



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



In the matter of:)
)
) ISCR Case No. 11-00481
)
Applicant for Security Clearance)

Appearances

For Government: Raashid S. Williams, Esquire, Department Counsel

For Applicant: *Pro se*

January 26, 2012

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, testimony, and exhibits, I conclude that Applicant has mitigated the security concerns related to foreign preference and foreign influence. Accordingly, his request for a security clearance is granted.

Statement of the Case

On July 12, 2011, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) that detailed security concerns under Guideline B (Foreign Influence) and Guideline C (Foreign Preference). This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992) as amended; and the Adjudicative Guidelines (AG) implemented by the Department of Defense on September 1, 2006.

In his Answer to the SOR, dated August 5, 2011, Applicant admitted all the factual allegations under Guidelines B and C. Department Counsel was prepared to proceed on

September 16, 2011, and the case was assigned to me on September 27, 2011. DOHA issued a Notice of Hearing on October 7, 2011, and I convened the hearing as scheduled on November 2, 2011. The Government offered three exhibits, which I admitted into evidence as Government Exhibits (GE) 1 through 3. Applicant offered four exhibits, admitted into evidence as Applicant's Exhibits (AE) A through D. I held the record open to allow Applicant to submit additional documentation. He timely submitted two documents, which I admitted into evidence as AE E and AE F. DOHA received the transcript of the hearing (Tr.) on November 10, 2011.

Procedural Ruling

I took administrative notice of certain facts related to Taiwan, included in 13 U.S. Government documents provided by Department Counsel. The facts are limited to matters of general knowledge, not subject to reasonable dispute, and are set out in the Findings of Fact.

Findings of Fact

Applicant's admissions in response to the SOR are incorporated as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the evidence, I make the following additional findings of fact.

Applicant, 51 years old, was born in Taiwan. He performed compulsory service in the Taiwanese military from 1982 to 1984. In 1986, he came to the United States on a student visa, and earned master's degrees in 1988 and 1990. He completed all coursework for a doctorate, except the dissertation. He became a naturalized U.S. citizen in 2004. He married in Taiwan in 2008, and his wife came to the United States in 2009. Applicant does not have children. For about nine months in 2000, Applicant worked as a manager. The company decided to move operations to China. Applicant did not want to move to China, and resigned from the company. Applicant was the director of software engineering at a technology company from 2001 to 2005. He has worked as a software engineer for a federal contractor since 2005. (GE 1, 3; Tr. 17-19, 21-22, 36-38, 40, 49-50)

Applicant has been a dual citizen of Taiwan and the United States since he became a naturalized citizen in 2004. He maintained his Taiwanese passport, which expires in July 2012. Applicant used this passport to travel to Taiwan once or twice per year between 2004 through 2009. He used it because a friend advised him it would allow him to avoid long lines while traveling. Its use also allowed him to remain in Taiwan for a longer period if a family emergency occurred. He used his U.S. passport for all other foreign travel. He was unaware that using a foreign passport represented a security risk. During his security interview, Applicant stated that he was willing to bear arms against Taiwan. He also noted that he has never voted in Taiwanese elections since leaving Taiwan, but does vote in U.S. elections. (GE 1, 3; AE D, E, F; Tr. 19-21, 31-33, 44, 49)

In the two years since he completed his current security clearance application, Applicant's facility security officer (FSO) did not discuss the security implications of holding a foreign passport. After the SOR was issued, Applicant questioned his FSO about how to proceed. She stated that Applicant might have to surrender his foreign passport. He agreed to do so, but was not provided with further instructions. He thought it was acceptable to wait until the adjudication process had been completed. Later, when he learned the implications of possessing the foreign passport, he surrendered it. The FSO provided a letter confirming that, on November 3, 2011, Applicant surrendered his Taiwanese passport to her. (AE E; Tr. 40-45)

In 2008, Applicant sponsored his wife's entry into the United States. She arrived in 2009, and is now a lawful U.S. permanent resident. She plans to apply for her U.S. citizenship when she is eligible. She has earned a cosmetology license and plans to begin working in that field. Applicant's parents, two eldest sisters, and his wife's parents are all deceased. Applicant does not speak with his wife's family, and any information about them is transmitted through his wife. (GE 1, 3; Tr. 22, 38-39)

Applicant feels he has an obligation, since the death of his parents and sisters, to stay in touch with his two remaining siblings, and to visit his family's gravesites. His brother, a taxi driver, is 53 years old. His brother's wife is a 49-year-old kindergarten teacher. In 2007, Applicant told the security investigator that he speaks with his brother once or twice per week. During his 2010 interview and at the hearing, he said he now speaks with his brother and sister-in-law approximately once per year on holidays. Applicant's 55-year-old sister is a chess instructor, and her husband is a homemaker. Applicant talks with his sister about two to four times per year by telephone. He rarely speaks with his sister's husband. Applicant most recently saw his siblings when he visited Taiwan in 2009. (GE 1, 3; Tr. 24-26)

