



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



In the matter of:)	
)	
)	ISCR Case No. 11-11585
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray Blank, Esq., Department Counsel
For Applicant: Corey R. Williams, Esq.

10/18/2013

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. Applicant was born in Taiwan and is a naturalized U.S. citizen who has lived in the United States since 1990. Applicant’s mother, siblings, and in-laws are citizens and residents of Taiwan. Notwithstanding his foreign family members, Applicant established that he has substantially more connections to the United States than to Taiwan. Applicant has rebutted or mitigated the Government’s security concerns under Guideline B, Foreign Influence and Guideline C, Foreign Preference. Clearance is granted.

History of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on January 9, 2013, the DoD issued a Statement of Reasons (SOR) detailing security concerns. DoD

¹ Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*

adjudicators could not find that it is clearly consistent with the national interest to grant or continue Applicant's security clearance. On February 4, 2013, Applicant answered the SOR and requested a hearing. On May 16, 2013, I was assigned the case. On May 31, 2013, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for the hearing convened on June 12, 2013. I admitted Government's Exhibits (Ex) 1 through 3 and Applicant's Exhibits A through L, without objection. Applicant testified at the hearing, as did a coworker. The record was held open to allow Applicant to submit additional information. Additional material (Ex. M and N) was submitted and admitted into the record without objection. On June 20, 2013, DOHA received the hearing transcript (Tr.).

Procedural and Evidentiary Rulings

Request for Administrative Notice

Applicant and Department Counsel requested I take administrative notice of certain facts relating to Taiwan. The documents submitted by the parties for administrative notice were not admitted into evidence but were included in the record as Hearing Exhibits. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In Applicant's Answer to the SOR, Applicant acknowledged his mother, two brothers, three sisters, mother-in-law, and father-in-law live in and are citizens of the Republic of China (Taiwan). He admitted that in July 2001, he received medical treatment of a value of less than \$20 while visiting in Taiwan and admitted having a bank account in Taiwan. I incorporate Applicant's admissions to the SOR allegations in my findings of fact. After a thorough review of the pleadings, exhibits, and testimony, I make the following additional findings of fact:

Applicant is a 49-year-old lead software engineer who has worked for a defense contractor since October 2008, and seeks to obtain a security clearance. (Ex. 1, Ex. B) His job performance from 2008 through 2011 was rated as "Exceeds Requirements" or as "Exceeds Expectations." (SOR Answer, Ex. F – Ex. I) Applicant's coworkers, supervisors, and friends state: Applicant is open, honest, trustworthy, dedicated, focused, and his work is consistently of a superior quality. (Ex. J, Ex. K, Ex. L, Ex. N, Tr. 26 – 28) They state he can be "counted upon to deliver results no matter how challenging, time consuming or stressful the task." (Ex. J) (Ex. N)

In 1964, Applicant was born in Taiwan. In June 1986, he obtained his Bachelor's degree in Industrial Design Engineering from a Taiwanese university. (Ex. A, Tr. 40) From August 1986 to June 1988, he performed his mandatory service in the Taiwanese military as a second lieutenant responsible for education and training. (Ex. 2, Ex. 3, Ex.

(January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

A) In August 1990, he moved to the United States. In June 1992, he obtained his Master's degree in computer science from a U.S. university. (Ex. A, Ex. D, Tr. 40) From October 1993 to March 1995, he was married to a woman² born in China. (Ex. 1)

In September 2001, Applicant married his wife who was born in South Korea. She is a dual U.S. – Taiwanese citizen.³ (Ex. 1, Ex. 2) In July 2001, he became a naturalized U.S. citizen and obtained a U.S. passport in December 2001. (Ex. 1, Tr. 42) His U.S. passport is valid through October 2021. (Ex. M) In September 2003, his daughter was born and in June 2007, his son was born. (Ex. A) Both were born in the United States. Since October 2008, he has been employed by his current employer, and has resided at the same address since October 2001.

Applicant's mother is an 82-year-old homemaker who is a citizen and resident of Taiwan. (Tr. 39) His father, who died in 1988, was a sailor. (Ex. A, Tr. 39) Applicant calls his mother twice a month. (Tr. 42) His mother-in-law and father-in-laws,⁴ citizens and residents of Taiwan, are retired, but had worked at a restaurant they owned for more than 20 years. (Ex. 2) He has contact with them twice a year. (Tr. 43) One of his wife's brothers is a travel guide and another works for a printing company. (Tr. 58, 59) The record does not list the third brother's employment.

