



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



In the matter of:)
)
[Name Redacted])
)
) ISCR Case No. 15-08127
)
Applicant for a Security Clearance)

Appearances

For Government: Gina L. Marine, Esq., Department Counsel
For Applicant: *Pro se*

06/14/2017

Decision

HOGAN, Erin C., Administrative Judge:

Applicant mitigated the security concerns under foreign influence and foreign preference. Eligibility for access to classified information is granted.

Statement of the Case

On March 9, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B Foreign Influence and Guideline C, Foreign Preference. The action was taken under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the Adjudicative Guidelines (AG) implemented by DOD on September 1, 2006. The AGs implemented by DOD on September 1, 2006, have been replaced by AGs implemented by DOD on June 8, 2017. The decision in this case is based on the new AGs, effective June 8, 2017. I also considered this case based on the AGs implemented on September 1, 2006. The outcome of my decision would have remained the same if adjudicated under the former AGs.

Applicant answered the SOR on April 1, 2015, and requested that his case be decided on the administrative record. On August 8, 2016, Department Counsel prepared a File of Relevant Material (FORM). The FORM was forwarded to Applicant on August 19, 2016. Applicant timely responded to the FORM and submitted matters. His response to the FORM is marked and admitted as Item 5. In a memorandum dated September 26, 2016, Department Counsel indicated no objection to Applicant's Response to the FORM. (Item 6) The file was forwarded to the DOHA Hearing Office on September 28, 2016. The case was assigned to me on May 18, 2017.

Procedural Rulings

Request for Administrative Notice

Department Counsel requested administrative notice of facts concerning Taiwan. Department Counsel provided supporting documents to show detail and context for those facts. Applicant did not object, and I granted Department Counsel's request. Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004)); *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). The most common basis for administrative notice at ISCR proceedings, is to notice facts that are either well known or from government reports. See Stein, ADMINISTRATIVE LAW, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice). Various facts pertaining to Taiwan were derived from Department Counsel's country summary and accompanying documents as indicated under subheading "Taiwan" of this Decision.

Findings of Fact

Applicant admitted the SOR allegations. After a thorough review of the evidence, I make the following findings of fact.

Applicant is a 39-year-old employee of a defense contractor. He has worked for his current employer since April 2011. He is applying for eligibility to hold a security clearance. He is single and has no children. (Item 3; Item 5)

Applicant was born and raised in Taiwan. He was awarded an associates degree from a Taiwan University in June 1998. From November 1998 to June 2000, Applicant served mandatory military service in the Republic of China (Taiwan) Army. His highest rank was the equivalent of corporal. He worked in military supplies. He was responsible for maintaining the food and clothing inventory in the unit. He does not maintain contact with anyone he knew during his military service. In June 2003, he was awarded a bachelor's degree from a Taiwan University. He moved to the United States in August 2004 for graduate school. He was awarded a master's degree from a U.S. university and has lived in the United States since 2004. He became a U.S. citizen on February 13, 2015. He was issued a U.S. passport on March 6, 2015. (Item 3; Item 5)

Under Foreign Preference, it is alleged Applicant possesses a Taiwanese passport that does not expire until November 2019. Applicant admitted the allegation, but indicated he was willing to surrender his Taiwanese passport. In response to the FORM, Applicant provided copies of both his Taiwanese and U.S. passports. He also provide proof that his Taiwanese passport was surrendered to his Facility Security Officer. (FSO). Before he became a U.S. citizen in February 2015, he traveled using his Taiwanese passport. He now uses his U.S. passport when traveling abroad. Under the new AGs effective June 8, 2017, Applicant is required to report to an appropriate security official the possession of an identity card issued by any country other than the U.S. He is also required to use a U.S passport when entering and exiting the United States.

