DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	
[NAME REDACTED]	)	ISCR Case No. 15-01537
	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Douglas Velvel, Esq., Department Counsel
For Applicant: *Pro se*

07/18/2016

Decision

MALONE, Matthew E., Administrative Judge:

Applicant held a Canadian passport in addition to a U.S. passport. However, he has relinquished the foreign passport and it has been destroyed. Applicant also is a dual citizen of the United States and Canada. He does not maintain his foreign citizenship to preserve property or financial interests in Canada or to receive benefits from the Canadian government. Security concerns about foreign preference are mitigated. Further, available information is sufficient to mitigate the foreign influence security concerns about Applicant's ties to persons who are citizens and residents of Canada, Taiwan, Serbia, and Croatia. His request for continued security clearance eligibility is granted.

Statement of the Case

On June 11, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain eligibility for a security clearance required for

his employment with a defense contractor. After reviewing the results of the ensuing background investigation, adjudicators for the Department of Defense (DOD) could not determine that it is clearly consistent with the national interest to continue Applicant's security clearance.[1]

On September 17, 2015, DOD issued a Statement of Reasons (SOR) alleging facts which raise security concerns addressed under the adjudicative guidelines[2] for foreign influence (Guideline B) and foreign preference (Guideline C). Applicant timely responded to the SOR (Answer) and requested a decision without a hearing. Subsequently, the Government timely requested a hearing, as authorized by Section E3.1.7 of the Directive.

The case was assigned to me on March 24, 2016, and I convened the requested hearing on April 25, 2016. The parties appeared as scheduled. Department Counsel presented Government Exhibits (Gx.) 1 - 3.[3] Applicant testified and presented Applicant's Exhibit (Ax.) A. All exhibits were received without objection. I received a transcript of the hearing (Tr.) on May 3, 2016. The record closed on May 13, 2016, after I admitted Ax. B, which was submitted post-hearing and to which Department Counsel did not object.[4]

Findings of Fact

Under Guideline B, the Government alleged that Applicant owns a home in Canada worth about $136,000 (SOR 1.a); that his mother is a dual citizen of Canada and Taiwan residing in Canada (SOR 1.b); that his sister is a dual citizen of Canada and Taiwan residing in Taiwan (SOR 1.c); that his father-in-law is a citizen and resident if Croatia (SOR 1.d); that his mother-in-law is a citizen and resident of Serbia (SOR 1.e); that his wife is a dual citizen of Canada and Serbia (SOR 1.f); and that Applicant has a retirement savings account in Canada worth about $53,000 (SOR 1.g). Applicant admitted, with explanation, all of these allegations except for SOR 1.c. He denied that allegation, explaining that his sister never obtained Canadian citizenship.

Under Guideline C, the Government alleged that in 2013, Applicant obtained a Canadian passport that will expire in 2018 (SOR 2.a); that after becoming a U.S. citizen in 2011, Applicant used his Canadian passport at least once (SOR 2.b); and that Applicant is maintaining his Canadian citizenship to protect the retirement savings

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[1] Required by Executive Order 10865, as amended, and by DOD Directive 5220.6 (Directive), as amended.

[2] The adjudicative guidelines were implemented by the Department of Defense on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006).

[3] At Department Counsel's request, a list of the Government's exhibits is included as Hearing Exhibit (Hx.) 1. Also, Gx. 3 is Department Counsel's request that I take administrative notice of facts pertaining to Taiwan. I granted that request and have considered some of the information presented in Gx. 3 and its 12 references.

[4] Hx. 2 identifies Ax. B and includes Department Counsel's waiver of objection as to admissibility.

account referenced at SOR 1.g (SOR 2.c). Applicant admitted, with explanations, each of these allegations. In addition to the facts established through Applicant's admissions, I make the following findings of fact.

Applicant is 60 years old and works for a defense contractor in support of a military aviation project. He was born in Taiwan, but moved to Canada with his parents and older sister and her family while he was still a teenager. After finishing high school in Canada, he received his college and post-graduate education there as well. Applicant became a Canadian citizen in 1985. His understanding is that he ceased to be a Taiwanese citizen at that time. He has not traveled to Asia in 30 years, and he has not sought or received any benefits as a Taiwanese citizen since 1985. (Gx. 1; Gx. 2; Tr. 30 - 31, 44 - 52)

Applicant's sister and her family did not stay in Canada very long and returned to Taiwan. She is now 67 years old and is experiencing the early stages of dementia. Applicant has infrequent contact with his sister, who has never worked for or been associated with the Taiwanese government. (Gx. 1; Tr. 30 - 31)

Applicant has a bachelor's degree in mechanical engineering. After working in the aerospace industry in Canada starting in 1985, he moved to the United States to take a job with a subcontractor to a major U.S. aerospace corporation in 1996. He left that job for another U.S. job in 1999. He returned to his previous U.S. employer in 2007. In September 2013, he accepted a position in Canada with another well-known aerospace corporation; however, after less than a year he realized that he preferred living and working in the United States, where he had become a naturalized citizen in October 2011. In May 2014, he accepted his current position with a private company that provides qualified manpower to work in support of military programs. (Gx. 1; Gx. 2; Ax. A)