Applicant's five siblings are citizens and residents of Taiwan. His oldest brother is a partner in a plumbing company. His youngest brother is a university professor. (Tr. 44, 62) He calls his brothers three times a year. (Ex. 2) One of his sisters works for an insurance agency, another for a travel agency, and the third is a junior high school teacher. (Ex. 2) He calls his sisters four times a year except for one sister who lives close to his mother. He calls that sister monthly to check on his mother. None of Applicant's relatives or in-laws have any connection with the Taiwanese government. He has an older half-brother who lives in China. Applicant's father was born in mainland China and had a wife and son there before his father moved to Taiwan. (Tr. 54) Applicant has met his half-brother only once. (Tr. 67) In the past 20 years, he has not seen his half-brother and has no contact with this individual. (Tr. 53, 54)

In July 2001, while on a visit to Taiwan, Applicant suffered from allergies and visited a doctor. (Tr. 78, 80) The medical treatment was worth \$17.47. (Ex. 3) The doctor did not present him with a bill believing Applicant was covered by insurance as a Taiwanese citizen. In March 2011, when he completed his Electronic Questionnaires for Investigations Processing (e-QIP), he had \$100 in a bank account in Taiwan, which he had opened in the late 1980s. (Ex. 1, Ex. 2, Ex. 3) The account is now closed. (Tr. 50)

² Applicant does not know where his former spouse resides and has had no contact with her since the divorce. (Ex. 2)

³ Applicant's wife has been a citizen of Taiwan since November 1971 and of the United States since 2005. (Ex. 2, Tr. 68)

⁴ Applicant sponsored his mother-in-law for permanent U.S. residence. In April 2007, she became a permanent U.S. resident. She lives in Taiwan, where she returned in January 2008. (Ex. 2)

He has assets of approximately \$700,000 in the United States. (Ex. 3, Tr. 67) His home is worth approximately \$230,000 and his vehicle \$40,000. (Tr. 51)

Applicant visited Taiwan from December 2010 to January 2011 (for 19 days), from December 2009 to January 2010 (for 24 days), in February 2008 (for 21 days), from March 2006 through April 2006 (for 17 days), from April 2005 through May 2005 (for 13 days), in July 2005 (for six days), and in October 2004 (for 14 days). (Ex. 1, Ex. 2) He was in Taiwan a total of 114 days during these seven trips, which spanned six years. He also traveled to Taiwan in March 2001 and February 2002. (Ex. 3) While in Taiwan, he visited family and went sightseeing. (Ex. 2)

In June 2013, Applicant submitted documents to renounce his Taiwanese citizenship. (Ex. M) In August 2008, he surrendered his Taiwanese passport, which was valid until January 2018, to his Facility Security Officer (FSO). (Ex. M) His FSO destroyed the passport by shredding it. (Ex. C, Tr. 54, 55) Applicant considers the United States his home and would do nothing to jeopardize his family here. (Tr. 47, 72, 76) His wife, children, home, and job are all in the United States. His whole work career has been in the United States. (Tr. 79)

TAIWAN

Taiwan is a stable democracy with a strong and well-developed economy. Taiwan is a multi-party democracy with significant economic contacts with China. Taiwan and the U.S. have had a close alliance for many decades and retain strong mutual strategic interest with the U.S. for both defense and commercial trade. The Taiwan Relations Act, signed in 1979, states the U.S. commitment to maintain Taiwan defense capability. In 2007, the U.S. announced military sales of \$2.2 billion to Taiwan. In 2008, the U.S. Congress approved arms sales to Taiwan totaling more than \$6 billion. In 2010 and 2011, more than \$12 billion in arms sales was approved. The United States is the largest foreign investor in Taiwan. Taiwan is the United States' ninth largest trading partner with trade amounting to nearly \$62 billion in 2011. Taiwan is also the sixth largest export market for food and agricultural products for the United States. Taiwan is known to be an active collector of U.S. economic intelligence and proprietary information.

Policies

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 must be considered 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 interests of 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.

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 to obtain 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order (EO) 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 *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Foreign Influence

AG ¶ 6 expresses the security concerns regarding foreign influence:

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:

(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.

Applicant's mother, siblings, and in-laws are citizens and residents of Taiwan. Between 2001 and 2011, he visited Taiwan nine times. In 1990, Applicant moved to the United States, where in June 1992, he obtained a Master's degree. In July 2001, he became U.S. citizen and in 2005, his wife became a U.S. citizen. Both of his children are U.S. citizens, having been born in the United States. Applicant has no foreign assets or foreign business interests, and he has U.S. assets of approximately \$700,000. Applicant has significant ties to the United States and none to Taiwan other than his mother, siblings, and in-laws living there. None of his relatives or their spouses have connections with any foreign government.

In every case where a mother and siblings live overseas, there is a risk of pressure on the relatives and through them upon the holder of a security clearance. Under the facts of this case, a heightened risk for exploitation, inducement, manipulation pressure, or coercion is substantiated. Having considered all of the Foreign Influence disqualifying conditions, applicable conditions that could possibly raise a security concern are AG ¶ 7(a) and AG ¶ 7(b).

AG ¶ 8 provides conditions that could mitigate security concerns:

(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 obligations 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;

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation; 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's mother is an 82-year-old homemaker and his father is deceased. Applicant calls his mother twice a month. His in-laws, now retired, had worked at a family owned restaurant. He has contact with them twice a year. One of his wife's brothers is a travel guide and another works for a printing company. The record does not list the third brother-in-law's employment.

