

KEYWORD: Foreign Influence

DIGEST: Applicant's elderly parents are citizens and residents of Taiwan. His father once worked as a low-level employee of a local city government in Taiwan, but he has been retired for more than 25 years. Applicant visits his parents once a year and presents them with a customary gift of about \$1,000 during the celebration of the Chinese New Year. He refuted the allegation his father is connected to the Taiwanese government and mitigated the security concern based on foreign influence. Clearance is granted.

CASENO: 04-06490.h1

DATE: 01/23/2006

DATE: January 23, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-06490

**DECISION OF ADMINISTRATIVE JUDGE**

**LEROY F. FOREMAN**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT** [\(U\)](#)

*Pro Se*

**SYNOPSIS**

Applicant's elderly parents are citizens and residents of Taiwan. His father once worked as a low-level employee of a local city government in Taiwan, but he has been retired for more than 25 years. Applicant visits his parents once a year and presents them with a customary gift of about \$1,000 during the celebration of the Chinese New Year. He refuted the allegation his father is connected to the Taiwanese government and mitigated the security concern based on foreign influence. Clearance is granted.

**STATEMENT OF THE CASE**

On April 5, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to not grant a security clearance to Applicant. This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive). The SOR alleges security concerns under Guideline B (Foreign Influence). Applicant answered the SOR in writing on April 15, 2005, and elected to have the case decided on the written record in lieu of a hearing. Applicant admitted his parents are citizens and residents of Taiwan (SOR ¶ 1.a.), he sends them \$100 per month (¶ 1.c.), and he traveled to Taiwan on several occasions between 1997 and 2003 (¶ 1.d.). He denied his father is an employee of the Taiwanese government (¶ 1.b.). Department Counsel submitted the Government's written case on November 15, 2005. A complete copy of the file of relevant material (FORM) was provided to Applicant, and he was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on November 22, 2005 and responded on November 24, 2005. The case was assigned to me on December 28, 2005.

**FINDINGS OF FACT**

Based on the entire record, I make the following findings of fact:

Applicant is a software engineer for a defense contractor. He is 47 years old and married. Both he and his spouse were born in Taiwan. He completed graduate school in the U.S. in June 1989. He and his wife both became naturalized U.S. citizens in August 1997. [\(2\)](#)

Applicant's parents are citizens and residents of Taiwan. They are both retired. One parent is 79 years old and the other is 76. They know very little about Applicant's work. [\(3\)](#)

Applicant's father grew up in a poor farmer's family and had limited education. He was hired by one of the local districts of Taipei City to ride through the district on his bicycle and visit each family to verify the head count of each household. He was hired because he knew how to use an abacus, could ride a bicycle, and could speak the local dialects. He retired in his 50s, and has been retired more than 25 years. [\(4\)](#)

Applicant visits his parents annually in Taiwan, joined by his two brothers who reside in Australia. In order to save money, he combines his annual vacation with the family reunion. In 1997, he made a second trip to Taiwan because his mother was hospitalized with a head injury. In 2001, he made a second trip to attend his father-in-law's funeral. [\(5\)](#)

During each annual visit to Taiwan, Applicant has given his parents a gift of about \$1,000. He presents the gift in a red envelope during celebration of the Chinese New Year, accompanied by "lucky phrases," wishing his parents long life and a prosperous year. The exchange of gifts in red envelopes is the only form of customary gift-giving among family members in Taiwanese culture. [\(6\)](#)

Applicant has a strong sense of civic duty, as demonstrated by his generous financial contributions to the New York City "September 11<sup>th</sup> Fund," victims of the Tsunami in South Asia, earthquake victims in Taiwan, and victims of the recent Hurricane Katrina. [\(7\)](#)

Taiwan is a multiparty democracy, a U.S. ally, and a major U.S. trading partner. It has a good human rights record. Taiwan maintains a large military establishment, and its primary mission is the defense of Taiwan against the Peoples Republic of China (PRC). With the encouragement of the U.S., contact between Taiwan and the PRC has grown significantly over the last decade, with increases in direct trade, travel, and postal links. The Taiwan Relations Act,

U.S.C. §§ 3301-3316, is the legal basis for the unofficial relationship between the U.S. and Taiwan and the U.S. commitment to ensuring Taiwan's defensive capability.<sup>(8)</sup> Taiwan is an active collector of defense, medical, economic, and computer information through industrial espionage.<sup>(9)</sup>

## 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), as amended and modified. 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.

The Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶¶ 6.3.1 through 6.3.6.

In evaluating an applicant's conduct, an administrative judge should consider: (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 applicant'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 for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. Directive ¶¶ E2.2.1.1 through E2.2.1.9.

