



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



In the matter of:)	
)	
)	ISCR Case No. 10-07992
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: *Pro se*

May 16, 2011

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86) on January 28, 2010. On November 4, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B (Foreign Influence) for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), 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.

Applicant received the SOR on November 7, 2010. He elected to have his case decided on the record in lieu of a hearing. Department Counsel submitted the Government's written case on March 2, 2011. Applicant received a complete file of relevant material (FORM) on March 11, 2011, and was provided an opportunity to file objections and submit material to refute, extenuate, or mitigate the government's case.¹

¹The Government submitted five items in support of its contentions.

Applicant did not submit a response. The case was assigned to me on April 27, 2011. Based upon a review of the case, eligibility for access to classified information is denied.

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Taiwan. The request and the attached source documents were included in the record as attachments. (I-XVI) The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In his Answer, dated November 10, 2010, Applicant admitted the factual allegations in ¶¶ 1.a through 1.h of the SOR. Applicant is a 46-year-old employee of a defense contractor. He was born and raised in Taiwan. After completing his mandatory military service for two years in Taiwan, he immigrated to the United States in 1988. Applicant became a naturalized U.S. citizen in August 2007. He has been with his current employer since June 2005. (Item 1)

Applicant received his undergraduate degree in Taiwan in 1986. He graduated from an American university, obtaining a master of science degree and ultimately a doctorate from a U.S. university in 1992. From 1994 until 2000, Applicant worked abroad in Japan and Singapore. Currently, he is employed as an engineer for a contractor. He has never held a security clearance. (Item 5)

Applicant is married and has two children. His wife was born in Taiwan and is a naturalized U.S. citizen. She resides in the United States with Applicant and their two children. In December 1989, they were married in the Taiwan. (Item 2). Applicant maintains that his wife does not show any interest in his work, and she works in the home. (Item 5)

Applicant's parents are citizens and residents of Taiwan. His mother is a retired civilian employee of the Taiwanese Army. She is 74-years-old. His father is a retired senior officer of the Taiwanese Army. He is 80-years-old years old. Applicant speaks to his mother on the telephone every two months. (Item 3) Applicant told the investigator during his interview in February 2010, that he also sees his mother when he travels to Taiwan and when his mother visited him in the United States, approximately three years ago. (Item 5) Applicant also speaks to his father on the telephone and sees his father when he travels to Taiwan. His father knows that Applicant is employed with a contractor but does not know that Applicant is under consideration for a security clearance. (Item 5)

Applicant's mother-in-law and father-in-law are citizens and residents of Taiwan. His mother-in-law is a retired senior officer of the Taiwanese Army. His father-in-law is a retired senior officer of the Taiwanese Army. Applicant speaks to them a few times a year by telephone. Applicant reports that he sees him every two or three years.

Applicant's father-in-law knows that Applicant is employed with a government contractor. (Item 5)

Applicant has a brother who is a citizen and resident of Taiwan. He maintains contact with him when he sees his parents in Taiwan. There is nothing else in the record concerning his contacts with his brother.

Applicant contends that his parents in Taiwan have been retired for many years and are senior citizens. He maintains that they have no connection to the Army or government anymore. He did not address whether they are receiving government pensions for their military service.

Applicant traveled to Taiwan in 2003 on three separate occasions. In 2004 and 2005, he also traveled to Taiwan on at least two occasions. He reported that the trips were for business and that he was working for a company that has business in Taiwan. The visits were sometimes two months in length. (Item 1). Applicant contends that in the past five years and since he became a U.S. citizen, he visited his parents and relatives in Taiwan only once.

Applicant stressed that he left Taiwan to study in the United States almost 23 years ago. Since then, he has married and established a home life in the United States. His children are U.S. citizens. He was not close to any government department or the Taiwanese army when he was in Taiwan. Applicant emphasized that as a naturalized citizen, he has relatives that reside in Taiwan, a foreign country. However, he feels he has a strong connection in the United States. Applicant states that he does not have divided loyalties. He has no financial interest in Taiwan. The United States is his home. His allegiance is to the United States.

I take administrative notice of the following facts. Taiwan is a multi-party democracy that has significant economic contacts with China, and it has developed a strong economy since its separation from the Peoples Republic of China (PRC) in 1949. Despite substantial economic ties, the PRC did not hold any official talks with Taiwan from October 1998 until June 2008. Moreover, the governments of Taiwan and the PRC still do not negotiate directly. The Taiwanese military's primary mission is the defense of Taiwan against the PRC, which is seen as the predominant threat and which has not renounced the use of force against Taiwan. The PRC's Ministry of State Security is the "preeminent civilian intelligence collection agency in China", and it maintains intelligence operations in Taiwan through a bureau utilizing PRC nationals with Taiwan connections.

