



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



In the matter of:

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) ISCR Case No. 15-08630
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Applicant for Security Clearance

Appearances

For Government: Adrienne Driskill, Department Counsel
For Applicant: *Pro se*

February 22, 2017

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on August 27, 2015. (Government Exhibit 1). On May 10, 2016, 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 July 18, 2016, 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 October 11, 2016. A notice of hearing was issued on November 3, 2016, scheduling the hearing for December 6, 2016. The Government offered two exhibits, referred to as Government Exhibits 1 and 2, which were received without objection. Applicant presented two

exhibits, referred to as Applicant's Exhibits A and B, which were admitted into evidence without objection. He also testified on his own behalf. The record remained open until close of business on December 30, 2016, to allow Applicant to submit additional documentation. Applicant submitted one Post-Hearing Exhibit, referred to as Applicant's Post-Hearing Exhibit C which was admitted without objection. The transcript of the hearing (Tr.) was received on December 19, 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. (Tr. p. 16.) Applicant had no objection to the documents. (Tr. p. 16.) 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 24 years of age, single, and has a Bachelor's degree in Business Economics. He is employed as a Program Control Analyst 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 in September 1992. He came to the United States in 1995, at the young age of almost three. His parents wanted to give him and his sister better opportunities and they believed them to be in the United States. Applicant grew up here, went to schools here, established his friends and his lifestyle here, and became a naturalized citizen in January 2013. Since emigrating to the United States, Applicant has visited Taiwan on several occasions. Once when he was in high school, for about a month, and once during the summer of 2012, to see his mother's friend's daughter, who became his girlfriend for a while. Applicant no longer has contact with her; but when he did, she was a singer and worked at a flower shop in Taiwan. Applicant also traveled to Taiwan in 2013.

Applicant had a Taiwanese passport that was issued to him in January 2011, before he was naturalized, that was scheduled to expire in January 2021. After receiving a United States passport in 2013, he traveled to Taiwan that same year using his Taiwanese passport. This was a mistake. Applicant explained that at the time he was young and he did not understand that someday, if and when he filed for a security clearance, the situation may be an issue of concern. Applicant submitted a letter from his Security Coordinator indicating that he has surrendered his Taiwanese passport to the company security department to be destroyed. (Applicant's Post-Hearing Exhibit C.) He has also contacted the Taiwanese embassy to obtain a form on how to renounce his Taiwanese citizenship.

A long-time friend of the Applicant's, who is Operating Unit Business Manager, and serves as the Business Conduct Officer for the company Applicant works for, testified that his son and the Applicant have been good friends since the age of ten. They are both accomplished musicians who tried for sometime to make it in the music business. Applicant needed a job, and this friend spoke to one of his counterparts about the Applicant, and recommended him for the job. Applicant was subsequently hired and found to be an excellent and very bright employee. Applicant is also known to be honest and responsible. He has also met the Applicant's parents and has no concerns about where the Applicant's loyalties lie. (Tr. pp. 57-61.)

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 in the SOR under this guideline. His father, mother, and sister were at one time citizens and residents of Taiwan. They emigrated to the United States with the Applicant in 1995. At that time, Applicant already had an aunt and uncle and cousins residing in the United States, in the process of obtaining their citizenship status. Applicant's father, mother and sister became naturalized citizens in December 2014. Applicant's father is 55 years old, and he currently works for a large corporation in the United States, repairing copy machines. He has never been associated with the Taiwanese government in any manner. Applicant's mother is 50 years old, and is a stay-at-home mother. In the past, she ran a Japanese restaurant in the United States. She has no affiliation whatsoever with the Taiwanese government. Applicant's sister is 28 years old and works at a well-known investment firm in the United States. Applicant currently lives with his parents in the United States. Applicant's only contact with Taiwan is when he talks to his grandparents about once a year.

Two letters of recommendation from good friends of the Applicant attest to his upstanding character, strong work ethic, highly professional manners, and trustworthiness. He is recommended for a security clearance. (Applicant's Exhibits A and B.)

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 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;

Conditions that could mitigate security concerns:

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.

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 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* applies. 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. His family emigrated to the United States when the Applicant was not yet three years old. He has live here permanently since then. He has become a naturalized American citizen. After receiving his United States passport, he used his Taiwanese passport to travel to Taiwan to avoid having to apply for a visa. He now understands that this poses a security risk. He has surrendered his Taiwanese passport for destruction and is planning to renounce his Taiwanese citizenship. He receives no benefits of any sort from Taiwan, nor does he intend to in the future. From here on out, he plans to travel on his United States passport since that is the only passport he has. 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.

Applicant's parents and sister are now naturalized citizens of the United States who reside here. Applicant's only contact with extended family in Taiwan occurs about once a year when he speaks to his grandparents.

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 more than 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 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, employee 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.: 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

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