



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----, -----) ISCR Case No. 09-04408
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: *Pro se*

April 8, 2010

Decision

WHITE, David M., Administrative Judge:

Applicant is a dual U.S. and Taiwanese citizen whose parents, brother, and in-laws are resident citizens of Taiwan. His wife and other brother are also Taiwanese citizens living in the U.S. He twice obtained Taiwanese passports after becoming a U.S. citizen to fulfill his parents' wishes that he maintain active citizenship there, and facilitate his eventual inheritance of part of their estate. The evidence is insufficient to mitigate resulting security concerns. Based upon a review of the case file, pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Applicant submitted a security clearance application on March 4, 2005, and another one on January 6, 2009.¹ On September 9, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines B (Foreign Influence) and C (Foreign Preference). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of

¹GE 1; GE 3. Applicant submitted the second application after the processing of the first one stalled. (Tr. at 7-8.) He held an interim clearance, without incident, from 2005 to 2009.

Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines promulgated by the President on December 29, 2005, and effective within the Department of Defense on September 1, 2006.

Applicant acknowledged receipt of the SOR on September 15, 2009. He answered the SOR in writing on September 29, 2009, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on November 4, 2009, and the case was assigned to me on November 13, 2009. DOHA issued a Notice of Hearing on December 8, 2009, and I convened the hearing as scheduled on January 6, 2010. The Government offered exhibits (GE) 1 through 5, which were admitted without objection. Department Counsel also requested administrative notice of the facts concerning Taiwan as set forth in Hearing Exhibit (HE) II, and supported by Government publications submitted as Administrative Notice (AN) exhibits I through XV. Applicant agreed to the truth of these facts, of which I took administrative notice. Pertinent facts are set forth below. Applicant offered exhibits (AE) A and B, which were also admitted without objection, and testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on January 19, 2010.

Findings of Fact

Applicant is a 32-year-old employee of a defense contractor, where he began working in early 2005. He has no military service. He held an interim U.S. security clearance from 2005 to 2009, without incident. He is married with no children.² In his response to the SOR, he formally admitted each factual allegation. Applicant's admissions, including his statements in response to DOHA interrogatories,³ are incorporated in the following findings.

Applicant was born in Taiwan. He came to the United States in 1991, at age 13, to live with his aunt and uncle who had become naturalized U.S. citizens in 1989. Shortly after his arrival he was adopted by his aunt and uncle. He was unclear about the reasons for this, but acknowledged that it made him eligible for accelerated naturalization. He became a U.S. citizen in 2001, and has retained dual citizenship with Taiwan.⁴ Applicant's birth parents were granted U.S. permanent resident alien status in 1996, but relinquished it and returned to live permanently in Taiwan in 2004. They, together with one of his brothers, run a pharmaceutical importing business there.⁵

Applicant attended college and graduate school in the United States. He purchased a home here in 2005 for around \$400,000, which he estimated is currently

²GE 3 at §§ 1, 13-16, 26; Tr. at 7-8, 70-71.

³GE 4.

⁴GE 3 at §§ 8, 14; GE 4 at 4; Tr. at 58-61.

⁵GE 4 at 8-9; Tr. at 61-62.

worth around \$200,000. He also estimated that he has around \$180,000 in retirement and investment accounts in the U.S. He has no financial assets in Taiwan at present.⁶

Applicant's uncle and adoptive father is deceased. His aunt and adoptive mother lives in another state, near her two daughters. Applicant has limited contact with them. He has frequent and close contact with his birth parents and two brothers. The parents and his older brother are resident citizens of Taiwan. His younger brother is a dual U.S. and Taiwanese citizen, and resides near Applicant in the U.S. Applicant has visited his family in Taiwan about once a year over the past ten years. Since his parents returned to Taiwan, they have come back to visit him and his younger brother about once a year as well. They are in regular contact by telephone and email.⁷

Applicant met his wife in the United States in 2005, where she finished graduate school and had been working for about three years. They married in 2008, with ceremonies in both Taiwan and the United States. She is a permanent resident alien here, and is a citizen of Taiwan. She is employed as a social worker by a non-profit company that assists elderly Asian-Americans. Her parents are citizen residents of Taiwan, and her mother works for the national tax collection agency there. Her father is retired from a career in a Taiwanese government administration office, and may still have some affiliation with that government. Applicant's brother-in-law is a Taiwanese resident citizen, employed by a power plant. Applicant and his wife maintain regular contact with her parents.⁸

Applicant maintains a close relationship with his birth parents, and admits that they continue to have significant influence over him through their close bonds of affection. Applicant was issued a Taiwanese passport in 1996 that expired in 2002. Thereafter, he traveled using his U.S. passport (issued in 2001 and due to expire in 2011) until his parents encouraged him to obtain another Taiwanese passport during a visit in January 2006. That passport was due to expire in 2016, but Applicant had it destroyed by his company's facility security manager in March 2009, about a month after his security interview by an investigator from the Office of Personnel Management. He said that he did so because fellow employees said that it would improve his chances of obtaining a security clearance.⁹

Applicant visited his family in Taiwan again in May and June 2009. During that visit, his parents discussed their desire for him to inherit some of their property in Taiwan, and that he needed to maintain his Taiwanese citizenship in order to be eligible

⁶GE 3 at § 10; Tr. at 55-57.

