



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



In the matter of:)
)
ISCR Case No. 10-10206
)
Applicant for Security Clearance)

Appearances

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

September 27, 2011

Decision

LYNCH, Noreen A., Administrative Judge:

This case involves security concerns raised under Guideline B (Foreign Influence). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application on May 18, 2010. On March 24, 2011, the Defense Office of Hearings and Appeals (DOHA) sent him a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny his application, citing security concerns under Guideline B. 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 amended (Directive); and the adjudicative guidelines (AG) implemented by the Department of Defense on September 1, 2006.

Applicant received the SOR and initially requested a decision on the record. He timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on July 25, 2011. DOHA issued a notice of hearing on August

4, 2011, scheduling the hearing for September 1, 2011. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified, and submitted Applicant's Exhibits (AX) A through D, which were admitted without objection. DOHA received the transcript (Tr.) on September 12, 2011.

Administrative Notice

Department Counsel requested that I take administrative notice of relevant facts about Taiwan. The request and supporting documents are attached to the record as HX. Applicant did not object to documents. (Tr. 14) I took administrative notice as requested by Department Counsel. The facts administratively noticed are set out below in my findings of fact.

Findings of Fact

In his answer to the SOR, Applicant admitted the factual allegations in the SOR under Guideline B (Foreign Influence) and offered explanations. He provided additional information to support his case. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a native of Taiwan. He received his undergraduate degree in Taiwan. He served a mandatory service of two years in the military in Taiwan. He came to the United States in 1982 on a student visa and obtained an advanced degree from an American university in 1982. In 1987, Applicant obtained his doctorate degree. He has almost 22 years experience in the aerospace industry, and has been with his current employer since 2009. Applicant has not held a security clearance, but he has worked with sensitive information in the aerospace industry. He became a naturalized U.S. citizen in 1996. (GX 1) Applicant's Taiwanese passport expired in November 2001 and he did not renew it. (Tr. 29)

Applicant's wife is also a native of Taiwan. They were married in April 1981, and they have no children. His wife is a naturalized U.S. citizen. Her parents live in the United States. Applicant's parents are both deceased. (GX 1)

Applicant's brother is a citizen and resident of Taiwan. He is 62 years old and recently retired as a civil engineer for a government agency in Taiwan. He is not aware of Applicant's work or his application for a security clearance. (Tr. 33) He has no current affiliation with the government. Applicant speaks to him on the phone once or twice a year. Applicant's other brother died in February 2011. Thus, the first SOR allegation is modified to reflect the fact that Applicant has one brother. Also, the allegation concerning the sponsorship of that brother is withdrawn. Applicant last saw his brother at his other brother's funeral in 2011 in Taiwan. (AX D)

Applicant's sister is a citizen of Taiwan who has resided in the United States for the past 12 years. She is 60 years old. She owns an import/export business, importing fashion jewelry. She does not know that Applicant is seeking a security clearance.

Applicant has contact with her once a month by phone. (Tr. 34) They also email each other once every two weeks. Applicant's sister holds a green card.

Applicant's aunt is a citizen and resident of Taiwan. He believes she is 72 years old. She retired from a secretarial position. He speaks to his aunt once every two or three years. In 2004, Applicant sponsored his niece, a citizen of Taiwan, into the United States. She studied at an American university where she graduated, receiving her undergraduate degree. She works for a university hospital in the United States and lives with Applicant and his wife. (Tr. 36) She holds an H-1 visa, and is applying for a green card.

Applicant and his wife own a home in the United States. The value of the home is approximately \$500,000. He and his wife have savings and retirement accounts worth about \$1.3 million. (Tr. 47) Applicant's home is mortgage-free. He and his brother own another home in the United States.

Applicant explained at the hearing that he came to the United States to receive an education. He and his wife plan to live the rest of their lives in the United States. He has roots in the United States both professionally and personally. Applicant has worked his entire adult life in the United States and has deep and long-term relationships. He has not held a clearance, but has been involved with sensitive information, providing service to the U.S. Government through his work with government contractors. Applicant was credible when he explained that if in the unlikely situation that there would be pressure on him or his family, he would immediately contact his facility security officer. (Tr. 18)

Applicant expressed his love for the United States. He also wants to give back to the community that has given him so much. He contributes part of his salary to a local volunteer organization. He wants to assume responsibility to help society in the United States since he lives a comfortable life. He swears to protect the United States from attack. He realizes that he cannot "divorce" his relatives, but during his years in the United States he has not contacted any friends or contacts in Taiwan. He is a law-abiding citizen who has never received a speeding ticket. He has worked hard to provide his family with financial security. He has saved more than 30 percent of his annual income over the years. He has no debt. He has a healthy lifestyle and is financially secure.

Applicant's former supervisor recommends him for a security clearance. He has known Applicant since 1988 and worked with him on four important projects in which Applicant was the analysis lead. Applicant possesses excellent skills, work ethic, and experience. Applicant is a valued member of the team. In sum, Applicant is described as having the utmost integrity. (AX C)

The Director of the defense contract group, for whom Applicant worked prior to his current position, has known Applicant since 1988. He described Applicant as a very capable engineer with an excellent theoretical background who can solve the most

difficult structural mechanics problems. Applicant is dedicated, hard working, and a good team player. He is a man of integrity, faithful to friends, trustworthy, and dependable. Applicant is conscientious about deadlines and is well regarded by his peers. Applicant has been involved in some challenging projects and received positive feedback. (AX D)

Applicant submitted a letter of recommendation from the volunteer coordinator of a community organization where Applicant is greatly involved. The Director has known Applicant for four years. Applicant volunteers with animal rescue. He also is a fund raiser for the organization. He is described a kind man who is always willing to help. His compassionate, gentle spirit is vital to the animal project. He is a loyal person and a responsible member of the community. (AX B)

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 ties with Taiwan from October 1998 until June 2008. Moreover, the governments of Taiwan and 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. However, this report is dated. There have been various cases involving the illegal export, or attempted illegal export, of U.S. restricted, dual use technology to Taiwan.

