



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



In the matter of:)
)
) ISCR Case No. 09-05557
)
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: *Pro se*

March 3, 2011

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

On November 12, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) as part of his employment with a defense contractor. (Item 4) On July 8, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns for foreign influence under Guideline B and foreign preference under Guideline C. (Item 1) 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 in the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on July 30, 2010. (Item 2) He admitted two and denied three of the SOR factual allegations under Guideline C. He admitted the

four SOR factual allegations under Guideline B. He elected to have the matter decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on November 24, 2010. Applicant received a complete file of relevant material (FORM) on January 7, 2011, and was provided the opportunity to file objections, and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant provided additional information on January 24, 2011. The case was assigned to me on January 31, 2011

Procedural Issues

Department Counsel in the FORM asked that administrative notice be taken of certain facts concerning Taiwan (Item 7). I have considered the request and the documents provided by Department Counsel. Administrative notice is taken of the facts as noted below in the Findings of Fact.

Findings of Fact

After a thorough review of the pleadings and exhibits, I make the following essential findings of fact.

Applicant is a 50-year-old project scientist who has worked for his employer for approximately six years. He will be on projects in the near future requiring access to classified information. Applicant was born in Taiwan where he completed his undergraduate education. While in Taiwan, he also served his mandatory two-year tour of military service in the Taiwan Army. He came to the United States in 1988 to attend graduate school and earned a Master's degree in 1990. He continued his studies and earned a doctorate at a United States University in 1995. He obtained grants to finance his graduate studies and living expenses while pursuing his studies in the United States. Applicant has worked for his present employer since receiving his doctorate. He is single having never married. He became a United States citizen in October 2006, and received a United States passport in December 2006. He was not required to renounce his Taiwanese citizenship when he received his United States citizenship. He is a dual citizen of the United States and Taiwan. (Item 6 at 5-6)

Applicant admits that his mother and father are residents and citizens of Taiwan. His parents owned a clothing store in Taiwan but are now retired. He admits that he has three siblings who are residents and citizens of Taiwan. His oldest brother is a restaurant owner and his next oldest brother is a newspaper distributor. His sister works in the restaurant business. His oldest brother and his sister live with his parents. His other brother lives nearby with his family. None of his immediate family has worked for the Taiwanese government or in any intelligence position. He has four to five monthly contacts with his family in Taiwan by telephone or e-mails. Applicant admits he has nieces and nephews who are citizens and residents of Taiwan, but he is not close to them. (Item 6 at 2-3) Applicant admits that since 2004, he has traveled to Taiwan every February during the Chinese New Year to visit his family. (See Answer to SOR)

Applicant admits he has a Taiwanese passport that was renewed in 2002 and does not expire until July 19, 2012. He uses his Taiwanese passport to travel to and from Taiwan since it expedites his entry and exit. He last used it in February 2010. However, he has not used the passport for travel to Canada as partially alleged in SOR 1.b. Applicant traveled to Canada in 2007 using his United States passport. He traveled to Canada prior to becoming a United States citizen in 2006 and using his Taiwan passport, the only passport he had at the time. (Item 6; Item 2, Applicant's Response to the SOR, dated July 30, 2010; Applicant's Response to the FORM, dated January 24, 2011)

Applicant denies voting in Taiwanese elections since becoming a United States citizen. He last voted in a Taiwanese election in 1986. Elections in Taiwan are in October and November and Taiwan does not have an absentee voting procedure. He travels to Taiwan only in January or February each year during the Chinese New Year and not in October or November. (Response to SOR, dated July 30, 2010; Response to FORM dated January 24, 2011)

Applicant denies that he is required to visit Taiwan every two years to maintain his Taiwanese citizenship. He does admit that he has to visit Taiwan every two years to maintain his status as a Taiwan resident. Appellant also admits that he received a monetary payment from Taiwan in 2009 as a Taiwan citizen as part of an economic stimulus program, (Response to SOR, dated July 30, 2010)

During World War II and after, a civil war was fought on the mainland of China between the Chinese Communist Party and the Nationalist Chinese. In 1949, the Chinese Communist Party was victorious and established a government on the mainland. The Nationalist Chinese fled to the island that is now Taiwan and established a government. Taiwan has developed steadily since then and is now the world's 17th largest economy. Taiwan became a member of the World Trade Organization in 2002, further expanding its trade opportunities and further strengthening its standing in the global economy. This prosperity established economic and social stability.

