



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



In the matter of:)	
)	
)	ISCR Case No. 09-00631
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Paul M. DeLaney, Esquire, Department Counsel
For Applicant: *Pro se*

November 30, 2010

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the written record in this case, I conclude that Applicant failed to rebut or mitigate the Government’s security concerns under Guideline B, Foreign Influence. His eligibility for a security clearance is denied.

Applicant completed and certified a Security Clearance Application (SF 86) on March 17, 2005.¹ On July 8, 2010, the Defense Office of Hearings and Appeals (DOHA) issued 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 adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

¹ The SF 86 in the FORM is dated August 12, 2009. Included with the SF 86 is a paper, purportedly signed by Applicant and dated March 17, 2005. The record also includes Applicant’s personal subject interview, which occurred on May 3, 2006. In responses to DOHA interrogatories, dated June 18, 2009, and May 6, 2010, Applicant provided additional information.

On August 10, 2010, Applicant answered the SOR in writing and requested that his case be determined on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on September 15, 2010. The FORM contained documents identified as Items 1 through 7. In addition, the Government compiled facts about Taiwan from 15 official U.S. government publications and requested that I take administrative notice of those facts. By letter dated September 16, 2010, DOHA forwarded a copy of the FORM, the factual summary containing information about Taiwan, and the source documents from which those facts were derived to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the file on September 19, 2010. His response was due on October 29, 2010. He did not submit any information or raise any objections within the required time period. On November 8, 2010, the case was assigned to me for a decision.

Findings of Fact

The SOR contains four allegations that raise security concerns under Guideline B, Foreign Influence (SOR ¶¶ 1.a. through 1.d.). In his Answer to the SOR, Applicant admitted three Guideline B allegations (SOR ¶¶ 1.a., 1.b., and 1.c.) He denied the allegation at SOR ¶ 1.d. Applicant's admissions are admitted as findings of fact.

Applicant is 30 years old, never married, and employed by a government contractor as an embedded software developer. In 2002, Applicant earned a Bachelor of Science degree, and in 2004, he earned a Master of Science degree. Both degrees were conferred by a U.S. university. Applicant seeks a security clearance for the first time. (Item 5.)

In May 2006, Applicant was interviewed about his citizenship status by an authorized investigator from the Office of Personnel Management (OPM).² Applicant told the investigator that he was born in the United States while his parents, citizens of the Republic of China (Taiwan), were in the United States pursuing higher education. Shortly after Applicant's birth, his family returned to Taiwan. When Applicant was about four years old, his family moved back to the United States, where, for about ten years, Applicant's father was employed by the government of Taiwan. In 1994 Applicant's family returned to Taiwan, where he attended high school. After graduating from high school in 1998, Applicant returned to the United States to attend college. Applicant's parents remained in Taiwan, where his father took a position as president of a private company. Applicant's mother is a homemaker in Taiwan. Applicant has in-person contact with his parents approximately twice a year, when they come to the United States to visit him. (Item 5; Item 6.)

² Applicant reviewed the investigator's summary of the interview, and, on June 18, 2009, he provided additional clarifying information. He did not dispute the accuracy of the information recited herein. (Item 6.)

Applicant, a native-born U.S. citizen, held dual citizenship with Taiwan. During his college years, he used his Taiwanese passport to travel from the United States to Taiwan to visit his parents during summer vacations. He used his Taiwan passport for travel to Taiwan because it was more convenient than obtaining a visa and using his U.S. passport to enter Taiwan. After 2000, Applicant did not renew his Taiwanese passport. In response to DOHA interrogatories, he reported that he no longer possesses a Taiwanese passport. (Item 5; Item 6; Item 7.)

While he was living in Taiwan, Applicant participated in Taiwan's universal health insurance, a benefit provided to those holding Taiwanese citizenship. He does not exercise this benefit while living in the United States. Applicant stated that he was willing to renounce his Taiwanese citizenship if required to do so to hold a U.S. security clearance. (Item 6.)

