



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-06322
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Department Counsel
For Applicant: *Pro Se*

October 28, 2009

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on August 6, 2007. (Government Exhibit 1). On March 30, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines C and 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 April 15, 2009, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on May 12, 2009. A notice of hearing was issued on June 2, 2009, scheduling the hearing for June 24, 2009. Applicant requested a continuance in order to travel to Taiwan with his family. The matter was rescheduled on July 13, 2009, and

set for August 19, 2009. In order to better accommodate the schedule, the matter was changed to August 20, 2009. At the hearing the Government presented four exhibits, referred to as Government Exhibits 1 through 4. The Applicant presented no exhibits, however, he testified on his own behalf, as did his wife. The record remained open until close of business on September 3, 2009, to allow the Applicant the opportunity to submit additional supporting documentation. The Applicant submitted one Post-Hearing Exhibit, consisting of five character reference letters, referred to as Applicant's Post-Hearing Exhibit A, which was admitted without objection. The official transcript (Tr.) was received on August 28, 2009. 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 condition in Taiwan. Applicant had no objection. (Tr. pp. 18-27). 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 49 years of age and has a Ph.D in Nuclear Engineering. He is employed as a Research Scientist for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline C - Foreign Preference). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has acted in such a way as to show a preference for another country over the United States.

In his Answer to the SOR, dated April 15, 2009, the Applicant admitted all of the factual allegations. He also provided additional information to support his request for eligibility for a security clearance.

The Applicant was born in Taiwan in 1960. He was raised in and completed his mandatory military service in Taiwan. He obtained his bachelors degree in nuclear engineering at a public university in Taiwan. In 1985, he emigrated to the United States for purposes of pursuing graduate school. At school, he met his wife, and became a naturalized United States citizen in 1995. His wife is a native born American citizen, and they now have three children all born in the United States. The Applicant participates in the political system in the United States and follows its laws.

The Applicant considers himself an American citizen. (Tr. p. 36). He has chosen to maintain his dual citizenship with Taiwan because of his family back in Taiwan. (Tr.

p. 37). On July 6, 2000, he applied for and was issued a Taiwanese passport. His Taiwanese passport will not expire until July 6, 2010. He continues to use his Taiwanese passport instead of his United States passport to enter and exit Taiwan, when he visits the country because of its convenience. He is not willing to destroy or surrender his Taiwanese passport. (Tr. p. 38). It would upset his father if he were to give up his dual citizenship with Taiwan, and he does not want to upset his father. (Tr. p. 38).

Paragraph 2 (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's father, step-mother, mother-in-law, and father-in-law are citizens and residents of Taiwan. The Applicant's father is a retired career military police officer with the Taiwanese Army. The Applicant's biological mother resides in the United States. The Applicant has a close and continuing relationship with his father and step-mother in Taiwan. The Applicant communicates with his in-laws in Taiwan about once a month or so.

In the past ten years, the Applicant has traveled to Taiwan on at least four separate occasions to visit his elderly parents. They have increasing health issues and are not free to travel to the United States. His most recent trip to Taiwan occurred in 2009. In 2008, he traveled to China for two weeks to attend his great uncle's funeral. He and his sister are in-line to inherit his father's home in Taiwan. He has never been approached by any governmental authority seeking to obtain information from him, and he would never jeopardize the safety of the United States or compromise classified information.

The Applicant's only financial resources are in the United States. He owns a home worth approximately \$700,000.00, and has several retirement accounts worth \$70,000.00 and \$40,000.000 respectively. His wife testified that he has also invested about \$145,000.00 in life insurance policies that will provide college funds for his children. (Tr. p. 62).

I have taken administrative notice of the current political conditions in Taiwan. Taiwan is a multi-party democracy that has significant economic contacts with China. It has developed a strong economy since its separation from the People's Republic of China (PRC) in 1949. The military's primary mission is the defense of Taiwan against the PRC, which is seen as the predominant threat and which had not renounced the use of force against Taiwan. Taiwan is known to be an active collector of U.S. economic intelligence and proprietary information. Their activities have included the illegal export, or attempted illegal export, of United States protected technology.

Letters of recommendation from the Applicant's supervisor, program manager, coworker, and pastor all attest to the fact that the Applicant has demonstrated

unwavering loyalty to the United States. He is described as a man of integrity, and responsibility, who takes his work very seriously and has great pride in developing technologies that help to protect our country and our soldiers abroad. He is highly recommended for a position of trust. (Applicant's Post-Hearing Exhibit A).

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 Preference

9. *The Concern.* When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

Condition that could raise a security concern:

10. (a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to:

- (1) possession of a current foreign passport.

Conditions that could mitigate security concerns:

None.

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 18-19, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature, extent, and seriousness of the conduct;
- 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 extent to which participation is voluntary;
- f. The presence or absence of rehabilitation and other permanent behavior changes;
- g. The motivation for the conduct;
- h. The potential for pressure, coercion, exploitation or duress; and
- 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

an acceptable security risk. 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 Administrative 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 C (foreign preference), and 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 preference 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 Preference, Disqualifying Condition 10(a) *exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to: (1) possession of a current foreign passport applies.* None of the mitigating conditions are applicable.

The Applicant is a dual citizen of Taiwan and the United States and continues to exercise his rights and privileges as such. After becoming a United States citizen in 1995, he applied for, obtained, and still possesses a valid Taiwanese passport that he regularly uses to enter and exit Taiwan during his visits. He has no intentions of relinquishing this foreign passport. Although he could use his United States passport, he chooses to use his Taiwanese passport for convenience purposes. The possession of a valid foreign passport is disqualifying and under the circumstances of this case, I find against the Applicant under Guideline C (Foreign Preference).

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 risks of foreign exploitation, inducement, manipulation, pressure, or coercion* applies. None of the mitigating conditions apply.

The Applicant has a number of family members, including his father, step-mother, and in-laws, who are citizens of and reside in Taiwan, with whom he maintains a close and continuing relationship. He is so close to his father in Taiwan, a retired Taiwanese military officer, that he does not want to upset him by relinquishing his Taiwanese passport or renouncing his dual citizenship with Taiwan. Although there is no evidence that any of his family members in Taiwan continue to be associated in any way with the Taiwanese government, the evidence is clear that the Applicant has a close family bond. This strong evidence of affection with his immediate family in Taiwan could potentially cause the Applicant to become subject to foreign exploitation, inducement, manipulation, pressure, or coercion. Moreover, the current political situation in Taiwan elevates the cause for concern in this case. The possibility of foreign influence exists that could create the potential for conduct resulting in the compromise of classified information. 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 Guidelines B and C of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Guidelines B and C.

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
Subpara. 1.d.: Against the Applicant

Paragraph 2: Against the Applicant.

Subpara. 2.a.: Against the Applicant
Subpara. 2.b.: Against the Applicant
Subpara. 2.c.: Against the Applicant
Subpara. 2.d.: Against the Applicant
Subpara. 2.e.: Against the Applicant
Subpara. 2.f.: Against the Applicant
Subpara. 2.g.: 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