



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



In the matter of:)	
)	
)	ISCR Case No. 07-17131
)	
Applicant for Security Clearance)	

Appearances

For Government: Fahryn E. Hoffman, Department Counsel
For Applicant: *Pro Se*

July 28, 2008

Decision

HEINY, Claude R., Administrative Judge:

Applicant was born in Taiwan and is a naturalized U.S. citizen, who has lived in the United States since 1989. Applicant’s parents, two siblings, and in-laws are citizens and residents of Taiwan. He has substantially more connections to the United States than to Taiwan. In Applicant has rebutted or mitigated the government’s security concerns under Guideline B, Foreign Influence. Clearance is granted.

Statement of Case

Applicant contests the Defense Department’s intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued to

¹ 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) approved by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant a Statement of Reasons (SOR) on February 20, 2008, detailing security concerns under Foreign Influence.

On March 10, 2008, Applicant answered the SOR, and requested a hearing. On May 2, 2008, I was assigned the case. On May 7, 2008, DOHA issued a notice of hearing scheduling the hearing held on May 21, 2008. The government offered Exhibits (Ex.) 1 through 3, which were admitted into evidence. Applicant testified on his own behalf and submitted Exhibits A through D, which were admitted into evidence. The record was kept open to allow Applicant to submit additional matters. On May 22, 2008, an additional document was received. There being no objection, the material was admitted into evidence as Ex. E. On June 5, 2008, the transcript (Tr.) was received.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Taiwan. The request and the attached documents were not admitted into evidence but were included in the record as Hearing Exhibits (HEx) I–VII. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In his Answer to the SOR, Applicant denied the factual allegations in ¶ 1.a – d of the SOR supported a violation of Guideline B, Foreign Influence.

Applicant is a 43-year-old principal systems engineer who has worked for a defense contractor since May 1995, and is seeking to obtain a security clearance. Co-workers state Applicant is extremely trustworthy and honest, diligent, caring, intelligent, innovative, dependable, hard-working, dedicated, extremely organized, mission oriented, and a person of honor and integrity. (Ex. A)

In 1965, Applicant was born in Taiwan, Republic of China (ROC). In July 1989, Applicant married his wife who was a native of Taiwan. From August 1989 to August 1994, he attended a U.S. state university receiving a Master of Science degree in August 1991 and his PhD. in August 1994. While obtaining his PhD, Applicant decided he wished to stay permanently in the U.S. (Tr. 31) In December 2004, both Applicant and his wife became naturalized U.S. citizens. (Ex. 1) They have two children, ages 15 and 17, both born in the U.S. (Tr. 42) Applicant's sister-in-law, a U.S. citizen, lives in the U.S. (Tr. 43, 44)

Applicant's parents, brother, and sister are citizens and residents of Taiwan, as are his father-in-law and mother-in-law. Applicant calls his father, who is retired school teacher, and his mother, a homemaker, once a month or every other month. (Tr. 26, 65) Applicant calls his brother and sister two or three times a year. His brother owns a construction company. His sister is a homemaker married to a marketing manager for a private company. (Tr. 27, 63) Applicant's father-in-law is a retired elementary principal

and his mother-in-law, a retired elementary school teacher. Applicant has telephone contact with them once a year, usually at Chinese New Year. (Ex. 3, Tr. 28) None of his relatives or in-laws have ever been affiliated with a foreign government.

In the past 15 years, Applicant has traveled to Taiwan twice, once in December 1997 and again in 2007. (Tr. 28) In June 2007, Applicant spent 10 days in Taiwan visiting his parents. His father was celebrating his 80th birthday. (Tr. 29) Applicant had a Taiwanese passport that expired in December 2004, which he returned to the Taiwanese authorities. (Tr. 54) Since becoming a U.S. citizen, the only passport he has used is his U.S. passport. (Ex 3, Ex. C)

All of Applicant's financial interests are in the U.S. (Tr. 16, 29) Applicant has \$215,000 in his company's retirement saving plan, \$38,000 with an investment company, and \$18,000 in another fund, all in the U.S. (Ex B, 21) The assessed value of his home is \$167,000 on which he pays \$1,000 per month. (Ex. B, Tr. 21) He has \$8,000 in his checking account and also maintains certificates of deposit in the U.S. (Tr. 37)

When Applicant became a U.S. citizen, he swore under oath his sole allegiance was to the U.S. (Tr. 17, 81) In May 2008, Applicant applied for and was granted a certificate of termination of his Taiwan citizenship. (Ex. D, Ex. E)

TAIWAN

Taiwan is a stable democracy with a strong and well-developed economy. (HEX. I, *Background Note: Taiwan*) Taiwan is a multi-party democracy with significant economic contacts with China. (HEX. III, *Taiwan: Recent Developments and U.S. Policy Choices*) Taiwan has been a close U.S. ally for many decades and retains strong mutual strategic interest with the U.S. for both defense and commercial trade. The Taiwan Relations Act signed in 1979 states the U.S. commitment to maintain Taiwan defense capability. In 2007, the U.S. announced military sales of \$2.2 billion to Taiwan. Taiwan is known to be an active collector of U.S. economic intelligence and proprietary information. (HEX. V. *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage 2000*) Although contact with Taiwan may seem to be relatively innocuous, it cannot be dismissed without some degree of caution and scrutiny.

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 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 over-arching

adjudicative goal is a fair, impartial and common sense 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, 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 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 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.

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

Foreign Influence

AG ¶ 6 expresses the security concerns 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 conditions that could raise a security concern and may be disqualifying:

- (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.
- (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.