Under Foreign Influence, the SOR alleges Applicant's father, mother, and brother are citizens and residents of Taiwan. Applicant admits these allegations. (Item 2) Applicant's father works at a private financial company. His mother is a housewife. His brother works at an elementary school. (Item 3) Applicant contacts his parents about once a week. He contacts his brother about once a month. He travels to Taiwan to visit family about once a year. (Item 5)

Before becoming a U.S. citizen, Applicant voted in the Taiwan Presidential election in March 2012. He disclosed this in his security clearance application. (Item 3) Applicant's parents gave him mutual funds in Taiwan as gifts in the past. They also opened bank accounts and deposited cash in the accounts for him while he was a student. Applicant indicated on his e-QIP that upon becoming a U.S. citizen, he transferred all funds and bank accounts held in Taiwan to his parents and the accounts are closed. (Item 3; section 20A)

In his response to the FORM, Applicant provided copies of his Taiwanese passport, his U.S. passport, and his Naturalization certificate. He also provided a statement from his FSO verifying that he surrendered his Taiwanese passport on September 6, 2016. Applicant states he is a loyal U.S. citizen. (Item 5)

Taiwan

Taiwan is a multi-party democracy. The United States does not support Taiwan's independence, in keeping with the "one China" policy; however, "maintaining strong, unofficial relations with Taiwan is also a major U.S. goal, in line with [the U.S.] desire to further peace and stability in Asia." The United States supports Taiwan's membership in appropriate international organizations where statehood is not a requirement for membership and encourages its meaningful participation in appropriate international organizations, such as the World Trade Organization, Asia-Pacific Economic Cooperation (APEC) forum, and the Asian Development Bank. Maintaining diplomatic relations with the People's Republic of China (PRC) has been recognized to be in the long-term interest of the United States by six consecutive administrations.

There are significant economic ties between Taiwan and the PRC, which are attributable to their physical proximity and history. Because of its location, Taiwan has a

particular interest in information from the United States that could aid it in its own defense. Taiwan's primary defense goal is to deter invasion from the PRC. The PRC maintains intelligence operations in Taiwan through a bureau utilizing PRC nationals with Taiwanese connections. Unlike the PRC, however, the constitutional basis of the Taiwanese government suggests that resort to coercive measures against its citizens to collect economic intelligence is unlikely.

Taiwan's commercial ties with the United States have expanded since 1979. Export-Import Bank financing, Overseas Private Investment Corporation guarantees, normal trade relations (NTR) status, and ready access to U.S. markets have enhanced the Taiwan economy. "In recent years, AIT¹ commercial dealings with Taiwan have focused on expanding market access for American goods and services. AIT has been engaged in a series of trade discussions that have focused on protection of intellectual property rights and market access for U.S. goods and services."

The record references various cases involving the illegal export or attempted illegal export of U.S. restricted, dual-use technology to and/or through Taiwan. One report to the U.S. Congress concerns foreign economic collection and industrial espionage. That report notes that Taiwan was then known to be an active collector of U.S. economic intelligence. The report ranked Taiwan after China, Japan, Israel, France, and Korea as an active collector of such information. Although some of the record information about Taiwan's intelligence activities targeting U.S. classified or sensitive information is more than 10 years old, several exhibits address more recent espionage by Taiwan's National Intelligence Bureau (NSB). There is some evidence that Taiwan has specifically targeted U.S. citizens in the last five to seven years to obtain protected and classified information.

The United States is committed to assisting Taiwan with maintenance of Taiwan's defensive capabilities. "The United States has continued the sale of appropriate defensive military equipment to Taiwan in accordance with the Taiwan Relations Act, which provides for such sales and which declares that peace and stability in the area are in U.S. interests. Sales of defensive military equipment are also consistent with the 1982 U.S.-P.R.C. Joint Communiqué."

Taiwan is a modern democracy with vibrant public participation during which demonstrations may become confrontational. The U.S. State Department urges caution within the vicinity of any political demonstrations. Overall crime is noted as low.

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

¹ The American Institute in Taiwan (AIT) is a private nonprofit corporation with its headquarters in the Washington, DC area and offices in Taipei and Kaohsiung. It is authorized to issue visas, accept passport applications, and provide assistance to U.S. citizens in Taiwan. (HE 5 at 7)

disqualifying conditions and mitigating conditions, which are useful 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(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 the 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 applicant or proven by Department Counsel. . . ." The applicant 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 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 Executive Order (EO) 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 explains the Government's concern under Foreign Influence:

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.

