



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



In the matter of:)	
)	
XXXXXXXXXXXXXXXXXXXXXXX)	ISCR Case No. 16-00151
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Allison Marie, Esquire, Department Counsel
For Applicant: Eric A. Eisen, Esquire

03/29/2018

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,¹ I grant Applicant's clearance.

On 16 June 2016, the Department of Defense (DoD) issued an SOR to Applicant detailing security concerns under Guideline B, Foreign Influence.² Applicant timely answered the SOR, requesting a hearing before the Defense Office of Hearings and Appeals (DOHA). DOHA assigned the case to me 7 April 2017, and I convened a

¹Consisting of the transcript (Tr.), Government exhibit (GE) 1, hearing exhibits (HE) I-II, and Applicant exhibits A-D.

²DoD acted 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 within the DoD on 1 September 2006. However, on 10 December 2016, the Director of National Intelligence (DNI) signed Security Executive Agent Directive 4, implementing new AG, effective with any decision issued on or after 8 June 2017. My decision is the same under both guidelines.

hearing 25 May 2017. DOHA received the transcript 2 June 2017, and the record closed.

Findings of Fact

Applicant admitted the allegations of the SOR. He is a 42-year-old systems administrator employed by a defense contractor since October 2002. He has not previously held a clearance, but underwent a background investigation in July 2009 to allow him to perform his computer duties with the United States (U.S.) military medical school.

Applicant was born in the Republic of China (Taiwan) in February 1975. He grew up there and was educated there until he was 12-years-old. In 1987, his parents, along with Applicant and his younger brother and sister, immigrated to Canada because his parents thought the children would have greater opportunities in Canada than in Taiwan. The entire family acquired Canadian citizenship. Applicant completed high school in Canada, and attended college in Canada. He immigrated to the U.S. in 1999 to attend graduate school from August 1999 to April 2001, obtaining his master's degree in computer science. There, he met his wife, a native of Malaysia. They married in July 2002, and have two sons, native-born U.S. citizens, born in June 2004 and July 2006.

Applicant became a legal permanent resident of the U.S. in April 2009, and became a naturalized U.S. citizen in June 2014. He obtained his U.S. passport in July 2016. He renewed his Canadian passport in March 2011, a passport that under U.S. immigration law, he was required to maintain while he remained a legally-resident alien in the U.S. He also renewed his Taiwanese passport in April 2014. He states that he has surrendered both foreign passports to his security officer (Tr. 36).

Applicant's 67-year old mother and 70-year-old father are dual citizens of Taiwan and Canada, currently residing in Taiwan. They returned to Taiwan in 2008, because Applicant's grandfather died that year, and his grandmother had previously suffered a stroke, and needed Applicant's parents to care for her. Applicant's grandmother died in 2015. Applicant's siblings live in Canada and each has two children, younger than Applicant's children.

When Applicant's grandmother was alive, he and his family traveled to Taiwan to visit her and his parents. Since her death, Applicant has not returned to Taiwan.

Applicant's father is a retired textile salesman and his mother is a life-long housewife. They are both avid golfers, and travel extensively to pursue their avocation in Asia and play golf and visit their grandchildren in the U.S. and Canada. Right now, the Canadian grandchildren are the favorites, as a toddler and an infant are cuter than two pre-teen boys. Applicant has monthly contact with his parents, either by telephone or video connection, but they travel to the U.S. and Canada every year now. Applicant anticipates that they will return to Canada to live near his sister when their traveling days are over.

Applicant and his wife have no financial interests in Taiwan. They have \$200,000 annual income, consisting of their two salaries, plus some net income from a rental property. They estimate their net worth at \$1,300,000, consisting of a retirement plan and the equity in their residence and a rental property (AE A). Applicant's oldest son is heavily involved in youth hockey, and the youngest is an active participant in the Boy Scouts (AE D).