Applicant visits his mother, siblings, and in-laws during his visits to Taiwan. His oldest brother is a partner in a plumbing company and his youngest brother is a university professor. He calls his brothers three times a year. One of his sisters works for an insurance agency, another for a travel agency, and the third is a junior high school teacher. He calls his sisters four times a year, except for one sister who lives close to his mother. He calls that sister monthly to check on his mother. None of Applicant's relatives or in-laws have any connection with the Taiwanese government or any other foreign government. Applicant has no contact with an older half-brother who he met once and has not seen in the past 20 years. His half-brother does not pose a security concern due to the lack of contact with this individual.

AG ¶¶ 8(a) and 8(c) partially apply. Because of his limited contact with his brothers, sisters, and in-laws, "it is unlikely [he] will be place in a position of having to choose between the interest of [his siblings and in-laws] and the interest of the U.S." His infrequent contacts (two to four times a year) and a not particularly close relationship with them have a very low potential for forcing him to choose between the United States and Taiwan. He met his burden of showing there is little likelihood that his relationship with his brothers, sisters, and in-laws could create a risk of foreign influence or exploitation.

Even though Applicant has limited contact with his mother visiting her once a year and calling her monthly, the contact is not considered casual because it is with his mother. However, there is little likelihood that his mother could create a risk of foreign influence or exploitation.

AG ¶ 8(b) fully applies. There is no evidence that his mother, siblings, or in-laws are or have been political activists, challenging the policies of the Taiwanese Government. There is no evidence they currently work or ever worked for the

Taiwanese government or that of any other foreign government. There is no evidence that the Taiwanese government has approached or threatened Applicant or his relatives or in-laws for any reason. There is no evidence that his mother, siblings, or in-laws living in Taiwan currently engage in activities that would bring attention to them or that the Taiwanese government is even aware of Applicant's work. As such, there is a reduced possibility that his relatives, in-laws, or Applicant would be targets for coercion or exploitation.

AG ¶ 8(f) applies because he has no interest in property in Taiwan and he has significant U.S. property and assets. These mitigating conditions taken together are sufficient to fully overcome the foreign influence security concerns.

Applicant has longstanding relationships and loyalties in the U.S. and can be expected to resolve any conflict of interest in favor of the U.S. interest. Applicant came to the U.S. in 1990 and became a U.S. citizen in 2001. In 1992, he obtained his Master's degree from a U.S. university. He worked for a defense contractor since 2008.

Applicant has more significant ties to the U.S. than to Taiwan and those ties are much stronger than his ties to Taiwan. There is little likelihood that Applicant will be placed in a position of having to choose between the interests of the U.S. and a foreign entity. Likewise, because of his close ties and his loyalties to the U.S., he would resolve any conflict of interest in favor of the United States.

Foreign Preference

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. AG ¶ 9.

Dual citizenship standing alone is not sufficient to warrant an adverse security clearance decision. ISCR Case No. 99-0454 at 5, 2000 WL 1805219 (App. Bd. Oct. 17, 2000). Under Guideline C, "the issue is not whether an applicant is a dual national, but rather whether an applicant shows a preference for a foreign country through actions." ISCR Case N. 98-0252 at 5 (App. Bd. Sep. 15, 1999).

A disqualifying condition may arise from "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." In July 2001, while visiting Taiwan, Applicant suffered from allergies and visited a doctor. He was not charged for the medical treatment, which cost \$17.47.

In the late 1980's Applicant opened a bank account in Taiwan. In March 2011, he had \$100 in the account. The account is now closed. This account was insignificant when compared to his assets in the United States, which are approximately \$700,000.

Applicant having received less than \$20 worth of medical services in 2001 and once having had a small bank account in Taiwan, which is now closed, are not of security significance.

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

Taiwan targets U.S. technology and financial interests, and engages in industrial espionage. Taiwan has been among the most active collectors of U.S. economic and proprietary information. Taiwan and the United States are important economic partners. Taiwan is the United States' ninth largest trading partner and the United States is the largest foreign investor in Taiwan. Although contact with Taiwan may seem to be relatively innocuous, it cannot be dismissed without some degree of caution and scrutiny.

Applicant chose to leave his home and pursue his career in the United States. He is firmly established in the United States where he has lived for 23 years. His assets are located in the United States. He has spent a considerable amount of time in the United States as a professional working as a software engineer. In 2001, he became a naturalized U.S. citizen. His wife is a naturalized U.S. citizen. His children are 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 his work.

Applicant is an American citizen with a stable family, social, and professional life. His life is focused here. There is no evidence indicating that he may be manipulated or induced to help a foreign power or interest. His mother, siblings, and in-laws do not work for a foreign agency or foreign government. There is no evidence any of his

relatives are involved with, under scrutiny, or have interests antithetical to the United States.

After weighing the disqualifying and mitigating conditions under Guidelines B and C, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on foreign influence and foreign preference. 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

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, Foreign Influence:	FOR APPLICANT
Subparagraphs 1.a and 1.b:	For Applicant
Paragraph 2, Foreign Preference:	FOR APPLICANT
Subparagraphs 2.a and 2.b:	For Applicant

Conclusion

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

CLAUDE R. HEINY II
Administrative Judge