



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



In the matter of:)
)
) ISCR Case No. 10-07016
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

November 30, 2011

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline C, Foreign Preference, but failed to mitigate the security concerns under Guideline B, Foreign Influence. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On April 8, 2011, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline C, Foreign Preference, and Guideline B, Foreign Influence. 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 effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on May 6, 2011, and elected to have his case decided on the written record. On July 12, 2011, Department Counsel submitted the Government's file of relevant material (FORM). The FORM was mailed to Applicant on July 26, 2011, and it was received on September 22, 2011. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant provided additional information that was included in the record without objection. The case was assigned to me on October 13, 2011.

Procedural Information

In the FORM, Department Counsel amended the SOR as follows:

1. Strike subparagraphs 1.b., 1.c., and 1.d; and
2. Add subparagraphs 2.c and 2.d to state the following:
 - 2.c. You and your spouse own and maintain a condo in Taiwan (Republic of China) valued at approximately \$600,000.
 - 2.d. You and your spouse own and maintain a bank account in Taiwan (Republic of China) valued at approximately \$190,000.

Request for Administrative Notice

Department Counsel submitted a formal Administrative Notice Request that I take administrative notice of certain facts relating to Taiwan.¹ Applicant did not object.² I granted the request. 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 the factual allegations, but denied they are security concerns. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 56 years old. He has worked for a federal contractor since March 2010. He was born in Taiwan. He married in 1981. He and his wife immigrated to Canada in 1982. He became a Canadian citizen in 1985. At some point, he moved to the United States and became a naturalized U.S. citizen in 1997. His wife was born in

¹ The Administrative Notice Request is marked as Hearing Exhibit (HE) I.

² Due to an oversight Applicant did not receive copies of the documents that were part of the Administrative Notice Request. He was sent the material on November 9, 2011 and was afforded an opportunity to object. He offered additional comments on November 18, 2011, but did not object to the documents. These documents are marked as HE II-V.

Taiwan and became a Canadian citizen and U.S. citizen, presumably at the same time as Applicant. There was insufficient evidence in the record to determine the dates.

In 2007, Applicant applied for a Taiwanese passport. He used the passport to travel to Taiwan and Australia. He used it for convenience. As part of Applicant's background investigation conducted by an Office of Personnel Management (OPM) investigator, Applicant was interviewed on April 20, 2010. During the interview, Applicant admitted he maintained dual citizenship with Taiwan. He did so because it is the country of his birth, his wife's relatives live there, and he was considering retiring in Taiwan. He understood that there are some benefits to being a Taiwanese citizen such as being part of the Taiwanese Universal Health System and Taiwanese travel groups receive special discounts. He was unaware of any obligations he may have to Taiwan and believed he would have to be a resident to access the health care system. He stated at his interview that he did feel some allegiance to Taiwan because it is his country of birth, but he did not believe he had a conflict of interest between Taiwan and the United States.³

Applicant was required to participate in compulsory military service in Taiwan, which he did for two years, before he became a U.S. citizen. He has not performed any other service for the Taiwanese government. During his interview, Applicant was not willing to give up his Taiwanese citizenship. He was not sure of the process of renouncing citizenship or the consequences. He was willing to relinquish his Taiwanese passport, which he eventually did to his facilities security officer on September 27, 2011. The passport was destroyed.⁴

Applicant's father-in-law, mother-in-law, and brother-in-law are citizens and residents of Taiwan. He maintains contact with them. His father-in-law is retired from the Taiwanese military. He is a bank board member. The bank is not affiliated with the Taiwanese government. His mother-in-law is retired, but it is unknown what job she formerly held. In his OPM interview, Applicant indicated his brother-in-law is employed as a director for a bio-chemical institute which is operated by the government. In his answer to the SOR, he indicated that his brother-in-law worked in a bio-tech research institute in Taiwan. He stated he was unclear as to what the relationship the company had with the Taiwanese government. He indicated his brother-in-law is some type of scientist. Applicant indicated he speaks to his in-laws in Taiwan infrequently, maybe once a year. He last visited them in 2007. It is unknown how often his wife maintains contact with her family in Taiwan.

