



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 09-05200
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

June 22, 2010

Decision

LOKEY-ANDERSON, Darlene, Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on November 12, 2010. (Government Exhibit 1). On December 18, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines B and C 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 January 21, 2010, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on February 18, 2010. A notice of hearing was issued on March 1, 2010, scheduling the hearing for April 14, 2010. At the hearing the Government presented two exhibits, referred to as Government Exhibits 1 and 2. The Applicant presented nine exhibits, referred to as Applicant's Exhibits A through I, and he testified on his own behalf. The official transcript (Tr.) was received on April 26, 2010. 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 and the Applicant requested that I take administrative notice of certain facts concerning the current political conditions in Taiwan and Hong Kong. I have also taken administrative notice of the laws concerning dual Taiwan nationals, and dual Canadian nationals, with respect to passport requirements when entering and exiting their countries. 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.

Motion to Amend SOR

Department Counsel requested the following amendments to the SOR. Applicant had no objection. Allegation 1(a), was amended to state: "Your parents are citizens of both Canada and Taiwan and reside in Taiwan." Allegation 1(b) was amended to state: "Your wife is a citizen of the United Kingdom, Canada and Hong Kong and resides in the United States." Allegation 1(d) was amended to state: "Your mother-in-law is a citizen of both Canada and Hong Kong and resides in Hong Kong." Allegation 1(e) was amended to state: "Your sister-in-law is a citizen of the United Kingdom, Canada and Hong Kong and resides in Hong Kong." (Tr.pp. 37-40)

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 34 years of age and has a Doctorate Degree in Electrical Engineering. He is employed as a Electrical 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 1976. After college, twelve years ago, in 1998, at the age of 22, the Applicant moved to the United States. He became a naturalized United States citizen in 2006. He states that he is grateful to the United States for the opportunities it has offered him, which include numerous jobs, a Masters and Doctorate Degree, many friends, mentors and colleagues, and most importantly, a place where his wife and newborn son call home. He is a citizen of Taiwan, Canada and the United States. He possesses passports from all three countries, even though he states that his loyalties remain in the United States. (Tr. P. 70).

The Applicant's parents, who were both born in Taiwan, are citizens of Taiwan and Canada, and they reside in Taiwan. They also live in Canada about three months of the year, enjoying their retirement. His father was a businessman and his mother was a homemaker. They have no affiliation with the Taiwanese or Canadian Governments whatsoever. Both Taiwan and Canada provide national health care for its

citizens and his parents, who are in their late 60's early 70's, find this to be important. Applicant contacts them by telephone or computer skype about every other week. (Tr. pp. 67-68).

His wife, who is of Taiwanese decent, is a citizen of the United Kingdom, Canada and Hong Kong. She resides in the United States with the Applicant as a lawful permanent resident. (Applicant's Exhibit A). She applied for permanent resident status in the United States, when she married the Applicant on August 28, 2007. She will be eligible to apply for naturalization and become a citizen in October 2010.

The Applicant's three sisters are citizens of Taiwan and Canada. Two of them reside in Taiwan. The other lives in Canada. In January 2007, the Applicant petitioned for all three sisters to immigrate to the United States. (Applicant's Exhibit B). The Applicant is currently awaiting available Visa numbers from the Department of State. He communicates with his sisters about once or month or so. (Tr. p. 73). None of them works for or receives financial benefits from the Taiwanese or Canadian Governments.

Applicant's mother-in-law and sister-in-law are citizens of Canada and Hong Kong and reside in Hong Kong. His mother-in-law is working for a Christian publishing house and has never worked for the government of Hong Kong. The Applicant has limited contact with his mother-in-law, restricted to customary greetings for birthdays, special occasions or holidays over the telephone. He speaks with his sister-in-law, a piano teacher, about twice a year. He and his wife have visited them in Hong Kong during their travels. His father-in-law, who was a music teacher, is deceased.

The Applicant has traveled to either Taiwan or Hong Kong on six separate occasions in the past five years. Each trip was family related. In November 2005, he traveled to Taiwan to attend his father's funeral; in December 2005, he traveled to Hong Kong to visit his wife and her family; and in December 2007, he traveled to Taiwan to make arrangements for his traditional wedding ceremony. In May 2007, he traveled to Hong Kong to visit his wife and finalize wedding details; and in December 2007, he traveled to Taiwan for his traditional wedding ceremony. In October 2008, he and his wife traveled to Hong Kong to visit their families.

