



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



In the matter of:

-----

Applicant for Security Clearance

)  
)  
)  
)  
)  
)

ISCR Case No. 15-03815

**Appearances**

For Government: Jeff A. Nagel, Department Counsel

For Applicant: *Pro se*

July 21, 2016

---

**Decision**

---

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on August 5, 2014. (Government Exhibit 1). On November 23, 2015, the Department of Defense (DOD), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the reasons why DOD could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

Applicant answered the SOR in writing on December 16, 2015, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals. The case was assigned to the undersigned Administrative Judge on March 15, 2016. A notice of hearing was issued on March 22, 2016, scheduling the hearing for April 28, 2016. The Government offered three exhibits, referred to as Government Exhibits 1 through 3, which were received without objection. Applicant called one witness, and

presented three exhibits, referred to as Applicant's Exhibits A through C, which were admitted into evidence without objection. He also testified on his own behalf. The record remained open until close of business on May 10, 2016, to allow Applicant to submit additional documentation. Applicant submitted three Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits A through C which were admitted without objection. The transcript of the hearing (Tr.) was received on May 10, 2016. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

## **REQUEST FOR ADMINISTRATIVE NOTICE**

Department Counsel submitted a formal request that I take administrative notice of certain facts concerning the current political condition in Taiwan that were set forth in Administrative Notice documents 1 through 7. Applicant had no objection to the documents. (Tr. p. 20.) The request and the attached documents were not admitted into evidence but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

## **FINDINGS OF FACT**

The following Findings of Fact are based on Applicant's Answer to the SOR, testimony, and the exhibits. The Applicant is 47 years of age, and married with two children. He has a Master's degree in Computer Science. He is employed as an Electronic Technician 1 by a defense contractor and seeks to obtain a security clearance in connection with his employment in the defense industry.

Paragraph 1 Guideline C - Foreign Preference). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he acts in such a way to indicate a preference for a foreign country over the United States and may be prone to provide information or make decisions that are harmful to the interests of the United States.

Applicant admits each of the allegations set forth under this guideline. Applicant was born in Taiwan to a Taiwanese family. He lived in Taiwan until the age of fourteen, when he moved with his family to Costa Rica to pursue the "straw" business. Applicant later moved to Canada by himself to attend college, where he obtained his undergraduate degree. In February 1996, he came to the United States on a student visa to pursue his Master's degree. He graduated with his Master's degree in 1997, and began working for his current employer in August 2014. Throughout his working career, he has never violated company rules and regulations in any form. (Tr. p. 31.)

In 2003, Applicant married a woman who was also born in Taiwan. She is currently a dual citizen of the United States and Taiwan, and works as a software

engineer. They have two children who are native born United States citizens. (Tr. p. 26.)

Applicant engaged in international travel to visit his parents and sisters in Taiwan, nearly annually, and used his Taiwanese passport for ease of travel since 2003. Every time he went back to Taiwan, except in 2012, he got sick, as SARS was prevalent. In an effort to protect himself and his family from SARS, he used his Taiwanese passport, which enabled him to get quicker medical treatment while in Taiwan. (Tr. p. 35.) In September 2007, Applicant became a United States citizen and obtained a United States passport, which is scheduled to expire in October 2017. (Tr. p. 32.) At that point, Applicant was no longer eligible to receive Taiwanese benefits. He renewed his Taiwanese passport in January 2012, which was scheduled to expire in January 2022, in order to continue to be able to get quicker medical treatment while visiting in Taiwan.

Applicant testified that he has purchased a primary residence and two rental properties in the United States. He also has both savings and checking accounts, as well as a retirement fund for him and his wife. His total net worth in the United States is in excess of 2 million dollars. (Tr. pp. 28 - 29.) He has no financial assets in Taiwan.

When Applicant learned that his security clearance would be in jeopardy by possessing his Taiwanese passport, he contacted the Taiwanese consulate and surrendered the foreign passport, and renounced his Taiwanese citizenship. (Tr. pp. 38, and 41-42) Applicant was given a receipt from the Taiwanese consulate, and is awaiting the final documentation indicating that he has renounced his Taiwanese citizenship.<sup>1</sup> (Tr. p. 42, and Applicant's Exhibit C.)

Paragraph 2 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts, which could create the potential for foreign influence that could result in the compromise of classified information.