AG ¶ 7 lists conditions that could raise a security concern and may be disqualifying. They include:

- (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;
- (c) failure to report or fully disclose, when required, association with a foreign person, group, government, or country;
- (d) counterintelligence information, whether classified or unclassified, that indicates the individual's access to classified information or eligibility for a sensitive position may involve unacceptable risk to national security;
- (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;
- (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;
- (g) unauthorized association with a suspected or known agent, associate, or employee of a foreign intelligence entity;
- (h) indications that representatives or nationals from a foreign country are acting to increase the vulnerability of the individual to possible future exploitation, inducement, manipulation, pressure, or coercion; and

(i) conduct, especially while traveling or residing outside the U.S., that may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country.

In Applicant's case, AG ¶ 7(a) and AG ¶ 7(b) apply. The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001). Applicant has frequent contact with his parents and brother in Taiwan. His relationship with his family creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion because Taiwan is known to conduct espionage against the United States. Applicant's contacts with his family in Taiwan also creates a potential conflict of interest between his obligation to protect classified information and his desire to help his family members by providing that information.

The Government produced substantial evidence of disqualifying conditions AG ¶¶ 7(a) and 7(b) as a result of Applicant's admissions and evidence presented. The burden shifted to Applicant to produce evidence and prove a mitigating condition. The burden of disproving a mitigating condition never shifts to the Government.

AG ¶ 8 lists conditions that could mitigate security concerns. They include:

(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;

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the agency head or designee;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

I find AG ¶ 8(a) and AG ¶ 8(b) apply to Applicant's case. It is clear that Applicant has close ties of affection and obligation to his immediate family members who reside in Taiwan. However, it is unlikely Applicant will have to choose between the interests of his family and the interests of the United States. Applicant's family members are not associated or affiliated with the Taiwanese government. His father works for a private financial company, his mother is a housewife, and his brother works for an elementary school. Applicant lives in the United States and moved all of his assets here. He has lived in the United States since 2004.

AG ¶ 8(b) applies because Applicant has deep and longstanding ties in the United States. Applicant has lived in the United States for over 13 years. He attended graduate school here. He became a US citizen in 2015. He transferred his assets in Taiwan back to his parents. All of his financial assets are located in the United States. Aside from his family members, all of Applicant's ties are in the United States. He can be expected to resolve any conflict in favor of U.S. interest.

GUIDELINE C: FOREIGN PREFERENCE

AG ¶ 9 explains the Government's concern under Foreign Influence:

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.

AG ¶ 10 lists conditions that could raise a security concern and may be disqualifying. They include:

10(a) applying for and/or acquiring citizenship in any other country;

10(b) failure to report, or fully disclose when required, to an appropriate security official, the possession of a passport or identity card issued by any country other than the United States;

10(c) failure to use a U.S. passport when entering or exiting the U.S.;

10(d) participation in foreign activities, including but not limited to:

(1) assuming or attempting to assume any type of employment, position, or political office in a foreign government or military organization; and

(2) otherwise acting to serve the interests of a foreign person, group, organization, or government in any way that conflicts with U.S. national security interests;

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

10(f) an act of expatriation from the United States such as declaration of intent to renounce U.S. citizenship, whether through words or actions.

Under the former AGs, effective September 1, 2006, Applicant's possession of his valid Taiwanese passport would have raised a security concern. Under the new AGs, effective June 8, 2017, Applicant's possession of a valid Taiwanese passport is no longer a concern because he disclosed that he had a foreign passport on his security clearance application. It is noted that Applicant would have mitigated concerns under the former AGs because he surrendered his passport to his FSO. I find for Applicant under Guideline C. None of the disqualifying conditions apply.

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

I considered Applicant's work history, his candor on his security clearance application, his willingness to renounce his Taiwanese citizenship as well as his willingness to surrender his Taiwanese passport. Since 2004, Applicant has made a life for himself in the United States. I have also carefully considered Applicant's family connections in Taiwan. I considered that Taiwan actively seeks U.S. classified and industrial/economic information. Based on the facts of this case, the mitigating factors outweigh the disqualifying factors. Applicant has made his life and future in the United States. There is no derogatory evidence in Applicant's background investigation. All of his financial assets are in the United States. Based on Applicant's longstanding ties to the United States, I conclude Applicant would resolve any attempt to exert pressure, coercion, exploitation, or duress in favor of the U.S.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the foreign influence and foreign preference concerns.

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 C:	For Applicant
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline B:	For Applicant
Subparagraphs 1.a – 1.c:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility access to classified information. Eligibility for a security clearance is granted.

Erin C. Hogan
Administrative Judge