



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



In the matter of:

ISCR Case No. 15-00938

Applicant for Security Clearance

Appearances

For Government: Bryan Olmos, Esq., Department Counsel

For Applicant: Jason A. Cheadle, Esq.

June 8, 2017

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Based on a review of the pleadings and exhibits, the security concerns raised by Applicant's eligibility for a \$60 monthly pension and his dual citizenship with the Republic of China (Taiwan) are mitigated under the guideline for Foreign Preference. Additionally, Applicant has mitigated the concerns related to Foreign Influence. His contacts with Taiwanese citizens, including his brother, sisters, father-in-law, mother-in-law and other Taiwanese citizens are minimal. His Taiwanese military service and governmental employment occurred prior to immigrating to the United States and becoming a U.S. citizen. His request for a security clearance is granted.

Statement of the Case

On March 1, 2014, Applicant completed an Electronic Questionnaires for Investigative Processing (e-QIP). (Item 3.) On September 29, 2015, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns

under Guidelines B and C.¹ (Item 1.) The SOR further informed Applicant that, based on information available to the Government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant responded to the SOR (Answer) on October 16, 2015. (Item 2.) He requested that his case be decided by an administrative judge on the written record. Department Counsel submitted the Government's written case on January 6, 2016. A complete copy of the File of Relevant Material (FORM), containing six Items, was received by Applicant on January 12, 2016. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. On April 21, 2016, Applicant, through his attorney, submitted Applicant Exhibits (AE) 1 through 10, in response to the FORM. Department Counsel had no objections to AE 1 through 10, and they are admitted. DOHA assigned the case to me on December 1, 2016.

Procedural Rulings

In the FORM, the Government requested I take administrative notice of certain facts relating to Taiwan. (Item 5.) Department Counsel provided a six-page summary of the facts, supported by 12 Government documents pertaining to Taiwan. Applicant also presented documents for administrative notice relating to Taiwan set out in AE 9 and AE 10. The documents provided by both parties give elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

Findings of Fact

Applicant admitted to the allegations in SOR ¶¶ 2.b, 2.c, 2.d, 2.e, 2.g, and 2.h. He denied SOR ¶¶ 1.a, 1.b, and 2.a. He failed to specifically admit or deny ¶ 2.f, and as a result, that allegation will be deemed a denial. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 58-year-old employee of a defense contractor. He has been employed with the defense contractor for more than 19 years. He is married to a U.S. citizen.² Applicant's two adult children are also U.S. citizens.

Applicant was born in Taiwan. He was educated there. He earned a bachelor's degree in 1980, and a master's degree in 1982, from Taiwanese universities. After graduation, Applicant was required to perform compulsory government service. He could either serve two years in the Taiwanese military, or six years in a "qualified organization." After completing four months of mandatory military service, he was

¹ I considered the previous Adjudicative Guidelines, effective September 1, 2006, as well as the new Adjudicative Guidelines, effective June 8, 2017. My decision would be the same if the case was considered under the previous Adjudicative Guidelines, effective September 1, 2006.

² As discussed below, Applicant's wife has renounced her dual citizenship with Taiwan. (AE 1.)

offered a position, and agreed to work for, a defense research and development agency. He worked there for 15 years. He no longer maintains contact with anyone from that agency or anyone from the Taiwanese military. His military service and work for the defense agency occurred approximately 20 years ago. (Item 3; AE 1.) Due to his work for the Taiwanese agency, he would have been entitled to receive a pension of approximately \$60 per month, if he remained a Taiwanese citizen. (Item 4.)

Applicant and his wife immigrated to the United States in 1998. He was naturalized as a U.S. citizen in November 2007. His wife is also a naturalized U.S. citizen. Applicant and his wife have renounced their dual citizenship with Taiwan, and have contacted the Taiwanese consulate to take steps to formalize that renunciation. They both have destroyed their Taiwanese passports, as verified by a witness. (AE 4.) Applicant's Taiwanese passport expired in 2013, and he did not use that passport after becoming a U.S. citizen. When he last traveled to Taiwan in 2008 to attend his brother's funeral, Applicant traveled using only his U.S. passport. (Item 2; Item 3; AE 1; AE 4.)

