



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



In the matter of:)
)
) ISCR Case No. 17-03688
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: Cathryn E. Young, Attorney At Law, Griffith Young & Lass

September 6, 2018

Decision

LOKEY ANDERSON Darlene D., Administrative Judge:

Statement of the Case

On December 19, 2017, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline B. The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant answered the SOR on February 9, 2018, and requested a hearing before an administrative judge. The case was assigned to me on May 15, 2018. The Defense Office of Hearings and Appeals issued a notice of hearing on June 21, 2018, and the hearing was convened as scheduled on August 6, 2018. The Government offered three exhibits, referred to as Government Exhibits 1 through 3, which were admitted without objection. The Applicant offered eight exhibits, referred to as Applicant's Exhibits A through H which were admitted without objection. Applicant testified on his own behalf. The record remained open to allow the Applicant the

opportunity to submit additional supporting documentation. Applicant submitted one Post-Hearing Exhibit, referred to as Applicant's Post-Hearing Exhibit A, which was admitted without objection. DOHA received the transcript of the hearing (Tr.) on August 15, 2018.

Procedural Rulings

The Government requested I take administrative notice of certain facts relating to Taiwan, which formally calls itself the Republic of China (China). Department Counsel provided a six page summary of the facts, supported by five Government documents pertaining to China. (Government Exhibit 3.) The documents provide elaboration and context for the summary. Applicant had no objection. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

Findings of Fact

Applicant admitted each of the allegations in the SOR. After a thorough and careful review of the pleadings, and exhibits, I make the following findings of fact.

Applicant is 32 years old and is married. He has two Associate degrees and has almost completed a Bachelor's of science degree. He holds the position of Cyber Security Analyst with a defense contractor. Applicant has never held a security clearance before. He began working for his current employer in 2014.

Applicant is a native born American citizen. His father immigrated from Mexico and Applicant is estranged from him but Applicant's mother told him that his father is an American citizen. All of Applicant's family and close friends are U.S. citizens. Applicant met his wife in February 2014 where she worked at a retail store in the U.S. They were married in April 2016. She obtained a green card in 2017. She is a Taiwanese citizen who is permanently residing in the United States. (Tr. p. 27.) She currently works at an airport for the duty free company as a supervisor. She plans to become a naturalized citizen when she is eligible in February 2020. (Tr. p. 28.) She also plans to renounce her Taiwanese citizenship and become only an American citizen. Applicant states that his wife has many friends in the U.S., as she is involved in the beauty industry and has produced and hosted a related television show. She won the break-out fashionista taste award in 2012 for her work in the beauty industry. Applicant states that she has immersed herself into the American culture and is very happy here.

Applicant's wife had a bank account in Taiwan with approximately \$31,656. In May 2018, Applicant's wife traveled to Taiwan to close the bank account and eliminate future inheritance from her father. The bank funds were transferred to a bank in the United States. (Applicant's Post-Hearing Exhibit A.) Applicant's spouse maintains the government required health insurance system in Taiwan. As soon as his wife becomes a naturalized U.S. citizen, she intends to cancel this medical insurance, as she has

never used it. (Tr. p. 58.) She has no other financial interests or property in Taiwan. (Tr. p. 36.)

Applicant's father-in-law is a citizen and resident of Taiwan. He is in his early 60's, and is an invested member of a wood veneer company. He has no associations with the Taiwanese government. He is fairly well established and receives no benefits from the Taiwanese government. He has never visited the U.S., and only speaks Mandarin. (Tr. p. 42.) Applicant's only contact with him is casual and through his wife. He was recently diagnosed with cancer so contact with him through his wife may be more regular. He does not know any particulars about the Applicant's job or the security clearance process. Applicant's most recently traveled to Taiwan in May 2018 to visit his father-in-law. (Tr. p. 47.) Applicant stated that during his visit he did not witness any suspicious behavior by anyone trying to obtain sensitive, private or classified information. (Tr. p. 47.) Applicant's mother passed away in January 2017.