⁷GE 4 at 6-10; Tr. at 37-40, 49-54, 67-68.

⁸GE 4 at 6-7; Tr. at 63-64.

⁹GE 2; GE 4 at 5-6; Tr. at 42-43.

to do so. His parents own some land and a business, and “are pretty well off.”¹⁰ Since he has not exercised any other rights of his citizenship there, they all agreed that he should renew his Taiwanese passport. He did that in late June 2009, and obtained an endorsement indicating that he is a dual citizen and resident of the United States so he would not be subject to compulsory military service in Taiwan. He reported his possession of this new passport in his July 2009 response to DOHA interrogatories. After the revocation of his interim clearance and issuance of his SOR, he was again advised by company personnel that possession of an active foreign passport would seriously impede his eligibility for a clearance. He discussed the matter again with his parents, and obtained their agreement to destroy this new passport in order to try to obtain a security clearance. On the day before his hearing, his facility security officer destroyed this new passport at his request.¹¹

Applicant’s supervisor for the past two years wrote a letter of reference for him. He said that they work in a very challenging program, and that Applicant is “a very conscientious, dependable, honest and diligent worker.”¹² He also described Applicant’s professionalism, timeliness, positive approach to work, dedication, and willingness to help others. Applicant provided no further evidence concerning the quality of his professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. During the hearing, Applicant appeared reluctant about renouncing his Taiwanese citizenship, and highly dedicated to maintaining close relations with his birth parents.¹³

I take administrative notice of the facts concerning Taiwan that are set forth in HE II, and they are incorporated herein by reference. Of particular significance are the facts that Taiwan is among the most active collectors of U.S. economic and proprietary information, and has been involved with numerous attempts to illegally acquire restricted U.S. technology. Moreover, the People’s Republic of China (PRC) maintains substantial intelligence collection activities in Taiwan. The primary mission of Taiwan’s military is the defense of Taiwan against the PRC, which is seen as the predominant threat and which has not renounced the use of force against Taiwan.

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions (DCs) and mitigating conditions (MCs), which are to be used in evaluating an applicant’s eligibility for access to classified information.

¹⁰Tr. at 62.

¹¹GE 4 at 20; GE 5; AE B; Tr. at 34-36, 43-49, 66-67, 70-71, 77-78.

¹²AE A.

¹³See Tr. at 34-38, 46-50, 66-70.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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, "[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant 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."

A person applying for access to classified information seeks to enter 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.

Analysis

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern 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. Department Counsel argued that the evidence in this case established one foreign influence DC: “(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.”¹⁴ Although not asserted by Department Counsel, AG ¶ 7(d), “sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure or coercion;” was also raised by substantial evidence due to his loving relationship with his wife and her family.

Taiwan is known to target U.S. citizens to obtain protected information, and has a significant interest in acquiring defense-related and advanced technology in Applicant’s area of expertise. The PRC also has substantial intelligence operations active in Taiwan. Accordingly, his strong family connections there have more potential to generate heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion under AG ¶¶ 7(a) and (d) than would similar connections in many other countries.

Applicant shares living quarters with his wife, who is a citizen of Taiwan, and whose parents and brother are resident citizens of Taiwan. His father, mother, and elder brother are also resident citizens of Taiwan. These immediate-family relationships are all presumed to be close and loving, and Applicant offered no evidence to the contrary. In fact, he confirmed his strong devotion and loyalty to his family, and regretted not having an even closer relationship with his in-laws.

These facts meet the Government’s burden of production by raising the aforementioned foreign influence DCs. Applicant’s regular, close, and personally significant contacts, relationships, and connections with Taiwan shift a heavy burden to him to prove mitigation under applicable Appeal Board precedent.

AG ¶ 8 provides conditions that could mitigate security concerns. Those with potential application in mitigating AG ¶¶ 7 (a) and (d) security concerns¹⁵ are:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those

¹⁴Tr. at 16-17, 73.

¹⁵The Government did not allege security concerns under AG ¶ 7(b), so the corresponding MC at AG ¶ 8(b) is not separately analyzed, but the issues that overlap with other MCs are addressed below.

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.; and

(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.

Applicant did not demonstrate that it is unlikely that he could be placed in a position of having to choose between the interests of a foreign individual or government and those of the United States due to his close and ongoing family ties in Taiwan. He has strong emotional relationships with his parents, brother, and in-laws (through his wife), all of whom are resident citizens there. He has visited family in Taiwan at least annually, on average, over the past decade and his parents frequently visit him in the United States as well. His father-in-law is retired from a career in the Taiwanese government, and his mother-in-law still works for that government. Accordingly, he failed to establish the mitigating conditions set forth in AG ¶¶ 8 (a) and (c).

