

DATE: October 18, 2007

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 07-03653

**DECISION OF ADMINISTRATIVE JUDGE
LEROY F. FOREMAN**

APPEARANCES

FOR GOVERNMENT

Alison O'Connell, Esq., Department Counsel
Richard A. Stevens, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant was born in Taiwan, and his wife was born in the People's Republic of China (PRC). Both came to the U.S. on student visas in the 1990s and both recently became U.S. citizens. Applicant's parents and three siblings are citizens and residents of Taiwan. His mother-in-law and father-in-law are citizens and residents of the PRC. Security concerns based on foreign influence are not mitigated. Clearance is denied.

STATEMENT OF THE CASE

On July 10, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny Applicant a security clearance. This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive); and the revised adjudicative guidelines (AG) approved by the President on December 29, 2005, and implemented effective September 1, 2006. The SOR alleges security concerns under Guideline B (Foreign Influence).

Applicant answered the SOR in writing on July 30, 2007, admitted all the factual allegations, offered explanations, and requested a hearing. The case was assigned to me on August 22, 2007, and heard as scheduled on September 18, 2007. DOHA received the transcript (Tr.) on September 26, 2007.

FINDINGS OF FACT

Applicant's admissions in his answer to the SOR and at the hearing are incorporated into my findings of fact. I make the following findings:

Applicant is a 42-year-old research scientist employed by a defense contractor. He has never held a clearance.

Applicant is a native of Taiwan. He graduated from college in Taiwan in 1987, served two years of mandatory military service in the Taiwanese Army, and came to the U.S. on a student visa in 1990 to complete his education (Tr. 35, 42). He obtained a master's degree in aerospace engineering and a Ph.D. in mechanical engineering, spent about a year in postdoctoral studies, and then went to work for his current employer in February 1998 (Tr. 44). He became a U.S. citizen in January 2006.

Applicant met his wife while they were both students in the U.S. (Tr. 35-36). His wife, then a citizen of the PRC, entered the U.S. on a student visa in August 1991 and recently became a U.S. citizen (Tr. 47). They were married in February 1995. She is employed by a private company as a software engineer (Tr. 49). Applicant and his wife have two children, ages 11 and 6. Both are native-born U.S. citizens.

Applicant's parents, brother, and three sisters are citizens and residents of Taiwan. Applicant's father is about 72 years old and owns a bicycle store. His mother, about 70 years old, works in the bicycle store (Tr. 50). Neither parent has ever worked for the Taiwanese government.

Applicant contacts his parents at least twice a month. He gives about \$2,000 each year to his siblings to purchase gifts for their parents in accordance with Taiwanese tradition (Tr. 39). He

traveled to Taiwan to visit his parents and siblings in June 2005,¹ July 2006, and November 2003, accompanied by his wife and children. His parents visit him in the U.S. every two or three years, most recently in June 2007 (Tr. 57-59).

Applicant's oldest sister is a 50-year-old nun (Tr. 61-62). He talks to her telephonically about twice a year, and visits her when he visits his parents (Tr. 63-64).

Applicant's next younger sister is about 45 years old, works as a software engineer in Taiwan, and has applied for immigration to Canada (Tr. 64-65). She is married and has three children. She works for a company that previously was government-owned but now is a private company (Tr. 66). He contacts her by telephone about once a year (Tr. 67).

Applicant's youngest sister is about 43 years old, and she works part-time for a research institute in Taiwan. She is disabled and works at home on the internet, performing human resources duties for the institute. She does not participate in research (Tr. 68-69). They speak on the telephone only once or twice a year but use text messaging and a website camera weekly (Tr. 71).

Applicant's brother is about 40 years old and works as a software consultant, sometimes for private companies and sometimes for the Taiwanese government (Tr. 73). He talks to his brother telephonically about once a year and contacts him by text message about three times a year (Tr. 74).

