



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



In the matter of:)	
)	
[REDACTED])	
)	ISCR Case No. 17-03488
)	
Applicant for Security Clearance)	

Appearances

For Government: Carroll Connelley, Esq., Department Counsel
For Applicant: *Pro se*

07/10/2018

Decision

BORGSTROM, Eric H., Administrative Judge:

Applicant mitigated the foreign influence security concerns arising from his foreign family members in Taiwan and the People's Republic of China (PRC). Eligibility for access to classified information is granted.

Statement of the Case

On October 18, 2017, Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B (foreign influence). The action was taken under Executive Order (EO) 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 implemented by the DOD on June 8, 2017.

On November 2, 2017, Applicant responded to the SOR, and requested a hearing before an administrative judge. On February 1, 2018, the Defense Office of Hearings and

Appeals (DOHA) issued a notice of hearing, scheduling the hearing for February 21, 2018. I convened the hearing as scheduled. Government Exhibits (GE) 1-2 and Administrative Notice (AN) I-II were admitted, without objection. Applicant testified and submitted three documents, which I admitted into evidence as Applicant Exhibits (AE) A through C, without objection. After the hearing, Applicant timely submitted an email and four attachments, which I admitted into evidence as AE D through H, without objection. DOHA received the hearing transcript (Tr.) on March 9, 2018.

Findings of Fact

The SOR alleges foreign influence security concerns based on Applicant's family members in Taiwan and the PRC. Applicant admitted all of the allegations. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact:

Applicant is 52 years old. He served his mandatory military service in the Taiwanese military from 1985 to 1987. He earned an associate's degree in Taiwan in 1987. He entered the United States in 1990, and earned master's and doctoral degrees here in 1992 and 1995, respectively. He became a naturalized U.S. citizen in October 2007. Since July 2003, he has been employed as a data scientist for a DOD contractor. He has been married since 1994, and he has three children – ages 12, 15, and 21.¹

Applicant's spouse was born in the PRC and is a naturalized U.S. citizen. Applicant's three children are all U.S. citizens by birth, and they reside with Applicant in the United States.

Applicant's parents (SOR ¶¶ 1.a.-1.b.) are citizens of and reside in Taiwan. Applicant's father is a retired engineer, and his mother is a retired teacher. Applicant has weekly telephonic contact with his parents, and he annually provides them approximately \$10,000 in financial support.²

Applicant's two sisters (SOR ¶ 1.c.) are citizens of and reside in Taiwan.³ One sister has two children who are citizens of and reside in Taiwan. One of Applicant's sisters is an engineer for a Taiwanese utility company, and the other sister is a homemaker who resides with and cares for Applicant's parents. Applicant has telephonic contact with his sisters about quarterly to monthly.⁴

Applicant's parents-in-law (SOR ¶¶ 1.d.-1.e.) are citizens of and reside in the PRC. Both parents-in-law are retired professors, having been employed at a government-

¹ GE 1-2.

² GE 1-2; Tr. 26-29.

³ Applicant's third sister is deceased.

⁴ Tr. 22, 31-36.

operated university. He has telephonic contact with his parents-in-law about every three months. Applicant's sister-in-law has U.S. permanent residency, and she resides in the United States.⁵

In 2000, Applicant purchased a home, currently valued at approximately \$500,000, in the United States. He maintains retirement, education, and savings accounts in the United States. Applicant does not have any foreign investments or property.

Applicant's work performance and character are highly regarded by his current supervisor, former supervisor, and current co-workers. He has been awarded for his research and publications on multiple occasions. Applicant also mentors and volunteers training junior scientists in his field.⁶

Administrative Notice

I have taken administrative notice of the following facts concerning Taiwan:

The 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. The United States does not diplomatically recognize Taiwan.⁷

There have been multiple cases involving the illegal export or attempted illegal export of U.S. classified, restricted, and dual-use technology to Taiwan. 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.⁸

I have taken administrative notice of the following facts concerning the PRC:

The PRC is an authoritarian state in which the Chinese Communist Party is the paramount authority. Human rights concerns included the repression and coercion of organizations and individuals involved in civil and political rights advocacy; torture and coerced confessions of prisoners; detention and harassment of journalists, lawyers, writers, bloggers, dissidents, petitioners, and others; lack of due process; extrajudicial disappearances; and monitoring of communications. Citizens lacked the right to change their government and had limited forms of redress against the government.⁹

⁵ GE 1-2; Tr. 23, 38-39, 48.

