



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



In the matter of:

ISCR Case No.15-05481¹

Applicant for Security Clearance

Appearances

For the Government: Rhett Petcher, Esq., Department Counsel
For Applicant: Kristan Siegwart, Esq.

11/16/2017

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the case file, testimony, and exhibits, I conclude that Applicant provided adequate information to mitigate the security concerns for foreign influence under Guideline B. Eligibility for access to classified information is granted.

Statement of the Case

On August 25, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance for her employment with a defense contractor. The Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On March 9, 2016, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for foreign influence under Guideline B and foreign preference under Guideline C. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective in the DOD on September 1, 2006.

¹ This case was original titled as an Application for Public Trust Position case (ADP). During the hearing, Department Counsel amended the case title to an Industrial Security Clearance Case (ISCR). (Hearing Exhibit, Amendment to Statement of Reason, dated August 11, 2017.

Applicant answered the SOR on May 1, 2016. SOR allegation 1.a alleges that Applicant was a citizen of Taiwan but held an United States permanent resident card. Applicant denied this allegation since he became a United States citizen in January 2015. SOR allegation 1.b alleges Applicant possessed a Taiwanese passport. He denied the allegation since the passport was destroyed.² Applicant denied SOR allegation 2.a concerning his wife being citizen of Taiwan since his wife became a United States citizen on May 7, 2015.³ He admitted the remaining two allegations (SOR 2.b and 2.c) that he has relatives who are citizens and residents of Taiwan and that he and his wife maintain bank accounts in Taiwan. Department Counsel was prepared to proceed on May 18, 2016. The case was assigned to me on February 25, 2017, and DOD issued a notice of hearing on July 2, 2017, for a hearing on August 7, 2017. I convened the case as scheduled. The Government offered one exhibit that I marked and admitted into the record without objection as Government Exhibit (GX) 1. Applicant testified and offered 25 exhibits that I marked and admitted into the record without objection as Applicant Exhibits (AX) A through Y. I received the transcript of the hearing (Tr.) on August 15, 2017.

Procedural Issues

Department Counsel and Applicant requested that I take administrative notice of certain facts concerning Taiwan. Both provided relevant U.S. Department of State documents pertaining to the Peoples Republic of China (PRC) and Taiwan. Department Counsel also postures that Taiwan and the PRC are one entity since the United States position on Taiwan and PRC is that there is only one China. (Hearing Exhibit II) Applicant's counsel argued that Taiwan and the PRC are separate entities. She points out that Taiwan is a democratic country with a president and a parliament. The Taiwan Relations Act (TRA) signed on April 10, 1979, created the legal authority for the U.S. to conduct unofficial relations with Taiwan. The U.S. supports Taiwan membership in international organizations. Taiwan is a separate trading party with the U.S. (Hearing Exhibit III) I determined that the PRC and Taiwan are separate countries for security clearance purposes. I will take administrative notice of facts concerning only Taiwan as noted in my Findings of Fact.

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following findings of fact. Applicant is 39 years old, and a principal scientist for a defense contractor working at a government research laboratory since May 2014. Applicant was born in Taiwan. He received a Bachelor's degree in 2000 and Master's degree in 2002 in electrical engineering from a Taiwanese university. He served his compulsory military service in the Taiwanese Army from 2002 until 2004. In 2004, Applicant came to the United States on a student visa and started his education for a

² Department Counsel withdrew SOR paragraph 1 and the allegations at SOR 1.a and SOR 1.b. (Tr. 10)

³ Department Counsel withdrew allegation SOR 2.a. (Tr. 10)

doctorate degree in electrical engineering at a United States university. While pursuing his degree, he was a research assistant at the university. He received his doctorate in electrical engineering in May 2011. He continued his employment at the university until December 2011. Applicant was employed as a post-doctrinal research staffer for a defense contractor at a government laboratory from January 2012 until January 2014. (Tr. 26-28; GX 1, e-QIP, dated July 4, 2014)

Applicant came to the United States in 2004 to pursue his advance degree and start a career in scientific research. He became a U. S. permanent resident in 2009, applied for U. S. citizenship in 2014, and became a U. S. citizen in January 2015. He married a Taiwanese citizen in the United States in 2008. His wife became a United States citizen in 2015. She is employed by a U.S. government agency as an accountant. They have one child who is a United States citizen born in the United States. He considers the United States to be his home and he wants to raise his daughter and future children in the United States. It is also the best place for his daughter to develop, be educated, and to receive care for her special needs. He is proud of the work he can do for the government and military in the United States. He is extremely well regarded by his supervisors and co-worker as a research scientist. (Tr. 28-31, 52-53; GX 1. E-QIP, dated July 4. 2014; AX A, AX G, AX H, AX YI, and AX O-Y)

