

KEYWORD: Foreign Influence

DIGEST: Applicant mitigated foreign influence security concerns involving his family living in Taiwan by application of the whole person analysis. He has lived in the U.S. almost 30 years with a U.S. education and 25 years of employment with major U.S. companies. He has five brothers living in Taiwan, all of whom have U.S. connections either through their own education in the U.S., education of their children, or business contacts in their work. His mother holds a green card and lives in the U.S. half of the time with a sister who is a U.S. citizen. Clearance is granted.

CASENO: 04-12701.h1

DATE: 03/20/2006

DATE: March 20, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-12701

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant mitigated foreign influence security concerns involving his family living in Taiwan by application of the whole person analysis. He has lived in the U.S. almost 30 years with a U.S. education and 25 years of employment with major U.S. companies. He has five brothers living in Taiwan, all of whom have U.S. connections either through their own education in the U.S., education of their children, or business contacts in their work. His mother holds a green card and lives in the U.S. half of the time with a sister who is a U.S. citizen. Clearance is granted.

STATEMENT OF THE CASE

On September 27, 2005, the 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 Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to 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 Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated October 16, 2005, Applicant responded to the allegations set forth in the SOR, and requested a hearing. The case was assigned to me on November 17, 2005, and a Notice of Hearing was issued November 28, 2005 for a hearing held on December 5, 2005. At the hearing, the Government introduced three exhibits and Applicant introduced three in addition to four appended to his answer. All were accepted into evidence. The Government offered seven official documents for administrative notice. The Applicant and other witness testified on his behalf. The transcript was received on September 16, 2005.

FINDINGS OF FACT

Applicant admitted all of the specific security concerns under Foreign Influence Guideline B with explanatory information provided for all. The admissions are incorporated herein as findings of fact. After a complete review of the evidence in the record and upon due consideration of the record the following additional findings of fact are made:

Applicant is a 55-year-old employee of a defense contractor working as an engineer. He was born in Taiwan to parents who had a third grade education and had lived under Japanese occupation of the island. He graduated from National Taiwan University in 1972 and emigrated to the U.S. in 1977 receiving two graduate degrees from two different prominent eastern universities including a PhD in electrical engineering in 1983. He became a U.S. citizen in 1988. He was employed for 20 years for two leading U.S. electronics companies. He retired in 2003 and accepted a job with his present employer in the defense electronics field.

Applicant's mother is 80 years old and holds a green card. She lives in Taiwan half the year and in the U.S. the balance of the time. She owns property in Taiwan and is financially self sufficient. He has five brothers all of whom are well educated in professional fields. Several were educated in the U.S. The eldest is a medical doctor who holds U.S. citizenship and worked for the U.S. Veterans Administration for ten years before returning to Taiwan. The second brother holds a PhD from a New York university and is dean of the engineering college of a Taiwan university. The third brother owns a company in Taiwan with primarily U.S. customers traveling to the U.S. frequently. A fourth is a retired vice-president of a petrochemical company. The fifth is a dentist, holds a PhD, and teaches in Taipei Medical School. None of them work for the government. He has one sister whom he sponsored for U.S. citizenship who now is a citizen living in the U.S. and cares for their mother when she visits. Several of the brothers are in the process of obtaining green cards with the sponsorship of Applicant for possible immigration. Applicant sees the brothers infrequently and primarily when they are visiting the U.S. Applicant has five half-sisters from his father's first marriage who are elderly and living in Taiwan with whom he has very little contact.

Applicant visited Taiwan on three occasions between 1972 and 2000 after business trips to Japan that he took for his former employer. He visited China (PRC) once in 2002 as a tourist on a group tour organized by a U.S. tour company. He has traveled abroad extensively for pleasure mostly to Europe and the United Kingdom. He travels extensively in the U.S. as a tourist.