Applicant has a brother who is a naturalized U.S. citizen and resides in the United States. Applicant's maternal grandparents are citizens of Taiwan and reside in Canada. Applicant's maternal grandfather is a retired physician. His maternal grandmother is a homemaker. Applicant has telephone contact with his grandparents once a month. (Item 6.)

In his 2006 interview with the OPM investigator, Applicant stated that a family friend, a U.S. citizen, worked for the government of Taiwan in the United States. Applicant identified this person because he considered her to be his closest contact with a foreign government. The SOR alleged at ¶ 1.d. that the family friend was a current employee of the Taiwanese government. In his Answer to the SOR, Applicant denied allegation 1.d. and stated that the person had retired from her position with the government of Taiwan. (Item 4; Item 6.)

Applicant also reported in his 2006 interview with the OPM investigator that two of his uncles on his father's side served in the Taiwanese military. One of the uncles was on active duty in 2006; the other was retired. In response to DOHA interrogatories in May 2010, Applicant reported that "all relatives in military have retired." (Item 7 at 3.)

In response to DOHA interrogatories, Applicant reported at least five trips to Canada between 2004 and 2009. His most recent trip to Taiwan occurred in December 2007. (Item 7.)

I take administrative notice of the following facts about Taiwan, as contained in official U.S. government documents provided by Department Counsel to Applicant in the FORM:

In 1949, following a civil war between the Nationalist Chinese and the Chinese Communist Party, two million refugees, predominately Nationalist members and supporters, fled from mainland China to Taiwan. That same year, Communists in mainland China established the People's Republic of China (PRC or China), and Chiang Kai-shek established a separate,

provisional capital for his government in Taipei, Taiwan. The PRC does not recognize Taiwan's independence and insists that there is only "one China." After long recognizing Taiwan, on January 1, 1979, the U.S. formally recognized the government of the PRC as the sole legal government of China. The U.S. does not support independence for Taiwan and is committed to a "one-China policy," under the Taiwan Relations Act, signed into law on April 10, 1979.

Taiwan is a multi-party democracy that has significant economic contacts with China, and it has developed a strong economy since its separation from the PRC in 1949. Despite substantial economic ties, the People's Republic of China did not hold any official talks with Taiwan from October 1998 until June 2008. Moreover, the governments of Taiwan and the People's Republic of China still do not negotiate directly. "The military's primary mission is the defense of Taiwan against the P.R.C., which is seen as the predominant threat and which has not renounced the use of force against Taiwan." The PRC's Ministry of State Security is the "preeminent civilian intelligence collection agency in China," and maintains intelligence operations in Taiwan, through a bureau utilizing PRC nationals with Taiwan connections.

Taiwan is known to be an active collector of U.S. economic intelligence, and the National Counterintelligence Center's 2000 Annual Report to Congress of Foreign Economic Collection and Industrial Espionage lists Taiwan as being among the most active collectors of U.S. economic and proprietary information. The 2000 Report highlights specific incidents wherein Taiwan engaged in attempts to acquire export-restricted products.

There have been various cases involving the illegal export, or attempted illegal export, of U.S. restricted, dual use technology to Taiwan, including: (1) laser gun aimer/ sights; (2) measuring probes controlled for nuclear nonproliferation and national security reasons; (3) centrifugal pumps that are controlled for chemical and biological weapons and anti-terrorism reasons; (3) Metal Organic Vapor Disposition tools controlled for national security and anti-terrorism reasons; (5) fluid control valves that are controlled for national security, foreign policy, nonproliferation or anti-terrorism reasons; radio communication encryption modules; and (7) controlled nickel powder.

(FORM at 5-7; footnotes and citations omitted.)

Additionally, in December 2005, a high U.S. official pled guilty to removing classified materials and to providing false statements to the U.S. Government. The official was engaged in a relationship with an intelligence officer employed by the foreign intelligence agency of the government of Taiwan. (FORM at 8.)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant an applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used 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, the administrative judge applies these guidelines 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, 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 in seeking to obtain 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

Under Guideline B, Foreign Influence, “[f]oreign 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.” AG ¶ 6.

