



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



In the matter of:

SSN: -----

Applicant for Security Clearance

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ISCR Case No. 07-09452

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel

For Applicant: Brian Cruz, Esquire,
McKenna Long & Aldridge

June 23, 2008

Decision

LOKEY-ANDERSON, Darlene, Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (eQip), on August 14, 2006. On November 3, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines B for Applicant. 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

The Applicant responded to the SOR on November 21, 2007, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on March 20, 2008. A notice of hearing was issued on March 27, 2008, scheduling the hearing for April 22, 2008. At the hearing the Government presented two exhibits. The Applicant presented twenty-two exhibits and testified on his own behalf. The official transcript (Tr.) was received on May 5, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts concerning the current political conditions in Taiwan. Applicant had no objection. (Tr. p. 27). The request and the attached documents were not admitted into evidence but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the testimony and the exhibits. The Applicant is 52 years of age and has a Masters Degree in Electrical Engineering. He is employed as a Corporate Engineer for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant was born in Taiwan in 1955. He came to the United States in 1983, at the age of twenty-eight in pursuant of higher education. He received his permanent residence in 1985, and became a United States citizen in October 1991. (Applicant's Exhibit E). He currently possesses a valid United States passport. In 1983, he married a woman from Laos who has since become a United States citizen. (Applicant's Exhibit F). She is employed as a United States Postal worker. (Tr. p. 39). They have two children who were born in the United States. One is attending an Ivy League University, the other is still in high school. The Applicant, his wife, and his children are committed to the American way of life and have made it their permanent home.

The Applicant's mother was a resident and citizen of Taiwan. She passed away in April 2007. (Applicant's Exhibit V). While she was alive, at times, the Applicant sent as much as \$3,000.00 a year to assist in his mother's living expenses. When she died, he inherited nothing.

The Applicant has two living family members in Taiwan; a younger brother and older sister. His brother manages and teaches courses at a private night school. (Tr. p. 44). He has no knowledge that the Applicant is applying for a security clearance. He is married and his wife is a high school teacher. (Tr. p. 45). The Applicant's sister is a retired housewife. (Tr. p. 47). Her husband runs a small window shop of produce and noodles. They receive no benefits what so ever, nor do they participate in any political activities concerning the Taiwanese Government. (Tr. p. 48). The Applicant is not close to his siblings, and speaks to them on holidays, only once or twice a year. (Tr. p. 46).

Over the past ten years, the Applicant traveled to Taiwan on four separate occasions. The purpose for each of the four trips involved his mother's health. He traveled to Taiwan in 1998, 2006, in April 2007, to attend his mother's funeral, and in March 2008 to memorialize the one year anniversary of his mother's death. On each of these trips, he reported to his security department that he was traveling to Taiwan. (Tr. p. 50).

The Applicant understands the responsibilities associated with holding a security clearance. He has also received a Foreign Travel Defensive Security Briefing and understands the unique responsibilities associated with his job. (Applicant's Exhibit U). Furthermore, he indicated that if he were ever approached by anyone seeking information from him of any sort, he would report it to the proper authorities, (his security department) and to the American consulate. (Tr. pp. 49 and 52)

The Applicant has no assets in Taiwan and never plans to retire there. He owns a home in the United States valued at approximately \$500,000. (Applicant's Exhibit R). He has retirement accounts, including a 401K and an IRA, valued at approximately \$600,000. (Applicant's Exhibits O through Q). He and his wife have checking accounts and savings, CD's, and E-Trade investment accounts valued at approximately \$300,000. (Tr. p. 54, and Applicant's Exhibits H, I, J, K, L, M, N).

Letters of recommendation from the Director of Corporate Facilities and Security, several Senior Directors, and the Vice President and Chief Technology Officer at the company, as well as customers who work with the Applicant, all attest to the Applicant's high standard of character, strong technical skills, loyalty, hard work ethic and kind heartedness. The Applicant is said to always follows the rules, is extremely conscientious in handling classified information, and has never violated any security procedures involving classified or proprietary materials. (Applicant's Exhibits A, B, C ,D, S and T).

I have taken official notice of the following facts concerning the Taiwan. Taiwan is a multi-party democracy with a population of about 23 million. It is one of the most active collectors of sensitive United States information and technology. Numerous individuals and companies have been subjected to civil penalties and or prosecuted for illegally exporting, or attempting to illegally export, sensitive United States technology to Taiwan. One United States official was recently convicted of crimes relating to his improper relationship with a Taiwanese intelligence official.

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and

circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Foreign Influence

6. *The Concern.* 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.

Condition that could raise a security concern:

7. (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.

Conditions that could mitigate security concerns:

8. (a) 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.;

8. (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.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation

- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is “clearly consistent with the national interest” to grant an Applicant’s request for access to classified information.

The DoD Directive states, “The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, “Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned.”

The Government must make out a case under Guideline B (foreign influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates a foreign influence and has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The mere possession of a foreign passport raises legitimate questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR.

Under Foreign Influence, Disqualifying Condition 7(a) *contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion* applies. However, Mitigating Conditions 8(a) *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.*, and 8(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* also apply.

Although the Applicant's has two siblings who are residents and citizens of Taiwan, the Applicant is not close to them and except for holidays, rarely has contact with them. There is no evidence of a close bond or strong evidence of affection. In fact, to the contrary, the Applicant's only speaks to them on holidays. The Applicant's deep and abiding ties are here in the United States. For the past twenty years he has worked hard to establish himself as a responsible, educated, American citizen. His wife and children, are all citizens and residents of the United States. His advanced education, employment with the DOD, assets, that include his home, many investments and retirement benefits are all in the United States. The Applicant essentially cut all ties from Taiwan when he moved to the United States and made it his permanent home for the past twenty years.

It is noted that the current political situation in Taiwan elevates the cause for concern in this case. However, the evidence shows that the Applicant has no bond and affection with his foreign siblings or to any foreign individual or to Taiwan in any way that could potentially cause the Applicant to become subject to foreign exploitation, inducement, manipulation, pressure, or coercion. Therefore, there is no possibility of foreign influence that exists that could create the potential for conduct resulting in the compromise of classified information. I find that the Applicant is not vulnerable to foreign influence. Accordingly, I find for the Applicant under Guideline B (Foreign Influence).

Considering all the evidence, the Applicant has met the mitigating conditions of Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guideline B.

FORMAL FINDINGS

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.

Subparas. 1.a.: For the Applicant

Subparas. 1.b.: For the Applicant

Subparas. 1.c.: For the Applicant

Subparas. 1.d.: For the Applicant

DECISION

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson
Administrative Judge