Applicant does not support his family in Taiwan. However, in 2005 or 2006, his sister's employer decided to move the company to China. She refused to go and lost her job. At the time, she also needed eye surgery. Applicant sent her approximately \$10,000 to help her while she was unemployed and to pay for her eye operation. He testified that he can no longer help anyone financially, because he is married. (Tr. 34-35)

Applicant's additional foreign contacts include two nephews, one niece, and a friend, who are citizens and residents of Taiwan. He has not talked to his niece in three years. Applicant last talked with one of his nephews in 2008. He does not have telephone contact with his nephews or niece. Applicant's friend in Taiwan is a university professor. They talk once or twice per year. He last saw her at his wedding in 2008, and did not contact her when he last visited Taiwan in 2009. None of Applicant's relatives have a connection with the Taiwanese government. (GE 3; Tr. 28-31)

During his 2010 security interview, Applicant told the investigator that he had a bank account in Taiwan. He explained at the hearing that he did have one before he left Taiwan in 1986. However, he is unsure if the account still exists. If it does, the balance is

likely less than one U.S. dollar, and he has not used it 25 years. Applicant owns a home in the United States, which he and his wife purchased in 2009. He estimates its value at \$380,000. He also has bank accounts that total approximately \$45,000, and a 401(k) account worth approximately \$250,000. (GE 3; Tr. 33-34, 45-46)

Applicant has received awards for service during several disasters. In 2008, he received an award for his outstanding contributions made under “extremely difficult conditions” while he worked on a project for the Veterans’ Affairs. In 2005, he traveled to Thailand to help with recovery efforts during the tsunami disaster. In 2001, Applicant assisted with post-September 11 identification of victims’ bodies. For two years, Applicant helped to streamline the computer process that matched bone fragments to specific 9-11 victims to speed the identification process. In September 2003, the New York Chief Medical Examiner’s Office of Forensic Biology awarded Applicant a certificate of appreciation for his “tireless efforts and selfless dedication to the victims’ families of those who perished on 9-11-01.” (AE A, B, C; Tr. 46-49)

Administrative Notice

Republic of Taiwan (Taiwan)

I take administrative notice of the following facts.¹ In 1949, two million refugees fled a civil war with Communist forces on the Chinese mainland, and established the Republic of China on the island of Taiwan. On the mainland, the Communists established the People’s Republic of China (PRC). In the 1979 Taiwan Relations Act (TRA), the United States issued the “one China” policy, formally recognizing the People’s Republic of China (PRC) as China’s sole legal government.

Taiwan and the PRC have significant economic ties, which are attributable to their physical proximity and history. Taiwan’s primary defense goal is to deter invasion from the PRC, which has not renounced the use of force against Taiwan. Because of its geographic location, Taiwan has a particular interest in information from the United States that could aid it in its own defense. In 2008, Taiwan nationals were involved in cases of industrial espionage and export of controlled items. The United States sells appropriate defensive military equipment to Taiwan, in accordance with the TRA.

Taiwan has become a modern multi-party democracy with active public participation in government. It is an economic power and a leading producer of high-technology goods. The United States continues to maintain strong unofficial relations with Taiwan that include significant commercial ties; objections to PRC threats to use force against Taiwan; support of democratic developments; assurances as to its security; and continued arms sales. Commercial connections between the United States and Taiwan have expanded since the TRA took effect. Taiwan enjoys Export-Import Bank financing, normal trade relations status, and ready access to U.S. markets.

¹ The facts regarding Taiwan derive from the documents provided for Administrative Notice.

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.² Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the Guidelines, commonly referred to as the “whole-person” concept. The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under Guidelines B and C.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest³ for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the Government’s case.

Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.⁴ A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Therefore, the government has a compelling interest in ensuring that each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the national interests as his or his own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government.⁵

Analysis

Guideline C, Foreign Preference

The security concern under Guideline C, AG ¶ 9, states:

² Directive. 6.3.

³ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁴ See *Egan*, 484 U.S. at 528, 531.

⁵ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

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.

Under AG ¶ 10, the following disqualifying conditions are relevant:

(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.

Applicant possessed and used a foreign passport while he was a U.S. citizen. He used it primarily to avoid long lines at airports during his travels to Taiwan from 2004 to 2009. He used only his U.S. passport for other foreign travel. AG ¶ 10(a)(1) applied during that period.

