



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 10-07194

**Appearances**

For Government: Jeff Nagel, Department Counsel  
For Applicant: Joseph Testan, Attorney At Law

August 15, 2011

**Decision**

LOKEY-ANDERSON, Darlene, Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on March 29, 2010. (Government Exhibit 1.) On January 31, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines B and F 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) effective within the Department of Defense for SORs issued after September 1, 2006.

The Applicant responded to the SOR on February 28, 2011, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on April 4, 2011. A notice of hearing was issued on April 19, 2011, scheduling the hearing for May 17, 2011. At the hearing the Government presented five exhibits, referred to as Government Exhibits 1 through 5. The Applicant called five witnesses, and presented eleven exhibits, referred to as Applicant's Exhibits A through

K. He also testified on his own behalf. The record remained open until close of business on May 24, 2011, to allow the Applicant to submit additional documentation. He submitted one Post-Hearing Exhibit, referred to as Applicant's Post-Hearing Exhibit A, which was admitted without objection. The official transcript (Tr.) was received on May 26, 2011. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Request for Administrative Notice**

Department Counsel requested that I take administrative notice of certain facts concerning the current political conditions in Taiwan. (Tr. pp. 16-23) Applicant's Counsel had no objection. (Tr. p. 24.) 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.

### **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 56 years of age and married with two adult children. He has a Master's Degree in Business Administration. He is employed as a Systems Administrator/Engineer Specialist 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 admits allegations 1(a), 1(b), and 1(c) of the SOR. He denies allegation 1(d). He was born in Taiwan in 1955, and grew up in a rural area. At the age of fourteen, he moved away from home to attend his last year of junior high school, and then high school where he lived in the dorms. After graduating from high school, he attended the University of Taipei and obtained his Bachelor's Degree in Law. He served his compulsory duty in the Taiwanese Marines from July 1977 to June 1979, where he held the rank of second lieutenant. He has had no contacts with the Taiwanese military since 1979.

In 1982, at the age of twenty-seven, he immigrated to the United States to fulfill a dream. He wanted to come to the land of opportunity and earn his own fortune. Since then, he has lived and worked in the United States and made it his permanent home. He became a naturalized United States citizen in 1996. He is married to an American citizen and has two children who are native-born American citizens. The Applicant also has a sister who resides in the United States with her family. (Tr. p. 88-89.) In March 2010, he began working as a Consultant for his current employer and became an employee of the company in March 2011. (Tr. p. 80.)

The Applicant's mother, sister, two brothers, and in-laws are citizens and residents of Taiwan. His father has passed away. His mother, who is 78 years old this year and currently ill, was a farmer before she retired. She receives the equivalent of social security from the Taiwanese Government, and the Applicant sends her a few hundred dollars every couple of months (Tr. p. 126-127.) She has no other affiliations with the Taiwanese Government. (Tr. p. 84.) The Applicant contacts her by telephone about once a month or once every two months. (Tr. p. 85.)

One brother in Taiwan has a green card and has already applied to come to the United States. His other brother in Taiwan is planning to move to the United States when his son graduates from high school. Both of his brothers in Taiwan are being sponsored by the Applicant's sister who lives in the United States. None of his family in Taiwan have any connection with the Taiwanese Government. (Tr. p. 89.)

The Applicant also has in-laws who are citizens and residents of Taiwan. The Applicant is not close to his in-laws in Taiwan. (Tr. p. 91-92.) He does not plan to communicate with them at all, and he has no feelings of obligation or loyalty to them. (Tr. p. 93.)

In April 2010, the Applicant formally renounced his Taiwanese citizenship even though he felt that he was no longer a Taiwanese citizen when he became a United States citizen. (Applicant's Exhibit K and Tr. p. 94.)

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.

Paragraph 2 (Guideline F - Financial Considerations) The Government alleges that the Applicant is ineligible for clearance because he is financially overextended and at risk of having to engage in illegal acts to generate funds.