The Applicant has no financial assets of any kind in Taiwan or in Canada. His financial assets in the United States total in excess of \$1.2 million. (Tr. p. 88.)

Paragraph 2 (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.

The Applicant is a citizen of Taiwan, Canada and the United States. He acquired his Taiwanese citizenship by birth in Taiwan, in 1976. He acquired his Canadian citizenship from his parents in 1994. He obtained his United States citizenship in November 2006.

The Applicant currently possesses a Canadian passport. He obtained it in August 2004, before becoming a naturalized United States citizen, and before acquiring a United States passport, in December 2006. It expired in August 2009, and is no

longer valid. However, the Applicant has not destroyed it. The Applicant stated that he has no intention of renewing it. (Tr. p. 83). Even though the Applicant had a valid United States passport, he used his Canadian passport when traveling to Canada. Applicant stated that he used his Canadian passport in compliance with Canadian law.

The Applicant also possesses a Taiwanese passport. He acquired this passport in February 2001, before becoming a naturalized United States citizen, and before acquiring his United States passport. He used his Taiwanese passport, instead of his United States passport to travel to Taiwan. Applicant stated that he used his Taiwanese passport in compliance with Taiwanese law. This passport is still valid and will remain so until 2011. He states that his intentions are not to renew it. (Tr. p. 83).

The Applicant indicated that he would like to keep his Canadian and Taiwanese passports to use to enter and exit those countries for convenience purposes, but would consider giving them up if he has to for security clearance purposes. (Tr. p. 96).

Letters of recommendation from the Applicant's supervisor, professional colleagues and friends are favorable. (Applicant's Exhibit I.) Applicant's 2009 performance review is favorable. (Applicant's Exhibit G.) Applicant has received numerous team awards for his contributions at work. (Applicant's Exhibit H.) He has also volunteered in the community at the local food bank. (Applicant's Exhibit D.)

I have taken official notice of the following facts concerning 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.

I have taken official notice of the following facts concerning Hong Kong. Hong Kong's foreign relations and defense are the responsibility of China. Hong Kong is a separate customs territory and economic entity separate from the rest of China and is able to enter into international agreements on its own behalf in commercial and economic matters. Hong Kong, independently of China, participates as a full member of numerous international economic organizations. The United States policy toward Hong Kong is grounded in a determination to promote Hong Kong's prosperity, autonomy, and way of life, as stated in the U.S. Hong Kong Policy Act of 1992. The United States maintains substantial economic and political interests in Hong Kong. The United States supports Hong Kong's autonomy under the "One Country, Two Systems" framework by conducting and implementing bilateral agreements, promoting trade and investment; broadening law enforcement cooperation; bolstering educational, academic and cultural links; supporting high-level visits of U.S. officials and serving the large community of U.S. citizens and visitors. The United States has substantial economic and social ties with Hong Kong.

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.

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.

Conditions that could mitigate security concerns:

None.

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.

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 behavioral 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 eligible for a security clearance. Eligibility for access to classified information is predicated 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) and Guideline C (foreign preference) 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 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 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*, and 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* apply. None of the mitigating conditions are applicable.

The evidence shows that the Applicant's has close emotional attachments to his wife, and his parents and sisters in Taiwan, and to a lesser extent, his mother-in-law and sister-in-law in Hong Kong. He telephones and skypes with his parents every other week and travels to see them regularly. He and his wife also speak to her mother in Hong Kong. This close bond or strong evidence of affection could potentially cause the Applicant to become subject to foreign exploitation, inducement, manipulation, pressure, or coercion. 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).

The Applicant is a citizen of Taiwan, Canada and the United States. After becoming a United States citizen and obtaining a United States passport, he has traveled to Taiwan on a number of occasions using his Taiwanese passport, and plans to do more traveling in the future. He currently possesses a valid Taiwanese passport. Under Foreign Preference, Disqualifying Conditions 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* applies, (1) *possession of a current foreign passport*. None of the mitigating conditions are applicable.

He has not formally renounced his Taiwanese and/or Canadian citizenships nor has he surrendered his foreign passports. He has not cut his foreign ties. Although he states that his loyalties are to the United States, he is showing mixed loyalty by possessing a valid Taiwan passport. There are too many questions left unanswered in this case. Under these particular circumstances, I find against the Applicant under Guideline C (Foreign Preference).

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
- Subpara. 1.e.: Against the Applicant
- Subpara. 1.e.: 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

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