



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



In the matter of:)	
)	
)	ISCR Case No. 09-07613
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

April 22, 2011

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant mitigated the Government's security concerns under Guideline B, Foreign Influence and Guideline C, Foreign Preference.¹ Applicant's eligibility for a security clearance is granted.

Statement of the Case

On November 26, 2010, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, Foreign Influence and Guideline C, Foreign Preference. DOHA acted 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

¹ Department Counsel withdrew the security concern under Guideline C. Applicant renounced his citizenship with Taiwan. He no longer possesses a Taiwanese passport.

amended (Directive); and the adjudicative guidelines (AG), effective within the Department of Defense on September 1, 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. DOHA received the request on January 13, 2011, and the case was assigned to me on January 25, 2011. DOHA issued a notice of hearing on March 3, 2011, setting the case for April 5, 2011. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 7 were admitted in evidence without objection. Applicant testified on his own behalf, and submitted Applicant's Exhibit (AX) A through C, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on April 12, 2011. Eligibility for access to classified information is granted.

Evidentiary Ruling—Administrative Notice

Department Counsel requested that I take administrative notice of certain facts relating to Taiwan, set forth in a summary marked as Hearing Exhibit (HE) 1, with attached documents. The request and its enclosures were not admitted in evidence but are attached to the record. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is a 58-year-old senior system engineer for a defense contractor. He was born in Taiwan and attended a college in Taiwan. He immigrated to the United States in 1978 to further his education. In February 1980, he earned a bachelor's degree from a U.S. university. In June 1980, he obtained a master's degree. He became a naturalized United States citizen in October 1987. Applicant has been employed with various contractors since 1996. (GE 1) He has never had any security violations He has worked for his current employer since 2003. Applicant has held a security clearance since 1996. (Tr. 26)

Applicant married in 1979. His wife and two adult children are U.S. citizens. Applicant's wife does not work outside the home. His two children are graduates of American universities. Applicant owns a residence in the United States and two rental properties. (GE 7) He has been employed with various contractors since 1996. (GE 1) He has never had any security violations.

Applicant admits that his mother is a citizen and resident of Taiwan. Applicant's mother is 82 years of age. She does not work outside her home, and does not have any affiliation with the Taiwan government. His mother visited Applicant and his family in 1997. (GE 7) Applicant calls his mother once every two months. He visited his mother in

2009 for three weeks. (Tr. 41) While in Taiwan, he stayed with his mother. His mother does not speak English and does not know what Applicant does for a living.

Applicant has three brothers who are residents and citizens of Taiwan. One brother is a retired pharmacist. Applicant has not maintained contact with him throughout the years. However, he saw this brother last year when he visited his mother in Taiwan. (Tr. 32) He has not had any contact with this brother since the visit in 2009.

Applicant's second brother is a fortune teller who lives with Applicant's mother. Therefore, Applicant speaks to him when he calls his mother. Applicant's third brother is retired. He owned a small restaurant. He talks to his brother perhaps once a year. (Tr. 34) If Applicant is visiting his mother in Taiwan, he also sees or visits his brother. (GE 2)

Applicant's brother-in-law is a citizen and resident of Taiwan. He is a teacher in a private university. Applicant does not maintain contact with him, but Applicant sees him when he travels to Taiwan.

Applicant's travels to Taiwan were for family visits only. Since 1997, he used his United States passport to travel to Taiwan. He no longer has a Taiwanese passport. (AE B) He renounced his citizenship with Taiwan. (AE A)

None of Applicant's family has ever held political office or been employed by the Taiwanese government. None of them know about Applicant's employment.

Applicant disclosed that at one time he had a bank account in Taiwan. This account held Taiwanese currency that he used when he traveled to Taiwan. He closed the account last year. (AE C) Applicant also transferred his property (land and home) interest to his family members in Taiwan. (Tr. 16) Department Counsel withdrew the allegations concerning the bank account and the property in Taiwan (SOR 1.d and 1.e) at the hearing). (Tr. 55)

TAIWAN

Taiwan is a multi-party democracy. The United States does not support Taiwan independence, in keeping with the "one China" policy. However, it continues to maintain strong unofficial relations with Taiwan. The United States supports Taiwan's membership in appropriate international organizations where statehood is not a requirement for membership and also supports its meaningful participation in appropriate international organizations.