The 2008 Annual Report to Congress on Foreign Economic Collection and Industrial Espionage notes Taiwan, along with seven other countries, was involved in criminal espionage and export controls enforcement cases in 2008.

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the 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.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline B, Foreign Influence

The SOR alleges Applicant's brother is a citizen and resident of Taiwan (¶ 1.a), Applicant's brother is employed as a civil engineer by the Taiwan government (¶ 1.b), withdrawn (brother deceased) (¶ 1.c), Applicant's sister is a citizen of Taiwan currently residing in the United States (¶ 1.d), and Applicant's sister is employed in the import/export business (¶ 1.e). Applicant sponsored his niece, a citizen of Taiwan, into the United States. (¶ 1.f). It also alleges Applicant's aunt is a citizen and resident of Taiwan, who is a retired secretary formerly employed by the government of Taiwan. (1.g).

The security concern under this guideline 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.

Four disqualifying conditions under this guideline are relevant to this case. First, a disqualifying condition may be raised by "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." AG ¶ 7(a). Second, a disqualifying condition may be raised by "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." AG ¶ 7(b). Third, a security concern may be raised if an applicant is "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." AG ¶ 7(d). Fourth a security concern also may be raised by "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." AG ¶ 7(e).

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it,

regardless of whether that person, organization, or country has interests inimical to those of the United States.” ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Furthermore, “even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security.” ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). Finally, friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, the nature of a nation’s government, its relationship with the U.S., 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, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the U.S. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

Applicant has lived and worked in the United States since 1982. He is a naturalized U.S. citizen. Applicant’s wife, who is a U.S. citizen, resides in the United States. His mother lived in the United States until her death. His sister and niece live in the United States, but are citizens of Taiwan.

Applicant’s brother and aunt are citizens and residents of Taiwan. His sister and niece are citizens of Taiwan, but live in the United States. His parents are deceased. His wife’s mother and father live in the United States. “[T]here is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person’s spouse.” ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at * 8 (App. Bd. Feb. 20, 2002). Applicant has not rebutted this presumption.

After considering the totality of Applicant’s family ties to Taiwan as well as each individual tie, I conclude that Applicant’s family ties are sufficient to raise an issue of a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. Applicant speaks to his brother once or twice a year on the phone. He saw his brother in 2011 in Taiwan when he attended the funeral of his other brother. He speaks to his aunt on the phone every year. Based on all these circumstances, I conclude that AG ¶¶ 7(a), (b), and (d) are raised.

Security concerns under this guideline can be mitigated by showing that “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.” AG ¶ 8(a). Taiwan engages in economic and industrial espionage, and it has been involved in incidents involving illegal importation of restricted, dual-use technology

from the United States. Applicant's brother is a citizen and resident of Taiwan. His aunt is a citizen and resident of Taiwan. His niece is living in the United States, as well as his sister, but they are still citizens of Taiwan. For these reasons, I conclude that AG ¶ 8(a) is partially established.

Security concerns under this guideline can be mitigated by showing "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." AG ¶ 8(b). Applicant has been involved with sensitive information in the aerospace industry for more than 20 years without incident. He has worked with government contractors during this time. Applicant's financial interests are totally in the United States. He and his wife have personal assets, including a home, in the United States worth more than \$1.3 million. Applicant and his wife surrendered their Taiwanese passports and use their U.S. passports. Applicant's sister and niece possess green cards and have lived in the United States for a number of years. I conclude that Applicant would resolve any conflict between the interests of the United States and his family in Taiwan in favor of the United States. Thus, I conclude that AG ¶ 8(b) is established.

Whole-Person Concept

Under the whole-person concept, an 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. An 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 have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a naturalized U.S. citizen who has lived in the United States since 1983. He and his wife reside in the United States, and are both naturalized U.S. citizens. He was articulate, candid, sincere, and credible at the hearing. Applicant's home is in the United States. Applicant has been successful in the defense contracting

business for many years. He has worked in the aerospace industry without incident for more than 22 years. His current employer recommends him for his professionalism and integrity.

Applicant chose to leave his home and emigrate from Taiwan in search of an education and career opportunities. He wants to provide for his family in the United States. He has worked hard in the engineering field and has received praise for his work ethic and accomplishments. Applicant purchased a home and has maintained excellent credit. He has a net worth of more than \$1.3 million. His family intends to remain in the United States. His sister and niece live in the United States.

There is no evidence any of the individuals at issue are involved with, or under scrutiny, by interests antithetical to the United States. Applicant returned to Taiwan in 2011 for his brother's funeral. His family members in Taiwan do not know the specifics of his work.

Regarding Applicant's life in the United States, he is an American citizen, with a stable family, social, and professional life. His life is focused here. He is admired by his peers. He and his wife intend to continue their lives in the United States. There is no evidence indicating that he may be manipulated or induced to help a foreign power or interest. He credibly stated he would report any attempts to influence him to security. In light of these facts and the country at issue, I find that Applicant successfully mitigated foreign influence concerns.

After weighing the disqualifying and mitigating conditions under Guideline B, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on foreign influence. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline B (Foreign Influence):	FOR APPLICANT
Subparagraphs 1.a-1.b:	For Applicant
Subparagraph 1.c:	WITHDRAWN
Subparagraphs 1.d-1.g:	For Applicant

Conclusion

I conclude that 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