When Applicant returned to Canada for work in 2013, he needed a Canadian work permit. To prove he was eligible, he obtained a Canadian passport that is valid until 2018. Applicant used the Canadian passport only for purposes of obtaining his work permit and when he re-entered Canada in 2013. He has since relinquished his Canadian passport and it has been destroyed. (Gx. 2; Ax. B; Tr. 34, 40)

While Applicant was still living and working in Canada before 1996, he contributed to a Canadian Retirement Savings Plan. Alternately described as a 401k retirement account and a social security account, it is currently valued at about $53,000. By virtue of reciprocity agreements between Canada and the U.S., Applicant's U.S. citizenship does not preclude him from receiving those funds at retirement. However, Applicant has not closed or transferred the account to a U.S. fund because he believes he will incur an onerous tax penalty if he does so before reaching retirement age. He is not actively contributing to that account. (Answer; Gx. 2; Tr. 29, 52)

Applicant's mother is a dual citizen of Taiwan and Canada. She is 86 years old and lives in Canada in a house Applicant bought for her and his now-deceased father in

about 1990. The house cost $136,000, but is now paid off and worth about $300,000. Applicant's name is on the deed so he can manage the property for his mother and make decisions about it after she dies. Applicant would like for his mother to move into a smaller home where elder care is available, but she refuses to move. She also does not want to come to the United States as all of her friends and familiar surroundings are in Canada. Applicant visits her periodically. He has only used his U.S. passport for those trips. Applicant did not live in that house before coming to the United States. He sold his home in Canada in 1993. Applicant does not have to be a Canadian citizen to own or dispose of real property there, or to manage his mother's estate when the time comes. (Gx. 1; Gx. 2; Tr. 35)

Applicant has been married twice. His first marriage was to a Canadian citizen in August 1982. They had two children, both now in their thirties. Applicant and his first wife divorced in July 1992. He has no contact with his ex-wife and very little contact with his children, all of whom still live in Canada. (Gx. 1; Gx. 2)

Applicant remarried in January 1998. His wife is a dual citizen of Serbia and Canada. They have three teenage children, all of whom are natural-born U.S. citizens. Applicant's wife's parents are both from the former Yugoslavia, but were separated in the early 1990s due to the Balkan conflicts. He is a citizen and resident of Croatia. She is a citizen and resident of Serbia. Applicant has very infrequent contact with either of his wife's parents. (Gx. 1; Gx. 2)

This is Applicant's first application for a security clearance. However, his work between 2007 and 2013 included large airframe applications for military in-flight refueling platforms. Over the past 20 years, Applicant has established himself as a highly-accomplished aerospace engineer in his work for several of the largest aerospace corporations in North America. He is certified through U.S. federal regulations for work involving material review board (MRB) universal product review (UPR) matters. He also is a certified design approval engineer (DAE), a designated design engineer (DDE), and a designated MRB mentor. (Ax. A; Tr. 32 - 33, 41)

Department Counsel did not present information about Canada, Serbia, or Croatia. However, based on the information presented about Taiwan, I take administrative notice of the following facts:

Taiwan is an island nation governed through a multi-part democracy. Since its separation from the mainland Chinese government more than 65 years ago,[5] Taiwan has become an industrialized economic entity and a leading producer of high-technology goods. In 1979, the U.S. formally recognized the PRC as the sole legal government of China. However, the United States has maintained cultural, commercial,

[5] The PRC does not recognize Taiwan, and insists there is only "one China." In 1949, Taiwan was populated by refugees fleeing a civil war in China. That same year, Communists in mainland China established the People's Republic of China (PRC), and a separate, independent government was established in Taiwan.

and military relations with Taiwan. Maintaining strong relations with Taiwan is a major U.S. goal. The United States does not officially support Taiwanese independence, but it does support Taiwan's membership in international organizations such as the World Trade Organization (WTO), the Asia-Pacific Economic Cooperation (APEC) forum, and the Asian Development Bank. The United States also is committed to helping Taiwan maintain its defensive capabilities, and has sold the Taiwanese defensive military equipment and weapons, including destroyers, anti-submarine aircraft, and diesel submarines. Notwithstanding these close ties with the United States, Taiwan continues to target the United States, among others, as part of its long-standing use of aggressive economic and information espionage activities.

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,[6] and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the guidelines. Commonly referred to as the "whole-person" concept, those factors are:

> (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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest[7] for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case.

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[6] *See* Directive, 6.3.

[7] *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).

Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.[8] A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.[9]

Analysis

Foreign Influence

The Government's information, along with Applicant's admissions, is sufficient to support the factual allegations under this guideline. The facts established reasonably raise a security concern about possible foreign influence that is addressed, in relevant part, at AG ¶ 6, as follows:

> 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.

Applicant's sister is a citizen and resident of Taiwan. Although the possibility exists that Applicant and his mother have not been Taiwanese citizens when they became Canadian citizens over 30 years ago, Applicant did not present information to establish that fact. Applicant has ties of affection to citizens of Serbia and Croatia through his wife, a dual citizen of Canada and Serbia, and her parents. Applicant also owns a home in Canada, which he bought 20 years ago for his parents, and he has about $53,000 in a Canadian retirement savings account.

Of the specific AG ¶ 7 disqualifying conditions, the following are pertinent to these facts and circumstances:

> (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a

[8] *See Egan,* 484 U.S. at 528, 531.

[9] *See Egan;* AG ¶ 2(b).

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;

(d) sharing 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

(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.

As to security concerns about ties to persons who are citizens and residents of Canada, Serbia, and Croatia, none of these disqualifying conditions apply. No information was provided about those countries that shows the presence of Applicant's mother, wife, and in-laws either creates a heightened risk of coercion, or that establishes a potential conflict of interest stemming from some unspecified desire to help those foreign citizens.

As to security concerns about Applicant's house and savings account in Canada, AG ¶ 7(e) does not apply. Even if those financial interests are considered to be significant, the fact that they are located in Canada has not been shown to create a heightened risk of foreign influence or exploitation. The savings account was built over a period of years and Applicant has not contributed to it in more than 20 years. He will not access the account until he retires so he can avoid onerous tax penalties for early withdrawal. The house in question is paid for and was purchased, not as an investment, but as a place for his parents to live out their days. Any financial interest Applicant has in that property is speculative.

Applicant's sister's citizenship and residence in Taiwan requires application of AG ¶¶ 7(a) and 7(b). Taiwan is an aggressive collector of economic and industrial information from the United States. Even though it is an open society, its activities in pursuit of foreign intelligence creates a heightened risk that Applicant might be coerced or manipulated through ties to his sister.

By contrast, available information supports application of the following AG ¶ 8 mitigating conditions:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be

placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;

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

(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.

As to AG ¶¶ 8(a) and 8(c), Applicant does not visit his sister and has little contact with her. She is older than he, and beginning to show signs of dementia. Applicant's sister returned to Taiwan from Canada more than 30 years ago and has lived a life without employment by or association with the government of Taiwan. There is little likelihood these circumstances will actually create a risk of foreign influence or coercion, or that Applicant will be in a position of having to choose between his obligations toward the U.S. and the interests of Taiwan.

AG ¶ 8(b) applies, because Applicant's life is wholly divorced from his Taiwanese origins. He moved with his family to Canada in the mid-seventies, became a citizen there in 1985, finished his high school and college educations there, and raised a family there. For the past 20 years, he has lived and worked in the United States. He has established a career in the U.S. aerospace industry and raised a family here. He has not returned to visit his sister in Taiwan in over 30 years, and he intends to retire in the United States. On balance, available information shows that the security concerns about this Applicant possibly being influenced by foreign connections and interests are mitigated.

Foreign Preference

Available information shows that, as alleged in SOR 2.a and 2.b, Applicant exercised his Canadian citizenship after becoming a U.S. citizen when he obtained and used a Canadian passport. It also was alleged that Applicant is maintaining his Canadian citizenship to protect his retirement account, but the record does not support this. The only reason Applicant still has an account in Canada is that he will incur a large tax penalty if he accesses the account before retirement. There is no information showing that he has to be a Canadian citizen to receive those funds. SOR 2.c is resolved for Applicant. Nonetheless, the information provided in support of SOR 2.a and 2.b reasonably raises a security concern about foreign preference that is articulated at AG ¶ 9, as follows:

> 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.

More specifically, the record requires application of the disqualifying condition at AG ¶ 10(a)(1) (*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*). Applicant obtained a Canadian passport in order to obtain a Canadian work permit for a short-lived job in Canada's aerospace industry in 2013. He used the passport once for that purpose and once to enter Canada when he moved to take the job

By contrast, the record also requires application of the mitigating position at AG ¶ 11(e) (*the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated*). Applicant's FSO has destroyed the foreign passport. When Applicant travels to Canada to see his mother, he uses his U.S. passport. The record evidence as a whole on this issue shows that Applicant will not exercise his Canadian citizenship in the future. I am confident he will continue to act in the best interests of the United States. The security concern under the guideline is resolved for Applicant.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(a). Applicant has firmly established his personal life and professional career in the United States over the past 20 years. Before coming to this country in 1996, ties to Taiwan were already greatly attenuated by his life in Canada. It is unlikely that he could be coerced by the Taiwanese government through his sister's presence there, or that he will again exercise his Canadian citizenship. A fair and commonsense assessment of the record evidence as a whole suggests that the security concerns raised by the Government's information are resolved.

Formal Findings

Formal findings 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.g:	For Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraphs 2.a - 2.c:	For Applicant

Conclusion

In light of all of the foregoing, it is clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is granted.

MATTHEW E. MALONE
Administrative Judge