Applicant's parents, siblings, and in-laws are citizens and residents of Taiwan. Twice in the last 15 years, he has visited Taiwan. In 1989, Applicant moved to the U.S., where he obtained master's degree and PhD. In 2004, he and his wife became U.S. citizens. Both of his children are U.S. citizens having been born in the U.S. Applicant has no foreign assets or foreign business interests, and his U.S. assets are in excess of \$450,000. Applicant has significant ties to the U.S. and none to Taiwan other than his parents, brother, and sister living there. None of his relatives or their spouses have connections with any foreign government.

Having considered all of the Foreign Influence disqualifying conditions, applicable conditions that could possibly raise a security concern are AG ¶ 7(a) and AG ¶ 7(b).

AG ¶ 8 provides conditions that could mitigate security concerns:

- (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.;
- (b) there is no conflict of interest, either because the individual's sense of loyalty or obligations 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;

(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;

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

In every case where parents and siblings live overseas, there is a risk of pressure on the relatives and through them upon the holder of a security clearance. Under the facts of this case, a heightened risk for exploitation, inducement, manipulation pressure, or coercion is substantiated. However, Applicant has more significant ties to the U.S. than to Taiwan. While he still has parents, two siblings, and in-laws living in Taiwan, he lives with wife and two children in the U.S. He has no financial or property interests in Taiwan. He owns a home in the U.S. and his ties with the U.S. are much stronger than his ties with Taiwan.

AG ¶¶ 8(a) and 8(c) partially apply. Because of his limited contact with his brother, sister, and in-laws, "it is unlikely [he] will be place in a position of having to choose between the interest of [his siblings and in-laws] and the interest of the U.S." His infrequent contacts (once or twice a year) and a not particularly close relationship with them have a very low potential for forcing him to choose between the United States and Taiwan. He met his burden of showing there is "little likelihood that [his relationship with his brother, sister, and in-law] could create a risk of foreign influence or exploitation."

Even though Applicant has limited contact with his parents having visited them in Taiwan only twice in the last 15 years, with the most recent visit due to his father's 80th birthday, the contact is not considered casual because it is with his parents and siblings. However, there is "little likelihood that [his parents] could create a risk of foreign influence or exploitation."

AG ¶ 8(b) fully applies. There is no evidence that his parents, siblings, or in-laws are or have been a political activist, challenging the policies of the Taiwanese Government. There is no evidence they currently work or ever worked for the Taiwanese Government, military, or news media, or that of any other foreign government. There is no evidence that the Taiwanese Government has approached or threatened Applicant or his relatives or in-laws for any reason. There is no evidence that his parents, siblings, or in-laws living in Taiwan currently engage in activities which would bring attention to them or that the Taiwanese government is even aware of Applicant's work. As such, there is a reduced possibility that his relatives, in-laws, or Applicant would be targets for coercion or exploitation.

AG ¶ 8(f) partially applies because he has no interest in property in Taiwan and he has significant U.S. property and assets. These mitigating conditions taken together are sufficient to fully overcome the foreign influence security concerns.

Applicant has “such deep and longstanding relationships and loyalties in the U.S., [he] can be expected to resolve any conflict of interest in favor of the U.S. interest.” Applicant and his wife came to the U.S. in 1989 and became U.S. citizens in 2004. Applicant attended U.S. schools to obtain his master’s degree and his PhD. He worked for a defense contractor since 1995.

There is little likelihood that Applicant will be placed in a position of having to choose between the interests of the U.S. and a foreign entity. Likewise, because of his close ties and his loyalties to the U.S. he would resolve any conflict of interest in favor of the U.S.

Whole Person Concept

Protection of our national security is of paramount concern. Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the adjudicative process is the fair-minded, commonsense assessment of a person’s trustworthiness and fitness for access to classified information. In reaching this decision, I have considered the whole person concept in evaluating Applicant’s risk and vulnerability in protecting our national interests. I considered the totality of Applicant’s family ties to Taiwan and the burden an Applicant carries when he has family members in a foreign country.

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 totality of Applicant’s family ties to Taiwan and the burden an Applicant carries when he has family members in a foreign country. Additionally, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant was born in Taiwan and almost 20 years ago, he came to the U.S. to pursue his education. Applicant has returned twice in the last 15 years. He has been working for the same contractor for 16 years. He is an established, highly-regarded engineer, with considerable U.S. ties and assets. His

parents and in-law are retired. His brother's and sister's jobs are not connected to any foreign government. Applicant is a man of integrity and trustworthiness who is loyal to the U.S. He takes seriously his pledge of sole allegiance to the U.S., taken when he became a U.S. citizen.

Taiwan has been a close U.S. ally for many decades and retains strong mutual strategic interests with the U.S for both defense and commercial trade. Taiwan would be taking a huge risk to coerce its own citizens in an attempt to force a U.S. citizen to commit espionage. It is unlikely Applicant relatives in Taiwan would be placed in a position to coerce Applicant and it is also unlikely Applicant would ever be put into a position of having to choose between the interests of Taiwan and the interest of the U.S.

These facts reduce any potential for pressure, coercion, exploitation, or duress. Applicant was sincere, open, and honest at the hearing. In the unlikely event that his relatives were subjected to coercion or duress, I find that with Applicant's deep and longstanding relationships and loyalties to the U.S., including his uncompromising commitment to the U.S., his wife, and children, Applicant would resolve any attempt to exert pressure, coercion, exploitation, or duress in favor of the U.S.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the foreign influence security concerns.

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.d: 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.

CLAUDE R. HEINY II
Administrative Judge