Applicant's mother-in-law and father-in-law are citizens and residents of the PRC. They are both in their 70s, and they retired before Applicant and his wife were married (Tr. 77). His father-in-law previously worked for an aerospace institute and his mother-in-law was an accounting assistant. Applicant talks to his in-laws telephonically less than once a year (Tr. 79). His wife talks to her parents every one or two months (Tr. 80). They came to the U.S. for Applicant's wedding in 1995, visited for about six months in 2000 when Applicant's daughter was born, and made a third six-month visit two or three years ago (Tr. 79-81). In 2002, Applicant and his family visited his in-laws in the PRC for about 10 days (Tr. 82).

Applicant testified he loves his parents, but his family is in the U.S. He testified he demonstrated his independence from the influence of his parents by marrying a citizen of the PRC, regarded by his parents as an enemy of Taiwan, and his wife demonstrated her independence by marrying a citizen of Taiwan, regarded as an enemy by her parents (Tr. 37). He believes that anything that is harmful to the U.S. is harmful to his children (Tr. 38).

Applicant maintains contact with a college friend in Taiwan. They were close friends in college, but now their contact is limited to an annual greeting card and occasional telephone call (Tr. 84-85; GX 2 at 14).

At the request of Department Counsel, and without objection from Applicant, I took administrative notice of relevant facts about the People's Republic of China (PRC) and Taiwan (Tr. 29-30). Department Counsel's request is included in the record as Hearing Exhibit (HX) I.

¹The SOR alleged Applicant traveled to Taiwan in June 2006. At Department Counsel's request, I amended the SOR to conform to the evidence by alleging he traveled in June 2005 (Tr. 20).

The PRC has an authoritarian government dominated by the Communist Party. It has large and increasingly sophisticated military forces. The U.S. and the PRC have been rivals since the Cold War, with particular disagreement on the status of Taiwan. Despite political disagreements, the U.S. and the PRC have become major economic and trading partners. The PRC aggressively targets sensitive and protected U.S. technology and military information, using worldwide intelligence operations, including those in Taiwan. It is one of the most aggressive practitioners of industrial espionage. There are an estimated 2,000-3,000 PRC-front companies operating in the U.S. to gather secret or proprietary information. U.S. citizens of Chinese ancestry are considered prime intelligence targets.

The PRC has a poor human rights record. It suppresses political dissent and engages in arbitrary arrest and detention, forced confessions, torture, and mistreatment of prisoners. Travelers to the PRC can expect to be placed under surveillance, with their hotel rooms, telephones, and fax machines monitored and personal possessions, including computers, searched without their knowledge or consent.

Taiwan is a multiparty democracy, established as a separate, independent government by refugees from mainland China in 1949. The People's Republic of China (PRC) does not recognize Taiwan's independence and insists there is only one China. The U.S. recognized Taiwan as an independent government until January 1979, when it formally recognized the PRC government as the sole legal government of China and terminated its mutual defense treaty with Taiwan (HX I, Enclosure VIII at 9). Taiwan maintains a large military establishment to protect itself from the PRC and purchases defensive military equipment from the U.S. Taiwan is among the most active collectors of U.S. economic intelligence.

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 criteria contained in the Guidelines. Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, the disqualifying conditions and mitigating conditions under each specific guideline, and the factors listed in AG ¶¶ 2(a)(1)-(9).

A person granted access to classified information enters into a special relationship with the government. The government must be able to have a high degree of trust and confidence in persons with access to classified information. However, 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. “Substantial evidence” is “more than a scintilla but less than a preponderance.” *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The Guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *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* AG ¶ 2(b).

CONCLUSIONS

Guideline B (Foreign Influence)

The concern under this guideline is as follows: “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 ¶ 6.

A disqualifying condition may be raised by “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.” AG ¶ 7(a). A security concern also may be raised if an applicant is “sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion” AG ¶ 7(d). The totality of an applicant’s family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003).

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).