The remaining SOR allegations are that Applicant's parents and in-laws are citizens and residents of Taiwan; that his father is retired from the Taiwan tax bureau and his mother is an elementary school teacher (SOR 2.b); and that he and his wife each maintain bank accounts in Taiwan (SOR 2.c). Applicant admits, in his response to the SOR, the allegation concerning his parents and in-laws, except he denies that his mother is still an elementary school teacher. He admits that he and his wife both have bank accounts in Taiwan.

Applicant's parents are now residents of the United States. They applied for permanent resident status in July 2016. They are waiting for a determination on their application. Applicant was informed in July 2017 that their case is pending and the government agency responsible for a decision has a large backlog of cases. His parents are retired and intend to remain permanent residents of the United States. His mother was an elementary school teacher for 25 years and retired in 2002. His father taught elementary school for ten years before earning his degree and become a civil servant. He worked for the Taiwan tax bureau from 1976 until retiring in 2012. He managed and oversaw a large tax office. He was not involved in policy but was a manager. Neither parent were involved in national security matters. (Tr. 32-36; AX A and AX B, Immigration Documents, August 25, 2016)

Applicant's in-laws are residents and citizens of Taiwan. His mother-in-law is a retired financial accounting professional. She never worked for the government but always for private firms. His father-in-law is a retired private sector bank manager. The most contact Applicant had with his mother-in-law was in 2008 and 2009 when he was assisting his wife in planning their wedding. Now he seldom talks to his mother-in-law. His in-laws visited Applicant and his wife in the United States from August 2015 until

January 2016 to assist with the care of their infant daughter. Since his mother-in-law's return to Taiwan, Applicant seldom talks to her. His wife talks to her more often. Applicant's father-in-law visited them in the United States from October 2015 until January 2016. He very seldom talks to his father-in-law since his return to Taiwan. Applicant traveled to Taiwan for short visits in 2008 and 2009 for wedding planning, and again for a visit in 2011 and 2012. He attended his sister's wedding in Taiwan in November 2014. (Tr. 36-40; E-QIP, July 4, 2014)

Applicant and his wife have separate bank accounts in Taiwan. Applicant opened his account in approximately 2000 to deposit the stipends he received while working on his master's degree, and to deposit his salary from his compulsory military service in 2002 to 2004. The account is still active but with a balance of about \$1. He has not accessed the account since he came to the United States in 2004. He has not closed the account since Taiwan requires that the account be closed in person. The procedures are difficult. If the procedures were not so difficult, he would have no problem with closing the account. (Tr. 41-46; AX C, AX D, AX E, and AX F, Bank Book and English Translation)

Applicant's wife opened her account in approximately 2000. She used the account to have funds available when she visited Taiwan. She closed the account in September 2016. The balance at the time was approximately \$1,800. (Tr. 46-49; AX D, AX E, and Bank Documents and English Translation)

Applicant and his wife both have accounts in the United States. Applicant's accounts are valued at approximately \$160,000. His wife's accounts are valued approximately \$400,000. (Tr. 50-51; see, AX J to AX N, Financial Documents)

During World War II and after, a civil war was fought on the mainland of China between the Chinese Communist Party and the Nationalist Chinese. In 1949, the Chinese Communist party was victorious and established a government on the mainland. The Nationalist Chinese fled to the island that is now Taiwan and established a government. Taiwan has developed steadily since then and is now the world's 17th largest economy. Taiwan became a member of the World Trade organization in 2002, further expanding its trade opportunities and further strengthening its standing in the global economy. This prosperity established economic and social stability.

Until 1968, Taiwan's political system was effectively controlled by one party, the Kuomintang. Since ending martial law in 1987, Taiwan has taken dramatic steps to improve respect for human rights and created a democratic political system. The United States has been committed to maintaining cultural, commercial, and other nonofficial relations with Taiwan since January 1979, when it formally recognized the government of the People's Republic of China (PRC) as the sole legal government of China. By formal act of Congress (Taiwan Relations Act of 1979), the United States is committed to provide Taiwan with military defensive arms in support of Taiwan's security and stability in the region. The United States also stated it would maintain cultural, commercial, and other unofficial relations with the people of Taiwan. Despite the United

