesy when talking with a family member.<sup>(20)</sup> The record does not reflect the extent of his contacts with his siblings nor does it contain any information about their employment in Taiwan.

Applicant has never been a member of a foreign military; he does not own foreign property or have any financial interests in Taiwan or any other foreign country; he has not had any jobs with a foreign government nor does he have

<sup>(21)</sup>

contacts with a foreign government; and he does not have foreign business connections. His father and siblings in Taiwan have no connections with his work and they have no knowledge about the work he does. (22) He has employment stability and is financially stable. He has not been arrested for alcohol or drug-related offenses.

Since 1999, Applicant has visited Taiwan on three occasions using his U.S. passport. (23) In November 2002, he traveled to Taiwan to attend his mother's funeral. (24) He remained about a week. In 1999 and in 2003, he and his family vacationed in Taiwan. Each trip lasted about a month. (25) The record does not indicate the extent of his contacts with other family members while vacationing.

Taiwan is a multiparty democracy, a U.S. ally, and a major trading partner. Its Constitution provides its citizens with many rights similar to those provided to U.S. citizens. (26) It has a good human rights record. It maintains a large military establishment whose primary mission is to the defense of Taiwan against the Peoples Republic of China. The Taiwan Relations Act, 22 U.S.C. §§ 3301-3316, is the legal basis for the unofficial relationship between the U.S. and Taiwan. (27) On the other hand, Taiwan is an active collector of defense, medical, economic, and computer information through industrial espionage. (28)

## **POLICIES**

Enclosure 2 of the Directive sets forth adjudication guidelines which must be considered in the evaluation of security suitability. An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the adjudicative process provision in Paragraph E2.2, Enclosure 2 of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Included in the guidelines are disqualifying conditions and mitigating conditions applicable to each specific guideline. In addition, each security clearance decision must be 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, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. 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.<sup>(29)</sup> The government has the burden of proving controverted facts.<sup>(30)</sup> The burden of proof is something less than a preponderance of the evidence.<sup>(31)</sup> Once the government has met its burden, the burden shifts to the applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.<sup>(32)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(33)</sup>

No one has a right to a security clearance<sup>(34)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(35)</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>(36)</sup> Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to loyalty of the applicant concerned." The decision to deny an individual a security clearance is not necessarily a determination as to the allegiance, loyalty, and patriotism of an applicant.<sup>(37)</sup> 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.

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:

**Foreign Influence - 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 interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.**

## CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to the allegations set forth in the SOR:

The government has established its case under Guideline B. Foreign Influence 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*) applies in this case. Applicant has a father and six siblings who are citizens of Taiwan and live there. This "could create the potential for foreign influence that could result in the compromise of classified information."<sup>(38)</sup> The mere possession of family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B.<sup>(39)</sup> However, such ties do raise a *prima facie* security concern sufficient to require an applicant to present evidence of rebuttal, extenuation or mitigation sufficient to meet the applicant's burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him.<sup>(40)</sup>

I have considered all Foreign Influence Mitigating Conditions (FI MC) and conclude that no FI MC apply. Applicant bears the burden of demonstrating that his family members in Taiwan are not in a position where they could be exploited by a foreign power in a way that could force him to choose between loyalty to those relatives and the U.S. He has established that his closest family members, his wife, a naturalized U.S. citizen, and children, live with him, as does his mother-in-law and father-in-law, thus, negating any vulnerability from pressure or duress being applied to these family members. However, Applicant has not met his burden of establishing that his family members in Taiwan are not vulnerable to pressure or duress by a foreign power. His credible statements that he does not discuss his work with family members and that they have no knowledge about the nature of the work are insufficient to mitigate against the likelihood that such pressure would actually occur. The record is devoid of any information concerning the identity of his brothers' and sisters' employers in Taiwan and the nature of the jobs they hold, or whether they are in anyway connected to Taiwan's government, military, or intelligence services.

Applicant denies contacting his elderly father monthly. He, however, does contact him periodically to inquire about his health and to just talk. These calls to his father are more than mere casual contact. Thus, his periodic telephone calls to his father are insufficient to mitigate the disqualifying conditions. Likewise, since he has not provided information about his contacts with his family while on vacation in Taiwan, Applicant's assertion that his trips are for pleasure is simply not enough to overcome the government's case.

Finally, I have considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I am not persuaded by the evidence in this case that Applicant would not be vulnerable to pressure or duress from a foreign power or the government of Taiwan. Although Applicant has developed a stable family life in the U.S., he has not provided any information on the contacts with his family members when on vacation in Taiwan, nor on the frequency of his contacts with his siblings in general. Likewise, his failure to provide information regarding the employment of his siblings raises concerns about the possibility of pressure being exerted upon his siblings by a foreign power or entity which could put him at risk. Applicant has not mitigated the government's case under Guideline B.

Accordingly, for the reasons stated, I find that it is not clearly consistent with the national interest to grant a security clearance to 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 (Foreign Influence): AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

### **DECISION**

In light of all of 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.

Mary E. Henry

Administrative Judge

1. Item 3 (Applicant's Answer to SOR dated May 12, 2005) at 1-2.
2. Item 4 (Security Clearance Application dated March 19, 2003) at 2.
3. *Id.* at 1.
4. *Id.*
5. *Id.* at 3. Although the record does not reflect when the Applicant immigrated to the United States, he married his wife in the U.S. in January 1993.

6. *Id.* at 1.
7. *Id.*
8. *Id.*
9. *Id.* at 1, 6.
10. *Id.* at 3.
11. *Id.* at 3-4.
12. *Id.* at 5.
13. *Id.* at 3.
14. *Id.*
15. *Id.* at 3-4.
16. *Id.* at 4.
17. *Id.*
18. *Id.* at 5.
19. Item 3, *supra* note 1, at 1.
20. *Id.*
21. Item 4, *supra* note 2, at 6-9.
22. *Id.*
23. Item 4, *supra* note 2, at 6.
24. *Id.*; Item 3, *supra* note 1, at 1.
25. *Id.*
26. Item 6 (United States Department of State, Country Report on Human Rights - China (Taiwan only), February 25, 2004).
27. Item 9 (United States Department of State, Background Note: Taiwan, dated January 2005) at 10.
28. Item 7 (Federal Bureau of Investigation- Facts and Figures 2003, Counterintelligence, undated) at 2; Item 8 (Annual Report to Congress on Foreign Economic Collection and Industrial Espionage - 2000 - National Counterintelligence Center) at 8, 11, 17.
29. ISCR Case No. 96-0277 (July 11, 1997) at 2.
30. ISCR Case No. 97-0016 (App. Bd., December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.
31. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).
32. ISCR Case No. 94-1075 (App. Bd., August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.



33. ISCR Case No. 93-1390 (App. Bd. Decision and Reversal Order, January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.

34. *Egan*, 484 U.S. at 531.

35. *Id.*

36. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.

37. Executive Order No. 10865 § 7.

38. Directive, ¶E2.A2.1.1.

39. ISCR Case No. 99-0424, 2001 DOHA LEXIS at 33-34 (App. Bd. Feb. 8, 2001).

40. *Id.*