Taiwan is known to be an active collector of U.S. economic intelligence, and the National Counterintelligence Center's 2000 annual report to Congress on foreign economic collection and industrial espionage lists Taiwan as being among the most active collectors of U.S. economic and proprietary information. There have been various cases involving the illegal export, or attempted illegal export, of U.S. restricted, dual use technology to Taiwan.

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 required 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, 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 B, Foreign Influence

The security concern for Foreign Influence is set out in AG & 6:

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(a), a contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or a resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion” may create a security concern. 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” is also applicable. Similarly, under AG & 7(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” may raise security concerns. Applicant’s parents are citizens and residents of Taiwan. His mother-in-law and father-in-law are residents and citizens of Taiwan. They are retired high-ranking members or employees of the Taiwanese Army. Applicant has a brother who is a citizen and resident of Taiwan. Applicant has visited his family on numerous occasions since 2003. Applicant’s visits were several times a year in some years. His last visit was in 2005. Taiwan and its strong connections to PRC and its use as an active collector of U.S. economic intelligence raises a heightened risk of foreign influence. Applicant’s familial relationship with citizens and residents of Taiwan creates a heightened risk of potential exploitation, inducement, manipulation, pressure or coercion. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from foreign influence. Under AG ¶ 8(a), the disqualifying condition may be mitigated where “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.” Applicant has lived about half

his life in Taiwan. Applicant maintains contact with his parents and his in-laws who had important positions with the Taiwanese Army before retiring and are still citizens and residents of Taiwan. Applicant's wife resides in the United States with Applicant and their two U.S. children but she has probably has emotional ties with her mother in Taiwan. Applicant's relatives are in Taiwan. He has visited his family on various occasions. His last visit was in 2005. Applicant and his wife keep in touch with their families in Taiwan by telephone. Applicant is a naturalized U.S. citizen, however, there is a heightened risk due to he and his wife's ties to family living in Taiwan. Taiwan is a country that causes concern in the area of potential exploitation and coercion, which makes Applicant vulnerable because of a history of economic espionage. His contact with his family cannot be construed as minimal. This creates a potential conflict of interest. The evidence does not establish this potentially mitigating condition.

Under AG & 8(b), security concerns may be mitigated where 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 long-standing 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." As noted above, Applicant has long-standing, close ties with his family. Applicant is a naturalized citizen; however, there is a heightened risk due to his family ties to Taiwan. Unfortunately, Taiwan is a country with a tendency to cause concerns in the area of potential exploitation and coercion which makes Applicant vulnerable. His contact with his family cannot be construed as casual or infrequent. This creates a potential conflict of interest.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an Applicant has frequent, non-casual contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

The nature of a nation's government, its relationship with the United States, and its human rights record are 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, if an applicant's family member is associated with or dependent upon the government, or if the country is known to conduct intelligence operations against the United States.

However, the complicated, competitive relationship of the PRC/Taiwan with the United States places a significant, but not insurmountable, burden of persuasion on Applicant to demonstrate that his relationship with his relatives living in Taiwan and his relatives in the United States with close relationships to family members living in Taiwan does not pose a security risk and he is not in a position to be forced to choose between loyalty to the United States and his family living in Taiwan. With its political, economic, rivalry with the United States, it is conceivable that Taiwan would target any citizen or

former citizen living in the United States in an attempt to gather valuable information from the United States.

Taiwan is a country whose potential for abuse is high. Applicant's familial relationship with citizens and residents of Taiwan creates a heightened risk of potential exploitation, inducement, manipulation, pressure or coercion. Taiwan's intelligence operatives seek economic information from U.S. businesses and/or governmental agencies. Applicant's connections to his family members and his in-laws create a potential conflict of interest because these relationships are sufficiently close to raise a possible security concern about his desire to help these relatives living in Taiwan by providing classified information.

Evidence that "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" is potentially mitigating under AG & 8(c). Applicant traveled to Taiwan numerous times to visit his family. He also contacts them on a regular basis. I conclude this potentially mitigating condition does not apply.

After a review of the remaining mitigating conditions, I find that none of them fully applies in this case.

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 relevant 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.

A Guideline B decision concerning Taiwan must take into consideration the geopolitical situation in the PRC. Taiwan is known to be an active collector of U.S. economic intelligence.

Applicant was born and raised in Taiwan. He has lived in the United States since 1988. He became a U.S. citizen in 2007. He received his master's degree and doctorate in 2006 from an American university. He has worked for a defense contractor since 2007.

Applicant has traveled to Taiwan on many occasions since 2003. He visited his family and also his in-laws. His last trip to Taiwan was in 2005. He maintained contact with his family by telephone. His familial ties are close and the practices carried out by Taiwan create a heightened security risk. I am persuaded by the totality of the evidence that it is not clearly consistent with the interests of national security to grant Applicant a security clearance. In reaching my decision, I considered the evidence as a whole, including the appropriate factors and guidelines.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from 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 B:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

NOREEN A. LYNCH
Administrative Judge

