



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 07-12760
)	
Applicant for Security Clearance)	

Appearances

For Government, Francisco Mendez, Esquire, Department Counsel
For Applicant: Pro se

August 11, 2008

Decision

MASON, Paul J., Administrative Judge:

Applicant submitted his Security Clearance Application (SCA) on November 22, 2005. On January 25, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under foreign influence (Guideline B). The action was taken pursuant to 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 made effective within the Department of Defense for SORs issued on or after September 1, 2006.

Applicant submitted his answer to the SOR on February 9, 2008. On April 2, 2008, DOHA scheduled the hearing for April 23, 2008. The hearing was postponed because Applicant was working on an assignment in the Middle East. On April 9, 2008, Applicant was informed that the hearing would be rescheduled for June 2, 2008. The hearing was completed on that day. Based on a careful evaluation of all the evidence in the record, Applicant's eligibility of security clearance access is granted.

At the hearing, the government submitted three exhibits (GE). The third exhibit (GE 3, administrative notice exhibit) contains publications from United States Government agencies that describe the government of Taiwan, its human rights record internally, its geopolitical relationship with its neighbors and around the world, and its policies regarding the collection of intelligence information. At the hearing, testimony was taken from Applicant. He provided two character statements following the hearing. On June 9, 2008, Department Counsel indicated the government had no objection to the exhibits being entered in the record. The two exhibits are now in the record as AE A. DOHA received the transcript on June 12, 2008.

Rulings on Procedure

Applicant's answer to the SOR has attachments including a copy of part of the United States (U.S.) passport belonging to his wife. Also, copies of his father-in-law's and mother-in-law's permanent resident cards are attached to his answer. Those documents are marked and admitted in evidence as AE B (incomplete copy of the passport belonging to Applicant's wife), and AE C (the permanent resident identification cards of his father and mother-in law).

GE 2 (answers to interrogatories) is undated. Applicant was asked to review the exhibit. He stated that he recognized the exhibit, and was fairly certain he signed the answers on March 17 or 18, 2007. (Tr. 16) He also indicated he had no objection to its admission in evidence. (Tr. 17) Having carefully reviewed the exhibit and found that it confirms a considerable amount of information found elsewhere in the record, GE 2 was admitted in evidence. (Tr. 18)

Findings of Fact

The SOR alleges in paragraph 1 that Applicant's ties to Taiwan, primarily his father-in-law, trigger foreign influence concerns that have not been mitigated. He admitted subparagraphs 1.a. through 1.c.

Applicant is 38 years old and married. He has been employed as an information technology associate (manager) with a defense contractor since September 2003. He seeks a secret security clearance.

On December 26, 1969, Applicant was born in the United States (U.S.), and has been living in the immediate area for about 33 years. Applicant registered the Selective Service (GE 1) and has exercised his voting rights. He attended school in the U.S., and was awarded his Master of Science degree in December 1999. GE 1 reflects that Applicant was employed by six private companies or defense contractors before landing his current associate (manager) job in September 2003.

Applicant's mother was born in Taiwan in March 1944, and has always been a housewife. In December 1967, she gave birth to Applicant's older brother in the U.S. She was naturalized as a U.S. citizen in January 1978. Applicant's father was born

Taiwan in December 1935, and became a U.S. citizen on the same day as Applicant's mother. He is a retired physician.

Applicant's spouse (SOR 1.a.) was born in Taiwan in November 1973, and immigrated to the U.S. when she was very young. She graduated from a local university with a degree in accounting. His wife met Applicant in 1997 and married him in December 1999. (GE 1) After working in several jobs, including a software position, she has decided to devote full attention to raising their two children, ages four and two, who were born in the U.S. Applicant's wife received her U.S. citizenship in November 2006.

Applicant's mother-in-law (SOR 1.b.) was born in Taiwan in November 1950. She received her permanent resident card in November 2006. She is waiting for her opportunity to become a U.S. citizen. Applicant last saw his mother-in-law in December 2007.

Applicant's father-in law (SOR 1.b., 1.c.) was born in the Peoples Republic of China (PRC) in November 1945. After completing the Republic of China Air Force academy in 1967, he became a fighter pilot for Air Force for several years in the early 1990s. From 1998 to 2003, he held various intelligence positions for the military. After serving for two years in positions at the military command level, he retired from the military in March 2006. In May 2006, Applicant's father-in-law became chairman of a plane manufacturer, a commercial organization under the Taiwanese Economic Affairs department.

When the communication (including physical visits) Applicant and his wife have with their parents-in-law are added together, the contacts average more than once a month. Topics of discussion Applicant and his parents-in-law address are always about family issues. Applicant has never talked to his father-in-law about professional subjects or the father-in-law's U.S. professional contacts. The only time Applicant ever met any of his father-in-law's military colleagues was during Applicant's wedding in November 1999.