The Applicant denied each of the delinquent debts set forth in the SOR. (See, Applicant's Answer to SOR.) Credit Reports of the Applicant dated April 23, 2010, and November 29, 2010, indicate that he was indebted to two creditors for outstanding mortgage loans listed in the SOR, which totaled in excess of \$400,000.00. (Government Exhibits 3 and 4.)

In 2005, the Applicant's home was paid off and he decided to invest in the real estate market. Searching out of state for reasonable priced property, and what he believed at the time was a good deal, he purchased five separate single family properties with a \$400,000 loan he took out against his primary residence worth \$750,000.00 at the time. (Tr. p. 95.) He hired a property management company to help

rent them. In 2006, the economy took a downturn. By 2007, the real estate market plunged, and the Applicant realized that he could no longer sustain his investments and was operating in the negative. In November 2007, he was laid off from his job due to a work force reduction.

Realizing that he had to do something to mitigate his increasing financial indebtedness, he decided that three of his properties must be returned to the lenders as he could not afford to make the payments. He contacted the mortgage holders to arrange to deed the property back, but was unsuccessful. (Applicant's Exhibits C and D.) As a result, he became indebted on a mortgage account that was past due in the approximate amount of \$18,608.00. In 2008, the house was foreclosed upon with a total loan balance of \$197,00.00. He also became also indebted on a mortgage account that was past due in the approximate amount of \$11,147.00. In 2008, the second house was foreclosed upon with a total balance of \$222,000.00. (Tr. p. 100.) The Applicant contends that he has no liability under either one of the two mortgage contracts according to the applicable state statute. He submitted a copy of the states anti-deficiency statute. (Applicant's Exhibit I.) Title 33, Chapter 6.1, Article 1, Title 33-814, subsection G, of the state statute indicates that the lender may not go after property owner for any losses on a home after foreclosure. Applying the provisions of this statute, under these particular circumstances, the Applicant has no liability to the lender. He also determined that he has no tax implications as cancellation of a nonrecourse debt does not result in taxable income. (See Applicant's Post-Hearing Exhibit A.) A third house was also foreclosed upon, but was not alleged in the SOR.

In regard to the Applicant's two remaining investment properties, the Applicant has paid off the second loan with his cash reserves, and he has refinanced the first loans. (Applicant's Exhibits F and G.) Both houses are being rented and the rent is covering the mortgage payments. (Tr. p. 130.) He is current on the payments on both houses. His intentions are to keep them both and eventually pay them off. (Tr. p. 103.) He is also current with the mortgage payments on his primary resident. (Applicant's Exhibit H.)

Five witnesses, including his second level supervisor, his immediate supervisor, his past neighbors, and a college instructor who was the Applicant's boss at one point, collectively testified that the Applicant is a hard worker, reliable, honest and trustworthy. He is recommended for a security clearance. (Tr. pp. 27-70.)

Letters from the Applicant's daughter and son indicate that they were raised as typical American children. They believe that their father is loyal to the United States and they plan to live in the United States the rest of their lives. (Applicant's Exhibit A.)

Numerous letters of recommendation from the Principal Director of the Company, a City Councilperson, and other professional associates, coworkers, friends and neighbors attest to the Applicant's character, ethics, professionalism, reliability, trustworthiness, outstanding work performance, great technical skills, and his commitment to properly safeguarding data. He is considered a tremendous asset to the

organization. He is also described as respectful, kind and sincere. (Applicant's Exhibit B.)

## **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.

#### Conditions that could mitigate security concerns:

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.;

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;

8.(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.

#### Guideline F (Financial Considerations)

18. *The Concern.* Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

#### Conditions that could raise a security concern:

19.(a) inability or unwillingness to satisfy debts;

19.(c) a history of not meeting financial obligation.