Guideline C, Foreign Preference

Under AG ¶ 9 security concerns involving foreign preference arise because, “[w]hen 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.”

AG ¶ 10 describes conditions that could raise a security concern and may be disqualifying under this guideline:

(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;
- (2) military service or a willingness to bear arms for a foreign country;
- (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;
- (4) residence in a foreign country to meet citizenship requirements;
- (5) using foreign citizenship to protect financial. or business interests in another country;

(6) seeking or holding political office in a foreign country;

(7) voting in a foreign election;

(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen;

(c) performing or attempting to perform duties, or otherwise acting, so as to serve the interests of a foreign person, group, organization, or government in conflict with the national security interest; and

(d) any statement or action that shows allegiance to a country other than the United States: for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship.

Department Counsel argued that Applicant's actions to obtain Taiwanese passports twice after becoming a naturalized U.S. citizen, in order to protect his ability to inherit part of his parent's estate, established the foreign preference DC set forth in AG ¶¶ 10(a)(1) and (5).¹⁶ This position has merit, but misses additional security concerns established under AG ¶¶ 10(b) and (c). Applicant's passport applications were affirmatively intended to obtain recognition of his continuing Taiwanese citizenship by that government. They were submitted to serve the interests of his foreign parents, after their voluntary relinquishment of permanent U.S. resident status in favor of resuming residence in Taiwan, and with full knowledge that such conduct was potentially in conflict with the U.S. national security interest. As he explained:

During my visit to Taiwan in May of this year (2009), my parents (birth parents . . .) communicated to me that they want me, along with my two birth brothers . . . to be an heir to their properties in Taiwan. My inheritance has special significance to them because they often feel that they lost me when they gave me up for adoption by my aunt . . . in 1991. I have little interest in the properties and inheritance, but I desire to honor my parents and their wishes. In order to be a legal heir in Taiwan, I have to retain my Taiwanese citizenship. Because I do not live in Taiwan, nor pay taxes to the Taiwanese government, nor exercise any rights of Taiwanese citizenship; in order to maintain my citizenship, I have to have a Taiwanese passport, with which the Taiwanese government can have a record of my entering and departing when I visit Taiwan. For this reason, I have renewed my Taiwanese passport, and it will be used only in conjunction with my U.S. passport whenever I visit Taiwan. [Emphasis in original.] Knowing that this fact may jeopardize the granting of my security clearance, I choose willfully and voluntarily to disclose this information.¹⁷

¹⁶Tr. at 72-73.

¹⁷GE 4 at 20.

AG ¶ 11 provides conditions that could mitigate foreign preference security concerns:

- (a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;
- (b) the individual has expressed a willingness to renounce dual citizenship;
- (c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;
- (d) use of a foreign passport is approved by the cognizant security authority;
- (e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated; and,
- (f) the vote in a foreign election was encouraged by the United States Government.

Applicant failed to establish mitigation under AG ¶¶ 11(a) or (b). Although his dual citizenship is based on his birth in Taiwan and his parents' citizenship there, he has taken active measures after obtaining U.S. citizenship to reaffirm and maintain Taiwanese citizenship. His tentative expression of willingness to renounce that citizenship if required to obtain a U.S. security clearance was neither sincere nor convincing, and was conditioned on obtaining his parents' approval. The only other mitigating condition potentially raised by the evidence is AG ¶ 11(e). However, Applicant's last-minute destruction of his 2009 passport does little to alleviate the security implications of his actions to evince his ongoing Taiwanese citizenship. The same family influences that caused him to twice renew that passport remain in place, and he can easily obtain another one as he did less than a year ago.

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 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 pertinent facts and circumstances surrounding this case. Security concerns in this case do not involve any personal misconduct, dishonesty, irresponsibility, or disloyal activity by Applicant. The primary whole-person issues of concern under these circumstances are his completely understandable and appropriate relationships with Taiwanese relatives, and his personal connection to Taiwan. It would be unrealistic to conclude that he has no ongoing obligations and loyalties toward his family members in Taiwan, and he provided insufficient evidence to support such a finding. These considerations raise the potential for pressure, coercion, exploitation, or duress, and the likelihood of continuation or recurrence. (AG ¶¶ 2 (8) and (9).) Applicant offered insufficient evidence of professional, social, or financial ties to the United States that might weigh in favor of a whole-person finding of exceptional allegiance to United States interests.

Overall, the record evidence creates substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising from foreign influence and foreign preference considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:

AGAINST APPLICANT

Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant

Paragraph 2, Guideline C:

AGAINST APPLICANT

Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant (Noting that this passport was destroyed on Jan. 5, 2010.)

Conclusion

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

DAVID M. WHITE
Administrative Judge