Until 1986, Taiwan's political system was effectively controlled by one party, the Kuomintang. Since ending martial law in 1987, Taiwan has taken dramatic steps to improve respect for human rights and create a democratic political system. The United States has been committed to maintaining cultural, commercial, and other nonofficial relations with Taiwan since January 1979, when it formally recognized the government of the People's Republic of China (PRC) as the sole legal government of China. By formal act of Congress (Taiwan Relations Act of 1979), the United States is committed to provide Taiwan with military defensive arms in support of Taiwan's security and stability in the region. The United States also stated it would maintain cultural, commercial, and other unofficial relations with the people of Taiwan. Despite the United States clear and consistent position that Taiwan and the mainland are part of one China, the United States expanded the commercial ties with Taiwan and is supportive of Taiwan's membership in international organizations, such as the World Trade

Organization and the Asian Development Bank (See Item 7, United States, Department of State's Background Note: Taiwan, dated November 3, 2010).

While still pursuing a closer relationship with Taiwan, the official United States position on Taiwan and mainland China seems to be a criticism of mainland China's buildup opposite Taiwan with periodic cautions and warnings to the effect that United States support for Taiwan is not unconditional, but has limits. Smooth United States and PRC relations are an important tool in cooperating against terrorism and maintaining stability in the Pacific region. Faced with competing pressures and the continuing transformation on both the PRC and Taiwan systems, the United States government may be facing new and more difficult policy choices in the future. The current dynamic as Taiwan moves closer to the PRC poses difficult, competing policy challenges for the United States. (See Item 7, Congressional Research Service Report to Congress: Taiwan: Recent Developments and U.S. Policy Choices, dated November 2, 2009).

The Government claims through Administrative Notice that Taiwan poses a threat to national security because, in the past, it was one of the countries most actively engaged in industrial espionage and the collection of foreign economic information. The request cites to the Annual Report to Congress on Foreign Economic Collection and Industrial Espionage of 2000. This report lists Taiwan as one of the most active collectors of industrial and economic intelligence. However, the Government also attached to its request the more recent Annual report from 2008. The report does not list Taiwan as being one of the biggest collectors of economic and industrial espionage. It does list the PRC and Russia as the most active collectors. The report states the United States is targeted by a large number of foreign countries for economic and industrial espionage. The report notes that the foreign private sector is the most active collector of this type of economic and industrial intelligence, but there is ample evidence that foreign intelligence services and other government organizations remain aggressive in collecting information by using the private sector to collect information for them and by their own continued direct intelligence gathering operations.

The report lists a number of factors that could cause concern for the United States. Among the concerns are the number of foreign visitors from any country to United States sensitive sites, the number of non-immigrant persons from a country that are admitted as visitors to the United States, and the number of requests from a country for visits to military and defense industry sites. There are a large number of visitors from Taiwan to the United States for business, pleasure, or other purposes. Taiwan does not appear to be any more active in the collection of economic and industrial intelligence than many other allied countries. (See Item 7)

The Government also presented information concerning individuals in the United States convicted of engaging in espionage practices on behalf of Taiwanese companies or officials, as well as companies that violate export control requirements in sending items to Taiwan. Some of these cases involve individuals in the United States, both native born and foreign born and both citizens and non-citizens of the United States, that formed friendships with Taiwan Intelligence agents and then provided the agents

with classified information. While the government presented information only on Taiwan cases, it is not difficult to assume that there are cases that pertain to other countries as well. The fact that there are cases of Taiwan intelligence agents accepting intelligence information from sources in the United States, no matter how obtained, does raise security concerns.

The relationship between the United States and Taiwan is defined in the Taiwan Relations Act which recognizes Taiwan. (Public Law 96-8) Taiwan has a long history of friendly relations with the United States, including substantial levels of foreign trade. Taiwan is an ally and friend but can also pose a security threat because of its activities and efforts to obtain economic, industrial, and national security information.