#### Conditions that could mitigate security concerns:

20.(c) the person has received or is receiving counseling for the problem and/or there are clear indications that problem is being resolved or is under the control;

20.(d) the individual has initiated a good faith effort to repay overdue creditors or otherwise resolve debts.

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 F (Financial Considerations) 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 or situation 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 or situation is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who is subject to foreign influence and has excessive indebtedness may be prone to provide information or make decisions that are harmful to the interests of the United States. 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* applies. However, Mitigating Conditions 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.*; 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 8.(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* also apply.

The evidence shows that the Applicant has no strong emotional attachment to his siblings or his in-laws in Taiwan. In regard to his siblings, age differences and the fact that he left home at fourteen explain the distant relationship. His permanent move to the United States even furthered this distance. He has no contact with his in-laws and no intention to contact them in the future. Admittedly, he does contact his mother in Taiwan, who is elderly and ill, once every month or two by telephone. He also sends her a few hundred dollars every several months. Even so, there is no close bond or strong evidence of affection that could potentially cause the Applicant to become subject to foreign exploitation, inducement, manipulation, pressure, or coercion. His immediate family, including his wife and children, who are American citizens, and his sister all live in the United States, and have made it their permanent home.

The Applicant is a naturalized United States who has formally renounced his Taiwanese citizenship. He has cut his foreign ties. He has demonstrated that his loyalties are to the United States. It is noted that the current political situation in Taiwan elevates the cause for concern in this case. However, based upon the evidence in total, the possibility of foreign influence does not exist 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 not vulnerable to foreign influence. Accordingly, I find for the Applicant under Guideline B (Foreign Influence).

In regard to his financial situation, the Applicant admittedly made some risky decisions to purchase five investment properties at the same time. Unfortunately,



millions of Americans have been victims of the collapse in the real estate market. However, without being able to predict the future, he took his chances. After losing his job, and finding it difficult to get tenants to pay the amount of rent needed, he realized that he could not afford to keep all five investment properties. He then used good judgment and acted reasonably under the circumstances by trying to negotiate with the mortgage lender to reach some suitable agreement. He was not successful, and three houses were forced into foreclosure. He has managed to keep two of his investments and they are both in good financial standing. He is also current with the payments on his primary residence.

Considering all of the evidence, the Applicant has introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case. Under Guideline F (Financial Considerations), Disqualifying Conditions 19.(a) *inability or unwillingness to satisfy debts*; and 19.(c) *a history of not meeting financial obligation* apply. However, Mitigating Conditions 20.(c) *the person has received or is receiving counseling for the problem and/or there are clear indications that problem is being resolved or is under the control*; and 20.(d) *the individual has initiated a good faith effort to repay overdue creditors or otherwise resolve debts* also apply.

Under the particular circumstances of this case, the Applicant has demonstrated sufficient good judgment, and a good faith effort to resolve his indebtedness, and there is sufficient evidence of financial rehabilitation. He has demonstrated that he can properly handle his financial affairs. Accordingly, I find for the Applicant under Guideline F (Financial Considerations).

I have also considered the "whole-person concept" in evaluating the Applicant's eligibility for access to classified information. Under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed as a whole, support a whole-person assessment of good judgement, trustworthiness, reliability, candor, a willingness to comply with rules and regulations, and/or other characteristics indicating that the person may properly safeguard classified information.

I have considered all of the evidence presented, and it does mitigate the negative effects of his foreign connections and financial indebtedness and its impact on his ability to safeguard classified information. On balance, it is concluded that the Applicant has overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the SOR.

## **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: For the Applicant.

- Subpara. 1.a.: For the Applicant
- Subpara. 1.b.: For the Applicant
- Subpara. 1.c.: For the Applicant
- Subpara. 1.d.: For the Applicant

Paragraph 2: For the Applicant.

- Subpara. 2.a.: For the Applicant
- Subpara. 2.b.: For the Applicant

## **DECISION**

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson  
Administrative Judge