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 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 connected with the Taiwanese government or the military. Their bicycle shop is not a high technology business likely to be a vehicle for industrial espionage. Applicant's oldest sister is a nun, unconnected to government, the military, or business. Applicant's middle sister works for a government institute, but she works at home and her duties are limited to personnel administration. Applicant's connection with an old college friend appears to have withered to a casual social connection. On the other hand, his brother and middle sister are employed in high technology businesses susceptible to involvement in industrial espionage or being targeted and used as a conduit for espionage activities.

Taiwan is a close ally, friend, and trading partner of the U.S. 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 little direct contact with his in-laws in the PRC, but his wife has regular contact. "[T]here is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse." ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at * 8 (App. Bd. Feb. 20, 2002). His in-laws attended his wedding and have visited twice in the U.S., both times for about six months, and Applicant has visited his in-laws in the PRC once. While there is sparse evidence showing personal affection for his in-laws, he has not rebutted the presumption that he has ties of obligation to them.

Applicant's father-in-law was employed in the aerospace business. The PRC aggressively targets U.S. technology, focusing on U.S. citizens of Chinese ancestry. Although it is likely Applicant and his wife would resist overt attempts to influence them, there is a "heightened risk" that they could be targeted by more subtle, indirect means.

Some of Applicant's family ties to Taiwan, considered individually, do not present the "heightened risk" in AG ¶ 7(a). However, the totality of Applicant's ties to Taiwan and the PRC are sufficient to raise both AG ¶¶ 7(a) and 7(d).

A disqualifying condition also may be raised by "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(b). Applicant's ties to two of his siblings in Taiwan and his in-laws in the PRC raise the "potential conflict of interest" contemplated by this disqualifying condition.

Since the government produced substantial evidence to raise AG ¶¶ 7(a), (b), and (d), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Security concerns under this guideline can be mitigated by showing that “the nature of the relationships 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, or government and the interests of the U.S.” AG ¶ 8(a). While Applicant’s parents and oldest sister (the nun) are in situations in Taiwan where a conflict of interest would be unlikely, his middle sister and brother in Taiwan and his in-laws in the PRC present a likelihood of a conflict of interest. Considering Applicant’s ties to Taiwan and the PRC in totality, I conclude the mitigating condition in AG ¶ 8(a) is not established.

Security concerns under this guideline also can be mitigated by showing “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 interest in favor of the U.S. interest.” AG ¶ 8(b). Applicant’s sense of loyalty or obligation to his college friend is minimal, but it is strong for his parents, siblings, and in-laws. Although he and his wife have lived in the U.S. since the early 1990s, they only recently became U.S. citizens. Applicant has the burden of establishing a mitigating condition, and he has not met his burden for AG ¶ 8(b).

Security concerns under this guideline also may be mitigated by showing that “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.” AG ¶ 8(c). Applicant has established this mitigating condition for his college friend, but not for his family members and in-laws.

Whole Person Analysis

In addition to considering the specific disqualifying and mitigating conditions under each guideline, I have also considered: (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 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. AG ¶¶ 2(a)(1)-(9). Some of these factors are discussed above, but some merit additional comment.

Applicant is a mature adult whose family aspirations are in and with the U.S. He has mitigated the security concerns based on his ties to his parents, two of his sisters, and a college friend, but he is vulnerable to subtle exploitation by or through his other siblings. His wife is vulnerable to coercion, exploitation, or duress exercised directly against her or indirectly through her parents in the PRC. Applicant’s ties to Taiwan and the PRC, considered in their totality, make him vulnerable to direct or indirect coercion or exploitation, notwithstanding his loyalty to the U.S.

After weighing the disqualifying and mitigating conditions under Guideline B, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on foreign influence. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to grant him a security clearance.

FORMAL FINDINGS

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

Paragraph 1. Guideline B (Foreign Influence):	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	Against Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant Applicant a security clearance. Clearance is denied.

LeRoy F. Foreman
Administrative Judge