



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



In the matter of:)	
)	
)	ISCR Case No. 12-04101
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank, Jr., Esq., Department Counsel
For Applicant: *Pro se*

03/20/2013

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline B, foreign influence Applicant's eligibility for a security clearance is granted.

Statement of the Case

On October 10, 2012, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, foreign influence. 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 effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR on October 22, 2012, and elected to have his case decided on the written record. On January 24, 2013, Department Counsel submitted the Government's file of relevant material (FORM). The FORM was mailed to Applicant, and

it was received on January 31, 2013. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant provided additional information that was included in the record without objection. The case was assigned to me on March 12, 2013.

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Taiwan. Applicant did not object. I granted the request. The facts administratively noticed are set out in the Findings of Fact below.

Findings of Fact

Applicant admitted the SOR allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 26 years old. He is not married and has no children. He earned a bachelor's degree in 2008. He has worked for a federal contactor since March 2011.

Applicant was born in the United States and became a dual citizen of Taiwan in 1998, at the age of 11. Applicant lived in Taiwan as a minor. He attended an American school there until he graduated from high school. During the summers, approximately every one to three years, his family would return to the United States for vacation. He moved back to the United States in 2004 to attend college. He has resided in the United States since he moved. He explained that he has lived a little under half his life in the United States. His sister, who was born in the United States, is also a dual citizen, residing in the United States. Applicant stated, but did not provide specifics, that he has a large extended family in the United States. Applicant stated he does not have particular loyalties to Taiwan, besides being fond of its culture.¹

In his security clearance application (SCA) Applicant noted that his parents obtained a Taiwanese passport for him when he was a minor. He used this passport as a minor when directed by his parents. When traveling to Taiwan in 2004, 2005, and 2006, he used his U.S. passport. In 2007, when he traveled to Taiwan, he used his Taiwanese passport at the direction of his mother. He believes his mother told him to use his Taiwanese passport so he could renew it, but he was not certain. From 2008 to 2009, when traveling to other countries, he used his U.S. passport. In his answer to the SOR he noted that he traveled to Taiwan in 2011. He stated "I complied with protocol and promptly recorded all contact." He did not provide information about whether he traveled on his Taiwanese passport. He had a Taiwanese passport with an expiration date of August 2014. In response to the FORM, he stated that he destroyed his Taiwanese passport several months ago as part of the application process.

¹ Items 2, 5; Answer to FORM.

Applicant received medical benefits from Taiwan when he lived there. These were standard benefits afforded to citizens. Applicant does not have any business, financial, or property interests in Taiwan. He has never voted in a Taiwanese election. He does not know if he will inherit anything from his parents, but stated he would have no qualms about renouncing any future inheritance. He described himself as living a minimalist lifestyle with few needs. He stated: “[m]oney in particular, isn’t something that has much hold over me.”²

Applicant’s mother was born in Taiwan and is a citizen and resident of Taiwan. She is also dual citizen of the United States. The date she became a U.S. citizen was not provided. Applicant’s mother is not employed outside of the home. He visits his mother when he returns to Taiwan and contacts her every two to three weeks.³

Applicant’s father was born in Taiwan and is a citizen and resident of Taiwan. He is also a dual citizen of the United States. The date he became a U.S. citizen was not provided. Applicant is estranged from his father. His father went to work away from the family home and separated himself from the family. He is not sure why his family is estranged from his father. The last information Applicant had about his father’s employment was that he worked as a manager for a technology development company in Taiwan. He receives emails from his father about once or twice a year. Applicant saw his father in the summer of 2006. In his answer to the SOR, Applicant stated that he recently met with his father for the first time in seven years. Applicant indicated that because of the estrangement from his father and the minimal contact, he does not have strong ties with him.⁴

There is no information as to when Applicant’s parents first moved to the United States. They moved back to Taiwan in 2000 because the company Applicant’s father was working for at the time opened an office in Taiwan and transferred him. His parents have remained in Taiwan since 2000.

Taiwan

Taiwan is listed, along with seven other countries, in the 2008 Annual Report to Congress on Foreign Economic Collection and Industrial Espionage, as being involved in criminal espionage and export control enforcement cases. Taiwan was also included in the 2000 version of that report, and it was noted that it was among the most active collectors of U.S. economic and proprietary information. The report also highlighted incidents wherein Taiwan engaged in attempts to acquire export-restricted products.

Taiwan has been involved in various cases involving illegal export or attempted illegal export of U.S. restricted, dual-use technology. The specific areas included:

² Items 2, 4; Answer to FORM.

³ Item 4; Answer to FORM.

⁴ Items 2, 4, 5; Answer to FORM.

classified materials, laser gun aiming devices/sights, measuring probes controlled for nuclear non-proliferation and national security reasons, centrifugal pumps that are controlled for chemical and biological weapons and anti-terrorism reasons, missile components shipped to Iran by way of Taiwan, and numerous other areas of concern.

The People's Republic of China's (PRC) Ministry of State Security is the "preeminent civilian intelligence collection agency in China." It maintains intelligence operations in Taiwan, through a bureau utilizing PRC nationals with Taiwan connections.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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. 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, 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, and has the ultimate burden of persuasion as to 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 that an applicant may deliberately or inadvertently fail to 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 conditions that could raise a security concern and may be disqualifying. I have considered all of them 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; and

(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.

AG ¶ 7(a) requires substantial evidence of a “heightened risk.” The “heightened risk” required to raise this disqualifying condition is a relatively low standard. “Heightened risk” denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or owning property in a foreign country. The totality of Applicant’s family ties to a foreign country as well as each individual family tie must be considered.

Guideline B is not limited to countries hostile to the United States. “The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States.”⁵

Applicant’s parents are dual citizens of the United States and Taiwan and reside in Taiwan. Applicant’s family relationships could potentially create a heightened risk of foreign inducement, manipulation, pressure, or coercion, and create a potential conflict of interest. I find the above disqualifying conditions apply.

I have also analyzed all of the facts and considered all of the mitigating conditions for this security concern under AG ¶ 8, and the following are potentially applicable:

(a) the nature of the relationship 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 and 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 interests in favor of the U.S. interests; and

(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.

The nature of a nation’s government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant’s family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the foreign government, or the country is known to conduct intelligence operations against the United States.

Applicant’s parents are dual citizens who live in the Taiwan. There is no evidence that they have any special ties to the Taiwanese government. Although Taiwan is a major collector of U.S. economic and proprietary interests, there is no evidence that the government exploits its citizens to obtain information. It is unlikely that Applicant’s parents’ residence in Taiwan or his relationship with them will place him in a position of having to choose between his parents’ interests and that of the United States. I find AG ¶ 8(a) applies to Applicant’s relationship with his parents.

⁵ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Taiwan is a leader in conducting industrial espionage against the United States. Applicant does not have strong ties to Taiwan. His sister, also a dual citizen, lives in the United States. Applicant has spent his adult life in the United States, and his extended family also lives here. Applicant had a Taiwanese passport that he used on one occasion in 2007, at the direction of his mother, so he could renew it. During his other foreign travel, including his trips to Taiwan, he used his U.S. passport. It appears that his only consistent contact in Taiwan is with his mother, although he has some contact with his father. Applicant's strong ties and loyalty to the United States are such that he can be expected to resolve any conflict of interest in its favor. I find AG ¶ 8(b) applies. Because Applicant maintains regular contact with his mother and some contact with his father, it is not considered casual or infrequent. I cannot apply AG ¶ 8(c).

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. 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. Applicant has regular contact with his mother in Taiwan and some contact with his father. He has strong ties to the United States. He was born here and lived here until he was 11. He returned for college and has maintained his residence in the United States. He has no business or financial interests in Taiwan. Applicant has met his burden of persuasion that his foreign contacts do not create a security concern. Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guideline B, foreign influence.

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

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.

Carol G. Ricciardello
Administrative Judge