Applicant understands that he was eligible for retirement benefits in Taiwan at the rate of approximately \$60 per month, but that he is no longer eligible for such benefits as a non-Taiwanese citizen. He stated, "I do not need that benefit, I do not want it, and even if I were eligible to receive that benefit, I would not seek it. That benefit, again, were I even eligible to pursue it, has no bearing whatsoever on my unwavering loyalty to America." (AE 1.) He provided documentation that shows he is entitled to approximately \$2,399 monthly in U.S. Social Security when he retires. He also indicated he has \$300,000 in his U.S. 401(k) account. (Item 2.)

Applicant's brother, three sisters, father-in-law, mother-in-law, and friend are citizens and residents in Taiwan.³ None of his family members in Taiwan have held a political office or have been employed by the Taiwanese government. Further, they are not aware of the nature of Applicant's work. He classifies his contacts with these relatives as "minimal." He has little in common with his family and speaks to his siblings only one-to-two times per year, to "say grace." (Item 2.) He has not had contact with his friend since 2008. (AE 1; Item 2.)

Applicant has voted in every local and federal U.S. election since becoming a U.S. citizen. He has not voted in any Taiwanese elections since immigrating to the United States. He owns his home in the United States. He has no assets in Taiwan. (AE 1.)

Applicant presented four character reference letters. The first, from the president and chief executive officer of Applicant's employer, indicated Applicant is a "highly professional and trustworthy individual" who is "very respectful of privacy, rules and restrictions." (AE 5.) A coworker indicated Applicant "is a hardworking, intelligent, and professional individual" and has "strong work ethics." (AE 6.) A close friend opined that Applicant is "highly professional and trustworthy." (AE 7.) Another friend indicated Applicant "demonstrates the importance of a strong work ethic, honestly, and team

³ Applicant identified two friends as foreign contacts on his e-QIP. However, one of those friends is now deceased. (AE 1.)

work.” (AE 8.) All recommend Applicant for a security clearance without reservation. (AE 5 through AE 8.)

Taiwan is a democracy, whose authorities generally respect human rights. It has been identified as a collector of industrial information and there have been several cases involving the illegal export, or attempted illegal export of U.S. restricted, dual-use technology to Taiwan. While the United States has not diplomatically recognized Taiwan, the U.S. Department of State continues to support Taiwan’s membership in international organizations where statehood is not a requirement, and calls Taiwan “a vital partner for the United States in Asia.” A Congressional Research Service Overview of Policy Issues between the United States and Taiwan indicated that Taiwan is the 12th largest U.S. trading partner. The relationship between the United States and Taiwan is built on common democratic values, strong commercial ties, and the United States’ commitment under the Taiwan Relations Act to aid in Taiwan’s defense. (Item 5; AE 3; AE 10.)

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 to be 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, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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 national security eligibility 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person who applies for access to classified information seeks to enter 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 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 EO 10865 provides that adverse 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 C, Foreign Preference

The security concern relating to the guideline for Foreign Preference is set out in 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 provide information or make decisions that are harmful to the interests of the United States. Foreign involvement raises concerns about an individual's judgment, reliability, and trustworthiness when it is in conflict with U.S. national interests or when the individual acts to conceal it. *By itself*; the fact that a U.S. citizen is also a citizen of another country is not disqualifying without an objective showing of such conflict or attempt at concealment. The same is true for a U.S. citizen's exercise of any right or privilege of foreign citizenship and any action to acquire or obtain recognition of a foreign citizenship.

The guideline notes several conditions that could raise security concerns under AG ¶ 10. One is potentially applicable in this case:

(e) using foreign citizenship to protect financial or business interests in another country in violation of U.S. law.

Applicant was a dual citizen of the United States and Taiwan. He was alleged to have maintained his dual citizenship with Taiwan to protect his eligibility for a pension of \$60 per month from the Government of Taiwan. However, the evidence established that he has renounced his Taiwanese citizenship. He is no longer entitled, nor does he desire, to receive this pension. Further, the Government failed to show that receipt of such a pension would be in violation of U.S. law. The evidence is insufficient to raise the above disqualifying condition.

