



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-08757
SSN:-----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Pamela C. Benson, Esquire, Department Counsel
 For Applicant: James P. Fleisher, Esquire
 Kirstie N. Bowling, Esquire

July 31, 2009

Decision

HOWE, Philip S., Administrative Judge:

On December 6, 2005, Applicant resubmitted and signed his Security Clearance Application (SF 86). On December 10, 2008, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B (Foreign Influence). 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.

Applicant acknowledged receipt of the SOR on December 16, 2008. He answered the SOR in writing on January 2, 2009, and requested a hearing before an administrative judge. DOHA received the request on January 5, 2009. Department Counsel was prepared to proceed on January 22, 2009, and I received the case

assignment on February 25, 2009. DOHA issued a Notice of Hearing on April 27, 2009, and I convened the hearing as scheduled on May 11, 2009. The Government offered Exhibits 1 through 3, which were received without objection, except for objections to several subparts of Exhibit 3, the request for administrative notice on the Taiwanese Government. (Tr. 15-22) Applicant testified and submitted Exhibits A to E, and H to M, without objection. The Department objected to Applicant's exhibits F and G, which were polygraph test results and the curriculum vitae of the examiner. I upheld the objections and did not receive those two exhibits into evidence. (Tr. 43) DOHA received the transcript of the hearing (Tr.) on May 18, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

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 and its government, known as the Republic of China. (Tr. at 11-22.) The request and the attached documents were admitted into evidence and were included in the record as Hearing Exhibit 3. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In his Answer to the SOR, dated January 2, 2009, Applicant admitted all factual allegations in ¶¶1.a, to 1.d of the SOR, with explanations. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 52 years old, married with two children, and works for a defense contractor of which he is a vice-president and a founder. Applicant was born on Taiwan in 1957. He obtained a bachelor's degree in physics at a Taiwanese university. After graduation from college in 1980, Applicant served his mandatory military service in the Taiwanese Army for two years as a lieutenant in the personnel department. He immigrated to the United States in 1983 on a student visa. He came to the United States to obtain advanced degrees not offered at Taiwan universities. He graduated with a master's degree in 1987, and later a doctorate degree in 1991, both degrees in mechanical engineering. Applicant was able to obtain an H1 visa in 1992, and became a permanent U.S. resident in 1995. He became a U.S. citizen in 2000. Applicant has voted in U.S. elections, but never in a Taiwanese election. (Tr. 51-78, 100-102, 107, 112, 134,150; Exhibits 1 and D)

Applicant is a research scientist and part owner of the company for whom he works. He owns 15% of that company. He is also an officer and director of the company. He co-founded the company in 1995 after moving to his present state of residence. He has owned homes in that state since then, and raised his children there. He does not own any foreign incorporated companies, nor does he have any real estate

or financial assets outside the United States. Applicant owns four cars, one for each member of his family. (Tr. 52, 54, 59-62, 88-94, 141-150; Exhibit 1)

Applicant's wife was born on Taiwan and came to the United States to advance her education. They met while they were graduate students in the United States. They married on Taiwan during a visit there in 1984. Their daughter and son were born in the United States, and are 23 and 17 years old, respectively. Applicant's wife is a chemist and safety engineer working for a foreign-owned automobile company. She became a U.S. citizen in 2000 when Applicant became a U.S. citizen. (Tr. 52, 53, 55-58, 80, 103; Exhibit 1)

Applicant traveled to Taiwan eight times since coming to the United States. Each trip was for family visits. He stayed with family members on each trip to Taiwan. The December 1984 to January 1985 trip was for his marriage. He traveled to Taiwan again from December 1987 to January 1988, and July to August 1995, and again in July 1997. He attended his father's funeral on a trip from August to September 2000, visited his mother in December 2003, and attended his mother's funeral in October 2004. He visited his wife's parents and family on their trip from November to December 2008. Each trip after 1997 he reported to his company's security officer as required by company procedures. Applicant has participated in quarterly security training in his company since 1997. Applicant did not discuss his work with anyone while on these trips. (Tr. 67, 99, 113-127, 143, 157)

Applicant is the youngest of five children. His oldest sibling is his 62-year-old brother. This brother sells weather instruments for his own company. Applicant is close to him, and calls him about twice a month. This brother also obtained permanent residency status in the United States through his wife's family. Applicant's next oldest sibling is his sister, who works for a Taiwanese government research facility. He does not communicate with her, and has only seen her 12 times in the past 26 years. She did not attend one family function because she was working on a project and her supervisors prohibited her attendance during that work. This sister has a Taiwanese security clearance. His next oldest sibling is a brother, who is an architect for a private company. Applicant does not communicate with him by email, and only has had 12 contacts in the past 26 years. Applicant's remaining sibling is a sister, who is a married housewife on Taiwan. He has not had much contact with her in the past 26 years. All his siblings live on Taiwan and are Taiwanese citizens. Applicant's parents are deceased. They were resident citizens of Taiwan. (Tr. 65-73, 129, 136-138, 144; Exhibits 2 and E)

Applicant's mother and father-in-law live on Taiwan and are citizens of Taiwan. His in-laws have permanent residency in the United States through one of his wife's sisters who lives in the United States. They do not travel much because of their ages. (Tr. 127, 143-145; Exhibit 1)

Until he became a U.S. citizen, Applicant used his Taiwanese passport. Since 2000, Applicant has only used his U.S. passport for overseas travel. His wife has both

types of passports, and his children only have U.S. passports. Applicant submitted a letter dated May 5, 2009, formally renouncing his Taiwan citizenship if his U.S. citizenship oath in 2000 did not accomplish that purpose, which was his intent at the time. His letter also formally surrendered his expired Taiwanese passports. (Tr. 105-112, 130, 145; Exhibits 1, A to D, L)