As noted in GE 1, Applicant has no foreign property or financial interests. He has never been a consultant to a foreign government. The only way he is associated with foreign entities is through his project assignments. He has never been directly employed by a foreign country. (GE 2)¹ He has never had contact with foreign officials. He has only a U.S. passport. Applicant earns about \$130,000.00 a year. He has approximately \$200,000.00 in his retirement plans. He has established mutual funds for his children, and owns rental property. He also owns his home worth approximately \$750,00.00, and has been living there since 2003.

¹ Handwritten page number "88" appears in the lower right hand corner of the page in GE 2.

Character Evidence

Applicant is a member of his development homeowner's association. The development also has designated certain houses as part of the "Safe House Program," a location where troubled children can go for protection and guidance.

Applicant's friend of 15 years is a retired investigator for one of the U.S. military investigative services, and is currently an adjudicator in another branch of the federal government. He attended Applicant's wedding. He considers Applicant reliable and trustworthy. Applicant's coworker and friend for the past four years, has worked with him on a daily basis for the past year on a project where Applicant is the project leader. He rates Applicant as a true professional who is committed to project objectives without sacrificing quality assurance along the way.

Administrative Notice

The U.S. recognized the Republic of China (ROC, Taiwan) and also the Peoples Republic of China (PRC) from 1949 to 1979. In January 1979 the U.S. officially indicated that the PRC was the only legal government of China.²

The ROC has developed a robust economy, but its security remains under constant threat from the PRC, and the PRC's elaborate intelligence gathering network that utilizes some of the intelligence apparatus active in Taiwan. Taiwan is an active collector of U.S. intelligence. The ROC's intelligence gathering operation is one of the most active according to reports of the National Counterintelligence Center (NACIC) generated in 2000.³ Evidence of recent espionage activity directed at the U.S. include espionage incidents in 2005 and 2006, that have led to criminal prosecution and conviction.⁴

The political system of the ROC is a multi-party democracy with an improving human rights record. Though the U.S. has not had formal diplomatic relations with the ROC since January 1979, the U.S. has sold the ROC military equipment⁵ and transacted billions of dollars in trade with them on an annual basis.

² U.S. Department of State, *Background Note: Taiwan*, (Background Note: Taiwan), October 2007.

³ National Counterintelligence Center, *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage 2000*, (Annual Report to Congress - 2000).

⁴ Statement of Facts, *United States v. Keyser*, Case No. 1:05CR543, United States District Court for the Eastern District of Virginia, December 12, 2005.

⁵ *Taiwan: Recent Developments and U.S. Policy Choices*, Congressional Research Service, Library of Congress, October 9, 2006.

Policies

When evaluating an applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information.

These guidelines are flexible rules of law. Recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's ultimate adjudicative goal is a fair, impartial and common sense decision. According to the AG, the entire process is a careful, thorough evaluation 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 ¶ 2b. 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, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining 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 is not restricted to normal duty hours. Rather, the relationship is an-around-the-clock responsibility between an applicant and the federal government. 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Foreign Influence (FI)

The security issues connected to foreign influence are familial ties, contacts, and/or proprietary/financial interests that could be used to generate a heightened risk of forcing an applicant into a position of having to choose between the foreign entity and the U.S.

Analysis

6. *The Concern.* “Foreign contacts and interests result in security concerns where those contacts and interests create divided loyalties, or may be manipulated or induced by a foreign entity that is harmful to U.S., or is vulnerable to pressure or coercion by any foreign entity. Decisions under this guideline should include the foreign country where the contact or financial interest is located, including, but not limited to whether the foreign government targets U.S. citizens to obtain protected information and/or is associated with the risk of terrorism.”

The SOR alleges under 1.a. that the citizenship of Applicant’s spouse in Taiwan raises FI concerns. In November 2006, Applicant’s spouse became a U.S. citizen. (AE B) The SOR alleges under 1.b. that Applicant’s father and mother-in-law are citizens and residents of Taiwan. They are also permanent resident aliens of the U.S. (AE C), though they spend some time every year in Taiwan. The record does not indicate the amount of time they spend in the ROC and the amount of time they spend in the U.S. However, based on the current position of Applicant’s father-in-law in the commercial organization, and entity of the Taiwanese government, it would be fair to conclude that they spend more than half a year in the ROC.

Potential security concerns are raised by the contact Applicant and his wife have with their in-laws who spend some time in Taiwan, and also by the 46-year-history Applicant’s father-in-law has had in the military and commercial industry of Taiwan. Foreign Influence (FI) disqualifying condition (DC) 7.a. (*contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or a resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion*), FI DC 7.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*), and FI DC 7.d. (*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*) apply. Because Applicant’s mother-in-law and father-in-law are citizens and residents of Taiwan, even though they have permanent resident cards and expect to become U.S. citizens, a heightened risk for foreign coercion and potential for conflict arises that shifts the burden to Applicant to show why he believes the heightened risk is manageable, and he will resolve any conflict of interest in favor of the U.S. The residual FI concerns that still may exist concerning Applicant’s wife have been dramatically reduced by her naturalization as a U.S. citizen in November 2006.

In assessing the applicability of the mitigating conditions under the FI guideline, it is important to evaluate the nature of a nation’s government, its relationship with the U.S., along with the foreign government’s human rights record, and/or whether the country conducts intelligence operations in the U.S., or engages in external terrorist operations. One should not lose sight of the fact that even with the friendly relations the

U.S. has had with the ROC, the country has engaged in espionage against U.S. interests over the years. See, ISCR Case No. 00-0317 at 15-16, (App. Bd. Mar. 29, 2002) Though the friendly relationship the ROC has with the U.S. should be evaluated with caution, it is still a favorable piece of evidence that must be factored into the ROC's improving human rights record. Ultimately, assessments must be made as to whether the ROC would want to jeopardize its relationship with the U.S. by applying some kind of pressure on it's own citizenry to reach a U.S. citizen.

FC MC 8.a. (*the nature of the relationships with foreign persons, the country in which these persons are located, or the position 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.*) applies to partially offset the FI concerns under FI DC 7.a., 7.b., and 7.d., because neither Applicant's wife, a citizen of the U.S., nor his mother-in-law, a permanent resident of this country, have ever worked for the ROC government, or have been agents of the Taiwanese government. Though the contact with both in-laws has been determined to be more than once a month, the discussions have been strictly about family concerns of relatives who care for one another. Applicant has never talked to his father-in-law about professional matters, and his father-in-law has not asked Applicant about his job responsibilities, although he knows Applicant works with computers.

FI MC 8.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 minimal, or the individual has such deep and long lasting 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*) receives greater application because Applicant's familial and financial bonds to the U.S. justify complete confidence that Applicant will resolve any conflict of interest in favor of U.S. Applicant's familial bonds begin with his birth in the U.S. in 1969, and naturalization of his parents as U.S. citizens in 1978. Applicant's brother was also born in the U.S. and lives in the area. Applicant's professional career has embraced U.S. jobs where he has amassed a substantial retirement savings account and a home worth more than \$750,000.00.

In determining whether FI MC 8.c. applies, one must evaluate the entire picture of contacts that an applicant has with a family member in a foreign country, rather than the individual contacts he has with each family member. ISCR Case No. 01-22693 at 7 (App Bd. Sept. 22, 2003). The DOHA Appeal Board has held there is a rebuttable presumption that contacts with a foreign family member are not casual. ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002) FI MC 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*) does not apply based on the level of contact Applicant has with his in-laws. However, I do not conclude this level of contact security disqualifying. On balance, I find Applicant has overcome the adverse evidence under the Guideline.

Whole Person Concept (WPC)

My finding against Applicant under the FI guideline must still be evaluated in the context of nine variables known as the whole person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors: (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 the participation was 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.

Assuming Applicant's evidence is insufficient to overcome the negative evidence under the FI guideline, I find for Applicant under the whole person model. First, Applicant was born in this country in 1969. He attended school in the U.S. and was awarded a Masters in Science degree in 1999. Applicant's parents immigrated to this country and became naturalized citizens in 1978. His mother has always been a housewife, and his father is now a retired physician. Applicant has a 39-year-old brother who was born in this country. While his spouse did not become a U.S. citizen until November 2006, she graduated from a U.S. high school. She received a degree in accounting from a highly regarded U.S. university. Applicant's mother-in-law obtained her permanent resident card in late 2006, and her father-in-law got his permanent resident card in January 2007. They both aspire to become U.S. citizens. Applicant has never discussed professional topics with his father-in-law.

Applicant has no foreign financial interests or property. He has never been associated with any foreign government in any way. His exposure to foreign governments comes from his job assignments all over the world. Applicant has worked at his current job since 2003. His colleague indicated that Applicant has delivered a quality, professional work product, and his friend of 15 years believes he is reliable and trustworthy.

Applicant has two children, ages four and two, who were born in the U.S. His income as an associate is approximately \$130,000.00; his retirement plan is now at about \$200,000.00, and he has established mutual funds to help finance his children's educational aspirations. Applicant owns his own house worth about \$750,000.00. He also has a rental property. On balance, the totality of Applicant's familial and economic bonds to the U.S. buttress my conclusion that his evidence successfully mitigates the foreign influence concerns set forth in the SOR. Accordingly, the FI guideline is decided for Applicant.

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 (Foreign Influence, Guideline B):	FOR APPLICANT
Subparagraph 1.a.	For Applicant
Subparagraph 1.b.	For Applicant
Subparagraph 1.c.	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 eligibility for a security clearance. Eligibility for access to classified information is granted.

Paul J. Mason
Administrative Judge