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 over-arching adjudicative goal is a fair, impartial and common sense 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 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.

Analysis

Guideline B: 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 the 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 consideration 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 ¶ 6)

Applicant's parents, siblings, and nieces and nephews are residents and citizens of Taiwan. Applicant has frequent and continuing contact with his parents and siblings in Taiwan contacting them telephonically or by e-mail a number of times a month. He has little contact with his nieces and nephews. Applicant returns to Taiwan each year during the Chinese New Year to visit his family. These contacts and travel to see family are a security concern and raise Foreign Influence Disqualifying Conditions (FI DC) AG ¶ 7(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); and FI DC AG ¶ 7(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). The Government's security concern is based on the strength and depth of Applicant's connections to Taiwan through his family.

The mere existence of foreign relationships and contacts is not sufficient to raise the above disqualifying conditions. The nature of Applicant's contacts and relationships must be examined to determine whether it creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. "Heightened" is a relative term denoting increased risk compared to some normally existing risk that can be inherent anytime there are foreign contacts and relationships. A factor that heightens the risk in Applicant's case is the extent, degree, and level of his connection to his family in Taiwan. Under these guidelines, the potentially conflicting loyalties may be weighed to determine if an applicant can be expected to resolve any conflict in favor of the United States interest.

Applicant raised facts to mitigate the security concerns for the contact and relationship with his family in Taiwan. I have considered Foreign Influence Mitigating Conditions (FI MC) 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.); FI MC AG ¶ 8(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 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); and FI MC AG ¶ 8(c) (Contact or communication with foreign citizens is so casual or infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation).

Applicant's contact with his parents and siblings in Taiwan is strong and frequent. He talks to them often and sees them yearly. They are not members of any political organization and do not hold any government office, but are ordinary citizens leading normal lives. He has little contact with his nieces and nephews, however. The extensive contacts with family members place a heavy burden on Applicant in mitigating the disqualifying conditions and the security concerns. In evaluating the potential conflict of interests between his family and the interests of the United States, I considered that Taiwan is an ally of the United States, has a defense agreement with the United States, and is one of the United States' substantial trading partners. However, there are strong indications that elements in Taiwan target and seek economic and sensitive information from their contacts in the United States. Taiwan or elements in Taiwan could engage in espionage against United States interests. A friendly relationship is not determinative, but it makes it less likely that a foreign government would attempt to exploit a United States citizen through relatives or associates in that country. Even friendly countries may engage in espionage against United States economic, scientific, or technical interest. Even though Taiwan is not a hostile country and its interests are not inimical to the United States, it is reasonable to consider that Taiwan could take an action that may jeopardize their friendly position with the United States if it needed trade and defense information from sources in the United States. Based on an evaluation of all of these factors, Applicant has not met his burden to establish that his family members in Taiwan will not place him in a position of having to choose between the interests of his family and the interests of the United States.

Applicant has also raised FI MC ¶ 8(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 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). Applicant came to the United States 12 years ago to earn a graduate degree. He became a United States citizen five years ago after earning his doctorate degree. Applicant has kept in frequent contact with his family and returned to Taiwan every year for at least the last seven years. Applicant has a strong sense of loyalty and obligation to his family in Taiwan. While he has a connection

and relationship to the United States, he has not established that it is stronger than the connection and sense of obligation he has to his family in Taiwan. He has not demonstrated that his feeling of loyalty to the United States will overcome his strong feelings and relationship with his family in Taiwan. Accordingly, FI MC AG ¶ 8(a), FI MC AG ¶ 8(b), and FI MC AG ¶ 8(c) do not apply. Applicant has not met his heavy burden to show that his contacts and relationships with Taiwan do not cause a security concern. I conclude Applicant has not mitigated security concerns for contacts with Taiwan.

Guideline C, Foreign Preference

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he may be prone to provide information or make decisions that are harmful to the interests of the United States. (AG ¶ 9) The principal goal of the foreign preference assessment is to determine the risk, based on foreign associations, that information may be compromised if access to sensitive information is granted. It is not a measure of Applicant's loyalty to the United States.

