

KEYWORD: Foreign Influence

DIGEST: Applicant and his wife are naturalized U.S. citizens. He has a sister living in Canada and a brother who is a citizen resident of Taiwan. Applicant's wife's family members emigrated from the PRC and are now citizen residents of Australia. One of her brother's currently resides in Hong Kong. Applicant mitigated the foreign influence security concerns. Clearance is granted.

CASENO: 04-04450.h1

DATE: 01/23/2006

DATE: January 23, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-04450

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

SYNOPSIS

Applicant and his wife are naturalized U.S. citizens. He has a sister living in Canada and a brother who is a citizen resident of Taiwan. Applicant's wife's family members emigrated from the PRC and are now citizen residents of Australia. One of her brother's currently resides in Hong Kong. Applicant mitigated the foreign influence security concerns. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 31 March 2005, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision ⁽¹⁾-security concerns raised under Guideline B (Foreign Influence) and Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing on 26 April 2005 and elected to have a hearing before an administrative judge. The case was assigned to me on 29 September 2005. On 15 November 2005, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on 28 November 2005.

FINDINGS OF FACT

Applicant is a 47-year-old software engineer for a defense contractor. He was born and raised in Taiwan. After completing his undergraduate degree, he performed compulsory military service from 1981-83 as a telephone operator. He then worked for a private company in Taiwan for two years and, in 1985, emigrated to the U.S. to attend graduate school. After completing graduate school, he found a job in the U.S. and has lived here since. He became a U.S. citizen in 1997 and obtained a U.S. passport in 1998.

Applicant's mother and one of his sisters are permanent residents of the U.S. They have applied for U.S. citizenship.

This sister is married to a U.S. citizen. Although she no longer works outside the home, she was a software engineer. Applicant has another sister who is a resident of Canada.

Applicant also has two brothers. One brother is a citizen resident of Taiwan, where he works as a civil engineer for a private company. He is married to citizen of Taiwan. Applicant normally has contact with this brother once or twice a year, but telephoned him once or twice a week when that brother's wife was undergoing treatment for cancer. He last saw this brother during a 1999 trip he made with his wife and children to Taiwan. Applicant's other brother emigrated to the U.S. in 1979 and was naturalized in 1994. After he lost his job, he moved to Australia to work as a consultant, before moving to Singapore for a job, From Singapore, he moved to the People's Republic of China (PRC) in search of a bride. He lived there on money he had earned in the U.S., Australia, and Singapore. He was unsuccessful in his search for a wife. Recently, he returned to the U.S. and is living with his mother and one of his sisters.

In 1993, Applicant married a woman born and raised in the PRC. She received her undergraduate degree there and came to the U.S. to attend graduate school in 1991. They met in the U.S. Applicant's wife became a U.S. citizen in 2002. Applicant and his wife have two children. She also works as a software engineer. She worked for a government owned company in the PRC before moving to the U.S. The family is financially secure. All of their financial assets and interests, which are substantial, are in the U.S.

At about the same time Applicant's wife was attending graduate school in the U.S., her family emigrated from the PRC to Australia. Her mother, sister, and brother are all citizens of Australia. Her mother visits the U.S. every other year. Her sister works at a university. Her brother is a software engineer for an airline company. He currently resides in Hong Kong, which is a special administrative region of the PRC. Applicant's wife has petitioned the U.S. Government to allow her mother and sister to immigrate to the U.S.

Since immigrating to the U.S., Applicant has made two trips to Taiwan. The first, in 1996, was to attend his father's funeral. In 1999, he took his wife and children to visit friends and relatives there. In the summer of 2005, Applicant's wife and the two children went to the PRC for three weeks. Applicant refused to go. They visited Shanghai and Beijing. Although they spent some time staying with old friends, most of the time, they stayed in hotels.

Applicant follows all the rules. He doesn't talk about his job outside his workplace. He understands his duty to advise the U.S. Government if someone attempts to obtain sensitive information from him.

Hong Kong is a special administrative region of the PRC. It has a high degree of autonomy, except in the areas of defense and foreign policy. It retains its own currency, laws, and border controls. Ex. 7 at 1.

Taiwan is a multi-party democracy with close ties to the PRC in its peoples, culture, and trade. Ex. 9 at 7. In 1979, the U.S. changed its diplomatic recognition for China from Taiwan to the PRC. Following derecognition, the U.S. terminated the Mutual Defense Treaty with Taiwan, but continues its commitment to assisting Taiwan's defensive capability. Ex. 9 at 13.

Australia is an independent nation within the British Commonwealth. It has a democratic, federal-state government that recognizes the British monarch as sovereign. Its constitution was patterned partly after the U.S. Constitution. Australia has fought beside the U.S. in every significant conflict to the present day. Ties with the U.S. are "exceptionally strong and close." Ex. 11 at 7.

Canada is a confederation with a parliamentary democracy and one of our closest allies.