⁶ AE A-H.

⁷ AN I.

⁸ AN I.

⁹ AN II.

The United States faces a large and growing threat to its national security from PRC intelligence collection operations. Among the most serious threats are the PRC's efforts at cyber and human infiltration of U.S. national security organizations. Computer systems, including those in the U.S. Government, are targeted by PRC-based intrusions. The PRC uses its cyber capabilities to support intelligence collection against U.S. diplomatic, economic, and defense industry sectors.¹⁰

Policies

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

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 the 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.

¹⁰ AN II.

Section 7 of EO 10865 provides that adverse 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

The security concern under this guideline is set out in AG ¶ 6 as follows:

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.

“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.”¹¹ The nature of a nation’s government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant’s family members are vulnerable to government coercion. “An applicant with family members living in a country hostile to the U.S. has a very heavy burden to show that they are not a means through which the applicant can be subjected to coercion or exploitation.”¹²

Three disqualifying conditions under this guideline are relevant to this case:

AG ¶ 7(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

AG ¶ 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 classified or sensitive information or technology and the

¹¹ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

¹² ISCR Case No. 11-12659 at 3 (May 30, 2013). See, e.g., ISCR Case No. 10-09986 at 3 (App. Bd. Dec. 15, 2011).

individual's desire to help a foreign person, group, or country by providing that information or technology; and

To establish AG ¶ 7(a), the Government must demonstrate a "heightened risk" of exploitation due to Applicant's contacts with his family members in Taiwan and the PRC. Given the PRC's intelligence-gathering capabilities and activities targeting the United States and the PRC's intelligence activities within Taiwan, the Government has established the requisite "heightened risk." Applicant's relationships with his relatives in Taiwan and the PRC create a potential conflict of interest. Therefore, AG ¶¶ 7(a) and 7(b) apply.

The following mitigating conditions under this guideline are potentially relevant:

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 United States;

AG ¶ 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

AG ¶ 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.

None of Applicant's family members in Taiwan is currently employed by its government or military; however, Applicant's parents-in-law are employed by a PRC-controlled academic institution. More importantly, the PRC's intelligence activities requires Applicant to overcome a "very heavy burden" in mitigation. AG ¶ 8(a) does not apply.

Applicant maintains close relationships with his family members in Taiwan, and he provides significant financial support to his parents. Applicant has not rebutted the presumption that his relationship with his parents-in-law is not casual. AG ¶ 8(c) does not apply.

Security-clearance determinations are predictive judgments as to whether an individual will safeguard classified information. Applicant made the United States his home beginning in 1990. Applicant and his wife were married in the United States, and all three sons were born in and live in the United States. Applicant completed his graduate-school education in the United States, and he has developed his entire

professional career in the United States. Applicant mentors and trains junior scientists in the United States, and all of Applicant's investments and property are in the United States. During his 28 years in the United States, Applicant forged longstanding professional relationships within the scientific community, and his professional colleagues strongly endorse his character and work performance. Notwithstanding Applicant's close relationships with his family members in Taiwan and the PRC, Applicant's deep and longstanding personal, professional, and community relationships are such that he can be expected to resolve any conflict of interest in favor of the U.S. interest. AG ¶ 8(b) applies. I conclude that Applicant mitigated the foreign influence security concerns triggered by his contacts with his relatives in Taiwan and the PRC.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The 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. I have incorporated my comments under Guideline B and the factors in AG ¶ 2(d) in this whole-person analysis.

Applicant's character, integrity, work ethic, and mentoring are highly regarded by his colleagues. Applicant maintains close relationships with his foreign relatives; however, he has forged deep and longstanding professional and personal relationships, during his 28 years in the United States. Any conflict of interest can be expected to be resolved in favor of the U.S. interest. 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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B: FOR APPLICANT

Subparagraphs 1.a.-1.e.: 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.

Eric H. Borgstrom
Administrative Judge