



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



In the matter of:)
)
) ISCR Case No. 17-03248
)
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey DeAngelis, Esquire, Department Counsel
For Applicant: *Pro se*

08/14/2018

Decision

Benson, Pamela C., Administrative Judge:

Applicant mitigated security concerns arising under Guideline B (Foreign Influence). Eligibility for access to classified information is granted.

Statement of the Case

On March 12, 2016, Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP). On October 25, 2017, the Department of Defense Consolidated Adjudications Facility (DODCAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B (Foreign Influence).¹ The action was taken under Executive Order 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) effective within the Department of Defense on June 8, 2017.

¹ The SOR skipped allegation 1.g. altogether. There are 20 SOR allegations cited from 1.a through 1.u.

On November 18, 2017, Applicant responded to the SOR, and he requested a hearing before an administrative judge. He submitted documents labeled as Applicant Exhibit (AE) A through U. On January 24, 2018, the case was assigned to me. On April 12, 2018, the Defense Office of Hearings and Appeals (DOHA) issued a notice of Hearing, setting the hearing for May 8, 2018.

During the video-teleconference (VTC) hearing, Department Counsel offered Government Exhibits (GE) 1 through 3 into evidence, which were admitted without objection. Applicant testified and did not offer any additional documents into evidence during the hearing. AE A through U were entered into evidence without objection. DOHA received the hearing transcript (Tr.) on May 22, 2018. I held the record open for one month in the event Applicant wanted to submit additional documents after the hearing. He did not submit any additional documents, and the record closed on June 8, 2018.

Procedural Issues

Department Counsel made a request during the hearing that I take administrative notice of certain facts relating to Taiwan. Applicant had no objection to this request and the documents were admitted into evidence as GE 3.

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) and McLeod v. Immigration and Naturalization Service, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). Usually administrative notice in ISCR proceedings is accorded to 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). See the Taiwan section of the Findings of Fact of this decision, *infra*, for the administratively noticed facts concerning Taiwan.

Findings of Fact

Applicant admitted all of the allegations under Guideline B (Foreign Influence), of the SOR. The security concerns alleged Applicant's familial connections to Taiwan, financial support to foreign nationals, and Applicant's travel and attendance at international conferences in Taiwan.

Applicant is 51 years old and works for a defense contractor as a senior research scientist since 1998. He emigrated from Taiwan to the United States in 1992 when he was 25 years old. He attended a university from 1992 until December 1996 and earned his doctorate degree. He became a naturalized U.S. citizen in 2004. He has possession of a valid U.S. passport since 2004, and only uses this passport for travel. (GE 1; Tr. 27)

Applicant's spouse was born in Taiwan. She is also a naturalized U.S. citizen. They were married in Michigan in 1993. His two daughters, ages 22 and 19, were born and currently reside in the United States. (GE 1; Tr. 34-35)

Applicant's father, brother, mother-in-law, two sisters-in-law and two brothers-in-law all live in Taiwan and are citizens of that country. Applicant's brother is a carpenter for a small company. His father, 80 years old, has been retired for 20 years. None of these family members are associated with a foreign government or foreign military. Applicant has weekly contact with his father and brother, and monthly contact with his mother-in-law. Applicant also has casual contact with friends in Taiwan. His friends are not associated with the military or government of Taiwan, except for two friends who are professors at a public university, which is supported by the government of Taiwan. Applicant has never been asked by friends or family members about the nature of his work duties or his scientific research. All of these family members and associates were reported on Applicant's e-QIP. (GE 1, GE 2; Tr. 36-37)

In 2014, Applicant's mother was involved in a serious motorcycle accident and suffered brain trauma. She lost her ability to talk, eat, and she was unable to care for herself, which required in-home healthcare assistance and rehabilitation expenses. Applicant provided money to assist with his mother's medical expenses. She passed away in 2017. Applicant no longer provides financial assistance, as his father receives sufficient retirement and savings income for his needs. Applicant has travelled to Taiwan on multiple occasions to visit his ailing parents and family. He stayed at his parents' house. Applicant fully disclosed his financial assistance to his parents and his travel to Taiwan on the e-QIP. (GE 1; Tr. 15-16)

In October 2011, Applicant attended an international conference in Taiwan. The conference was funded through a contract approved by his program manager. The second international conference attended by Applicant also occurred in Taiwan in August 2015. Both conferences involved fundamental research in liquid atomization and spray systems, nothing classified in nature. Applicant received approval from the U.S. Air Force to attend the conferences. Any of his papers or speeches at the international conferences were reviewed by his security officials and were cleared for public release, per security requirements. Applicant is vigilant about following all security requirements, to include before, during, and after his trips. Applicant disclosed his international conferences on his e-QIP, and provided numerous documents with his SOR response to demonstrate his compliance with security requirements in order to attend the conferences. (GE 1, GE 2; AE D, AE E, AE F, AE G, AE H; Tr. 16-17, 32-34)