States' clear and consistent position that Taiwan and the mainland are part of one China, the United States expanded commercial ties with Taiwan and is supportive of Taiwan's membership in international organizations, such as the World Trade Organization and the Asian Development Bank. (See, United States Department of State Background Notes: Taiwan, dated November 3, 2010)

The Government documents in its request for Administrative Notice mainly discuss the PRC and not Taiwan. The documents point out that Taiwan poses a threat to national security because in the past, it was actively engaged in industrial espionage and the collection of foreign economic information. The request cites to the annual Report to Congress on Foreign Economic Collection and Industrial Espionage of 2000. It lists the PRC and Russia as the most active collectors. The report states the United States is targeted by a large number of foreign countries for economic and industrial espionage. The report notes that the foreign private sector is the most active collector of this type of economic and industrial intelligence, but there is ample evidence that foreign intelligence services and other government organizations remain aggressive in collecting information by using the private sector to collect information for them and by their own continued direct intelligence gathering operations.

The report lists a number of factors that could cause concern for the United States. Among the concerns are the numbers of foreign visitors from any country to United States sensitive sites, the numbers of non-immigrant persons from a country that are admitted as visitors to the United States, and the number of requests from a country for visits to military and defense industry sites. There are a large number of visitors from Taiwan to the United States for business, pleasure, or other purposes. Taiwan does not appear to be any more active in the collection of economic and industrial intelligence than many other allied countries.

The Government noted information concerning individuals in the United States convicted of engaging in espionage practices on behalf of Taiwanese companies or officials, as well as companies that violated export control requirements in sending items to Taiwan. Some of these cases involve individuals in the United States, both native born and foreign born and both citizens and non-citizens of the United States, that formed friendships with Taiwan intelligence agents and then provided the agents with classified information. While the Government presented information only on Taiwan cases, it is not difficult to assume that there are cases that pertain to other countries as well. The fact that there are cases of Taiwan intelligence agents accepting intelligence information from sources in the United States, no matter how obtained, does raise security concerns.

The relationship between the United States and Taiwan is defined in the Taiwan Relations Act which recognizes Taiwan. (Public Law 96-8) Taiwan has a long history of friendly relations with the United States, including substantial levels of foreign trade. Taiwan is an ally and friend but can also pose a security threat because of its activities and efforts to obtain economic, industrial, and national security information. (Hearing Exhibits II and III, and supporting documents)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered 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(c), 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 access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion to obtain 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

Foreign Influence

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 the U.S. interest, 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 consideration 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. (AG ¶ 6)

Guideline B is not limited to countries hostile to the United States. The United States has a compelling interest in protecting and safeguarding sensitive information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States. Even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. The nature of a nation's government and its relationship with the United States are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the foreign government or the country is known to conduct intelligence operations against the United States. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue.

The SOR alleges, and Applicant admits, that his parents are citizens of Taiwan and her in-laws are citizens and residents of Taiwan. Applicant and his wife also had bank accounts in Taiwan. Applicant's Taiwan based relatives and bank accounts are a foreign influence security concern and raise the following disqualifying conditions under AG ¶ 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;
- (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;
- (e) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risks of foreign inducement, manipulation, pressure, or coercion; and

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

The mere existence of foreign relationships and contacts is not sufficient to raise the above disqualifying conditions. AG ¶¶ 7(a), 7(e), and 7(f) requires substantial evidence of a “heightened risk.” The “heightened risk” required to raise one of these disqualifying conditions is a relatively low standard. “Heightened risk” denotes a risk greater than the normal risk inherent in having a family member or contacts living under a foreign government. The nature of Applicant’s contacts and relationships must be examined to determine whether it creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. One factor that may heighten the risk in Applicant’s case is Taiwan’s collection of economic and industrial intelligence and the potential use of Taiwanese citizens to obtain such information. The Government has established that Applicant may be under a “heightened risk” of security concern because of the intelligence activities of the Taiwanese government and Taiwanese businesses to obtain industrial and commercial information. An applicant with foreign family or friendship ties to a country that presents a heightened risk has a heavy burden of persuasion to show that neither he nor his relatives are subject to influence by that country. The totality of an applicant’s family member ties to a foreign country must be considered. There is a risk presented because Applicant’s in-laws are citizens and residents of Taiwan and Taiwan is a known collector of intelligence information from foreigners.

Applicant raised facts to mitigate the security concerns arising from his relatives connections to Taiwan. I considered the following Foreign Influence Mitigating Conditions under AG ¶ 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.;

(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;

(c) contact or communication with foreign citizens is so casual or infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation; 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 have considered Applicant's relationship with his parents who are citizens of Taiwan but residents of the United States, and his in-laws who are citizens and residents of Taiwan. I have also considered the Taiwanese Government's significant intelligence and security actions. Taiwan is a known collector of security information, but they are not known to coerce their own citizens to gain security information. They conduct a significant security apparatus because of the threats from mainland China.