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 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 the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

In the SOR, DOHA alleged Applicant has one brother who is a dual U.S./Taiwan citizen currently residing in the PRC (¶ 1.a); a brother who is a citizen resident of Taiwan (¶ 1.b); a brother-in-law who is a citizen of Australia residing in Hong Kong (¶ 1.c); mother and sister who are citizens of Taiwan residing in the U.S. (¶ 1.d); and he traveled to Taiwan in 1996 and 1999 (¶ 1.e). Applicant admitted each of the allegations. A security risk may exist when an applicant's immediate family, or other persons to whom he may be bound by affection, influence, or obligation, are not citizens of the U.S. or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Directive ¶ E2.A2.1.1.

It is a potentially disqualifying condition for an applicant to have family members, or persons to whom he has close ties of affection or obligation, who are citizens of, or resident or present in, a foreign country. DC E2.A2.1.2.1. The Government's evidence established Applicant's immediate family are citizens of, or resident or present in a foreign country. His mother, one brother, and two sisters are citizens of Taiwan, although only his one brother still lives live there.

There is a rebuttable presumption that an applicant has ties of affection for, or at least obligation to, his wife's immediate family. ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at *8 (App. Bd. Feb. 20, 2002). Furthermore, it is a potentially disqualifying condition for an applicant to share living quarters with a person if the potential for adverse foreign influence or duress exists. DC E2.A2.1.2.2. Applicant's wife still has ties to the PRC and members of her family live overseas. She stayed with friends while traveling to the PRC in 2005, and her brother lives in Hong Kong, a special administrative region of the PRC. Applicant's wife's ties to the PRC are relevant considerations under Guideline B. ISCR Case No. 01-02452 at 8 (App. Bd. Nov. 21, 2002).

Applicants are responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by the Government. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." Directive ¶ E3.1.15.

An applicant may mitigate foreign influence security concerns in several ways. Potentially mitigating conditions in Applicant's case include the following: His immediate family members and foreign associates are neither "agents of a foreign power" nor in a position to be exploited by a foreign power in a way that could force the applicant to choose between loyalty to the family member or associate and loyalty to the U.S. (MC E2.A2.1.3.1); contact with the foreign associates is casual and infrequent (MC E2.A2.1.3.3); Applicant has promptly reported to proper authorities all of his contacts with a foreign country (MC E2.A2.1.3.4); and he has no foreign financial interests (MC E2.A2.1.3.5).

Whether Applicant is in a vulnerable position concerning his foreign associates "hinges not on what choice Applicant might make if he is forced to choose between his loyalty to his family and the United States, but rather hinges on the concept that applicant should not be placed in a position where he is forced to make such a choice." ISCR Case no. 03-15205 at 3-4 (App. Bd. Jan. 21, 2005). In assessing whether an associate is in a position to be exploited by a foreign

power, it is helpful to consider several factors. Even friendly nations can have profound disagreements with the U.S. over matters they view as important to their vital interests or national security. We know friendly nations have engaged in espionage against the U.S., especially in the economic, scientific, and technical fields. *See* ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). Nevertheless, the nature of a nation's government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the U.S. *See* ISCR Case No. 02-24254, 2004 DOHA LEXIS 703 at *17 (App. Bd. Jun. 29, 2004) (distinguishing ISCR Case No. 98-0419 (App. Bd. Apr. 30, 1999) and suggesting it was appropriate for the administrative judge to consider the foreign country involved had a friendly relationship with the United States, is not an authoritarian regime, and is not on the U.S. list of countries sponsoring terrorism); *but see* ISCR Case No. 02-31154 at 6 (App. Bd. Sep. 22, 2005) (claiming "nothing in Guideline B indicates or suggests that it is limited to countries that are hostile to the U.S.").

Applicant established that his foreign associates are not agents of a foreign power and do not place Applicant in a position to be exploited by a foreign power in a way that could force him to choose between loyalty to them and loyalty to the U.S. Only one of Applicant's brothers remains in Taiwan, and he is not associated with the government in any way. A sister resides in Canada, but is not associated with the government. The rest of the family resides in the U.S. With the exception of the brother who resides in Hong Kong, Applicant's wife's family are all Australian citizen residents and are not associated with any government.

After carefully reviewing all the evidence, I conclude Applicant's wife does not have *close* ties of affection or obligation for the friends she visited in the PRC. Her contact with them is casual and infrequent. MC E2.A2.1.3.3.

I find for Applicant on ¶ 1.e. Applicant's travels to Taiwan in 1996 and 1999 do not establish disqualifying conditions. They merely show he was a dutiful son and wanted his family to see the country where he was born and raised. It does not demonstrate a particularly close tie to Taiwan.

Applicant reported his foreign travels and contacts with foreign citizens, as required. MC E2.A2.1.3.4 applies. Applicant and his wife have no financial interests overseas. MC E2.A2.1.3.5 applies.

After considering all of the evidence, the disqualifying and mitigating conditions, and the adjudicative process factors, I find for Applicant on ¶ 1. The nature of his relationships with foreign persons, the countries in which they are located, and the activities of those persons are such that it is unlikely Applicant will be placed in a position of vulnerability to a foreign power.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

DECISION

In light of all of the circumstances in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

James A. Young

Administrative Judge

1. As required by Exec. Or. 10865 (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6 (Jan. 2, 1992), as amended and modified (Directive).