Taiwan and the People's Republic of China (PRC) have significant economic ties, which are attributable to their physical proximity and history. Because of its location, Taiwan has a particular interest in information from the United States that could aid in its own defense. Taiwan's primary defense goal is to deter invasion from the PRC. The PRC maintains intelligence operations in Taiwan through a bureau utilizing

PRC nationals with Taiwanese connections. Taiwan has a history of intelligence gathering and industrial espionage.

Policies

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

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion to obtain a favorable security decision."

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

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

Analysis

Guideline B, Foreign Influence

The security concern for Foreign Influence is set out in AG ¶ 7:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Three are potentially applicable in this case:

- (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;
- (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; and
- (e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

Applicant's mother, three brothers, and brother-in-law are residents of Taiwan. Applicant has visited Taiwan several times, and he stays with his mother. Such ties do not automatically disqualify an Applicant from obtaining a security clearance. However, Taiwan both maintains defenses against the People's Republic of China and has economic ties to it based on history and proximity. Family ties in Taiwan raise security concerns because of the potential for foreign influence. Applicant's bank account and property in Taiwan also raise a concern. AG ¶¶ 7(a), (b), and (e) have been raised by the evidence. (SOR 1.e was withdrawn at the hearing)

Conditions that could mitigate Foreign Influence security concerns are provided under 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.;

(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;

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

Applicant is a naturalized United States citizen. He came to the United States to further his education. He obtained an advanced degree and has worked for a federal contractor for many years. He has held a security clearance without any violations since 1996. He and his wife have two children who are American citizens. They have resided in the United States for many years. Their family home and substantial assets are located in the United States. They are financially secure and have established well-grounded lives in this country. There was no evidence to suggest that any of his Taiwanese relatives are influenced by the politics of Taiwan. There was no evidence to suggest that any of his relatives are influenced by the politics of Taiwan. I find that Applicant has deep and longstanding relationships and loyalties in the United States. None of his relatives have jobs with the Taiwanese government. It is unlikely that Applicant would be placed in a position of having to choose between the interest of a relative and the United States. It is clear that even in the unlikely event such a situation would arise he would choose the interests of the United States. Therefore, I find AG ¶¶ 8(a) and (b) apply to SOR ¶¶ 1.a-1.c.

Applicant's property interests in Taiwan do not exist any more. He has no bank accounts in Taiwan. Department Counsel concedes that this mitigating factor applies to SOR ¶¶1.d and 1.e. and I find the allegations in these two SOR paragraphs to be mitigated under AG ¶ 8(f).

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. Applicant is a naturalized U.S. citizen. He and his wife, who is also a U.S. citizen, have resided in the United States since 1978. He and his wife have two adult children who are U.S. citizens. He obtained his graduate school education in the United States. He has been employed with federal contractors since 1996 and has held a security clearance without any incidents. He does not discuss his work with his mother or siblings in Taiwan. He has travelled to Taiwan to visit his family. He has no property in Taiwan. He came to the United States to further his education. He remained here and has been a citizen for many years. As a good son, he talks to his mother once every two months and visits her periodically. All of his visits to Taiwan were for family purposes rather than any connection to the Taiwanese government. He has established that his motivation for his contacts and activities with his family do not indicate a security risk. He has presented sufficient information to mitigate any security concerns under the whole-person concept. I conclude Applicant is eligible for access to classified information.

Applicant's life, career, substantial assets, and allegiance all lie in the United States. After considering all the evidence, including his valuable and highly regarded work for his current employer, I am convinced that it is consistent with the national interest to grant Applicant a security clearance.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Foreign Influence 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 B:	FOR APPLICANT
Subparagraphs 1.a-1.c:	For Applicant
Subparagraphs 1.d-1.e:	WITHDRAWN
Paragraph 2, Guideline C:	WITHDRAWN

Conclusion

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

Noreen A. Lynch
Administrative Judge