AG ¶ 11 contains factors that can mitigate disqualifying conditions. I have considered all the mitigating conditions, especially the following:

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

Although Applicant used his foreign passport only for convenience, a desire for convenience does not mitigate its use. However, he last traveled to Taiwan in 2009, before applying for a security clearance. In addition, he had no knowledge that his use would raise security concerns, because his FSO did not inform him. Once Applicant understood the security implications of his possession of a foreign passport, he surrendered it to his FSO. She provided documentation that it is no longer in his possession. Applicant's actions are mitigated under AG ¶ 11(e).

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern under Guideline B:

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 the disqualifying conditions, and find that the following are relevant to the case:

- (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information; and
- (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.

Family ties with a resident or citizen of a foreign country do not automatically disqualify an Applicant from obtaining a security clearance; such ties are only disqualifying if they create a heightened risk of foreign exploitation or a potential conflict of interest. Applicant shares living quarters with his wife, a Taiwanese citizen. He also has ties to foreign family members who are citizens and residents of Taiwan. He has expressed a sense of obligation to stay in touch with them, and he has traveled to Taiwan several times since 2004 to visit them. The country in question must also be considered in evaluating a Guideline B case. Taiwan has engaged in economic espionage, and has economic ties to the PRC, based on history and proximity. Applicant's family ties create a heightened risk of foreign exploitation and a potential conflict of interest. AG ¶¶ 7(a), (b), and (d) apply.

I have also considered the mitigating conditions under AG ¶ 8, especially the following:

- (a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;
- (b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is

so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

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

Applicant does not have a close relationship with his niece and nephews or his friend in Taiwan, and he does not talk with his in-laws. The primary concern is the obligation he feels toward his two remaining siblings. However, since his marriage, his contacts with them have decreased. They talk a few times per year, and he has not visited since 2009. They have no connection with the Taiwanese government. Given his strong connections with the United States, his U.S. graduate education, U.S. citizenship, long-term residence here, his financial investment in his home, other substantial investments, and his service to the Government through his employment with a federal contractor, it is unlikely that Applicant would choose his foreign siblings if a conflict of interest arose. Mitigating conditions AG ¶ 8(a) and (b) apply.

It is possible Applicant has one bank account in Taiwan. However, he does not know if it is still open. If it is, it has virtually no funds, and he has not used it in 25 years. He has no property in Taiwan. The value of his home here, coupled with his substantial U.S. savings and investments, far outweigh any financial interests in Taiwan. AG ¶ 8(f) applies.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the relevant circumstances. I have evaluated the facts presented and have applied the appropriate adjudicative factors under the cited guidelines. I have also reviewed the record before me in the context of the whole-person factors listed in 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the cited guidelines, I considered

the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant's ties to Taiwan consist of his wife here in the United States, and his siblings, in-laws, niece, and nephews who live there. He has almost no contact with his in-laws, niece, and nephews. Although Applicant feels an obligation to keep in touch with his siblings, and used to travel there regularly, he has not traveled there in more than two years, and expects that his future travel will be less, now that he is married. He does not own property or have financial interests there. He has not voted in Taiwanese elections, and would be willing to bear arms against it.

I have also considered Applicant's strong ties to the United States. He has made his life here for the past quarter-century. He has earned two graduate degrees, and worked steadily. He has built up savings and investments. Given his substantial nest-egg, it is unlikely he would be vulnerable to financial coercion. He has voted in U.S. elections. His wife is a lawful permanent U.S. resident, who plans on obtaining U.S. citizenship as soon as she is eligible. She has studied here, earned a professional certificate, and is planning on a career. Finally, Applicant has contributed significantly to his community through his volunteer efforts. Over the past ten years, he has been commended for several substantial volunteer efforts. He was recognized for a significant two-year contribution to victim identification efforts after September 11. Given these U.S. ties, I conclude that Applicant would resolve any conflict of interest in favor of the United States.

For all these reasons, I conclude Applicant has mitigated the cited security concerns. A fair and commonsense assessment of the available information bearing on Applicant's suitability for a security clearance shows he has satisfied the doubts raised under the guidelines for foreign influence and foreign preference.

Formal Findings

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1, Guideline C:	FOR APPLICANT
Subparagraphs 1.a(1) – 1.a(3)	For Applicant
Paragraph 2, Guideline B	FOR APPLICANT
Subparagraphs 2.a – 2.g	For Applicant

Conclusion

In light of all of the foregoing, it is clearly consistent with the national interest to allow Applicant access to classified information. Applicant's request for a security clearance is granted.

RITA C. O'BRIEN
Administrative Judge