



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



In the matter of:)	
)	
)	ISCR Case No. 11-12213
)	
Applicant for Security Clearance)	

Appearances

For Government: Candace L. Garcia, Esquire, Department Counsel
For Applicant: Brian E. Kaveney, Esquire

05/17/2013

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, Applicant's eligibility for access to classified information is granted.

Statement of the Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on May 16, 2011. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on September 26, 2012, detailing security concerns under Guideline B, foreign influence, and Guideline 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 For Determining Eligibility for Access to Classified Information* (AG) implemented on September 1, 2006.

Applicant received the SOR on October 8, 2012, and he answered it on November 16, 2012. Applicant retained counsel and requested a hearing before an administrative judge with the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on January 28, 2013, and I received the case assignment on January 30, 2013. DOHA issued a Notice of Hearing on February 14, 2013, and I convened the hearing as scheduled on February 28, 2013. The Government offered exhibits (GE) marked as GE 1 through GE 3, which were received and admitted into evidence without objection. Applicant and three witnesses testified. He submitted exhibits marked as AE A through AE T, which were received and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on March 12, 2013. I held the record open until April 30, 2013, for Applicant to submit additional matters. Applicant timely submitted AE U - AE BB, which were received and admitted without objection. The record closed on April 30, 2013.

Procedural Rulings

Notice

Applicant received the notice of the date, time and place of the hearing less than 15 days before the hearing. I advised Applicant of his right under ¶ E3.1.8. of the Directive to receive the notice 15 days before the hearing. After consulting with counsel, Applicant affirmatively waived this right under the directive. (Tr. 9.)

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Taiwan. The request and the attached documents were not admitted into evidence, but were included in the record as Hearing Exhibit 1, I-XVI. The facts administratively noticed will be limited to matters of general knowledge and matters not subject to reasonable dispute, and are set out in the Findings of Fact below.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a and 2.a-2.c of the SOR. His admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶ 1.b of the SOR.¹ He also provided additional

¹ When SOR allegations are controverted, the Government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the Government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the Government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). 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. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 53 years old, works as an engineer and businessman for a DOD contractor. He began his current employment at a subsidiary company of a large corporation in March 2000. His employer recently promoted him to division manager.²

Applicant was born and raised in Taiwan. He attended undergraduate school in Taiwan, receiving his bachelor's degree in engineering in 1982. Upon completion of his college education, he served his mandatory two years of Taiwanese military service. In 1984, he immigrated to the United States to study for his master's degree. He completed his education and received a degree in engineering and applied physics from a major U.S. university in 1985. He returned to graduate school part time in 1988 and received a masters in business administration degree from another U.S. university in 1993. Applicant became a naturalized U.S. citizen in 1994.³

Applicant married his first wife in 1989, and they divorced in 1999. They have two sons, ages 22 and 19. His sons are U.S. citizens by birth and have always resided in the United States. His oldest son recently graduated from a U.S. university and is working. His youngest son is a student at a U.S. university. Applicant and his second wife married in February 2005. She was also born in Taiwan and is a naturalized U.S. citizen. She works for a county government.⁴

Applicant's 80-year-old father is a citizen and resident of Taiwan. He retired about 15 years ago from his accountant position in a private company. His 73-year-old mother is a citizen and resident of Taiwan. She has not worked in many years. She was diagnosed with cancer in 2009 and underwent surgery and cancer treatment. Applicant's brother, a Taiwanese citizen, lived in the United States for eight years as a young man, but returned to Taiwan where he lives and operates his own organic food business. Applicant's sister is a resident and naturalized citizen of the United States. His family members in Taiwan are not politically active, do not work for the Taiwanese government, and do not have contacts with officials of the Taiwanese government.⁵

Applicant does not own any property in Taiwan, and he receives no benefits from the Taiwanese government. Since 1985, he has worked and paid taxes in the United States. In 2011 and 2012, he earned over \$240,000 in income and bonuses plus stock options. He earned approximately \$205,000 in 2010. Including his savings, retirement, investments, and home, his assets total about \$1,820,000 and are located in the United

² GE 2; Tr. 49, 73.

³ Attachments to SOR Response; GE 2; AE F; AE G; Tr. 64-65, 70-71.

