



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
)	ISCR Case No. 07-02856
)	
Applicant for Security Clearance)	

Appearances

For Government: David Hayes, Esq., Department Counsel
For Applicant: *Pro se*

August 11, 2011

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government's security concerns under Guideline B, Foreign Influence. Applicant's eligibility for a security clearance is granted.

Statement of the Case

On February 18, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR on March 15, 2011, and requested a hearing before an administrative judge. The case was assigned to me on April 13, 2011. DOHA issued a Notice of Hearing on April 18, 2011. I convened the hearing as scheduled on May 25,

2011. The Government offered Exhibits (GE) 1 through 3. Applicant did not object and they were admitted into evidence. The Government requested administrative notice be taken of Hearing Exhibit (HE) I. I granted the request. Applicant testified on his own behalf. He offered Exhibits (AE) A through H, which were admitted into evidence without objection. Applicant provided his closing statement in writing and it was marked as HE II. DOHA received the hearing transcript (Tr.) on June 2, 2011.

Findings of Fact

Applicant admitted all of the allegations in the SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 53 years old. He married in 1982 and has two children, ages 27 and 24, who were born in the United States. He has worked for a federal contractor since 2002. He came from Taiwan to the United States in 1982 on a student visa. His wife came from Taiwan to the United States in the same year. They both became naturalized citizens of the United States in 1997.¹

Applicant's father, three brothers, and two sisters-in-law are citizens and residents of Taiwan. His father is 80 years old and retired about 13 or 14 years ago, as the secretary of a town council in a small town of less than 10,000 people. He receives a pension from the city. He lives with Applicant's older brother. His mother passed away in 2002. His older brother and his wife are also retired. His brother worked in the mother's family real estate business. He is 56 years old. He does not receive a pension. His wife has worked as a teacher for approximately 25 years and anticipates retiring in the near future. She will receive a pension.²

Applicant's younger brother is 52 years old. He is not married. He also used to work in their mother's family real estate business. He no longer does and is now unemployed.³

Applicant's youngest brother and his wife are both medical doctors. They work in the same hospital. The hospital is semi-private, but it is unclear how the government is involved with it.⁴

In 1998, Applicant sponsored his three brothers for permanent residency status in the United States. His two younger brothers declined because they were firmly entrenched in their careers and jobs in Taiwan. His oldest brother and his wife paid the

¹ Tr. 37-51; GE 1.

² Tr. 29-32, 36.

³ Tr. 32.

⁴ Tr. 33, 75.

required fees to keep their application open and it was approved, but they have not yet decided whether to immigrate.⁵

Applicant traveled to Taiwan in October 2001, January 2003, August 2003, January 2004, February 2007, February 2008, July 2008, August 2008, and July 2009. Applicant's mother was ill with cancer during this time and later had a kidney transplant. Applicant traveled often in 2007 to 2008 to visit her while she was sick. When he was in Taiwan, Applicant visited with his father and siblings. He does not maintain any friendships there. Since his mother passed away, Applicant has returned to Taiwan once and anticipated he will return in the future, but presently has no plans. He talks to his father by telephone once every two to three months. He talks to his brothers a couple of times a year. He does not send any of his family money. Except for his youngest brother, his Taiwanese family has not visited him in the United States since 1994 or 1995. His youngest brother visited about seven years ago when he came to study at a renowned medical facility. He did additional training at a medical facility located close to where Applicant lives.⁶

Applicant does not own property in Taiwan. He does not anticipate inheriting any property. All of his assets are in the United States and are jointly held with his wife. He estimated his residence is worth about \$1.1 million. He owns it jointly with his wife and daughter. He has rental property valued at about \$280,000. He also owns two time shares that are worth about \$20,000. He has a 401K retirement plan valued at about \$200,000. He has some stocks valued between \$5,000 and \$10,000. He owns three cars. His wife works and contributes to a 401K account that is worth about \$20,000 to \$30,000.⁷

Applicant never voted in Taiwan. He has voted in the United States in every election, including local elections.⁸

Applicant's wife's sister and her family live close to them and are all citizens of the United States. They maintain regular contact with Applicant's family.⁹

Applicant has a United States passport and uses it when he travels. He was conscripted into Taiwanese military service from 1979 to 1981, and was a communications officer. He credibly testified that his family, friends, finances, community, career, and life are all in the United States. He stated he pledged his loyalty to the United States when he became a citizen. He is not loyal to any foreign

⁵ Tr. 33-36, 77.

⁶ Tr. 60-63, 70-74, 78-81.

⁷ Tr. 52-59.

⁸ Tr. 52.

⁹ Tr. 59-60.

government. He provided copies of awards that were presented to him and his family, along with a letter of recommendation that I considered.¹⁰

Taiwan¹¹

In 1949, Taiwan was populated by refugees fleeing a civil war in China. That same year, Communists in mainland China established the People's Republic of China (PRC), and a separate, independent government was established in Taiwan. The PRC does not recognize Taiwan, and insists there is only "one China."

