



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



In the matter of:)
)
) ISCR Case No. 14-03513
)
)
Applicant for Security Clearance)

Appearances

For Government, David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

05/08/2015

Decision

MASON, Paul J., Administrative Judge:

The foreign influence concerns raised by Applicant’s connections to Taiwan have been mitigated. Eligibility for access to classified information is granted.

Statement of the Case

Applicant signed and certified his Electronic Questionnaire for Investigations Processing (e-QIP) on November 24, 2013. On October 24, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns based on foreign influence (Guideline B). The action was taken pursuant to 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 in DOD on September 1, 2006.

Applicant submitted his notarized answer to the SOR on October 24, 2014. A notice of hearing was mailed to Applicant on January 9, 2015, scheduling a hearing for February 10, 2015. The hearing was held as scheduled. The Government’s exhibit (GE) 1 and the Applicant’s exhibit (AE) A, containing 16 exhibits, were admitted in evidence

without objection. Applicant testified. The transcript was received by the Defense Office of Hearings and Appeals (DOHA) on February 19, 2015, and the record closed on the same day.

Ruling on Procedure

Department Counsel requested that I take administrative notice of certain facts about Taiwan. The facts which I will administratively notice appear after Findings of Fact. The facts administratively noticed are limited to matters that are obvious to the average person, easily verifiable, and relevant to this case. The Administrative Notice Memorandum and list of administrative notice documents shall be marked as Hearing Exhibit (HE) 1 and admitted into the record. (Tr. 17)

Findings of Fact

The SOR contains three allegations under foreign influence (Guideline B). Applicant admitted his mother (SOR 1.a), brother (SOR 1.b), and mother-in-law (SOR 1.c), are citizens and residents of Taiwan. These allegations are based on Applicant's e-QIP (GE 1). Considering Applicant's admissions together with the entire record, I make the following factual findings.

Applicant was born in Taiwan and is 55 years old. After obtaining his bachelor's degree in electrical engineering from a Taiwanese college in 1982, he performed two years of compulsory service in the Taiwanese military, then was discharged. In 1984, he accepted a teaching assistant position at the school where he received his bachelor's degree. He married his current wife later in the same year. In 1986, he immigrated to the United States and worked for a company that paid his U.S. graduate school tuition. In August 1988, Applicant received his master's degree in electrical engineering and then his PhD in August 1993. In September 1995, he purchased a home where he resides today. The mortgage is paid off. He became a naturalized U.S. citizen in 1996. He was investigated and received a security clearance in 2005. (GE 1 at 10, 15-16; AE A4, A12; Tr. 34-38, 42, 49)

Applicant's wife immigrated to the United States in 1987. She is a naturalized U.S. citizen and housewife. His 28-year-old daughter, born in Taiwan, is a naturalized U.S. citizen. Applicant's 18-year-old son, born in the United States, is in college studying electrical engineering. (Tr. 39, 41)

SOR 1.a. Applicant's mother is 88 years old and is a citizen of Taiwan, but has lived in the United States with Applicant since May 2009. Before she immigrated, she was a housewife for about 64 years. When her husband (Applicant's father) passed away in May 2009, Applicant brought her to the United States and his wife takes care of her at their home. Applicant's mother obtained a U.S. permanent resident card in March 2010, and will be applying for U.S. citizenship in 2015. She never worked for the government of Taiwan. (AE A1; Tr. 27-28)

SOR 1.b. Applicant's brother, 64 years old, is a citizen and resident of Taiwan. He worked for the Republic of China (ROC) Coast Guard before spinal and stomach problems forced him to retire in 2012. The brother receives a pension from the ROC Coast Guard. He lives in a house in the southern part of the country. He is no longer employed by the government or the military. Applicant telephones him weekly. He last saw his brother in Taiwan at their father's funeral in May 2009. (AE A15; Tr. 42-44)

SOR 1.c. Applicant's mother-in-law is 84 years old and has been a housewife for 60 years. Applicant's father-in-law is deceased. Her poor health requires long-term care. She does not receive any benefits or a pension from the Taiwanese government. Applicant pays \$10,000, about 50% of the yearly cost of his mother-in-law's medical and living expenses. His brother-in-law (his wife's brother) pays the balance of the long-term care. Applicant has not spoken with his mother-in-law since his face-to-face contact with her at his father's funeral in 2009. His wife speaks to her about once every two months. Applicant's only remaining contacts to Taiwan are his brother and mother-in-law. (GE 1 at 25; AE 1; Tr. 30-33)

Applicant has no other siblings in Taiwan and does not maintain contact with Taiwanese friends he met while in college. He has relatives in the Peoples Republic of China (PRC), but has never had contact with them. He has no property interests or accounts in Taiwan. All his accounts are in U.S. banks. He has no property or other business interests in the country. He has no foreign contacts and is not affiliated with any foreign business ventures or educational events. Applicant has no plans to return to Taiwan. (GE 1 at 26-27; Tr. 42, 44-46) When asked to explain his allegiance to the United States versus Taiwan, Applicant explained that he came to America to continue his education, raise his family, and secure a better life for them. (Tr. 53-54)