Additionally, even if there were a valid concern expressed under AG ¶ 10, above, several mitigations identified under AG ¶ 11 are applicable, including:

- (b) dual citizenship is based solely on parental citizenship or birth in a foreign country, and there is no evidence of foreign preference;
- (c) the individual has expressed a willingness to renounce the foreign citizenship that is in conflict with U.S. national security interests;
- (d) the exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen; and
- (e) the exercise of the entitlements or benefits of foreign citizenship do not present a national security concern.

Applicant's former Taiwanese citizenship was based upon his birth there, and there is no evidence he prefers Taiwan. Instead, he chose to build his life in the United States. His home is here, his assets are here, and his immediate family is here. He has formally notified Taiwan that he has renounced his Taiwanese citizenship. His right to a pension in Taiwan was earned prior to his immigration to the United States and he has no interest in exercising that right. Further, a \$60 pension does not present a national security concern. AG ¶ 11(b) through (e) provided mitigation with respect to this guideline.

Guideline B, Foreign Influence

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Four are potentially applicable in this case:

- (a) contact, regardless of method, 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 classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology;

(e) shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion; and

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

Applicant's brother, three sisters, father-in-law, mother-in-law, and friend are citizens and residents of Taiwan. He also had connections to the Taiwanese military from his four months of active service in 1982, and the 15 years he worked for a defense research agency. It is possible that his connections to his family, friends, or the Taiwanese government itself, could create a conflict of interest. Further, there is an articulated heightened risk associated with having ties to a friend and family members in Taiwan, due to the targeting of sensitive U.S. technology as demonstrated in the several cases involving illegal export. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 including:

(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 United States;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; 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.

AG ¶ 8(a) does not have application under the facts in this case. Applicant's brother, three sisters, father-in-law, mother-in-law, and friend are citizens and residents of Taiwan. The family's physical presence in that country creates a heightened potential for exploitation, inducement, manipulation, pressure, or coercion, as there is evidence of Taiwan's targeting of U.S. technology. Thus, Applicant's family interests could be threatened to the point that he would confront a choice between their interests and those of the United States should adverse forces learn of Applicant's work for the U.S. Government.

AG ¶ 8(b) provides mitigation. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the United States," such that he "can be expected to resolve any conflict of interest in favor of the U.S. interest." While he grew up in Taiwan, briefly served in the Taiwanese military, and worked for a defense agency for 15 years, he chose to immigrate to the United States. He has lived in the United States since 1998 and became a U.S. citizen in 2007. Since becoming a U.S. citizen, he has traveled solely on his U.S. passport. He votes in all U.S. elections. He has renounced his Taiwanese citizenship and has few ties to Taiwan. His wife is a naturalized U.S. citizen, and his two children are U.S. citizens. He has successfully worked for his employer for the past 19 years. He has economic ties to the United States, including a financial interest in real estate, and retirement savings. He has little in common with his family in Taiwan and only speaks to them twice a year, at most. His deep and longstanding relationships and loyalties in the United States would lead him to resolve any conflict of interest in favor of the U.S. interest.

AG ¶ 8(c) provides mitigation with respect to his friend. He indicated he has not spoken to his friend since 2008. It does not provide mitigation for the security concerns raised with respect to his brother, three sisters, father-in-law, or mother-in-law, because he has affections for them and calls them at least annually. These contacts have been sufficiently frequent that they cannot be construed as casual or infrequent.

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(d):

(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 facts and circumstances surrounding this case. I have incorporated my comments under Guidelines C and B in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant has a distinguished history of working in the defense industry and is respected by those that wrote letters on his behalf. He performs well at his job. While he was born in Taiwan, he is an American by choice. He has been residing in the United States for the past 19 years. His closest familial ties are with his children and wife, all of whom are American citizens. He can be expected to resolve any conflict of interest in favor of the United States due to his longstanding ties here.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the Foreign Influence and Foreign Preference security concerns.

Formal Findings

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

Paragraph 1, Guideline C:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	For Applicant
Subparagraph 2.e:	For Applicant
Subparagraph 2.f:	For Applicant
Subparagraph 2.g:	For Applicant
Subparagraph 2.h:	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.

Jennifer I. Goldstein
Administrative Judge