Taiwan is a multi-part democracy. Through nearly five decades of hard work and sound economic management, Taiwan has transformed itself from an underdeveloped, agricultural island to an economic power that is a leading producer of high-technology goods. On January 1, 1979, the United States formally recognized the PRC as the sole legal government of China. The U.S. also announced that it would maintain cultural, commercial, and other unofficial relations with the people on Taiwan. The Taiwan Relations Act (TRA) signed into law on April 10, 1979, created the legal authority for the conduct of unofficial relations with Taiwan. The American Institute in Taiwan, a private nonprofit corporation with offices in Taiwan, is authorized to issue visas, accept passport applications, and provide assistance to U.S. citizens in Taiwan. A counterpart organization was established by Taiwan. It has multiple offices in the U.S.

Taiwan is among the most active collectors of U.S. economic and proprietary information and there are numerous specific incidents of their attempts to acquire export-restricted products and dual use technology. In addition, the PRC's Ministry of State Security, the preeminent civilian intelligence collection agency, maintains intelligence operations in Taiwan, through a bureau utilizing PRC nationals and Taiwan connections.

Maintaining strong, unofficial relations with Taiwan is a major U.S. goal. The U.S. does not support Taiwan independence, but does support Taiwan's membership in appropriate international organizations such as the World Trade Organization (WTO), which it joined in 2002; Asia-Pacific Economic Cooperation (APEC) forum; and the Asian Development Bank. In addition, the U.S. supports appropriate opportunities for Taiwan's voice to be heard in organizations where its membership is not possible.

The TRA enshrines the U.S. commitment to help Taiwan maintain its defensive capability. The U.S. continues to sell appropriate defensive military equipment to Taiwan, in accordance with the TRA.

In response to political developments in Taiwan, the United States dialed back some of its enthusiasm for supporting Taiwan's initiatives. While still pursuing a close relationship with Taiwan, U.S. officials are balancing criticisms of the PRC military

¹⁰ Tr. 25-26, 64-70, 83; AE B, C, D, E, F, G, H.

¹¹ HE I.

buildup opposing Taiwan with periodic cautions and warnings to the effect that U.S. support for Taiwan is not unconditional, but has limits. In January 2010, the White House Administration notified Congress of its intent to sell various defense weapons to Taiwan.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security decision."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern regarding foreign influence:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 describes disqualifying conditions that could raise a security concern. I have considered all of them and the following are potentially applicable:

- (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information.

AG ¶¶ 7(a) and 7(b) require substantial evidence of a “heightened risk.” The “heightened risk” required to raise one of these disqualifying conditions is a relatively low standard. “Heightened risk” denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or owning property in a foreign country. The totality of Applicant's family ties to a foreign country as well as each individual family tie must be considered.

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.”¹²

Furthermore, “even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security.”¹³ Finally, friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. 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 vulnerability to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, or the country is known to conduct intelligence operations against the U.S.

Applicant’s father, three brothers and two sisters-in-law are citizens and residents of Taiwan. He has offered to sponsor his brothers to move to the United States. His oldest brother and his wife have completed their applications, but have not decided whether to proceed any further. His father receives a pension from the government. Applicant traveled in the past to Taiwan for visits to see his family and anticipates he will do so in the future. These facts potentially create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion, and also create a potential conflict of interest. Therefore, I find AG ¶¶ 7(a) and 7(b).

I have also analyzed all of the facts and considered all of the mitigating conditions for this security concern under AG ¶ 8 and conclude the following are potentially applicable:

- (a) the nature of the relationship with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization and interests of the U.S.;
- (b) there is no conflict of interest, either because the individual’s sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interests in favor of the U.S. interests; and
- (c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

¹² ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

¹³ ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002).

Applicant maintains a relationship with his father and siblings in Taiwan. He visited them and had contacts with them regularly before his mother passed away. He intends to visit them in the future. I find AG ¶ 8(c) does not apply because his familial relationships in Taiwan are more than casual.

The United States maintains close relations with Taiwan. Applicant maintains consistent contact with his relatives in Taiwan. His father receives a government pension. Except for the pension, his relatives have no other contact with the Taiwanese government. 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 and his wife have been citizens of the United States since 1997. Their children were born here. They have substantial assets all located in the United States. They have no assets in Taiwan. Applicant's wife's has relatives who are citizens and residents of the United States, and live nearby. I do not find Applicant's relationship with his father, his siblings and their wives, and his visits to Taiwan create a heightened security risk. It is highly unlikely, considering Taiwan's relationship with the United States that Applicant would have to choose between loyalty to his family in Taiwan and the United States.

The United States is the main supplier of military hardware to Taiwan. Taiwan is an active collector of U.S. economic intelligence. However, there is no indication that they target or exploit their own citizens to obtain it. Although Applicant's father receives a government pension, based on Taiwan's relationship to the United States, it is very unlikely that intelligence officials would attempt to pressure Applicant's father or his brothers to gather valuable or classified information from the United States through Applicant. I find mitigating conditions AG ¶¶ 8 (a) and 8(b) apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (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 individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant and his family are firmly entrenched in the United States. He has been in this country since 1982 and has been a citizen since 1997. All of his substantial assets are located in the United States. His wife and her family are citizens and residents of the United States. Although Applicant has some familial ties to Taiwan, I am convinced that he will resolve any issues in favor of the United States. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the guideline for Foreign Influence.

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:	FOR APPLICANT
Subparagraphs 1.a-1.e:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge