



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



In the matter of:)	
)	
-----)	ISCR Case No. 11-05390
)	
Applicant for Security Clearance)	

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel

For Applicant: *Pro se*

January 28, 2013

Decision

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigation Processing (e-QIP), on July 27, 2010. (Government Exhibit 1.) On May 7, 2012, the Department of Defense issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines B (Foreign Influence) and C (Foreign Preference). 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.

Applicant submitted an Answer to the SOR on May 25, 2012, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on July 31, 2012. I received the case assignment on August 7, 2012. DOHA issued a notice of hearing on August 14, 2012, and I convened the hearing as scheduled on September 4, 2012. The Government offered Government Exhibits 1 and 2, which were received without objection. Applicant testified on his own behalf, and submitted

Applicant Exhibits A and B, which were also admitted without objection. DOHA received the transcript (Tr.) of the hearing on September 12, 2012. Applicant requested that the record remain open until October 1, 2012, for the admission of additional documents. He timely submitted Applicant's Exhibits C through F, which were also admitted without objection. The record closed on October 1, 2012. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Procedural Ruling

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to the Republic of China (Taiwan). (Tr. 29-35.) The request and 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

Applicant was 56 at the time of the hearing, married, and has a master's degree. He is employed by a defense contractor and seeks a security clearance in connection with his employment in the defense industry. Before beginning employment with his current company in June 2010 Applicant had never worked in the defense industry. This is his first application for a security clearance. (Government Exhibit 1 at Section 13; Tr. 26.)

Applicant admitted allegations 1.a, 1.c, 2.a, 2.b and 2.c in the SOR. Those admissions are deemed findings of fact. He specifically denied allegations 1.d and 2.d. His response concerning allegation 1.b I am viewing as a denial. He also provided additional information to support his request for eligibility for a security clearance.

Paragraph 1 (Guideline C - Foreign Preference)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has acted in a way that shows a preference for another country ahead of the United States.

Applicant was born in Taiwan in 1955. He attended college in Taiwan, then in 1981 he came to the United States to continue his education. He received his master's degree from an American university in 1983. (Tr. 71-72.) Applicant became an American citizen in October 2005. (Government Exhibit 1 at Section 9.) His wife is also an American citizen. (Government Exhibit 1 at Section 17.)

Taiwan has mandatory military service. Applicant was obligated to perform that service between 1977 and 1979, which he did as a junior officer in the Taiwanese Navy. (Tr. 59-61.)

Applicant has a current and valid United States passport issued to him in October 2005. This passport shows many immigration stamps from Taiwan from 2007 through 2012. (Applicant Exhibit E; Tr. 52-54.)

Applicant at one time had a Taiwanese passport. It was issued to him in September 2005, before he became an American citizen. Applicant's facility security officer stated that Applicant destroyed his Taiwanese passport in her presence on December 8, 2010. (Applicant Exhibits A and B; Tr. 40-47.)

Allegation 1.b of the SOR states that a concern of the Government is that Applicant used his Taiwanese passport after becoming an American citizen. This appears to have happened one time, under fairly unique circumstances. Applicant was going to travel to Taiwan in December 2008 because his father was ill. His father passed away on December 24, 2008. Applicant arrived in Taiwan on December 27, 2008. For that trip Applicant "used both his U.S. and Taiwan passports to travel to Taiwan. When he entered Taiwan, both passports were stamped." (Government Exhibit 2 at 10.)¹ Once in Taiwan, Applicant used his Taiwanese passport to facilitate matters concerning his father's estate. (Tr. 48-49, 54-59.)

Applicant denied allegation 1.d of the SOR, which states he maintained Taiwanese citizenship in order to inherit money or property from his mother. A Report of Investigation prepared by a Government investigator concerning a statement of Applicant states, "The subject [Applicant] **has not** maintained dual citizenship to protect a financial interest in Taiwan. The subject's mother lives in Taiwan and owns some property. He may inherit this property in the future and may need to be a citizen of Taiwan in order to inherit, but he is not sure." (Government Exhibit 2 at 10.) (Emphasis supplied.) Applicant testified at the hearing that he need not be a Taiwanese citizen to inherit from his mother. Further, Applicant is one of five siblings. His mother's estate will be divided between all of them. He estimates that his portion is worth around \$70,000. (Tr. 61-66.)

Because of his birth in Taiwan, he was a citizen there. However, Applicant has stated that he is willing to renounce his Taiwan citizenship and that he does not think of himself as a citizen of Taiwan. (Tr. 47, 83-85.) He further stated that he would support the United States in the unlikely event of a conflict between Taiwan and the United States. (Tr. 87-88.)

¹Applicant Exhibit E (Applicant's US passport) at page 9 shows a Taiwan entry stamp of December 27, 2008, and an exit stamp of January 8, 2009.

Paragraph 2 (Guideline B - Foreign Influence)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has foreign contacts and interests that could lead to the exercise of poor judgment, unreliability or untrustworthiness on his part, or make him vulnerable to pressure or coercion.

Applicant's mother is a citizen and resident of Taiwan. She is 90 and in poor health, suffering from a form of Alzheimer's Disease, as well as other ailments. She does not recognize Applicant any more and he does not call her since she would not know who he was. (Tr. 66-68.)

Applicant has four siblings. One brother is also an American citizen. However, he is currently working and living in Taiwan. (Tr. 70-71.) His two sisters and other brother all live and are citizens of Taiwan. All three are professional people, and have no involvement with the Taiwanese government or military establishment. (Tr. 68-69.) Applicant testified that he tries to travel to Taiwan on an annual basis to see his family. (Tr. 47-54.)

Allegation 2.d of the SOR states that a security concern is that Applicant may inherit property from his mother. The discussion under allegation 1.d, above, applies to this allegation as well.

Administrative Notice

Applicant has contacts with Taiwan. Accordingly, it is appropriate to look at the current situation concerning Taiwan. Taiwan is a multiparty democracy, whose authorities generally respect the human rights of its citizens. Taiwan is an active collector of industrial information and engages in industrial espionage, as shown by the administrative notice documents in the record. However, the record does not demonstrate that the government of Taiwan targets US intelligence information. Further, the record does not demonstrate that it seeks to exert pressure on US citizens to collect information from family members residing in country or abroad. Finally, it is worth noting that the US Government, and the Defense Department in particular, have a close and continuing relationship with Taiwan and its military, in accordance with the Taiwan Relations Act of 1979, which has governed policy in the absence of diplomatic relations or a defense treaty with Taiwan. In 2011 the principal assistant secretary of defense for Asian and Pacific security affairs testified to Congress, "Today, the United States has a deep security relationship with Taiwan, as indicated by the administration's strong record on arms sales. . . . We will continue to make available to Taiwan defense articles and services to enable it to maintain a sufficient self-defense capability." (Tyrone C. Marshall Jr. American Forces Press Service, *Official Cites Importance of Stability in Taiwan Strait*, <http://www.defense.gov/news/newsarticle.aspx?id=65543> (October 4, 2011).)

Mitigation

Applicant has never held a security clearance. However, he has received security training from his employer and understands his responsibility with regards to the safeguarding of classified information. (Tr. 88-92.)

Applicant owns two houses in the US, with a combined value of approximately \$800,000. This, combined with savings, makes his net worth in the US about \$1 million. (Government Exhibit 2 at 6-7; Applicant Exhibit F; Tr. 74-76.)

Applicant's latest work evaluation shows that he is a valued performer who "High Meets" his job requirements. (Applicant Exhibit C.)

Finally, Applicant submitted a letter of recommendation from the Master and Secretary General of a religious organization to which Applicant belongs. This letter is deeply laudatory, extolling Applicant's skills over the almost 19 years he has been a member of the organization. The Master is also a research professor emeritus in physics and astronomy at a major American university. (Applicant Exhibit D.)