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.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. "[T]he Directive presumes there is a nexus or rational connection between proven conduct under

any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. 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 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

## CONCLUSIONS

A security risk may exist when an applicant's immediate family, or other persons to whom he or she 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. A disqualifying condition (DC 1) may arise when "[a]n immediate family member [spouse, father, mother, sons, daughters, brothers, sisters], 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." Directive ¶ E2.A2.1.2.1. Because Applicant's parents are citizens and residents of Taiwan, DC 1 is established.

There is a rebuttable presumption that contacts with an immediate family member in a foreign country are not casual. ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002). The record reflects Applicant visits his parents annually in Taiwan and presents them with the customary New Year's gift of about \$1,000 during those visits. Applicant's travel to Taiwan and his annual gifts are indicative of his continuing relationship with his parents, but neither his travel nor his gifts have any independent security significance. Although he has shown his family contacts are not frequent, he has not rebutted the presumption that they are not casual.

A disqualifying condition (DC 3) may arise if an individual has relatives "who are connected with any foreign government." Directive ¶ E2.A2.1.2.3. Applicant's father once worked as a low-level functionary of the local government, but has long since retired. He is no longer "connected" with the Taiwanese government. I conclude DC 3 is not established.

In cases where an Applicant has immediate family members who are citizens or residents of a foreign country or who are connected with a foreign government, a mitigating condition (MC 1) may apply if "the immediate family members, 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." Directive ¶ E2A2.1.3.1.

Notwithstanding the facially disjunctive language of MC 1 ("agents of a foreign power **or** in a position to be exploited"), it requires proof "that an applicant's family members, cohabitant, or associates in question are (a) not agents of a foreign power, **and** (b) not in a position to be exploited by a foreign power in a way that could force the applicant to choose between the person(s) involved and the United States." ISCR Case No. 02-14995 at 5 (App. Bd. Jul. 26, 2004); *see* 50 U.S.C. § 1801(b) (defining "agent of a foreign power"). Since the Government produced substantial evidence to establish DC 1, the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Although Taiwan historically has been regarded as friendly to the U.S., the distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly.

Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations such as Taiwan have engaged in espionage against the United States, 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 that 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.

Applicant's parents are not agents of a foreign power under either the statutory definition in 50 U.S.C. 1801(b) or the broader definition apparently adopted by the Appeal Board. *See* ISCR Case No. 02-24254, 2004 WL 2152747 at \*4-5 (App. Bd. Jun.29, 2004) (employee of foreign government need not be employed at a high level or in a position involving intelligence, military, or other national security duties to be an agent of a foreign power for purposes of MC 1). They know little about Applicant's work, have limited education, and are not connected to the government or businesses likely to engage in industrial or economic espionage.

Applicant and his wife have lived in the U.S. for more than 18 years, and he has worked for a defense contractor since September 2002. He is a loyal U.S. citizen with a strong sense of civic duty, as demonstrated by his generous financial contributions to the New York City "September 11<sup>th</sup> Fund," victims of the Tsunami in South Asia, earthquake victims in Taiwan, and victims of the recent Hurricane Katrina.

Taiwan is a close ally, friend, and trading partner of the U.S., and is dependent on the U.S. for its defense. The nature of Taiwan's government, its human rights record, and its relationship with the U.S. are clearly not determinative. Nevertheless, they are all relevant factors in determining whether Taiwan would risk damaging its relationship with the U.S. by exploiting or threatening its private citizens in order to force a U.S. citizen to betray the U.S.

Applicant has the burden of proving a mitigating condition, and the burden of disproving it is never shifted to the government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). After weighing the disqualifying and mitigating conditions and making a commonsense evaluation of the evidence, I conclude Applicant has carried his burden of proving MC 1. I further conclude the security concern based on foreign influence is mitigated.

### **FORMAL FINDINGS**

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

Paragraph 1. Guideline B (Foreign Influence): FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: 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 Applicant a security clearance. Clearance is granted.

LeRoy F. Foreman

Administrative Judge

1. Applicant's middle name is misspelled in the SOR. It is correctly spelled in the FORM and this decision.
2. FORM Item 4 at 1-3.
3. Reply to FORM at 4.
4. *Id.*; Reply to FORM at 3, 5.
5. FORM Item 2; Reply to FORM at 5.
6. Reply to FORM at 2-3.
7. Reply to FORM, Attachments A, B, and C.
8. U.S. Department of State Background Note: Taiwan, September 2005; Background Note: China, included in the FORM as Item 5.
9. National Counterintelligence Center (NACIC), *Annual Report to Congress 15* (2000), included in the FORM as Item 6, identified Taiwan as one of the "most active" practitioners of industrial espionage. The NACIC Annual Reports for 2001, 2002, and 2003, available on the internet at [www.nacic.gov](http://www.nacic.gov), did not identify the most active practitioners of industrial espionage by name. It may well be that the "most active" practitioners can no longer be reliably identified because there are so many. In 2000, NACIC identified seven countries as "most active." The number of countries targeting the U.S. rose to 75 in 2001 and over 90 in 2002.