



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 09-06257
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

December 16, 2010

Decision

MOGUL, Martin H., Administrative Judge:

On April 30, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines C and B 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 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.

On May 24, 2010, Applicant replied to the SOR (RSOR) in writing, and he requested a hearing before an Administrative Judge. I received the case assignment on June 28, 2010. DOHA issued a notice of hearing on August 9, 2010, and I convened the hearing as scheduled on September 10, 2010. The Government offered Exhibits 1 through 4, which were received and admitted without objection. Applicant testified on his own behalf and submitted Exhibits A through S, which were also admitted without objection. DOHA received the transcript of the hearing (Tr) on September 23, 2010. I granted Applicant's request to keep the record open until September 24, 2010, to

submit additional documents. Applicant timely submitted three additional documents, which have been identified and entered into evidence collectively as Exhibit T. Based upon a review of the case file, pleadings, exhibits, and the testimony of Applicant, eligibility for access to classified information is granted.

Request for Administrative Notice

Department Counsel requested that I take administrative notice of certain facts relating to the country of Taiwan. The request and the attached documents were admitted into evidence as Exhibit 4. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In his RSOR, Applicant admitted that SOR allegations 1.a., and 2.a. through 2.g., are correct. The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, the admitted documents, and the testimony of Applicant, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 42 years old. He was born in Taiwan, and served in the Taiwanese army from 1990 to 1992, but he has had no contact with the military since that time, nor will he receive any benefits from his service. He came to the United States in 1993, when he was 25, and he became a United States citizen in 2007. Applicant was married from 2000 to 2009, and his former wife, who was born in Taiwan, also became a United States citizen.

Applicant received a Bachelor of Science degree in Electronic Engineering in 2007 from United States university. He is employed by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

Paragraph 1 (Guideline C - Foreign Preference)

1.a. It is alleged in the SOR that as of April 28, 2009, Applicant possessed a Taiwanese passport that was issued on December 4, 2000, and would not expire until December 4, 2010. Applicant testified that he filled out a form in Taiwan to have his Taiwanese passport revoked. He conceded that he used it on one occasion after he became a United States citizen, as he was unaware that he should be using a U.S. passport once he became a United States citizen. (Tr at 48 - 53.) Exhibit A is a letter, dated September 7, 2010, from the assistant Facility Security Officer for Applicant's current employer, in which she certified that she destroyed the Republic of China passport of Applicant on September 7, 2010, in his presence.

Applicant averred that when he had his passport revoked, he also informed the Taiwanese Government that he was renouncing his Taiwanese citizenship. (Tr at 54 -

55.) He believes that he is only a United States citizen since he renounced his Taiwanese citizenship, but if he learned that he was still considered a citizen of Taiwan, he would renounce that citizenship. Finally, it is Applicant's committed intention to remain in the United States. (Tr at 110 - 112.)

Paragraph 2 (Guideline B - Foreign Influence)

The SOR lists six allegations regarding Foreign Influence, under Adjudicative Guideline B, which will be reviewed in the same order as they were listed on the SOR. As stated above, Applicant has admitted all of the allegations listed:

2.a., b., c., and d. Applicant's mother, father, brother, and sister are citizens and residents of Taiwan. His mother and father are retired, but they were formerly office clerks, processing paperwork for the local prosecutor of their town. His mother, father, brother, and sister all worked as office clerks for the same office, where his brother and sister continue to work.

Applicant testified that his parents, brother and sister have applied to become legal residents of the United States. (Tr at 56 - 71.) Exhibits O through S are their petitions for visas to become legal residents here. It is Applicant's understanding that his parents, as the parents of a United States citizen, will be accepted automatically in due course, within approximately one year. (Tr at 75.) Exhibit K establishes that the petitions for visas for Applicant's brother and sister have been granted, and they are awaiting their opportunity to emigrate to the United States.

Applicant testified that his brother and sister purchased a home in the United States in 2005, in which Applicant is currently living. They purchased the home with the goal of eventually living here once their requests for residency are granted. Exhibit L consists of property tax bills for this property, showing that his brother and sister are the registered owners of the property, and that the tax bills are being paid.

2.e. Applicant owns an apartment in Taiwan that was estimated to be worth about \$115,000. In his RSOR, Applicant stated that this apartment was a gift from his parents. At the hearing, Applicant estimated that the apartment is now worth approximately \$90,000, and his brother and his family reside in the apartment. He has not seen the title, but he believes that his parents may be on the title with him. His brother and sister also received their own apartments as gifts from his parents. (Tr at 91 - 93, 107.)

2.f. Applicant has traveled to Taiwan in at least 2008, 2007, 2005, 2003, and 2002. At the hearing, he testified that he went there one additional time in December 2009. His sole reason for his trips is to visit his family, especially his father, who is 86 years old. He does not associate or keep in contact with anyone else in Taiwan beside his family. (Tr at 105.)