Administrative Notice

According to the 2008 Annual Report to Congress on Foreign Economic Collection and Industrial Espionage, Taiwan and seven other countries are extensively engaged in criminal espionage and export control cases in 2008. An earlier edition of the report indicates that Taiwan is one of the most active collectors of U.S. economic and proprietary information and export-restricted products. There have been numerous instances of U.S. companies involved in the illegal export or attempted export of sensitive, dual-use technology to Taiwan. There is some evidence of Taiwanese intelligence officials targeting U.S. citizens for protected and classified information, but there is no evidence that indicates the Taiwanese government applies coercive tactics against its own citizens to collect economic intelligence. The PRC, a leading collector of intelligence related to U.S. science and technology targets, maintains intelligence activity in Taiwan by using PRC citizens that have Taiwanese affiliations.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). Following the security concern definition 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 must be considered in the context of the nine general factors known as the whole-person concept to enable the administrative judge to 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."

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 as to obtaining a favorable security decision.

Analysis

Foreign Influence

AG ¶ 6 sets forth the security concern of the foreign influence guideline:

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 U.S. citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 contains two potential disqualifying conditions that may be pertinent 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; and

(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 individual's desire to help a foreign person, group, or country by providing that information.

If an applicant has contact with an immediate or extended family member living in a foreign country, this single factor may create a potential for foreign influence that is disqualifying under the guideline. Applicant's brother and mother-in-law are citizens and residents of Taiwan. He contacts his brother weekly. Though he does not contact his mother-in-law, his wife speaks to her about once every two months. He provides a significant amount of money on a yearly basis to pay for his mother-in-law's long-term care. Applicant's mother is still a citizen of Taiwan living in the United States.

In a Guideline B case, the foreign country should be identified and evaluated to determine whether it targets U.S. citizens for classified information and whether it is affiliated with terrorism. Taiwan has engaged in economic espionage and continues to target U.S. citizens for classified information. Applicant's family ties create a heightened risk of foreign pressure and a potential conflict of interest. However, I emphasize that while he knows he has relatives in the PRC, Applicant has never contacted them, a salient factor in assessing his overall vulnerability to a heightened risk of foreign exploitation and pressure.

The Government has presented sufficient evidence under AG ¶¶ 7(a) and 7(b). The burden then moves to Applicant to present evidence under AG ¶¶ 8(a) or 8(b) that demonstrates he is unlikely to be placed in a position of having to choose between his family members and U.S. interests. The potential mitigating conditions are:

- (a) the nature of the relationships with foreign persons, the country in which these persons are located, or the position 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.; and
- (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 minimal, or the individual has such deep and long-lasting 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.

Applicant presented evidence that his 88-year-old mother has lived with Applicant since May 2009, and has been a permanent resident of the United States since March 2010. She is eligible for U.S. citizenship in 2015. Because of medical problems, Applicant's 64-year-old brother retired from the ROC coast guard in 2012, and draws a pension for his military service. Applicant talks to his brother weekly, but his most recent face-to-face contact was at their father's funeral in May 2009. Applicant has not spoken with his 84-year-old mother-in-law since his father's funeral in May 2009. Except for the brother's pension, none of the three family members have current connections to the Taiwan government. Applicant and his wife have been in the United States for over 28 years. He has been a U.S. citizen for more than 18 years. His wife is also a naturalized U.S. citizen. Their two children are U.S. citizens. Applicant has owned his U.S. home for almost 30 years. He has worked for his employer since September 1995. It is unlikely that

he would choose the interests of his foreign family members if a conflict arose between those interests and U.S. interests. AG ¶¶ 8(a) and 8(b) apply.

Whole-Person Concept

I have evaluated this case under the specific disqualifying and mitigating conditions of the foreign influence guideline. I now consider those findings in the context of the nine general factors of the whole-person concept identified in 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) the extent to which the participation was 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 on careful consideration of the specific guidelines and nine factors for the whole-person concept.

Upon receiving his bachelor's degree in electrical engineering in 1982, Applicant completed his two-year mandatory commitment to the Taiwan military. In 1986, he immigrated to the United States to continue his education. His wife, who he married in 1984, joined him in 1987. He received a master's degree at a U.S. university in 1988, then a PhD at a U.S. university in 1993, the same year he started working for one of his current employers. He purchased his home in 1995 and became a U.S. citizen in 1996. His two children are U.S. citizens. Applicant has developed strong ties to the United States. He provides a significant sum of money for the continuing medical care of his 84-year-old mother-in-law because she has no pension and receives no other benefit from the Taiwanese government. While the potential for foreign exploitation and pressure could reach Applicant because of his financial help, I am convinced he would not relinquish the longstanding relationships and loyalties he has developed in America, nor betray the interests of the U.S. Having weighed all the evidence under the whole-person concept, including Applicant's credible testimony concerning his reasons for becoming an American citizen, he has successfully mitigated the security concerns associated with the guideline for foreign influence.

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 (Foreign Influence, Guideline B): FOR APPLICANT

Subparagraphs 1.a-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 eligibility for a security clearance. Eligibility for access to classified information is granted.

Paul J. Mason
Administrative Judge