Applicant understands his reporting requirements regarding foreign travel, that he must receive approval for all foreign travel and report it to his security officer. Applicant also disclosed his foreign travel, his wife's foreign bank account and her Taiwanese medical insurance on this security clearance application. (Government Exhibit 1 and Tr. p. 50.) He states that he cannot be influenced by any of his wife's family in any way to act contrary to the best interests of the United States. (Tr. p. 51.) He considers himself a loyal and patriotic U.S. citizen.

A letter from the Applicant's supervisor dated August 1, 2018, indicates that Applicant is among the top performers of 20 personnel who work in the department. He is honest and forthright and highly recommended for a security clearance. (Applicant's Exhibit E.)

Letters of recommendation from coworkers of the Applicant dated February 2018, states that he is an enthusiastic, hardworking, quick learner. He is a team player who multi-tasks effectively, and is able to handle a high volume workload. He is considered an asset and has their highest recommendation for a security clearance. (Applicant's Exhibit D.)

Performance evaluations of the Applicant for 2017 reflect that he meets expectations in every category. (Applicant's Exhibit F.)

I have taken administrative notice of the following facts about Taiwan, officially known as the Republic of China. Its neighbor to the west is the People's Republic of China, recognized as the sole legal government of China, which considers Taiwan to be part of the One China policy. China is one of the world's most active and persistent perpetrators of economic espionage, and it is predicted that their attempts to collect U.S. intelligence will continue at a high level and will represent a persistent, if not growing threat to U.S. economic security. China's intelligence services, as well as private companies and other entities, frequently seek to exploit Chinese citizens, or person with family ties to China, who can use their insider access to corporate networks to steal secrets using removable media and devices or e-mail. China is using its cyber

capabilities to support intelligence collection against the U.S. national, diplomatic, economic, and defense industrial base sectors that support U.S. national defense program. China very likely uses its intelligence services and employees or other illicit approaches that violate U.S. laws and export controls to obtain key national security and export-restricted technologies, controlled equipment, and other materials unobtainable through other means. In 2015, numerous computer systems around the world, including those owned by the U.S. Government, continued to be targeted for intrusions, some of which appear to be attributable directly to China's Government and military. These and past intrusions were focused on accessing networks and exfiltrating information. China uses state-sponsored industrial and technical espionage to increase the level of technologies and expertise available to support military research, development, and acquisition.

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 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 AG ¶ 2 describing 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 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies for access to classified information 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 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 (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 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 notes several conditions that could raise security concerns under AG ¶ 7. Four 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;

(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;

(e) shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk 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 interest.

Applicant's foreign family member includes his father-in-law who is a citizen and resident of Taiwan, part of China. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 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;

(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.

Having considered the fact that Taiwan and China present a heightened risk to the national security of the U.S., the nature of the relationships with Applicant's family there do not pose a security risk. Applicant has only limited and casual contact with his extended family in Taiwan/China. Applicant is an American citizen. He resides with his spouse, who is from Taiwan, but she too is ingrained into the American culture, and simply awaiting to be eligible to become a citizen. There is nothing in the record to show that these foreign contacts pose a heightened risk of foreign influence. Full mitigation under AG ¶ 8(a), 8(b), and 8(c), has been established.

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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

There is compelling evidence showing that Applicant's wife's family in Taiwan do not pose a heightened risk of foreign influence. It is noted that Taiwan, as part of China, continues to act as one of the most active, aggressive and capable collectors of intelligence targeting the U.S. However, there is sufficient information in this record to prove that Applicant's casual connections with his father-in-law in Taiwan do not pose a security risk. Everything the Applicant has was given to him by the U.S., including his job and his education. Applicant acknowledges that he has much to lose if he were to allow Taiwan or anyone related to that country to influence his decision making. Applicant and his wife have made the U.S. their permanent home, they are encouraged by his wife's father to pursue the American dream, and they have no intention of ever returning to Taiwan to retire. Applicant's wife plans to become a naturalized citizen as soon as she is eligible and she will renounce her Taiwanese citizenship. Applicant's relationship with Taiwan does not subject him to foreign influence that could cause him to make decisions that are against the national interests.

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 has mitigated the Foreign Influence security concern.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	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 national security eligibility for a security clearance. Eligibility for access to classified information is granted.

Darlene Lokey Anderson
Administrative Judge