



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 14-03264
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel

For Applicant: *Pro se*

April 30, 2015

Decision

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigation Processing (e-QIP), on July 17, 2013. (Government Exhibit 1.) On September 22, 2014, the Department of Defense 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 adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant submitted an Answer to the SOR, notarized on October 21, 2014, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on January 12, 2015. I received the case assignment on January 21, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 21, 2015, and I convened the hearing as scheduled on February 26, 2015. The Government offered Government Exhibit 1, which was received without objection.

Applicant testified on his own behalf, and submitted Applicant Exhibits A through H, which were also admitted without objection. DOHA received the transcript (Tr.) of the hearing on March 6, 2015. Applicant requested that the record remain open for the admission of additional documents. He timely submitted Applicant's Exhibits I and J, which were also admitted without objection. The record closed on March 16, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Procedural Ruling

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to the Republic of China (Taiwan). (Tr. 17-19.) The request and the attached documents were not admitted into evidence but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

Applicant is 40, married, and has a master's degree. He has one native-born American child and his wife is expecting their second. He is employed by a defense contractor and seeks a security clearance in connection with his employment in the defense industry. This is his first application for a security clearance. (Government Exhibit 1 at Section 13; Tr. 28-29.)

Applicant admitted all of the allegations in the SOR. Those admissions are findings of fact. He also provided additional information to support his request for eligibility for a security clearance.

Paragraph 1 (Guideline B - Foreign Influence)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has foreign contacts and interests that could lead to the exercise of poor judgment, unreliability or untrustworthiness on his part, or make him vulnerable to pressure or coercion.

Applicant was born in Taiwan in 1974. He moved with his family to the United States in 1986, when he was 11. He received a bachelor's degree, and his master's degree from American universities. (Tr. 27.) Applicant became an American citizen in December 1994. (Government Exhibit 1 at Section 9.) His father has passed away, but Applicant's mother and two sisters are all American citizens. (Government Exhibit 1 at Section 18.) Applicant views himself only as an American citizen and testified eloquently about the importance of American citizenship to him. He states that "this is where I've invested my time, my life, my work. I don't have any loyalties outside the United States.

. . . So, this is where I would like to be - - to know this is where I want my legacy to be.” Applicant’s late father wanted him and his sisters to become American citizens. Applicant stated he would not do anything to disgrace that desire. (Tr. 40-42, 60-62.)

As part of an inheritance from his father, Applicant received a fractional interest (1/72nd) in a plot of land in Taiwan. Applicant does not know where this property is, has no involvement in managing the property, and has never visited it. His understanding is that the entire parcel is owned by extended family members. He is uncertain of the property’s value, but estimates it may be worth \$15,000. Applicant would like to sell his interest, but there are some legal difficulties with squatters on the property. (Government Exhibit 1 at Section 20A; Applicant Exhibits C, and I; Tr. 33-40, 47-49.)

Applicant’s wife was born in Taiwan in 1980, and moved with her parents to Australia in 1992, when she was twelve. She is a dual citizen of Taiwan and Australia. Applicant met his wife in 2009, after she moved to the United States in 2008. They were married in 2011. As stated, Applicant and his wife have one child, and she is expecting their second. She owns a company in the United States with her brother, who also lives here. She originally came to the United States on a business visa, but is currently a permanent resident based on her marriage to Applicant. She considers herself to be Australian. (Government Exhibit 1 at Section 17; Applicant Exhibit H; Tr. 43-46, 56-57, 64-66.)

Applicant and his wife own two houses in the US, with a combined value of approximately \$1,800,000. This, combined with savings, makes his net worth in the US at least \$2 million. (Tr. 49-50, 62-64.)

Applicant’s wife’s parents currently live in Taiwan. They are also dual citizens of Taiwan and Australia. According to Applicant, “They [his in-laws] are not affiliated with any political groups or interests in Taiwan or in Australia. But they are upstanding citizens in any countries that they have resided in.” They are successful business people in Australia and Taiwan. He is unsure of their net worth, but states they are millionaires. They visit the United States on an annual basis to see their grandchild. Applicant states that he is not close to his in-laws. (Tr. 43, 53-59.)

Applicant had an active bank account in Taiwan. This account was opened by Applicant in May 2011 in relation to an engagement party that was held for Applicant and his wife in Taiwan. There was no action on the account after the original deposit. Applicant provided documentation showing that it was closed in February 2015. The account had the equivalent of \$660 American in it when closed. Applicant gave the money to his in-laws. (Applicant Exhibits A, B, and J; Tr. 29-33, 50-51.)