Additionally, adjudications under Guideline B “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 U.S. citizens to obtain protected information and/or is associated with the risk of terrorism.” AG ¶ 6.

I have considered all of the disqualifying conditions under the Foreign Influence guideline. Applicant’s close contacts and relationships with family members who are citizens of Taiwan raise security concerns under disqualifying conditions AG ¶¶ 7(a) and 7(b). AG ¶ 7(a) reads: “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.” AG ¶ 7(b) reads: “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 provided some credible information to establish that his family friend was retired and no longer employed by the Taiwanese government. Accordingly, the SOR allegation at ¶ 1.d. is concluded for Applicant.

While the United States and Taiwan share common democratic values, Taiwan is strongly focused on protecting itself from possible military action from the PRC. Toward that end, Taiwan is known to be an active collector of U.S. economic and proprietary information that could assist in strengthening its defensive position, and it has targeted

U.S. government organizations in order to acquire U.S. technology. American citizens with immediate family members who are citizens or residents of Taiwan could be vulnerable to coercion, exploitation, inducements, or pressure by those seeking to acquire proprietary or otherwise restricted U.S. technology for the benefit of Taiwan.

Applicant's father and mother are citizens and residents of Taiwan. Applicant's father was employed by the Taiwanese government in the United States for ten years during Applicant's childhood. He now is employed as the president of a private company in Taiwan. Additionally, Applicant's maternal grandparents are citizens of Taiwan who reside in Canada. Applicant sees his parents about twice a year when they travel to the United States to visit him. He has monthly telephone contact with his grandparents in Canada.

Several mitigating conditions under AG ¶ 8 might be applicable to Applicant's case. If "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.," then AG ¶ 8(a) might apply. If "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 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," then AG ¶ 8(b) might apply. If "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," then AG ¶ 8(c) might apply.

Applicant's relationships with his parents and grandparents are neither casual nor infrequent, but are based on long-standing family ties of affection and obligation. Applicant is in close familial contact with his parents and grandparents, all of whom are citizens of Taiwan. His parents travel to the United States to visit him.

Taiwan is an active collector of U.S. proprietary information. Both of Applicant's parents have been educated in the United States, and they are familiar with the workings of the U.S. federal government. For approximately ten years, Applicant's father was employed by the Taiwanese government in the United States. Several of his relatives, now retired, served in the Taiwanese military. Nothing in the record suggests that Applicant's parents, grandparents, and extended family in Taiwan know of the nature of his work as a federal contractor, but if they did, this could raise additional conflict of interest concerns that might also threaten U.S. security interests. Applicant failed to meet his burden of providing information to rebut or mitigate the security concerns raised by AG ¶¶ 7(a) and 7(b). I therefore conclude that the mitigating conditions under AG ¶¶ 8(a), 8(b), and 8(c) are inapplicable.

Nothing in Applicant's answers to the Guideline B allegations in the SOR suggested he was not a loyal U.S. citizen. Section 7 of Executive Order 10865

specifically provides that industrial security clearance 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.”

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an Applicant’s eligibility for a security clearance by considering the totality of an applicant’s conduct and all relevant 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 potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is an intelligent and well-educated professional with a specialty in software development. He has close familial ties with his parents and grandparents, all of whom are citizens of Taiwan. He is in frequent contact with his family members. Applicant’s father was employed by the government of Taiwan and worked in the United States for ten years. Taiwan actively seeks to collect proprietary information from U.S. businesses and government contractors. Because of his close relationships with Taiwanese citizens, Applicant could be vulnerable to foreign exploitation, inducement, pressure, or coercion.

Overall, the record evidence leaves me with questions and doubts at the present time as to Applicant’s eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising under the foreign influence adjudicative guideline.

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: AGAINST APPLICANT

Subparagraphs 1.a. through 1.c.: Against Applicant

Subparagraph 1.d.: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Joan Caton Anthony
Administrative Judge