



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



In the matter of:)
)
) ISCR Case No. 07-06996
)
)
Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank, Jr., Esq., Department Counsel
For Applicant: *Pro Se*

May 8, 2008

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant failed to mitigate the security concerns raised by his foreign influence. Eligibility for access to classified information is denied.

On December 21, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B, Foreign Influence. 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on January 11, 2008, and requested a hearing before an Administrative Judge. The case was assigned to me on March 3, 2008. DOHA issued a Notice of Hearing on March 14, 2008, and I convened the hearing as scheduled on April 9, 2008. The Government offered Exhibits (GE) 1 through 3, which were received without objection. Applicant testified on his own behalf but did not submit any documentary evidence. I granted Applicant's request to keep the record

open until April 23, 2008, to submit additional matters. Applicant submitted a fax cover sheet and two letters, which were marked Exhibits (AE) A through C, and received without objection. Department Counsel's memo is Hearing Exhibit (HE) IX. The record closed on April 23, 2008. DOHA received the transcript of the hearing (Tr.) on April 18, 2008.

Procedural and Evidentiary Rulings

Motion to Amend SOR

The caption had Applicant's name reversed, with part of his first name listed as his last name. On my own motion, I amended the SOR to reflect his correct first and last name, as listed in the caption of this decision. Department Counsel and Applicant did not object to the motion.

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Taiwan. Applicant did not object. The request and the attached documents were not admitted into evidence but were included in the record as HE I through VIII. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

Applicant is a 38-year-old engineer for a defense contractor. He was born in Taiwan. His mother brought him and his three siblings to the U.S. when he was about 13 years old. He has lived here ever since. He has a Bachelor of Science degree and a Master of Science degree from an American university. He became a U.S. citizen in April 2006. He has never been married and has no children.¹

Applicant's mother is 66 years old. She moved back to Taiwan in about 2001. She became a U.S. citizen several years before her move to Taiwan. She maintains dual citizenship with Taiwan. She is a retired college professor. His father is 70 years old. He is a citizen and resident of Taiwan. He never moved to the U.S., but did spend some extended visits and obtained permanent residence status. He was also a college professor before he retired. Applicant speaks to his parents about once or twice a week.²

Applicant maintained dual citizenship with Taiwan after he became a U.S. citizen. His parents asked him not to renounce his Taiwanese citizenship. They own several properties in Taiwan and intend to leave the properties to Applicant and his siblings after their passing. They wanted Applicant to maintain his Taiwanese citizenship to ensure that he could inherit the property without any problems. He kept his Taiwanese

¹ Tr. at 21-22, 27, 36, 42; GE 1-3.

² Tr. at 22-26, 37; Applicant's response to SOR; GE 1-3.

passport and used it during a trip to Taiwan in 2006. He also had a U.S. passport by that time. When he realized that possession of a foreign passport could be a concern, he provided the passport to his security officer who destroyed it in July 2007. He told his parents that he would be willing to renounce his Taiwanese citizenship and give up his inheritance if necessary.³

Applicant's three siblings all became U.S. citizens. Two live in the U.S. His youngest brother is currently living in the People's Republic of China (PRC). He is attempting to open a franchise store/restaurant that is part of a U.S. chain. None of his siblings have formally renounced their Taiwanese citizenship. Applicant speaks to his siblings about once a month.⁴

Applicant has about four friends that are Taiwanese citizens living in the U.S. as permanent residents. Several are attempting to become U.S. citizens. He has regular and frequent contact with them in person and on the telephone. He traveled to Taiwan and visited his parents in 2001, 2004, 2005, 2006, and 2007. Applicant has about \$400,000 in real estate and other assets in the U.S.⁵

Character letters from Applicant's supervisors attest that he is dedicated, honest, responsible, professional, and ethical, with a high level of integrity, dependability, and attention to detail. He is recommended for a security clearance.⁶

Taiwan

In 1949, Taiwan was populated by refugees fleeing a civil war in China. That same year, Communists in mainland China established the People's Republic of China, and a separate, independent government was established in Taiwan. The PRC does not recognize Taiwan, and insists there is only "one China." Taiwan's large military establishment's primary mission is the defense of Taiwan against the PRC, which is seen as the predominant threat and which has not renounced the use of force against Taiwan. The PRC maintains intelligence operations in Taiwan. Taiwan is known to be an active collector of U.S. economic intelligence.

Taiwan is a multi-party democracy. Through nearly five decades of hard work and sound economic management, Taiwan has transformed itself from an underdeveloped, agricultural island to an economic power that is a leading producer of high-technology goods. On January 1, 1979, the United States formally recognized the PRC as the sole legal government of China. The U.S. also announced that it would maintain cultural, commercial, and other unofficial relations with the people of Taiwan. The Taiwan Relations Act (TRA) signed into law on April 10, 1979, created the legal authority for the conduct of unofficial relations with Taiwan. The American Institute in Taiwan, a private nonprofit corporation with offices in Taiwan, is authorized to issue

³ Tr. at 26-33; Applicant's response to SOR; GE 1-3.