Administrative Notice

Applicant has contacts with Taiwan. Accordingly, it is appropriate to look at the current situation concerning Taiwan. Taiwan is a multiparty democracy, whose authorities generally respect the human rights of its citizens. Taiwan is an active

collector of industrial information and engages in industrial espionage, as shown by the administrative notice documents in the record. However, the record does not demonstrate that the government of Taiwan targets US intelligence information. Further, the record does not demonstrate that it seeks to exert pressure on US citizens to collect information from family members residing in country or abroad. Finally, it is worth noting that the US Government, and the Defense Department in particular, have a close and continuing relationship with Taiwan and its military, in accordance with the Taiwan Relations Act of 1979, which has governed policy in the absence of diplomatic relations or a defense treaty with Taiwan. In 2011 the principal assistant secretary of defense for Asian and Pacific security affairs testified to Congress, "Today, the United States has a deep security relationship with Taiwan, as indicated by the administration's strong record on arms sales. . . . We will continue to make available to Taiwan defense articles and services to enable it to maintain a sufficient self-defense capability." (Tyrone C. Marshall Jr. American Forces Press Service, *Official Cites Importance of Stability in Taiwan Strait*, <http://www.defense.gov/news/newsarticle.aspx?id=65543> (October 4, 2011).)

Mitigation

Applicant has never held a security clearance. However, a supervisor states, "[Applicant] has always been very careful in handling sensitive company or program information, and he has been respectful for people's privacy, company rules and restrictions. When in doubt, he has asked for clarification before proceeding." The writer concludes, "I recommend [Applicant] for security clearance without reservation." (Applicant Exhibit E.)

A former manager, who has known Applicant for over ten years, also submitted a letter. The writer states, "He [Applicant] lives by a very high moral and ethical code of conduct which I find to be admirable." (Applicant Exhibit F.) A coworker and friend, who has known Applicant for 15 years, says, "He [Applicant] has always demonstrated high ethical standards, integrity and honesty at work." (Applicant Exhibit G.)

Finally, Applicant submitted a letter of recommendation from the pastoral assistant at his church. This letter is deeply laudatory, extolling Applicant's skills over the almost five years he has been a member of the congregation. (Applicant Exhibit D.)

Policies

Security clearance decisions are not made in a vacuum. 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 as appropriate 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 AG ¶ 2(a) describing the adjudicative process. 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, "Any 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 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination 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

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the applicant's conduct and the continued holding of a security clearance. If such a case has been established, the

burden then shifts to the applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

Paragraph 1 (Guideline B - Foreign Influence)

The concern under Guideline B is styled as follows at AG ¶ 6:

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 Applicant has family connections to Taiwan. He also has a small piece of property, which may be worth \$15,000. He no longer has active an active bank account in Taiwan.

The following Disqualifying Conditions apply to this case under AG ¶ 7:

- (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
- (e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

Applicant proved that he is a conscientious and patriotic citizen, and member of the defense industry. He has lived in the United States for more than half of his life. His child is an American citizen, as are his mother and sisters. He has substantial family and financial ties in the United States that significantly outweigh his relationship to Taiwan. The value of the property interest he inherited in Taiwan from his father is far outweighed by his \$2 million net worth in the United States.

While his wife has family in Taiwan, Applicant has shown that his loyalties are to the United States. It is important to note that Applicant's wife and her parents are citizens of both Taiwan and Australia. Australia is a very close ally of the United States,

and her parents citizenship in that country significantly reduces the already slim possibility that the Taiwanese government might engage in any adverse conduct towards them. As stated, the record does not show that the Taiwanese government engages in such conduct, and the United States and Taiwan remain close allies as well. That being said, it is noted that the Taiwanese government does engage in intelligence gathering, as well as industrial espionage, thereby creating a heightened risk, which Applicant must rebut. Applicant has done so.

Applicant has provided compelling evidence to show that the following Mitigating Conditions under AG ¶ 8 also apply to this case, given his particular background:

(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; 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.

Based on my analysis of the available information, Applicant has overcome the adverse inference arising from his wife's family members' presence and citizenship in Taiwan, and the property he inherited from his father. Guideline B is found for Applicant.

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. 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. 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) 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. My Guideline B analysis is applicable to the whole-person analysis as well. I have also specifically examined the intelligence activities of Taiwan. The evidence shows that the Applicant is a patriotic American citizen. Applicant eloquently testified about the importance to him of being a citizen of the United States, and his pride in being a member of the defense industry. Though he has never held a security clearance, he is knowledgeable about security and understands his responsibility. I find that there is little or no “potential for pressure, coercion, exploitation, or duress” as set forth in AG ¶ 2(a)(8). Using the whole-person standard, Applicant has mitigated the security significance of his alleged foreign connections and is eligible for a security clearance.

On balance, it is concluded that Applicant has successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding for Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

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 through 1.d:	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.

WILFORD H. ROSS
Administrative Judge