Applicant admitted each of the allegations set forth under this guideline. His father, mother, two sisters, mother-in-law, and father-in-law, are citizens and residents of Taiwan. His father is 75, and worked in the human relations department for a clothing business. His mother is 73, and has always been housewife. (Tr. p. 45.) Applicant contacts his parents by telephone about once every two weeks. They are both retired now, and are independently wealthy. (Tr. p. 48.) Applicant provides them with no financial support. Neither of them have ever worked for or been associated with the Taiwanese government.

---

<sup>1</sup>

Applicant originally submitted the receipt from the Consulate written in Chinese. The Administrative Judge requested that the document be interpreted into English by a qualified interpreter. The document was translated into English, and admitted into evidence as Applicant's Post-Hearing Exhibit A.)

Applicant's two sisters are both in the process of emigrating to the United States. Applicant has submitted copies of their petitions for foreign alien relatives. (Applicant's Exhibit A.) They have completed the requisite documentation and are awaiting processing. Applicant's parents also plan to live permanently in the United States. They are waiting for their daughters to be processed first, and they plan to follow. Applicant explained that his older sister is a teacher, and her husband is an engineer. His younger sister is not married, and works as a buyer at a company. Applicant contacts his sisters in Taiwan on a sporadic basis. (Tr. pp. 50 - 55.)

Applicant's parents own a house in Taiwan worth about \$300,000 dollars. In the event that Applicant someday inherits anything from his parents it may be 1/3 of the value of the house. Applicant stated that if this is so, he is going to tell his father to give it to his younger sister, as she has been the one to take care of his parents. (Tr. p. 56.)

Applicant's in-laws already reside in the United States, plan to become citizens when they can, and have already been granted green cards. They travel to Taiwan fairly frequently, as they both are being treated by a medical doctor there. Applicant has infrequent contact with his in-laws, and provides them with no financial support. They plan to eventually live with the Applicant and his wife. (Tr. p. 63.) They are currently in Taiwan, and plan to return to the United States at the end of May 2016.

Applicant's wife testified and confirmed that her parents now have their green cards, plan to become United States citizens, and plan to live with her and the Applicant. (Tr. p. 63.)

Applicant's performance appraisal from July 2015 through December 2015, reflects an overall evaluation of 8.3 which falls within the "very good" category. (Applicant's Post-Hearing Exhibit B.)

Letters of recommendation from Applicant's coworkers, professional associates, and friends, indicate that he is considered to be a valuable asset to the company. His skill, vast knowledge in his field, professionalism, positive attitude, and trustworthiness have made him irreplaceable. He is meticulous and precise with his work, highly motivated, eager to learn, and extremely efficient. He is well respected among his peers and management, and is highly recommended for a security clearance. (Applicant's Post-Hearing Exhibit C.)

I have taken administrative notice of the current political conditions in Taiwan, Republic of China (ROC). The People's Republic of China, (PRC) seeks to unify Taiwan and mainland China as "One China." The ROC does not recognize the PRC, founded in Beijing by the Communist Party of China (CPC) in 1949. Since 1949, the ROC has governed only in Taiwan, and the PRC has ruled mainland China. From 1913 through 1978, the U.S. recognized the ROC, but subsequently shifted and recognized the PRC under its "One China" policy. In the U.S.-PRC Joint Communiques of 1972, 1979 and 1982, the U.S. recognized the Government of the People's Republic of China as the sole legal government of China, acknowledged China's claim that there is but one China, and

refrained from taking its own stance on Taiwan's status. The U.S. does not diplomatically recognize Taiwan.

Taiwan is and continues to be a significant threat to the U.S. for theft of U.S. trade secrets, proprietary economic information, and critical technologies. The risk to sensitive business information and advanced technologies have dramatically increased in the post-Cold War era as foreign governments, both former adversaries and allies, have expanded their espionage resources to include not just military and political information but also financial and commercial intelligence. Specific defense-related technology that has been stolen by Taiwan includes the illegal transport or attempted illegal export of U.S. restricted, dual-use technology. The dual-technologies that have been targeted include classified materials; weapons-grade carbon fiber; infrared laser aiming devices; thermal weapons sights and Joint Helmet-Mounted Cueing System; dual use hermetic connectors and glass to metal seals shipped to Iran by way of Taiwan; Ablative Materials that are used as protective coating for rocket nozzles; microwaveable amplifiers; drones; and surveillance airplanes and stealth technology related to fighter planes. The U.S. Government works diligently to identify, circumvent, and sanction any foreign intelligence threats to U.S. national and economic security.

## **POLICIES**

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

### Foreign Preference

9. The Concern. 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.

Conditions that could raise a security concern:

10.(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;
- (2) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country.

Conditions that could mitigate security concerns:

11.(a) dual citizenship is based solely on parent's citizenship or birth in a foreign country;

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

Foreign Influence

6. *The Concern.* 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.

Conditions that could raise a security concern:

7. (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;

7. (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

7. (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.

Conditions that could mitigate security concerns:

8. (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.;

8. (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

8. (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.

In addition, as set forth in Enclosure 2 of the Directive at pages 18-19, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature, extent and seriousness of the conduct;
- b. The circumstances surrounding the conduct, to include knowledgeable participation;
- c. The frequency and recency of the conduct;
- d. The individual's age and maturity at the time of the conduct;
- e. The extent to which participation is voluntary;
- f. The presence or absence of rehabilitation and other permanent behavior changes;
- g. The motivation for the conduct;
- h. The potential for pressure, coercion, exploitation or duress; and
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct, which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole-person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination". The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

The Government must make out a case under Guideline C (foreign preference) and Guideline B (foreign influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's situation and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the Applicant presently qualifies for a security clearance.

An individual who shows foreign preference and has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. Foreign influence can raise questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

## **CONCLUSIONS**

Having considered the evidence of record in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR.

Under Foreign Preference, Disqualifying Conditions 10.(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 (2) accepting educational, medical, retirement, social*



*welfare, or other such benefits from a foreign country* apply. Mitigating Conditions 11.(a) dual citizenship is based solely on parent's citizenship or birth in a foreign country, and 11.(e) *the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated* are also applicable.

Applicant's dual citizenship is based solely on the fact that he was born in Taiwan. He chose to become an American citizen. He also used his foreign passport for the benefit of obtaining quicker medical treatment while visiting Taiwan. He now understands that this poses a security risk. He has surrendered his Taiwanese passport and renounced his Taiwanese citizenship. He will no longer receive medical benefits from Taiwan, and will now only use his American passport for foreign travel. Under the circumstances, Guideline C is found for the Applicant.

Under Foreign Influence, Disqualifying Conditions 7.(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*; 7.(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 7.(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* apply. However, Mitigating Conditions 8.(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.*; 8.(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 8.(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* also apply.

It is acknowledged that the Applicant's parents, sisters, and in-laws are all citizens of and reside in Taiwan. However, Applicant's sisters have both applied to move to the United States and his parents plan to follow. Applicant's in-laws have already been granted their green cards and are awaiting the opportunity to apply for United States citizenship.

It is noted that the current political situation in Taiwan elevates the cause for concern in this case. In this case, the Applicant has everything to lose and nothing to gain by engaging in any conduct that may prove harmful to the interests of the United States. Applicant has lived in the United States for the past twenty years and made it his permanent home. Everything that he has worked for and everything that he stands for

will be destroyed. All of his financial assets are in the United States. He has long-standing ties and deep relationships here. The Applicant is married to an American citizen and they have two native-born American children. The United States is now the Applicant's permanent home and he has adopted the American culture and its values. Under the particular facts of this case, the possibility of foreign influence does not exist, nor could it create the potential for conduct resulting in the compromise of classified information. I find that the Applicant is not vulnerable to foreign influence. Accordingly, I find for the Applicant under Guideline B (Foreign Influence).

I have also considered the "whole-person concept" in evaluating the Applicant's eligibility for access to classified information. Under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed as a whole, support a whole-person assessment of good judgement, trustworthiness, reliability, candor, a willingness to comply with rules and regulations, or other characteristics indicating that the person may properly safeguard classified information. The Applicant is an intelligent, senior engineer with an excellent work record for the Defense Department. His favorable evidence, including the testimony and letters from his professional associates and friends that know him well, in addition to his overall integrity gleaned from his own testimony, demonstrate his trustworthiness. He has presented sufficient evidence in mitigation to demonstrate that he is not a security risk.

Considering all the evidence, the Applicant has met the mitigating conditions of Guidelines C and B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guidelines C and B.

## **FORMAL FINDINGS**

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.

Subpara. 1.a.1.: For the Applicant

Subpara. 1.a.2.: For the Applicant

Paragraph 2: For the Applicant.

Subpara. 2.a.: For the Applicant

Subpara. 2.b.: For the Applicant

Subpara. 2.c.: For the Applicant

Subpara. 2.d.: For the Applicant

Subpara. 2.e.: For the Applicant

## **DECISION**

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson  
Administrative Judge