



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



In the matter of:

ISCR Case No. 15-08572

Applicant for Security Clearance

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel

For Applicant: *Pro Se*

05/17/2018

Decision

HEINTZELMAN, Caroline E., Administrative Judge:

This case involves security concerns raised under Guidelines B (Foreign Influence) and C (Foreign Preference). Applicant failed to mitigate security concerns raised by his foreign family member. He mitigated the foreign preference security concern. Eligibility for access to classified information is denied.

History of Case

Applicant submitted security clearance applications (SCA) on May 31, 2015 and May 5, 2017. On September 14, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guidelines B and C. The DOD acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), for all decisions on or after June 8, 2017.

Applicant answered the SOR on September 21, 2017, and requested a decision on the record without a hearing. On December 20, 2017, a complete copy of the File of Relevant Material (FORM), containing six Items, was mailed to Applicant and received by him on January 2, 2018. The FORM notified Applicant that he had an opportunity to file objections and submit material in support of his case within 30 days of his receipt of the FORM. Applicant did not respond to the FORM. Hence, Items 1 through 6 are admitted into evidence without objection. The case was assigned to me on March 1, 2018.

Administrative Notice

I took administrative notice of facts concerning Taiwan. Those facts are set forth in the following: Government's Request for Administrative Notice for Taiwan, marked as Item 6. These documents are included in the record. The facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute. Those facts are set out in the Findings of Fact, below.

Findings of Fact

Applicant is 27 years old, and he was born in Taiwan. He entered the United States in 2003, and was naturalized in February 2010. Four years later he received a bachelor's degree. During the summer of 2015, he worked as an intern for Company A, a defense contractor. In 2016, he received a master's degree and shortly thereafter started working for his current employer, Company B, as an electrical engineer. He requires a clearance for his employment. Applicant is single and has no children.

Applicant's father is a surgeon. He holds a U.S. green card, but continues to live and work in Taiwan (Item 2). His mother and brother are dual citizens of the United States and Taiwan, who live in the United States. Applicant's grandmother is a citizen and resident of Taiwan. He talks to her on the phone every two or three days and sees her when he visits Taiwan. His uncle, aunt, cousin, and several friends are citizens and residents of Taiwan (Item 5).¹

Applicant regularly visits his family in Taiwan. In his two SCAs, he disclosed the following visits: July to September 2009; June to September 2010; June to September 2011; April to August 2014; and June to August 2016 (Items 3 and 4). During these visits he saw his relatives and childhood friends. None of these individuals are employed by the Taiwanese government.

Applicant used his Taiwanese passport to enter the United States in 2010, 2011, 2014, and 2016 because of confrontations by U.S. custom agents. They questioned why there was no record in his U.S. passport of him entering or exiting a foreign country. He used his Taiwanese passport to enter and exit Taiwan because he misinterpreted Taiwanese citizenship laws. Additionally, he did not understand the potential implication

¹ In his Answer to the SOR, Applicant indicated his grandmother has terminal cancer and dementia. He does not maintain close relationships with his extended family members or his friends (Item 2).

of entering the United States with a non-U.S. passport while working for a defense contractor (Item 2).

Taiwan

The People's Republic of China (PRC) seeks to unify Taiwan and mainland China as "one China" and does not recognize Taiwan's independence. Tensions persist between the PRC and Taiwan over Taiwan's sovereignty. Since 1979, the United States has not diplomatically recognized Taiwan.

There have been multiple cases involving the illegal export or attempted illegal export of U.S. classified, restricted, and dual-use technology to Taiwan and the PRC. Illegal technology transfers are a significant concern because foreign government entities – including intelligence organizations and security services – have learned to capitalize on private-sector technology acquisitions. (Item 6).

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person applying for national security eligibility seeks to enter 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk 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 or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an applicant 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.” See *a/so* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline C: Foreign Preference

The security concern relating to the guideline for foreign preference is set out in AG ¶ 9:

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.

The guideline includes several conditions that could raise security concerns under AG ¶ 10. One is potentially applicable in this case:

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

Applicant's use of his Taiwanese passport to enter the United States in 2010, 2011, 2014, and 2016 establishes the above disqualifying condition.

After the Government produced substantial evidence of the disqualifying condition, the burden shifted to Applicant to rebut them or otherwise prove mitigation. Two mitigating conditions under AG ¶ 11 are potentially applicable to the disqualifying security concerns based on the facts of this case:

(b) dual citizenship is based solely on parental citizenship or birth in a foreign country, and there is no evidence of foreign preference; and

(e) the exercise of the entitlements or benefits of a foreign citizenship do not present a national security concern.

In both of his SCAs, Applicant disclosed the use of his foreign passport. There is no evidence that he has used his Taiwanese passport to enter or exit the United States since he started his full-time employment at his current employer. Accordingly, the Guideline C concerns alleged in the SOR have been mitigated.

Guideline B: Foreign Influence

The security concern relating to the guideline for foreign influence is set out in AG ¶ 6:

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.

The guideline includes several conditions that could raise security concerns under AG ¶ 7. Two are potentially applicable in this case:

(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; and

(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.

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, that 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 ongoing familial connections with his father. This relationship creates a heightened risk of foreign pressure or attempted exploitation because of the intelligence-gathering activities of Taiwan. The evidence and Applicant's admissions are sufficient to raise these disqualifying conditions.

After the Government produced substantial evidence of those disqualifying conditions, the burden shifted to Applicant to rebut them or otherwise prove mitigation. Three mitigating conditions under AG ¶ 8 are potentially applicable to the disqualifying security concerns based on the facts of this case:

(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; and

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

Although none of Applicant's foreign contacts are employed by the Taiwanese government, the intelligence-gathering activities of Taiwan present an unacceptable risk that Applicant may be placed in a position of having to choose between the interests of a foreign individual, group, or government and the interests of the United States. AG ¶ 8(a) does not apply.

Applicant has lived in the United States since he was twelve years old, and he has earned bachelor and master's degrees from U.S. universities. His mother and brother are both citizens and residents of the United States. Notwithstanding these relationships, by Applicant's own admission, he maintains a close relationship with his father in Taiwan, to whom he has been bound by affection or obligation his entire life. He has not overcome the presumption of a non-casual relationship with this immediate family member. AG ¶¶ 8(b) and 8(c) do not apply.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall commonsense judgment based upon careful consideration of the following guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under the guideline at issue in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under this guideline, and evaluating all the evidence in the context of the whole person, Applicant has not mitigated the security concerns at issue. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the interests of national security of the United States to grant him eligibility for access to classified information.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ 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:	AGAINST APPLICANT
Subparagraph 2.a.	Against Applicant
Subparagraph 2.b.-2.f.	For Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to continue Applicant's eligibility for access to classified information. Clearance is granted.

Caroline E. Heintzelman
Administrative Judge