Mitigation

As stated above, Applicant received his B.S. degree, and Exhibit J shows that he has been making monthly payments since April 29, 2008, without missing any payments, to pay off his student loan. The amounts, as scheduled, are between \$1,018 and \$808.11. Exhibit I showed his current principal balance is \$71,175.74, and the total amount that is scheduled to be paid off on May 1, 2013, is \$92,438.62

Applicant submitted two very positive character letters in Exhibit T. The first letter was from a co-worker, who described Applicant as someone with “good moral character.” The second letter was from a former classmate and now co-worker of Applicant. He called Applicant “a man of great integrity,” honest and hardworking,” and “a man of character and honor.”

Applicant also submitted his most recent employment evaluation. In the Performance summary it was stated, “Overall [Applicant] is a very good employee. His quality of work is very good. He meets his weekly goals . . . He can be depended on to be present and help meet team commitments.”

Finally, Applicant submitted a series of letters that he received as a college student, showing that he was on the Dean’s List many times. (Exhibit E.) Applicant testified that he was on the Dean’s List nine times, and he graduated Magna Cum Laude. (Tr at 83.)

Current Status of Taiwan

I take administrative notice of the following facts regarding Taiwan. Taiwan has an elected democratic government. It has the 17th largest economy and is a leading producer of high-technology goods. It engages in industrial and economic espionage. Proprietary information technology is high on the Taiwanese list of targeted information to be acquired by their agents from foreign governments and businesses.

There are 23 million Taiwanese citizens. Their per capita income in 2005 was \$15,000, cited by their president in a speech that he presented as economic progress under his administration. Although the United States now recognizes Taiwan as part of the People’s Republic of China (PRC) as “one-China,” it continues to maintain strong unofficial relations with 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 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 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 as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline C, Foreign Preference

Under AG ¶ 9 the security concern involving foreign preference arises, "[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."

Applicant's application and receipt of a Taiwanese passport raises foreign preference concerns under Disqualifying Condition AG ¶ 10 (a) as the "exercise of any right, privilege or obligation of foreign citizenship."

However, Applicant did invalidate his foreign passport, by renouncing it to a Taiwanese government representative, and then having it cut and invalidated by the Facility Security Officer of his employer. Additionally, Applicant renounced his Taiwanese citizenship to the Taiwan authorities. Therefore, I find that Mitigating Conditions AG ¶ 11 (b) and (e) apply to this case. After considering all of the evidence of record under Guideline C, I conclude that the mitigating evidence substantially outweighs the disqualifying evidence.

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. Those that could be applicable in this case include the following: 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." Applicant's relatives, who are citizens and residents of Taiwan, and who continue to have a close bond to Applicant, make AG ¶ 7(a) a concern to the Government. I find that 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 . . . and the individual's desire to help a foreign person, group, or country by providing that information" is also applicable in this case. Finally, AG ¶ 7(e) "a substantial business, financial, or property interest in a foreign country. . . which could subject the individual to heightened risk of foreign influence or exploitation" could be applicable because of the apartment given to Applicant by his parents.

AG ¶ 8 provides conditions that could mitigate security concerns. I find that 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,” is applicable to this Applicant and controlling for the following reasons:

Applicant is a U.S. citizen, who has lived in the U.S. since 1993 and been a United States citizen since 2007. He has been avidly pursuing the goal of having his parents and his brother and sister move to the United States as permanent residents, and the process while slow does seem to be progressing. While Applicant did serve in the military of Taiwan, it was only for two years, from 1990 to 1992, and he has had no contact with the military since that time, nor will he receive any benefits from his service.

Applicant worked hard to receive his college education in the United States, and he is meeting his financial obligation by continuing to pay back the loan. He submitted two very positive letters from co-workers who wrote about his honesty and integrity. Finally, Applicant has shown his loyalty and interest only in remaining in the United States by renouncing his Taiwanese citizenship and revoking his passport. I therefore conclude Guideline B for Applicant.

Whole-Person Concept

Under the whole-person concept, the Administrative Judge must evaluate an Applicant’s eligibility for a security clearance by considering the totality of the Applicant’s conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual’s age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2 (c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case under Guidelines C and B. Based on all of the reasons cited above as to why the Mitigating Conditions apply, and the very laudatory descriptions of Applicant from the writers of the submitted letters, plus his excellent employment and college records, I find that the evidence leaves me with no significant questions or doubts as to Applicant’s eligibility and suitability for a security clearance under the whole-person concept. For all these reasons, I conclude Applicant has mitigated the security concerns.

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: FOR APPLICANT

Subparagraphs 1.a.: For Applicant

Paragraph 2, Guideline B: FOR APPLICANT

Subparagraphs 2.a. through 2.f.: For Applicant

Conclusion

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

Martin H. Mogul
Administrative Judge