



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 08-03424  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Jennifer I. Goldstein, Department Counsel  
For Applicant: *Pro Se*

September 29, 2008

**Decision**

LOKEY-ANDERSON, Darlene, Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on November 27, 2006. On April 28, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline 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 May 13, 2008, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on July 16, 2008. A notice of hearing was issued on July 16, 2008, scheduling the hearing for July 24, 2008, at the Applicant's request. The Applicant knowingly waived the 15 days notice required by the Directive in order to expedite the matter. At the hearing the Government presented four exhibits, referred to as Government Exhibits 1 through 4. The Applicant presented five exhibits, referred to as Applicant's Exhibits A through E, and he testified on his own behalf. The official transcript (Tr.) was received on July 31, 2008. Based upon a review of the case file,

pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **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. 15). 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 51 years of age and has a Masters Degree and a Ph.D. in Optical Sciences. He is employed as a Senior Principal Systems 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 1957, and grew up there. He also obtained his undergraduate degree from a university in Taiwan. He first came to the United States in 1982, on a graduate student visa to attend college. After several months, his father fell ill, and he returned to Taiwan to be with his family. In 1983, the Applicant returned to the United States to pursue his studies and in 1988, he was awarded a Masters and Ph.D. in Optical Sciences. In 1983, the Applicant married a Taiwanese woman he met in the United States. In December 1991, he began working for a defense contractor. In May 1996, he became a naturalized United States citizen. That same year, he applied for and was granted a security clearance. He later applied for a Special Compartmentalized Access, but was denied access in June 2004.

The Applicant's mother and father are citizens and residents of Taiwan. His mother is a 79 year old housewife. His father, who was born in China, is 89 years old. He served as a General in the Taiwanese Air Force until he retired in the mid 80's. He flew fighter aircraft in World War II against the Japanese. The Applicant testified that his father is financially supported by a retirement pension plan, but the Applicant does not know if it is provided for by the Government of Taiwan. His father had a seizure in January, and is currently very ill.

The Applicant has close emotional ties to his parents in Taiwan. He calls them on a weekly basis to, among other things, keep up with their health concerns. (Tr. p. 54). On occasion he sends gifts and money when they are in need. (Tr. pp. 52-53). He testified that he will help them in the future if necessary. He visits them in Taiwan on a yearly basis and stays with them during his visits. He traveled to Taiwan in 1999, 2000,

2001, 2002, 2003, 2005, 2006 and 2008. On occasion, his wife and son travel to Taiwan with him. He plans to spend his yearly vacations in Taiwan to visit his family there.

The Applicant's only financial assets are in the United States. They are valued at approximately \$400,000.00, which includes a house, a couple of certified savings accounts, and a 401(k).

Letters from the Applicant's Supervisor, a Senior Manager, the Senior Program Manager, two Directors of programs and other professional colleagues and coworkers attest to the Applicant's high performance level and serious and professional approach to his work efforts. He is considered to be a person of honesty, integrity, dedication and competence. (See Applicant's Exhibit A).

The Applicant has received numerous awards for his contributions to the company. (See Applicant's Exhibit B). Performance appraisals for his entire period of employment beginning in 1992, through the 2007, reflect consistent ratings of satisfactory or above in every category. (See Applicant' Exhibit C).

A copy of the Applicant's father's Aviation Training yearbook from his time in the Taiwanese military was placed into evidence. (See Applicant's Exhibit D).

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:

None.

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 ad 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. None of the mitigating conditions are applicable.

The evidence shows that the Applicant's has close emotional attachments to his parents in Taiwan. He telephones them once a week, travels to see them annually, and sends them gifts and/or money if they need it. He is devoted to his parents and he is obviously a good son. This close bond or strong evidence of affection, however, could potentially cause the Applicant to become subject to foreign exploitation, inducement, manipulation, pressure, or coercion. Furthermore, as a retired General in the Taiwanese Air Force, it can be presumed that the Applicant's father receives a significant pension from the Government of Taiwan. It is also noted that the current political situation in Taiwan elevates the cause for concern in this case. Based upon this evidence, the possibility of foreign influence exists that could create the potential for conduct resulting in the compromise of classified information. Under the particular facts of this case, I find that the Applicant is vulnerable to foreign influence. Accordingly, I find against the Applicant under Guideline B (Foreign Influence).

Considering all the evidence, the Applicant has not met the mitigating conditions of Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has not 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: Against the Applicant.  
Subpara. 1.a.: Against the Applicant  
Subpara. 1.b.: Against the Applicant  
Subpara. 1.c.: Against the Applicant

### **DECISION**

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson  
Administrative Judge