Applicant is married to a native-born Taiwanese professional who also was retired from a civilian electronics firm. They have no children but have helped various nieces and nephews who have studied in the U.S. His principal activities outside work are reading and buying books for his extensive library on a variety of non-technical subjects. His current interests are religion and law. His only assets are his home and funds invested in retirement accounts in the U.S. He

owns no foreign property. He has no contingent interest in his mother's property in Taiwan since it will be inherited by one of his brothers.

While Applicant does not and has not held a security clearance, he demonstrated insight into the requirements of holding a clearance and cited a recent experience where he inadvertently sent an e-mail internally to another part of his company where it should not have gone. He immediately alerted company officials and was publicly recognized by management for his actions. Applicant is well regarded by his company. His supervisor who also hired him for his present position and has held a security clearance for 20 years testified for him at the hearing (TR 25-34).

Applicant regards himself and his family as American and considers his ancestry as only Taiwanese and not Chinese as they have lived on the island when it was Formosa for several generations long before the emigration of the Chinese Nationalists to the island after their withdrawal from the mainland in 1948.

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.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (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. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist 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. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "Any

doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531.

"A security risk may exist when an individual's immediate family 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." Directive, ¶ E2.A2.1.1. Having immediate family members who are citizens of, and residing in a foreign country, may raise a disqualifying security concern. Directive, ¶ E2.A2.1.2.1.

CONCLUSION

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

Conditions under Guideline B that could raise a security concern and may be disqualifying include an immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident in a foreign country. (E2.A2.1.2.1.) Based on the evidence of record, including Applicant's acknowledgment of family members living abroad, the Government established reasons to deny him a security clearance because of foreign influence. Having established such reasons, the Applicant had the burden to establish security suitability through evidence which refutes, mitigates, or extenuates the disqualification and demonstrates that it is clearly consistent with the national interest to grant a security clearance. ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

Mitigating conditions (MC) that might be applicable are a determination that the individuals 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 persons involved and the U.S.(E2.A2.1.3.1.), and contacts and correspondence with foreign citizens are casual and infrequent. (E2.A2.1.3.3.) Applicant's mother is living in the U.S. half of the year and could live here all the time if she desired to do so. His brothers either have a U.S. education or extensive contacts in the U.S. for business reasons. Several of them have children who have or are studying in the U.S. whom Applicant has assisted thus showing a strong family affiliation with and affection for the U.S.

Applicant has little contact with his half-sisters and the government indicated at the hearing that this issue was not a security concern.

While Applicant's past employment did not require a security clearance, he did work with proprietary information of his former employers where he learned the requirements of confidentiality. His recent experience with the corporate e-mail and the recognition he received for how he handled it illustrates his sensitivity to security requirements in working in a classified environment.

Taiwan, as do other countries, engages in industrial espionage (Exh. V), but none of his relatives living in Taiwan pose a potential security threat or are in a position likely to be influenced by the Taiwan government. None of them work for the Taiwan government or are involved in work that might create security issues for the U.S.(Exh. J). Any potential security concerns relating to possible future trips to Taiwan are minimal considering the manner in which he has handled his past travels to Taiwan and other countries. Applicant can be expected to take whatever steps are necessary to eliminate any possible risk. The extent of his travels in the U.S. and to other countries than Taiwan and the PRC indicates that his interests lie primarily elsewhere than in the country of origin.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. The "whole person" concept recognizes that we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

Applicant presents a highly credible case that he would not be influenced by anything anyone might seek him to do any acts contrary to the best interests of the U.S. His strong ties the U.S. contrasted with his minimal ties to Taiwan, his residence in the U.S. for almost 30 years, and his career record as a trusted employee of major U.S. corporations for almost a quarter century, effectively refutes the likelihood that he would now take any action that would jeopardize U.S. security interests.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that it is clearly consistent with the national interest to grant clearance to Applicant.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

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

After full consideration of all the facts and documents 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.

Charles D. Ablard

Administrative Judge