Policies

Security clearance decisions are not made in a vacuum. When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used as appropriate 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, "Any 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

Paragraph 1 (Guideline C - Foreign Preference)

In this case the Government has met its initial burden of proving by substantial evidence that Applicant is a dual citizen of Taiwan and the United States, that he had a valid Taiwan passport, and that he served in the Taiwan military in the 1970s.

Applicant has mitigated the Government's concerns about the above conduct. The concern is stated thus under this Guideline at AG ¶ 9:

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.

Disqualifying Condition AG ¶ 10 applies to the facts of this case:

Conditions that could raise a security concern and may be disqualifying include: (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; and
- (2) military service or a willingness to bear arms for a foreign country.

Applicant's Taiwan passport has been destroyed. Accordingly, "the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated," as required by Mitigating Condition AG ¶ 11(e).

Applicant used both his US and Taiwan passports when he went to Taiwan in 2008, after the death of his father. His use of his Taiwanese passport inside the country to facilitate issues connected with his father's estate can be mitigated by the fact of the considerable period of time since the event. In addition, Applicant made a point of traveling on both of his passports, which shows he was not attempting to hide or conceal his American citizenship. Finally, it is worth noting that Applicant was not working in the defense industry at that time and had no knowledge of security requirements.

The Government also expressed concern that Applicant was maintaining his Taiwanese citizenship to inherit property from his mother. Applicant denied this allegation, and in Government Exhibit 2 Applicant makes the affirmative statement that he "**has not** maintained dual citizenship to protect a financial interest in Taiwan." (Government Exhibit 2 at 10.) (Emphasis supplied.) This allegation is unproven and Disqualifying Condition ¶ 10(a)(5), "using foreign citizenship to protect financial or business interests in another country," does not apply to this case

Applicant has repeatedly and credibly stated that he only considers himself an American citizen and is willing to renounce his Taiwan citizenship. Mitigating Condition ¶ 11(b) applies to this case, "the individual has expressed a willingness to renounce dual citizenship." Mitigating Condition AG ¶ 11(a) also applies as his "dual citizenship is based solely on parents' citizenship or birth in a foreign country." Guideline C is found for Applicant.

Paragraph 2 (Guideline B - Foreign Influence)

The concern under Guideline B is styled as follows at 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 Applicant has family connections to Taiwan. There is the potential for him to inherit property there as well.

The following Disqualifying Conditions apply to this case under AG ¶ 7:

(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; and

(e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

Applicant has proved that he is a conscientious and patriotic citizen, and member of the defense industry. He has lived in the United States for more than half of his life, and his wife is also a citizen. He has substantial family and financial ties in the United States that outweigh his relationship to Taiwan. While he still has family in Taiwan, Applicant has shown that his loyalties are to the United States.

Applicant has provided compelling evidence to show that the following Mitigating Conditions under AG ¶ 8 also apply to this particular case, given his particular background:

(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.

Based on my analysis of the available information, Applicant has overcome the adverse inference arising from his family members presence in Taiwan. Guideline B is found for Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. 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. 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. My Guideline B and C analysis is applicable to the whole-person analysis as well. I have also specifically examined the intelligence activities of Taiwan. The evidence shows that the Applicant is a patriotic American citizen. Applicant eloquently testified about the importance to him of being a citizen of the United States, and his pride in being a member of the defense industry. Though he has never held a security clearance, he is knowledgeable about security and understands his responsibility, particularly with regards to Taiwan. I find that there is little or no "potential for pressure, coercion, exploitation, or duress" as set forth in AG ¶ 2(a)(8). Using the whole-person standard, Applicant has mitigated the security significance of his alleged foreign preference and foreign connections and is eligible for a security clearance.

On balance, it is concluded that Applicant has successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding for Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the Government's Statement of Reasons.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline C:	FOR APPLICANT
Subparagraphs 1.a through 1.d:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a through 2.d:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

WILFORD H. ROSS
Administrative Judge