Character Evidence

A 2008 letter of appreciation from a high-ranking official in the research laboratory revealed that he had worked with Applicant in a professional capacity on a collaboration project. He indicated that Applicant is a serious, hard-working individual, a leader, and a valuable team member. Another co-worker praised Applicant in a 2017 e-mail for his fundamental work on a project. Applicant also provided copies of his 2008

Certificate of Merit from the American Institute of Aeronautics and Astronautics, and his 2002 award from the Institute of Liquid Atomization and Spray Systems. (AE Q, AE R, AE S, AE T)

Administrative Notice

Taiwan is a multi-party democracy. The United States does not support Taiwan independence, in keeping with the China policy; however, it maintains strong and, unofficial relations with Taiwan in order 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.

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 resorting to coercive measures against its citizens to collect economic intelligence is unlikely.

The PRC is Taiwan's largest trading partner and the United States is Taiwan's second largest trading partner. The PRC and Taiwan are collectors of U.S. economic and proprietary information. In the past ten years, these activities on behalf of Taiwan have resulted in criminal and civil charges in the United States. The PRC seeks to acquire intelligence through multiple sources, including through illegal means.

The United States and Taiwan have had a close military and diplomatic relationship for more than 60 years. Taiwan's armed forces are equipped with weapons obtained primarily from the United States. In January 2010, the Barack Obama administration notified Congress of its intent to sell Taiwan \$6.4 billion worth of various defensive weapons, including Blackhawk helicopters and Patriot missiles, and authorized an additional \$5.8 billion in September 2011, which included a retrofit of Taiwan's F-16 A/B fleet. Taiwan adheres to the principles of the nuclear Non-Proliferation Treaty and has stated that it does not intend to produce nuclear weapons.

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 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 (AG ¶ 2(a)). 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must 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 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 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 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 ¶ 7 explains the security concern about "foreign contacts and interests" stating:

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.

Two disqualifying conditions under this guideline are relevant. A disqualifying condition may be raised by “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.” AG ¶ 7(a). In addition, AG ¶ 7(b) provides that “connections to a foreign person, group, government, or country that create a potential conflict of interest between the individuals’ 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.”

Applicant has contact with his father, brother, and mother-in-law on a regular basis, and contact with his other relatives is less frequent. He visits his family members in Taiwan at least once every year. His family’s presence in a country that engages in espionage against the United States raises a significant security concern and generates a heightened risk of exploitation, pressure or coercion of the Applicant. Those circumstances could place Applicant in a position of having to choose between his family members residing in Taiwan and the United States. There is also potential conflict between Applicant’s obligation to protect sensitive information or technology and his possible desire to assist his foreign relatives by providing that information. The Government met its burden of production by raising the above disqualifying conditions and shifts the burden to Applicant to prove mitigation. AG ¶¶ 7(a) and (b) apply.

AG ¶ 8 lists two potential conditions that could mitigate foreign influence security concerns including:

(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; and

(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.

Applicant has lived in the United States since immigrating in 1992. He became a U.S. citizen in 2004. He owns a home in the United States. His contact with his father, brother, and mother-in-law is ongoing, and his contact with other associates and relatives in Taiwan is less frequent, but those contacts do not overcome his loyalty to the United States. Applicant's family members and associates are not directly involved in military or governmental work in Taiwan. They have positions in Taiwan that make it unlikely that he would be placed in the position of having to choose between his relatives' interests and those of the United States. Applicant's connections to the United States after 26 years are stronger than his familial ties to Taiwan. Applicant can be expected to resolve any conflict of interest in favor of the United States based on his stellar 20-year work history. AG ¶¶ 8(a) and (b) apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the relevant circumstances. 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.

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. Applicant's foreign contacts resulted from his birth in Taiwan. His children were born here, his immediate family resides here, and he voluntarily became a U.S. citizen in 2004. There is no evidence that he has ever taken any action that could cause potential harm to the United States. All of the foreign connections alleged in the SOR were self-reported by Applicant. There is no derogatory information about him in the record.

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

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 B: FOR APPLICANT

Subparagraphs 1.a-u: For Applicant

Conclusion

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

Pamela C. Benson
Administrative Judge