⁴ GE 2; AE A; AE B; Tr. 67-70.

⁵ Response to SOR; GE 2; AE K; Tr. 70, 83-85, 95-96, 103-109, 116.

States. His only liability is a mortgage of \$250,000, giving him a net worth of \$1,570,000.⁶

When his mother became ill in 2009, Applicant and his sister learned that their father had opened bank accounts in Taiwan in their name. His father told them about the accounts because he needed additional funds to pay for their mother's high medical bills. Applicant believed his father opened these accounts when he was a child, but was unable to provide clear proof as to when the accounts were opened. He did establish that account one was opened prior to 1982. His evidence shows that the second account was opened in 2002. Applicant did not contribute to these accounts nor has he received any income from the accounts. With the agreement of his father, Applicant closed the two Taiwanese bank accounts opened by his father on March 4, 2013 and March 5, 2013. The total proceeds from these accounts equaled \$156,927.00. He and his father agreed that Applicant would receive \$66,783, which has been transferred to Applicant's bank in the United States. The remaining money was returned to his father.⁷

Applicant's Taiwanese passport expired when he became a U.S. citizen. His Taiwanese identification card (ID card) also expired. For 16 years, he traveled on his U.S. passport. In 2010, Applicant renewed his Taiwanese passport to allow his father access to the above savings accounts to obtain funds to pay for his mother's medical treatments. To access the savings accounts in Applicant's name, Applicant's father needed a valid signatory stamp and a valid ID card. To get the ID card, Applicant needed to show an entry stamp on his Taiwanese passport, indicating that he traveled to Taiwan. He used his Taiwanese passport to enter Taiwan in May 2010 and then obtained his Taiwanese ID card, which he gave to his father. His father already had the signature stamp. Applicant does not have possession of his Taiwanese ID card.⁸

Applicant traveled to Taiwan in August 2010, using his Taiwanese passport and his U.S. passport. He also traveled with his U.S. passport in May 2010. He provided a copy of his U.S. passport, which contains entry and exit stamps from Taiwan for these trips. Applicant has not been approached by Taiwanese military or government officials when traveling in Taiwan. Likewise, his family members have not been approached by military or government officials. Applicant has expressed an intent to renounce his Taiwanese citizenship.⁹

When he traveled to Taiwan in May 2010, Applicant also traveled to Hong Kong for business. He stopped in Taiwan while on his business trip. Applicant traveled to China for business in May 2005, March 2006, October 2006, December 2006, March 2008, February 2009, and March 2010. He traveled to Hong Kong for business in

⁶ AE L; AE M; AE O; Tr. 81-82.

⁷ Response to SOR; GE 2; GE 3; AE P; AE R; AE U; AE W - AE BB; Tr. 89-91, 118.

⁸ Response to SOR; GE 3; AE R; Tr. 90, 98-99, 120-124.

⁹ GE 3; AE V; Tr. 88, 124-128.

November 2009 and May 2010. After his business meetings in China in March 2008, he stopped in Taiwan to visit his parents. Between 2006 and 2011, he traveled to Canada, France, Spain, Italy, Germany, Ireland, and the United Kingdom on business. During his business trips, Applicant met with foreign nationals to discuss products related to his business, not classified information or classified products. The president and CEO of one subsidiary of Applicant's employer verified Applicant's business travels to China and Hong Kong and is aware of Applicant's visits to his family in Taiwan.¹⁰

Since his mother became ill, Applicant talks with her about twice a month by telephone. He talks with his father less frequently and even less with his brother. Applicant denies a preference for Taiwan. His witnesses also stated that they did not believe Applicant had a preference for Taiwan because he recognizes the opportunities given to him by America.¹¹

When he completed his e-QIP, Applicant realized that his Taiwanese passport might raise a problem with his request for a security clearance. In May 2011, Applicant advised his then supervisor about his concern and gave him his Taiwanese passport. His supervisor gave Applicant's passport to the facility security officer (FSO), who currently has possession of the passport. If Applicant requests the Taiwanese passport, the FSO will deny his request and file an incident report.¹²

Applicant advised that if he were approached by anyone about providing classified information to a foreign government or individual, he would report the incident to his FSO because he is not trained to handle such an incident. A former coworker and supervisor indicated that Applicant always complied with the rules and regulations for managing classified information and that he was responsible with managing sensitive and classified information when he previously held a security clearance.¹³

Applicant's employer is a major corporation with several wholly-owned subsidiaries. The presidents and CEOs of two subsidiaries, one of whom is Applicant's direct supervisor, and the vice-president and FSO of his company testified. They also submitted letters of recommendation, as did two other individuals. All praise his work skills, work ethic, honesty, and loyalty. They described him as an exceptional engineer and excellent businessman. They trust him implicitly and strongly support his obtaining a security clearance. They describe him as a family man and a proud American.¹⁴

¹⁰ Response to SOR; GE 2; GE 3; AE A; AE D; AE I; Tr. 29-32, 87, 134-137.

¹¹ AE A; AE D; AE E; AE I; Tr. 32, 52, 60-61.

¹² AE I; AE J; Tr. 53, 97-98, 147.

¹³ AE D; Tr. 129, 134.

¹⁴ AE A; AE D; AE E; AE I; AE Q; AE T; Tr. 22-58, 140-154.

Taiwan

In 1949, a large number of Chinese refugees fled from the civil war in mainland China and immigrated to the off-shore Island of Formosa, now known as Taiwan. The Communists in mainland China established the People's Republic of China (PRC), and Chiang Kai-shek, the leader of the Kuomintang on mainland China, established a provisional government and capital in Taipei, Taiwan. The PRC refuses to recognize Taiwan's independence, and insists that there is only "one China." After recognizing Taiwan for nearly 30 years, on January 1, 1979, the United States formally recognized the government of the PRC as the sole legitimate government of China. The United States does not support independence for Taiwan and, under the Taiwan Relations Act, signed into law on April 10, 1979, is committed to a "one-China policy." Nevertheless, the United States has been also been committed to maintaining cultural, commercial and other nonofficial relations with Taiwan, and continues to provide arms in support of Taiwan's security and region stability.

Taiwan is a multi-party democracy with a strong economy, with significant economic contacts with both the PRC and the United States. Taiwan's own national security remains under constant threat from the PRC since PRC has not renounced the use of force against Taiwan, and this has led to Taiwan's large military establishment. Taiwan's armed forces are equipped with weapons obtained primarily from the United States, but Taiwan has stressed military self-reliance in recent years which has resulted in the growth of indigenous military production.

Taiwan is believed to be an active collector of U.S. economic intelligence and proprietary information. There is no evidence that Taiwan uses coercive measures to gain access to such information, but cyber security is an issue. While there have been a number of incidents involving individuals, companies, and Taiwanese intelligence officers improperly acquiring U.S. economic intelligence and proprietary information, there is no direct or indirect connection to, or involvement with, Applicant. Activities by terrorist organizations in Taiwan are not reported.

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 are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available,

reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” An applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern 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 the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

(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

(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's wife, children and sister are citizens and residents of the United States. Thus, no security concern is raised by these family members. Applicant's parents and brother are citizens and residents of Taiwan. Applicant maintains a normal familial relationship with his parents and brother in Taiwan. He talks with his mother by telephone twice a month and with his father and brother less frequently. He does not provide financial support to his parents. He visits with his family in Taiwan periodically. His family relationships are not *per se* a reason to deny Applicant a security clearance, but his contacts with his family members must be considered in deciding whether to grant Applicant a clearance. The Government must establish that these family relationships create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion by terrorists or would create a potential conflict of interest between his obligations to protect sensitive information and his desire to help his family members who may be threatened by terrorists.

In determining if such a heightened risk exists, I must look at Applicant's relationships and contacts with his family, as well as the activities of the Governments of Taiwan and terrorist organizations within Taiwan. The risk that an applicant could be targeted for manipulation or induced into compromising classified information is real, not theoretical. Applicant's relationship and contacts with his family in Taiwan raise a heightened risk and a security concern because the activities of Taiwan in collecting economic and proprietary information. The evidence of record fails to show that the Taiwanese Government targets U.S. citizens in the United States or in Taiwan by exploiting, manipulating, pressuring, or coercing them to obtain protected information. Thus, the concern that the Taiwan Government will seek classified information is moderate. The press releases reflect activities by some citizens of Taiwan, not the

Government of Taiwan, to violate U.S. laws and ship controlled goods without proper licenses to Taiwan, although there is no information that these incidents involved the exchange of classified information.

Under the guideline, the potentially conflicting loyalties must be weighed to determine if an applicant can be expected to resolve any conflict in favor of U.S. interests. In determining if Applicant's contacts in Taiwan cause security concerns, I considered that Taiwan and the United States have a relationship, which includes working together on international security issues and trade. There is no evidence that the Taiwanese Government targets U.S. citizens for protected information. The human rights issues are not an issue with the Taiwanese Government. While none of these considerations by themselves dispose of the issue, they are all factors to be considered in determining Applicant's vulnerability to pressure or coercion because of his family in Taiwan. Applicant's contacts with his family raise a heightened risk under AG ¶¶ 7(a) and (b). The bank accounts in Taiwan opened by Applicant's father also raise a security concern under AG ¶ 7(e).

The Foreign Influence guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 8(a) through ¶ 8(f), and the following are potentially applicable:

- (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;
- (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;
- (d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority; 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 has a normal relationship with his parents and brother. His care and concern for his parents and their health is expected and normal. Applicant's preference is to the United States. If presented with a situation where he would be asked to choose between Taiwan and the United States, he would choose the interests of the United States. There is little likelihood he would be placed in this position because of his family contacts in Taiwan as his family lives quietly. His employers strongly support his loyalty to the United States and his trustworthiness to handle classified information, making it likely that Applicant would choose the interests of the United States over Taiwan.

Applicant's multiple trips to China and Hong Kong were for business unrelated to classified products produced by his company. With the agreement of his father, Applicant closed both bank accounts in Taiwan and transferred some of the money to his U.S. bank accounts. The remaining funds were returned to his father. Applicant has no property in Taiwan. Applicant has mitigated the security concerns about foreign influence under AG ¶¶ 8(a)-8(d) and 8(f).

Guideline C, Foreign Preference

Under AG ¶ 9 the security concern involving foreign preference arises, "[W]hen 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 ¶ 10 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

(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

(5) using foreign citizenship to protect financial or business interests in another country.

Applicant renewed his Taiwanese passport and ID card in 2010 to access bank accounts in Taiwan. A security concern under AG ¶ 10(a)(1) and (a)(5) is established.

The Foreign Preference guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 11(a) through ¶ 11(f), and the following are potentially applicable:

(b) the individual has expressed a willingness to renounce dual citizenship;
and

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

After he completed his e-QIP in May 2011, Applicant immediately gave his Taiwanese passport to his supervisor because Applicant realized that his Taiwanese passport could present a concern for his security clearance. His FSO retains possession of his Taiwanese passport, and Applicant has not requested it. He travels on his U.S. passport. He has indicated an intent to renounce his Taiwanese citizenship and he does not have possession of his Taiwanese ID card. Applicant's ties are to the United States and his preference is for the United States. Applicant has mitigated the security concerns about his foreign preference under AG ¶¶ 11(b) and 11(e).

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 an 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant has no desire to return to Taiwan to live. The United States is his home and his country. He is proud to live in America and grateful for the opportunities he has had in the United States. He owns a house and all his financial assets are in the United States. He has

worked hard and built a highly successful career with United States companies. He is trustworthy, honest and loyal. His managers and supervisors have a high regard for Applicant and strongly recommend him for a security clearance. In reviewing all the evidence and testimony, it is clear Applicant would not betray the interests of the United States if confronted by foreign officials or military officers. There is little likelihood that Taiwan would pressure him to release classified information. Overall, the evidence clearly indicates that Applicant prefers the United States to Taiwan. He has mitigated the security concerns about his family in Taiwan and his foreign contacts through business.

For all these reasons, I conclude Applicant mitigated the security concerns arising from his foreign contacts under Guidelines B and C.

Formal Findings

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

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraphs 1.a-1.b:	For Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraphs 2.a-2.c:	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 eligibility for a security clearance. Eligibility for access to classified information is granted.

MARY E. HENRY
Administrative Judge