Applicant and his wife have a bank account in Taiwan that has approximately \$190,000 in it. They maintain it for investment and for convenience.⁵

³ Item 7.

⁴ Item 7; Response to FORM.

⁵ Answer to SOR.

Applicant and his wife own a condominium in Taiwan valued at about \$600,000. They own it for investment and convenience. Applicant indicated in his response to the FORM that he and his wife are planning to sell their condominium in the near future and deposit the profits in the United States.

Applicant indicated that the condominium and bank account in Taiwan constitute about 30-40% of his total assets and it would be financially difficult if they were abandoned.⁶

Applicant owns a retirement savings account in Canada. He owned the account because he lived and worked in Canada for more than six years. Due to the rules governing early withdrawal, it is not financially prudent to do so. It cannot be accessed without penalty until age 60.⁷

Taiwan⁸

Taiwan is listed, along with seven other countries in the 2008 Annual Report to Congress on Foreign Economic Collection and Industrial Espionage, as being involved in criminal espionage and export control enforcement cases. Taiwan was also included in the 2000 version of that report, and it was noted that it was among the most active collectors of U.S. economic and proprietary information. The report also highlighted incidents wherein Taiwan engaged in attempts to acquire export-restricted products.

Taiwan has been involved in various cases involving illegal export or attempted illegal export of U.S. restricted, dual-use technology. The specific areas included: classified materials, laser gun aiming devices/sights, measuring probes controlled for nuclear non-proliferation and national security reasons, centrifugal pumps that are controlled for chemical and biological weapons and anti-terrorism reasons, missile components shipped to Iran by way of Taiwan, and numerous other areas of concern.

The People's Republic of China's (PRC) Ministry of State Security is the "preeminent civilian intelligence collection agency in China." It maintains intelligence operations in Taiwan, through a bureau utilizing PRC nationals with Taiwan connections.

⁶ Item 7.

⁷ Answer to SOR, Item 7. During his interview with an OPM investigator Applicant indicated he maintained dual citizenship with Canada. He stated he was unclear whether his citizenship is current or still maintained. He stated he did not have much allegiance to Canada, except that his sister lived there. He stated he has not taken any steps to maintain his citizenship in Canada. He was willing to renounce his Canadian citizenship. I have not considered this information for disqualifying purposes, but have considered it in my "whole-person" analysis.

⁸ All of the information about Taiwan is contained in the cited sources in the Administrative Notice.

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 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. 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, 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 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 that an applicant may deliberately or inadvertently fail to 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

AG ¶ 9 expresses the security concern involving 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 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. I have considered all of them and the following are potentially applicable.

(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;

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

After becoming a United States citizen, Applicant applied for and received a Taiwanese passport. He used the passport to travel to Taiwan and Australia. He stated in his OPM interview that he was unwilling to renounce his dual citizenship with Taiwan. I find both of the above disqualifying conditions apply

AG ¶11 describes conditions that could mitigate the security concerns. I have considered all of them and the following are potentially applicable:

(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; and

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

Applicant's dual citizenship is not based solely upon his parents' citizenship or birth in Taiwan. After becoming a U.S. citizen, he applied for and obtained a Taiwanese passport. He used the passport to travel. This was an affirmative action to obtain

Taiwanese citizenship. AG ¶ 11(a) does not apply. In his OPM interview, Applicant was unwilling to renounce his Taiwanese citizenship. AG ¶ 11(b) does not apply. Applicant used his Taiwanese passport to travel. AG ¶ 11(c) does not apply. Applicant surrendered his passport to his security officer and it was destroyed. AG ¶ 11(e) applies.