Taiwan is a multiparty democracy, whose authorities generally respect the human rights of its citizens. While Taiwan is an active collector of industrial information and engages in industrial espionage, the record does not demonstrate that the government of Taiwan targets U.S. intelligence information. Further, the record does not demonstrate that it seeks to exert pressure on U.S. citizens to collect information from family members residing in country or abroad. The U.S. does not have formal diplomatic relations with Taiwan, but maintains a substantial informal relationship. The Government acknowledges that the People's Republic of China (PRC) has not yet successfully integrated what it considers to be a renegade province (HE I)

Applicant's current supervisor—the Chief Knowledge Officer at the medical school, who was responsible for Applicant's 2009 transfer to the school information division—praises his exceptional work performance and highly recommends him for his clearance. A former supervisor at the school recommends him with similar praise, as does a co-worker, and a neighbor (AE C). They noted no issue with Applicant's handling of sensitive medical information. Applicant has been recognized at work for his positive contributions to the hospital's mission (AE B).

Policies

The adjudicative guidelines (AG) list factors for evaluating a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also reflect a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). Any one disqualifying or mitigating condition is not, by itself, conclusive. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline B (Foreign Influence).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a

compelling interest in ensuring each applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the government.³

Analysis

Under Guideline B (Foreign Influence), an applicant’s foreign contacts and interests may raise security concerns if the individual 1) has divided loyalties or foreign financial interests, 2) may be manipulated or induced to help a foreign person, group, organization, or government in a way contrary to U.S. interests, or 3) is vulnerable to pressure or coercion by any foreign interest. Foreign influence adjudications 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, whether the country is known to target U.S. citizens to obtain protected information and/or is associated with a risk of terrorism.⁴ Evaluation of an individual’s qualifications for access to protected information requires careful assessment of both the foreign entity’s willingness and ability to target protected information, and to target ex-patriots who are U.S. citizens to obtain that information, and the individual’s susceptibility to influence, whether negative or positive. More specifically, an individual’s contacts with foreign family members (or other foreign entities or persons) raise security concerns only if those contacts create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.⁵ In addition, security concerns may be raised by a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.⁶

In this case, the government did not establish that Applicant’s contacts with his family in Taiwan created a heightened risk of exploitation, inducement, manipulation, pressure, or coercion. Taiwan and the U.S. enjoy excellent foreign relations. Although Taiwan is an active collector of commercial information, it has not been demonstrated to target protected U.S. information, nor has it been demonstrated to target U.S. citizens to obtain protected information. Given that Taiwan generally respects the human rights of its citizens, the risk that it might seek protected information—or succeed in obtaining such information—from Applicant is low, if not non-existent.

Examining Applicant’s circumstances, the government produced no evidence that there was a heightened risk of foreign exploitation, inducement, manipulation,

³See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁴AG, ¶6.

⁵A G, ¶ 7(a).

⁶AG, ¶ 7(e).

pressure, or coercion because of Applicant's contacts with family in Taiwan. Applicant has resided in North America over two-thirds of his life, and in the U.S. more than half of his life, including all of his professional life. He has no financial interests in Taiwan. His contacts with his parents are routine. There is nothing in the circumstances of their being in Taiwan, or in Applicant's contacts with them, to heighten the risk that he could be impelled or compelled to provide protected information to Taiwan.

Even if I were to assume that the Government had established security concerns based on his contacts with his parents, I conclude that he has mitigated the security concerns.⁷ His contacts in Taiwan are routine, Taiwan generally respects the rights of its citizens, and his parents are not, and have not been, involved in activities that would make it likely that Applicant would have to choose between their interests or those of the U.S.⁸ I resolve Guideline B for Applicant.

Formal Findings

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraph a: For Applicant

Subparagraph b: For Applicant

Conclusion

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

JOHN GRATTAN METZ, JR
Administrative Judge

⁷Indeed, the Government's administrative notice documents (HE I) focused as much on perceived risks posed by the fact that Taiwan is infiltrated with agents from the People's Republic of China (PRC) as on Applicant's contacts in Taiwan vis-a-vis the Taiwanese government. Presumably, Applicant would not be able to distinguish these agents from any other ethnic Chinese on Taiwan. Assuming this is so, the government has still failed to establish how Applicant might be influenced to provide protected information to the Taiwanese government—or to the PRC acting under cover.

⁸Adjudicative Guidelines, ¶8(a).