⁴ Tr. at 33-37; Applicant's response to SOR; GE 1-3.

⁵ Tr. at 37-41; Applicant's response to SOR; GE 2, 3.

⁶ AE B, C.

visas, accept passport applications, and provide assistance to U.S. citizens in Taiwan. A counterpart organization was established by Taiwan. It has multiple offices in the U.S.

Maintaining strong, unofficial relations with Taiwan is a major U.S. goal. The U.S. does not support Taiwan independence, but it does support Taiwan's membership in appropriate international organizations such as the World Trade Organization (WTO), which it joined in 2002, Asia-Pacific Economic Cooperation (APEC) forum, and the Asian Development Bank. In addition, the U.S. supports appropriate opportunities for Taiwan's voice to be heard in organizations where its membership is not possible.

The TRA enshrines the U.S. commitment to help Taiwan maintain its defensive capability. The U.S. continues to sell appropriate defensive military equipment to Taiwan, in accordance with the TRA. President Bush publicly stated in 2001 that the United States would do "whatever it takes" to help Taiwan's defense and approved a substantial sale of U.S. weapons to Taiwan, including destroyers, anti-submarine aircraft, and diesel submarines. The White House also was more accommodating to visits from Taiwan's officials than previous U.S. Administrations, and permitted visits from Taiwan's president in 2001 and 2003, and Taiwan's vice president and defense minister in 2002.

Since then, there have been changes in U.S.-Taiwan relations. Taiwan's new president disavowed key concepts long embraced by the opposing party - the "status quo" that there is only one China and Taiwan is part of it - and instead has adopted the more provocative position that Taiwan already "is an independent, sovereign country," a "status quo" he promises to maintain. There was also a series of recent corruption scandals.

In response to Taiwan's political developments, the Administration appears to have dialed back its earlier enthusiasm for supporting Taiwan's initiatives. While still pursuing a close relationship with Taiwan, U.S. officials now appear to be balancing criticisms of the PRC military buildup opposite Taiwan with periodic cautions and warnings to the effect that U.S. support for Taiwan is not unconditional, but has limits.

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised 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. The Administrative Judge's over-arching adjudicative goal is a fair, impartial and common sense 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, the Applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by 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 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

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 7:

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

(a) 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;

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information; and

(i) conduct, especially while traveling outside the U.S., which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country.

Applicant's father is a citizen and resident of Taiwan, a country known to be an active collector of U.S. economic intelligence. His mother is a dual U.S.-Taiwan citizen living in Taiwan. His three siblings are all dual citizens. Applicant's foreign connections create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. They also create a potential conflict of interest. AG ¶¶ 7(a) and (b) have been raised by the evidence.

I do not find that Applicant's friendship with Taiwanese citizens who are U.S. permanent residents is sufficient to raise a disqualifying condition. SOR ¶ 1.d is concluded for Applicant.

There is insufficient evidence to conclude that Applicant's periodic trips to Taiwan made him vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country. While the trips are relevant evidence for other considerations, they do not raise a disqualifying condition. SOR ¶ 1.e is concluded for Applicant.

Conditions that could mitigate Foreign Influence security concerns are provided under 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 U.S.;

(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;

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

Applicant has lived in this country since he was 13 years old, when his mother brought him and his three siblings here. He became a U.S. citizen in April 2006. His mother and three siblings also became U.S. citizens. His father never moved to the U.S. and his mother moved back to Taiwan in about 2001. Applicant maintained dual citizenship with Taiwan at his parents' request so that he and his siblings could inherit their property without any problems. While he destroyed his Taiwanese passport and stated he is willing to forsake his inheritance and Taiwanese citizenship, he has not been a U.S. citizen unencumbered by direct ties to Taiwan for long enough to fully satisfy any mitigating condition.

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 the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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) 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 common sense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the totality of Applicant's family ties to Taiwan. Taiwan is an ally of the United States. However, it is known to be an active collector of U.S. economic intelligence and Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified [or 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."⁷ The distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly.

Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, the nature of a nation's government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the U.S.

Applicant became a U.S. citizen about two years ago. He maintained his Taiwanese citizenship at his parents' request to ensure his inheritance would pass to him without incident. He used his Taiwanese passport during a trip to Taiwan in 2006, after he became a U.S. citizen. When he realized the passport was a concern, he had it destroyed. He stated that he is willing to renounce his Taiwanese citizenship and give up his inheritance if necessary. His two siblings live in the U.S. He has a good job where he is a valued and trusted engineer. He has extensive U.S. assets valued at about \$400,000. Applicant carries the burden of persuasion in this case. When I balance all the evidence, I find that Applicant has not been a fully committed U.S. citizen long enough to counter the concerns raised by his foreign ties and connections.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the Foreign Influence 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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant

⁷ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge