



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 14-06990 |
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| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: Daniel C. Stafford, Esq.

05/12/2016

Decision

CURRY, Marc E., Administrative Judge:

Applicant mitigated the foreign preference and foreign influence security concerns. Clearance is granted.

Statement of the Case

On July 2, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines C, foreign preference, and 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).

Applicant answered the SOR on April 24, 2015, denying all of the allegations and requesting a hearing. On October 23, 2015, the case was assigned to me. On November 6, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing

scheduling the case for December 9, 2015. I held the hearing as scheduled and considered two Government exhibits (GE), marked as GE 1 and 2, and 18 Applicant exhibits (AE), marked as AE A through Q, and AE S. I reserved on the admission of AE R because it was not written in English. Also, I took administrative notice, at Department Counsel's request, of the facts set forth in 12 documents (Hearing Exhibits (HEs) I-V; VII-XII, and HE XIX)¹ and I took administrative notice, at Applicant's counsel's request, of the facts set forth in six documents (HE XIII-XVIII). I declined to take administrative notice of HE VI, the U.S. Office of the National Counterintelligence Center, Annual Report to Congress on Foreign Economic Collection and Industrial Espionage, because it was published in 2000, and as such, is not sufficiently current in order for me to gauge the geopolitical profile of Taiwan vis-a-vis the United States.²

At the close of the hearing, I left the record open to allow Applicant's counsel to submit additional exhibits, including a translation of AE R. Within the time allotted, he submitted four exhibits (AE T - AE V), and he submitted a document containing additional facts about Taiwan that he requested I administratively note (HE XX). Department Counsel did not file an objection. I have incorporated these documents into the record. He did not submit a translation of AE R, therefore, I decline to admit it. The transcript was received on December 29, 2015.

Findings of Fact

Applicant is a 49-year-old married man with three children, ages 9, 11, and 12. He is a federal contractor who has been working for his current employer since 2012. (AE S) Between 2012 and 2014, he worked on a consultant basis, and since 2014, he has been working full-time as the company's technical director of nanotechnology. (Tr. 38)

Applicant was born and raised in Taiwan. He immigrated to the United States to pursue graduate studies in 1991. By 1996, he had completed both a master's and an undergraduate degree in engineering. (GE 1 at 11) He works part-time on the staff of his *alma mater* as an adjunct professor.

Before immigrating to the United States, Applicant completed mandatory service in the Taiwanese army. He has never voted in any elections in Taiwan.

Applicant has been a naturalized U.S. citizen since 2004. (Tr. 40) His wife, also a native of Taiwan, became a naturalized U.S. citizen in 2013. (GE 1 at 18) His children are all U.S. citizens by birth.

¹On November 23, 2015, Department Counsel filed a memorandum notifying Applicant's counsel that some of the source document of the facts that he was requesting that I administratively note were voluminous and encyclopedic in nature, containing extraneous information that was not germane to the security profile of Taiwan vis-a-vis the United States. As such, he was only submitting the relevant excerpts. Applicant's counsel did not object.

²ADP Case No. 06-14978 at 3 (App. Bd. Oct. 11, 2007).

Applicant's parents are retired elementary school teachers. In 2007, they moved from Taiwan to the United States, obtaining permanent U.S. resident status with the intention of becoming naturalized U.S. citizens. (Answer at 3) In approximately 2012, they both began experiencing major health problems. Because Taiwan has a warmer climate and free health care, they decided to return. (Tr. 75-76) Applicant talks to them frequently and visits them in Taiwan approximately two to three times per year. He also supports them financially, giving them approximately \$2,000 to \$3,000 per visit. (Tr. 73) Although Applicant's parents remain unable to travel, their application for U.S. citizenship remains open, as they hope to recover and return to the United States.

Applicant has two sisters who are both Taiwanese citizens. One lives in Taiwan. She originally worked in the engineering field, but recently switched careers to marketing and business development. She lives with their parents and helps take care of them. Because of a large age gap, Applicant and this sister have little in common, and they rarely speak. (Tr. 75, 88) Applicant's other sister lives in Australia and is a nurse. Applicant speaks with her once a year on holidays. None of Applicant's family members have ever worked for the Taiwanese government. (Tr. 58)

Applicant's mother-in-law is deceased. Applicant's father-in-law lives in the United States and has permanent residence status. (Tr. 107) Before moving to the United States, he worked in the lumber business. Applicant does not support his father-in-law financially. Applicant's wife has two siblings. Both are U.S. citizens and residents.

Applicant owns no assets in Taiwan. (Tr. 40) He owns seven properties in the United States. None of these properties is mortgaged. (Tr. 44) His net worth is between 1.5 and 2 million dollars.

Applicant has traveled worldwide, participating in conferences, seminars, and symposiums related to his field of expertise. These events constituted opportunities to discuss the latest innovations and to discuss joint ventures. (GE 1 at 31-39; AE J-Q) Of the 26 international trips he has taken since 2007, ten were to either the People's Republic of China or to Taiwan. All of his trips were paid for by either his current or former employer. (Tr. 62)³

As of the hearing date, Applicant possessed a valid Taiwanese passport. He has possessed one since immigrating to the United States, and renewed it in 2012. After realizing the security implications of a foreign passport, in September 2015, Applicant surrendered it to the Taiwanese consulate, and expressed an intention to renounce his Taiwanese citizenship altogether. (AE U; Tr. 92) Later, the Taiwanese consulate returned it to him through the mail, together with forms for him to complete to facilitate the citizenship renunciation. Per the consulate, Applicant was to return these completed forms with the passport. As of the hearing date, Applicant was in the process of gathering the requested information, and was not going to surrender the passport until he had finished gathering the information, as instructed.

³Applicant's former employer is a U.S. multinational company.

After the hearing, Applicant physically altered his Taiwanese passport by cutting off the lower right hand corner of the cover, and he returned it to the consulate with a letter of surrender. (AE V, AE W)

The United States and Taiwan enjoy a “robust unofficial relationship.” (HE V at 1) Bilateral relations between the United States and Taiwan are at their highest point in decades. (HE XV at 3) The U.S. is Taiwan’s largest foreign investor. (HE XIV at 1) Taiwan is one of less than 40 countries where tourists are allowed to visit the United States without a visa. Criteria for waiving visa requirements include compliance with security and information sharing requirements, and the maintenance of high counterterrorism, law enforcement, border control, aviation, and document-security standards. (HE XIII)

In December 2005, the then-Principal Deputy assistant Secretary of State for East Asian and Pacific Affairs pled guilty to keeping numerous classified documents in his home and to concealing his relationship with a Taiwanese intelligence agent. (HE VII at 3) In 2009, the U.S. Treasury Department designated two Taiwanese-based companies as proliferators of weapons of mass destruction, isolating them from the U.S. financial system and prohibiting any U.S. person or company from doing business with them.

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.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied together with the factors listed in the adjudicative process. 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.”

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 for obtaining a favorable security decision.

Analysis

Foreign Preference

Under this guideline, “[w]hen an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States” (AG ¶ 9). Here, Applicant’s possession of a Taiwanese passport triggers the application of AG ¶ 10(a), “exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member.”

In September 2015, Applicant initiated the process of renouncing his Taiwanese citizenship. In December 2015, Applicant invalidated his Taiwanese passport by cutting off the lower right hand corner of its cover page and mailing it to the Taiwanese government with an affidavit of surrender. AG ¶ 11(b), “the individual has expressed a willingness to renounce dual citizenship; and 11(e), “the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated,” apply. Applicant has mitigated the foreign preference security concern.

Guideline B, Foreign Influence

Under this 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 the United States interests, or is vulnerable to pressure or coercion by any foreign interest.” Moreover, “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.” (AG ¶ 6)

Department Counsel provided evidence, which I administratively noted, of several examples of criminals, some of whom were Taiwanese nationals living in the United States, who have illegally exported sensitive U.S. goods and military technologies. Generally, these examples are insufficient to conclude that either the Taiwanese government or the Taiwanese government through corporate or academic intermediaries are targeting the United States for sensitive or classified information. However, the case of the senior State Department official who was arrested, in part, for sharing sensitive information with a Taiwanese intelligence agent with whom he was having an affair, poses a significant exception. This case alone is sufficient to conclude that Applicant’s contacts with his family members who are Taiwanese citizens may generate “a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion,” (AG ¶ 8(a)).

Applicant rarely speaks to his sisters. One of them does not live in Taiwan. 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,” applies to these relationships.

Applicant’s father-in-law lives in the United States. Taiwan is a friendly country. Although friendly countries can conduct espionage against the United States as readily as unfriendly ones, Taiwan is certainly not the latter. It is not competing aggressively with the United States by any means necessary, including the exploitation of its citizens living in the United States. I conclude that Applicant’s relationship with his father-in-law does not pose a security concern.

Applicant has been living in the United States for 25 years, completing his advanced studies, raising his family, and building his career. He owns no property in Taiwan. In contrast, since immigrating to the United States, he has accrued a net worth of between 1.5 and 2 million dollars, including seven properties that he owns free and clear of any mortgages. His frequent international lectures and attendance at professional conferences are a byproduct of a successful career that he has cultivated in the United States. All of his worldwide trips to professional and academic conferences were paid for by either his current or former employers, both U.S. multinational companies. Under these circumstances, 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 United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest,” applies to Applicant’s relationship with his parents and to any potential conflict generated by his participation in international conferences.

Whole-Person Concept

Under 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 these whole-person factors in my application of the mitigating conditions. Applicant has mitigated the 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:

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| Paragraph 1, Guideline C: | FOR APPLICANT |
| Subparagraph 1.a : | For Applicant |
| Paragraph 2, Guideline B: | FOR APPLICANT |
| Subparagraphs 2.a - 2.f: | For Applicant |

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

MARC E. CURRY
Administrative Judge