Applicant submitted four character statements from his colleagues at his place of employment. Each writer characterizes Applicant as an intelligent research scientist and a valuable member of the team on which he works. The writers also have known Applicant for at least 15 years within the scientific community where they work. They regard him highly as a professional and as a person. Their comments are detailed and persuasive. The president of Applicant's employing company testified about the security procedures the company uses, and that in his experience Applicant has complied with all procedures and has not mishandled classified or proprietary information. He recommends Applicant receive a security clearance. This witness also wrote Exhibit K. (Tr. 151-163; Exhibits H to K)

I take administrative notice of the following facts regarding Taiwan. The Nationalist Government of the late Chinese president Chiang Kai-shek was defeated by the Communist forces of Mao Tse-tung in 1948 for control of China. While the Communists established their government on mainland China, the Peoples Republic of China (PRC), the Nationalists fled to the island of Taiwan and re-established their government there (the Republic of China). Taiwan has a population of 23 million people, and a multi-party parliamentary democracy has evolved over the past 60 years. Taiwan did \$466 billion in trade in 2007, having developed a strong economy over the years. In 1979 the United States formally changed its recognition from Taiwan to the Communist PRC government on the mainland of China as the sole legal government of China. The United States maintains an unofficial relationship with Taiwan under the 1979 Taiwan Relations Act, and sells defense military equipment to Taiwan pursuant to that law. Taiwan is known as an active collector of U.S. economic intelligence. Taiwan maintains a large military establishment against the PRC government. (Exhibits 3 and M)

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 overarching adjudicative goal is a fair, impartial, and commonsense 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, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and 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

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern pertaining to 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. interest, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign county 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.

The guideline notes nine conditions that could raise security concerns under AG ¶ 7. Two are potentially applicable in this case:

(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;¹ and

(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 family members and his wife's parents are citizens and residents of Taiwan. One of his sisters works for a Taiwan government research facility and has a security clearance granted by that Government. Applicant's monthly contacts with his oldest brother and his eight visits to his family in the past 25 years also raise a security concern. Finally, Taiwan is a known collector of U.S. economic and industrial intelligence for its own economic development. AG ¶ 7(a) and (b) have been raised by this evidence.

The Government produced substantial evidence of those two disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove mitigation. Four conditions that could mitigate the disqualifications are provided under AG ¶ 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.;

(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 so minimal, or the individual has such deep and longstanding relationships

¹ The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

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; and,

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country.

Applicant does not discuss his business and work with his relatives on Taiwan. As an officer in his employing company, he knows the necessity of maintaining the security of classified and proprietary information. Applicant's siblings are not engaged in the types of businesses which would seek the knowledge he has, except for his second oldest sibling who works for a Taiwanese government research facility. But that relationship is mitigated because he rarely speaks with her or sees her, being only 12 incidents of contact in 25 years. It is unlikely under the facts presented by Applicant that he would be placed in a compromising situation wherein he would have to make a choice. AG ¶ 8(a) applies.

Applicant has his work and property in the United States. He made the conscious decision for his own purposes in 1983 to come to the United States to earn advanced degrees. He met and married his wife, and his children were born here. His property and business, with its personal and professional relationships, are in the United States. His sense of loyalty to the United States is so great, and any residual feelings for Taiwan so miniscule, that it is very evident he would resolve any conflict in favor of U.S. interests. Therefore, AG ¶ 8(b) applies.

Applicant's contact with his siblings other than his oldest one, and with his wife's parents, is casual and infrequent. His contact with his oldest brother is not of that type. AG ¶ 8(c) has limited application.

Applicant has promptly complied with all company and agency requirements about his trips to Taiwan. His company president and security officer testified to that fact. Applicant knows the rules and follows them on these contacts with his family members. AG ¶ 8(e) applies.

Whole Person Concept

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.

The Appeal Board requires the whole person analysis address "evidence of an applicant's personal loyalties; the nature and extent of an applicant's family's ties to the U.S. relative to his [or her] ties to a foreign country; his or her ties social ties within the U.S.; and many others raised by the facts of a given case." ISCR Case No. 04-00540 at 7 (App. Bd. Jan. 5, 2007).

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant has spent 26 years building his life in the United States. He raised his family here, owns real estate here, and has not expressed any interest in returning permanently to Taiwan as shown by his business interests in the United States. His wife is a naturalized U.S. citizen and has worked in a professional capacity for a firm based in the U.S. Both he and his wife were educated at U.S. universities. He is an entrepreneurial scientist, who has a share in his own company doing research. Applicant is highly regarded in his scientific community, and is not likely to endanger that long-earned status by betraying the United States in preference to Taiwan. Applicant came to the United States for economic opportunity, and has realized his dream of obtaining advanced scientific degrees and financial prosperity. Whether he could have done that on Taiwan, which is a populous and confined island under the guns of the PRC on mainland China, is doubtful. The United States offers Applicant more opportunities, which he recognized in 1983 and in the years afterward. Therefore, he has a greater attachment to the United States where he lives and works than to Taiwan, where he has only visited periodically in the past 26 years. He has demonstrated his commitments to science and the United States for 26 years. In contrast, his ties to Taiwan are minimal at this time.

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 security concerns arising from foreign influence. I conclude the "whole person" concept 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, Guideline B: FOR APPLICANT

Subparagraph 1.a to 1.d: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security interests to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

PHILIP S. HOWE
Administrative Judge