Applicant is a dual citizen of Taiwan and the United States. He was born and raised in Taiwan and came to the United States as a young man in his twenties to earn a graduate degree. He received his master's degree in 1988 and a doctorate in 1995, and became a United States citizen in 2006. He received a United States passport in 2006 after becoming a United States citizen. He has a Taiwanese passport that was issued in 2002 but does not expire until 2012. He uses this passport to ease entry into Taiwan when he travels there yearly to visit his family. He is not required to travel to Taiwan to remain a Taiwanese citizen but is required to register every two years to maintain his status as a resident of Taiwan. He also received a payment from Taiwan in 2009 as a citizen and resident of Taiwan. However, he has not voted in a Taiwanese election since becoming a United States citizen. His actions that exercise his Taiwan citizenship status raise Foreign Preference Disqualifying Condition (FP DC) AG ¶ 10(a) (Exercise of any right, privilege, or obligation of foreign citizenship after becoming a United States citizen or through the foreign citizenship of a family member. This includes but is not limited to: (1) possession of a current foreign passport), and (5) using foreign citizenship to protect financial or business interest in another country.

In response to this disqualifying condition, Applicant raised Foreign Preference Mitigating Conditions (FP MC) AG ¶ 11(b) (The individual has expressed a willingness to renounce dual citizenship); and FP MC AG ¶ 11(e) (The passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated). The United States Supreme Court has recognized a right under the United States Constitution for United States citizens to have a dual citizenship with another country. (*Afroyim v. Rusk*, 387 U.S. 253 (1967)). The mere fact that a United States citizen is eligible for dual citizenship with another country is not a security concern. Applicant has stated he does not intend to renounce his dual citizenship with Taiwan. His failure to renounce dual citizenship is not a disqualifying condition since the renunciation of a dual citizenship is very often a meaningless gesture because of the citizenship laws of the other nation.

Applicant's exercise of dual citizenship does create a security concern. He has a foreign passport and used it for his travels. He still possesses a current Taiwanese passport and does not intend to relinquish control of the passport. While he has not voted in a foreign election since becoming a United States citizen, he has used his Taiwanese citizenship to maintain his status as a resident of Taiwan and to obtain a monetary benefit offered to citizens and residents of Taiwan. His exercise of dual citizenship shows there may be a conflict between his loyalty to the United States and his loyalty to Taiwan. Applicant has not mitigated security concerns for his exercise of Taiwanese citizenship.

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 access to sensitive information 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. The whole-person concept requires consideration of all available information about Applicant, not a single item in isolation, to reach a determination concerning Applicant's eligibility for access to classified information. Applicant has a frequent and close relationship and contact with his family in Taiwan. He possesses a current Taiwanese passport which he uses, and travels to Taiwan to maintain his status as a Taiwan resident. In addition, he received a monetary benefit from Taiwan based on his Taiwanese citizenship and residence. These facts alone are sufficient to raise security concerns for Applicant's potential vulnerability to coercion, exploitation, or pressure. In addition, Applicant has not established he has such deep and longstanding relationships and loyalties to the United States so that he can be expected to resolve any conflict of interest in favor of the United States. While Taiwan is an ally of the United States, there is a security concern because of the efforts of Taiwan or on the behalf of Taiwan to gain sensitive United States economic and technical information. Applicant's connections to Taiwan create a heightened risk related to national security. Applicant's exercise of dual citizenship and his relationship

and connection with family members in Taiwan leaves me with questions and doubts about Applicant's eligibility and suitability for access to classified information. For all these reasons, I conclude Applicant has not met the heavy burden of mitigating potential security concerns arising from his contacts in Taiwan and his exercise of Taiwanese citizenship. Applicant has not mitigated the security concerns arising from foreign influence and foreign preference, and access to classified information is denied.

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 C:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant except for travel to Canada
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraphs 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	Against 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 access to classified information. Eligibility for access to classified information is denied.

THOMAS M. CREAN
Administrative Judge