There is a rebuttable presumption that contacts with an immediate family member in a foreign country are not casual. Factors such as an applicant's relatives' obscurity or the failure of foreign authorities to contact them in the past do not provide a meaningful measure of whether an applicant's family circumstances pose a security concern. Applicant's parents reside in the United States with Applicant and his wife and are not a security concern. Applicant's in-laws reside in Taiwan and Applicant talks to them infrequently. He last saw them in late 2016 when they came to help care for his infant daughter. The communications between Applicant and his in-laws is casual and infrequent since they moved back to Taiwan and does not create a heightened risk for foreign influence or exploitation. In spite of Taiwan's significant intelligence and trustworthiness concerns and functions, it is unlikely Applicant will be placed in a position to choose between his in-laws and U.S. interests.

In evaluating the potential conflict of interests between Applicant's Taiwanese siblings, I considered that Taiwan is a strong ally of the United States with mutual defense and strategic interests. It is a substantial trading partner of the United States. A friendly relationship is not determinative, but it makes it less likely that a foreign government would attempt to exploit a United States citizen through relatives or associates in that country. Even friendly countries may engage in espionage against the United States' economic, scientific, or technical interest. Even though Taiwan is not a hostile country and its interests are not inimical to the United States, it is reasonable to consider that elements in Taiwan could take an action that may jeopardize their friendly position with the United States if they needed trade and defense information from sources in the United States. There are strong indications that elements in Taiwan could seek economic and sensitive information from contacts in the United States.

Applicant has strong ties to the United States. He has been a resident of the United States for over 13 years, a permanent resident for over eight years, and a U.S. citizen for over three years. He completed his education in the United State and has been employed by a government contractor to work in a U.S. government laboratory. There are clear indications that he has firm ties to the United States and considers it home. He has embraced the culture, history, and lifestyle of the United States. He has no remaining financial interests in Taiwan since he and his wife closed their bank accounts. Even if the accounts were not closed, Applicant's financial interests in Taiwan were minor compared to their financial interests in the United State. The Taiwan

financial interests would not result in a conflict of interest and could not be used to effectively influence, manipulate, or pressure Applicant.

Applicant's loyalty to the United States is unquestioned. Applicant has established through his actions that it is unlikely that he could be placed in a position to choose between any sense of loyalty or obligation to his relatives in Taiwan and his sense of loyalty or obligation to the United States. In balancing all of the factors mentioned and considered above, I am satisfied Applicant's loyalty to the United States is such that he can be expected to resolve any conflict of interest in favor of the United States interest. There is no risk to the national interest if Applicant has access to classified information. Mitigating conditions AG ¶¶ 8(a), 8(b), 8(c), and 8(f) apply. Applicant has met his heavy burden to show that his relatives in Taiwan do not cause a security concern. I conclude that Applicant has mitigated security concerns for foreign influence.

Whole-Person Concept

Under the whole person concept, the administrative judge must evaluate an Applicant's eligibility for an access to sensitive information clearance by considering the totality of the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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 access to sensitive information 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. The whole-person concept requires consideration of all available information about Applicant, not single items in isolation, to reach a determination concerning Applicant's eligibility for access to sensitive information.

Applicant's parents are residents of the United States and as such do not create a security concern. Applicant has infrequent and casual contact with his in-laws in Taiwan. Applicant established that he has such deep and longstanding relationships and loyalties in the United States that he can be expected to resolve any conflict of interest in favor of the United States. While access to sensitive information is not based on a finding of loyalty in the United States, Applicant has an abiding commitment to the protection of United States interests. Applicant is a United States citizen and he has

established his preference for the United States over any preference for Taiwan. These facts leave me without questions and doubts about Applicant's eligibility and suitability for access to sensitive information. For all these reasons, I conclude Applicant has met the heavy burden of mitigating potential security concerns arising from his in-laws in Taiwan.

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:

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|---------------------------|---------------|
| Paragraph 1, Guideline C: | Withdrawn |
| Paragraph 2, Guideline B: | FOR APPLICANT |
| Subparagraph 2.a: | Withdrawn |
| Subparagraphs 2.b – 2.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 for access to sensitive information. Eligibility for access to sensitive information is granted.

THOMAS M. CREAN
Administrative Judge