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. I have considered all of them and the following are potentially applicable:

- (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
- (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; 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 and his wife have a bank account with approximately \$190,000 in Taiwan. They own a condominium in Taiwan worth about \$600,000. Applicant's wife's

parents and brother are citizens and residents of Taiwan. Applicant's father-in-law is retired from the Taiwanese military. I find the above disqualifying conditions apply.

I have also analyzed all of the facts and considered all of the mitigating conditions for this security concern under AG ¶ 8, and the following are potentially applicable:

(a) the nature of the relationship 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 and 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 interests in favor of the U.S. interests; 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.

(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.

In Applicant's interview and answer to the SOR, he indicated he has minimal contact with his wife's family in Taiwan. However, there is insufficient evidence to determine how much contact his wife has with her family. There is insufficient evidence to conclude that the familial connections and the nature of the relationship Applicant has with his in-laws and his wife has with them, would make it unlikely that Applicant and his wife would be placed in a position of having to choose between their family interests and the interests of the United States.

The nature of a nation's government and its relationship with the United States is relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the foreign government or the country is known to conduct intelligence operations against the United States. Applicant's in-laws are citizens and residents of Taiwan. His father-in-law is retired from the Taiwanese military. Applicant did not provide information regarding his father-in-law's pension. He did not provide any information regarding the type of job his mother-in-law held before she retired and whether she receives a pension. He indicated his brother-in-law works for a company that he believes may be related to the government.

Taiwan is a leader in conducting industrial espionage against the United States. Applicant and his wife maintain strong economic ties to Taiwan. In his OPM interview Applicant indicated he may retire to Taiwan. He also indicated he and his wife were going to sell their Taiwanese property in the future. No evidence was produced to show that that transaction has happened. Although Applicant's passport was destroyed, he indicated during his OPM interview that he was unwilling to renounce his Taiwanese citizenship. I have insufficient information to conclude that Applicant's relationship with Taiwan and his wife's contact with her relatives are such that it is unlikely he would be placed in a position of having to choose between his economic and family interests and the interests of the United States.

Applicant applied for a Taiwanese passport and maintained his Taiwanese passport until September 27, 2011. He maintained his dual citizenship with Taiwan until at least that time. In 2010, he was unwilling to renounce his Taiwanese citizenship. I cannot conclude that there is no conflict of interest. Applicant failed to establish that his sense of loyalty or obligation to his foreign relatives and to the country of Taiwan is so minimal or that he has established such deep and longstanding relationships and loyalties with the United States, that he can be expected to resolve any conflict of interest in favor of the United States. I find AG ¶¶ 8(a) and 8(b) do not apply.

Because I do not have evidence as to the contact and communications Applicant's wife maintains with her family in Taiwan I cannot apply AG ¶ 8(c).

Applicant estimated his assets in Taiwan to be about 30% to 40% of his total assets. Without additional information, I am unable to conclude that Applicant's financial interests in Taiwan are unlikely to result in a conflict and could not be used to effectively influence, manipulate, or pressure him. Therefore, I find there is insufficient evidence to apply 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's wife has relatives in Taiwan. His father-in-law is retired from the Taiwanese military, and it is unclear if his brother-in-law works for a company with government ties. Applicant and his wife own property worth about \$600,000 and have a bank account with about \$190,000 in Taiwan. Applicant indicated he has minimal contact with his in-laws, but there was insufficient evidence regarding his wife's contact with her relatives in Taiwan. Applicant applied for and became a dual citizen of Taiwan after he was a U.S. citizen. He used his Taiwanese passport after he became a U.S. citizen. He recently surrendered the passport and it was destroyed. In his statement to an OPM investigator in 2010, he was unwilling to renounce his Taiwanese citizenship and indicated he may retire there in the future. Applicant failed to meet his burden of proof. He failed to provide sufficient evidence to conclude that his personal and financial contacts with Taiwan are not a security concern. Overall, the record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the Guideline C, Foreign Preference, but failed to mitigate the security concerns under Guideline B, Foreign Influence.

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
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	Against 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 a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge