DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 18-00852
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

02/19/2019

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Decision

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GLENDON, John Bayard, Administrative Judge:

This case involves security concerns raised under Guideline B based upon Applicant's family ties to the Republic of China (Taiwan). Eligibility for access to classified information is denied.

History of the Case

On May 7, 2018, the Department of Defense (DOD) sent Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline B. The DOD acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended (Exec. Or.); Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), for all adjudicative decisions on or after June 8, 2017.

Applicant answered the SOR on May 18, 2018, and requested a hearing before an administrative judge of the Defense Office at the Hearings and Appeals (DOHA). The case was assigned to me on October 4, 2018. On October 17, 2018, DOHA issued a

Notice of Hearing scheduling the hearing on November 13, 2018. I convened the hearing as scheduled.

At the hearing, Department Counsel offered two exhibits into evidence, which I marked as Government Exhibits (GE) 1 and 2. He also offered two requests for Administrative Notice, one regarding Taiwan and the other regarding the People's Republic of China (China). I marked these as GE 3 and 4. Applicant testified and offered one exhibit. I marked his exhibit as Applicant's Exhibits (AE) A. Government Exhibits 1 and 2 and AE A were admitted into the record without objection, although Applicant provided some corrections to GE 2.

I kept the record open until December 14, 2018, to give Applicant the opportunity to provide additional documentation in support of his case. On December 13, 2018, he emailed me a document. I have marked Applicant's email and document as AE B and admitted the exhibit into the record without objection. DOHA received the transcript of the hearing (Tr.) on November 29, 2018.

Administrative Notice

Department Counsel requested that I take administrative notice of relevant facts about Taiwan and China. His written requests (GE 3 and 4) and supporting documents were not admitted into the record as evidence, but are attached to the record solely for administrative notice purposes. The facts administratively noticed are set forth below in my findings of fact.

Findings of Fact[1]

In Applicant's answer to the SOR, he admitted the three SOR allegations. His admissions are incorporated in my findings of fact.

Applicant was born in Taipei, Taiwan, in 1973 and is 45 years old. He was raised in Taiwan and graduated from high school in 1991 and college in 1995. He received his bachelor's degree in aeronautical engineering. After graduating, he relocated to the United States to pursue his post-graduate education in engineering. He received two master's degrees, one in 1997 and the second in 1999. In 2002, he began a doctorate program in the United States. He completed his Ph. D. in 2006. All of his U.S. degrees were awarded by prestigious U.S. universities.

After receiving his second master's degree in 1999, Applicant moved back to Taiwan and worked there for about three years. He returned to the United States to enter a doctorate program. After receiving his Ph. D., he remained in the United States and has worked at five U.S. companies. His two most recent positions have been with major U.S. defense contractors. In December 2016, he was sponsored for a security clearance by

[1] Applicant's personal information is extracted from his security clearance application (GE 1) unless otherwise indicated by a parenthetical citation to the record.

the first defense contractor. Applicant's security clearance application (SCA) was submitted shortly after he began working for this employer. He changed companies three months later, and his new employer is continuing to sponsor him for a clearance. (GE 2 at 2; Tr. 14-15.)

While living in Taiwan in 2002, Applicant married a Taiwanese woman. They moved to the United States later that year when Applicant began his doctoral studies. They have since had three children, ages, 15, 13, and 9. They were all born in the United States and are U.S. citizens. At one point, they possessed Taiwanese passports. Applicant is unsure whether they are presently dual citizens of the United States and Taiwan. (GE 2 at 4; Tr. at 40-41.)

Applicant's first U.S. employer applied for Applicant to become a permanent resident in the United States. In 2011, the government granted him and his wife alien registration status. They became naturalized U.S. citizens in July 2016, a few months before Applicant submitted his SCA. On October 26, 2018, shortly before the hearing in this case, Applicant submitted a request to the Taiwanese government to renounce his Taiwanese citizenship. His request was granted on November 27, 2018, after the DOHA hearing. His wife retains her dual citizenship with Taiwan. Applicant renounced his Taiwanese citizenship based upon the advice of his employers, which have sponsored him for a security clearance. (AE A and B; Tr. 14, 32.)

Applicant's mother, father, and sister are citizens and residents of Taiwan. His mother is a homemaker. When Applicant was young, she was a full-time, and later a part-time, high school teacher. She ceased working as a teacher when Applicant was in school. His father is retired. He worked as a teacher at a vocational school. In his SCA, Applicant wrote that neither of his parents had or presently has any affiliation with the Taiwanese government or its affiliated industries. In his SCA, he reported that he speaks with his parents weekly. He testified that more recently, he speaks with them "constantly," which he then explained is every other week. (Tr. 25, 44.)

Applicant testified that his father paid for his two U.S. master's degrees. His father was born in 1941 and was 56 years old when Applicant earned his first master's degree in 1997 and was 58 when he earned his second master's. Applicant's father retired in 1996 at the age of 55. (Tr. 54.)

When asked if either the Taiwanese government or the Chinese government paid for any of his education, Applicant equivocally responded "No, I don't think so." When the question was repeated, he answered "No" and then changed the subject to the low cost of education in Taiwan and other matters. Applicant's responses and his demeanor at that point in the hearing suggested that he may not have been completely candid in answering questions about who paid his tuition and living expenses for four years of graduate education while he was studying for his two master's degrees in the United States. Applicant also testified that he paid the expenses for his doctorate studies with his own savings from when he worked in Taiwan for three years (1999-2002) and by working as a research assistant at his U.S. university. (Tr. 41, 54, 55.)

Applicant's sister is a professor at a public university in Taiwan. She also received a Ph. D. from a U.S. university. In his SCA, he wrote that he communicates with his sister monthly. He testified, however, that he actually has much less communication with her and has not spoken with her since his most recent trip to Taiwan in July 2018, about four months earlier. He said he only communicates with her when he visits Taiwan. He provided no explanation for the discrepancy between his 2016 SCA disclosure and his testimony on this point. (Tr. 25-26, 44.)

The parents and the siblings of Applicant's wife are also citizens and residents of Taiwan. His wife has a close and continuing relationship with her Taiwanese family. Her mother worked as a sales person for a clothing company, and her father worked as a security guard at an apartment building. Both are now retired. Her sister is employed in the financial industry in Taiwan. Her brother is a salesman, who sells anti-theft, car-locking devices.

Applicant's wife has regular contact with her family in Taiwan. In his SCA, Applicant wrote that he speaks with his mother and father-in-law monthly by phone. At the hearing, he testified that he merely says hello to his wife's parents once a month when he happens to be in the same room as his wife when she is talking on the phone with her parents. In his background interview, he said that he has monthly telephone contact with his sister-in-law and brother-in-law when he is with his wife and she is talking with them on the phone. At the hearing, he described his contacts with his sister-in-law and brother-in-law in the same manner. (GE 1 at 30-32; GE 2 at 4; Tr. at 26, 44, and 51-53.)

In response to Section 19 ("Foreign Contacts") of the SCA, Applicant disclosed that he has three friends from his undergraduate days with whom he has "close and/or continuing contact." He noted that he maintains annual contact with each of them. He testified that in addition to their contacts as undergraduates in Taiwan, he also lived with them in Taiwan for about six months in 2002 before he moved to the United States for his doctorate program. He testified without any explanation that he "was required to provide three names in Taiwan" and that it "was hard for me to generate those three names." The three "foreign contacts" he identified are not the three persons he was asked to identify in response to Section 16 ("People Who Know You Well") of his SCA. He provided information for four persons with U.S. addresses in response to that question. (Tr. at 15, 26, 27, and 44-45.)

The three foreign contacts Applicant identified work for an aircraft engine maintenance company, an electronic equipment inspection company, and a company that manufactures power supply lines for computers. Applicant had to contact them to obtain their employment information in his SCA because he did not know what they did or the names of their employers. Furthermore, he testified that he does not "visit my friend[s] that much" and "basically I don't have a friend in Taiwan." He did admit though that he and his wife saw one of his listed foreign contacts in the hospital during his most recent trip to Taiwan in the summer of 2018, but claimed that this person "forced me to meet with him." (Tr. 15-16, 26, and 45-49.)

Throughout his testimony discussing his three foreign relationships, Applicant attempted to minimize the extent of his contacts with them, making the point that he did not have their phone numbers and only communicated with them through social media. He testified that his contacts with them were "actually" limited to the 1997 or 1998 time period, when he and one friend communicated about their courses in mathematics. He failed to reconcile this statement with his testimony that he actually lived with these three persons in 2002. He also testified that "even though I know they work in the technology industry but I don't exactly know what they do in Taiwan, their job descriptions in detail because basically we don't talk about it." In his background interview, however, he told the interviewer that with respect to one of the friends, they work in the same industry and frequently discuss industry topics when they have contact. Applicant's inconsistent statements, demeanor, and the credibility of his testimony about his relationships with his friends suggested that he was attempting to portray falsely his relationships with one or more of his reported foreign contacts. (GE 2 at 4; Tr. at 26, 27, and 44-45.)

Prior to obtaining his U.S. citizenship in July 2016 and receiving his U.S. passport a month later, Applicant travelled on his Taiwanese passport. After he was awarded his Ph. D. in 2006, Applicant has returned to Taiwan six times. Applicant visited Taiwan each summer in 2016, 2017, and 2018. (GE 2 at 2; Tr. at 65.)

Applicant and his wife have lived in a home they own since 2010, for two years in one state and then six years in another. Applicant provided no documentary evidence or testimony of his other financial ties to the United States. He has renounced his Taiwanese citizenship and considers himself to be an American. He believes he has lived in the United States for a long time, and he followed all of the proper procedures to obtain his U.S. citizenship. He testified that he has no contact with anyone in Taiwan who works in his industry. (Tr. 29, 57-58, and 67.)

I have taken administrative notice of the following facts regarding Taiwan and China. Taiwan is a multi-party democracy, established as a separate, independent government by refugees from mainland China in 1949. The United States recognized Taiwan as an independent government until January 1979, when it formally recognized the Chinese government as the sole legal government of all of China, including Taiwan. This has been referred to as the U.S. "One-China" policy. Nevertheless, the United States and Taiwan enjoy a positive, unofficial relationship.

Chinese actors are the world's most active perpetrators of economic espionage. China aggressively targets sensitive and protected U.S. technologies and military information, using worldwide intelligence operations, including Chinese intelligence operatives based in Taiwan. The United States faces a serious threat to its national security from Chinese intelligence collection operations. China uses it intelligence services and employs other illicit approaches that violate U.S. laws and export controls to obtain important export-restricted technologies and equipment. China's collection activities include the use of Chinese nationals, such as students and researchers to act as procurement agents or intermediaries.

Taiwan has a strong economy and maintains significant economic contacts with China. For many years, Taiwan has also been an active collector of U.S. economic intelligence and technology, including dual-use technologies that have sensitive military applications. There have been numerous cases involving illegal export or attempted export of sensitive, dual-use technology to Taiwan.

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. *See Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria

listed therein and an applicant's security suitability. *See* ISCR Case No. 15-01253 at 3 (App. Bd. Apr.20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531.

Analysis

Guideline B, Foreign Influence

The SOR sets forth three allegations under Guideline B. SOR ¶ 1.a alleges that Applicant's mother, father and sister are citizens and residents of Taiwan. SOR ¶ 1.b alleges that Applicant's mother-in-law, father-in-law, sister-in-law and brother-in-law are also citizens and residents of Taiwan. SOR ¶ 1.c alleges that Applicant has three friends from his undergraduate years, who are citizens and residents of Taiwan and work in the technology industry.

The security concern under this guideline is set out in AG ¶ 6, as follows:

> 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 maybe 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 evidence establishes the following disqualifying conditions:

> AG ¶ 7(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;

AG ¶ 7(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; and

AG ¶7(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.

The Government's evidence has established that Applicant's foreign contacts, as well as his wife's, create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. These relationships also constitute connections to foreign persons that creates a potential conflict of interest between Applicant's obligation to protect classified or sensitive information or technology and Applicant's desire to help family members, in-laws, or friends by providing that information or technology. AG ¶¶ 7(a), 7(b), and 7(e) apply to Applicant's relationships with the foreign contacts and connections alleged in the SOR.

The following mitigating conditions are potentially applicable:

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 United States;

AG ¶ 8(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

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.

AG ¶ 8(a) has not been established. With respect to Applicant's immediate foreign family members and in-laws, he has not presented sufficient evidence to meet his burden of persuasion to mitigate the security concerns under this mitigating condition. His relationships with these foreign persons is sufficiently close and continuing and the country in which they are located raises serious security concerns so as to preclude a conclusion that it is unlikely that Applicant will be placed in a position of having to choose

between the interests of these foreign family members and the interests of the United States.

AG ¶ 8(b) has not been established. Applicant presented limited evidence of his ties to the United States. His evidence consists mainly of his post-graduate education in the United States, his 12 years of living in this country since the completion of his graduate studies, his five jobs during that period, and the births of his children in the United States. Although he and his wife have owned their home in the United States for the past eight years, Applicant provided no significant, additional information of a financial nature, or otherwise evidencing that he has deep and long-standing relationships and loyalties in the United States. Applicant was a U.S. citizen for only five months before he applied for a security clearance. Furthermore, his sense of loyalty and obligation to his Taiwanese family members and in-laws is hardly minimal. Based upon Applicant's limited evidence to mitigate the security concerns raised by his foreign connections, I cannot conclude that he has satisfied his burden of persuasion under this mitigating condition to establish that there is no conflict of interest and that he can be expected to resolve any conflict of interest in favor of the U.S. interest.

AG ¶ 8(c) has not been established with respect to his Taiwanese family members and his wife's. Applicant has a close relationship with his immediate family members in Taiwan. Moreover, there is a rebuttable presumption that an applicant's contacts with immediate family members are not casual. ADP Case No. 12-03783 at 4 (App. Bd. Aug. 12, 2013); ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002). Applicant has not rebutted this presumption. The same is true with respect to Applicant's in-laws. "'[T]here is a rebuttable presumption that a person has ties of affection for, or obligations to, the immediate family members of the person's spouse.'" ISCR Case No. 12-00084 at 3 (App. Bd. May 22, 2014), *quoting* ISCR Case No. 12-07647 at 3 (App. Bd. Nov. 7, 2013). *See also* ISCR Case No. 14-05986 at 3 (App. Bd. Oct. 14, 2016) (the above-quoted rebuttable presumption is "well settled"). Applicant's regular trips to Taiwan to visit family members further supports this conclusion.

With respect to his three Taiwanese friends identified in his SCA and referred to in the SOR, the fact that Applicant and his friends work in the technology industry in Taiwan renders his contacts with his friends meaningful from a security standpoint. While I found some of Applicant's testimony regarding his minimal contacts with his friends to be unpersuasive, I conclude that his contacts and communications with these friends are casual and infrequent. The mitigating condition set forth in AG ¶ 8(c) has been established with respect to the three friends, who are the subject of SOR ¶ 1.c.

Whole-Person Analysis

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. In applying the whole-person concept, an 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 and applying the adjudicative factors in AG ¶ 2(d).[2]

I have incorporated my comments under Guideline B in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Some factors and evidence deserve further consideration. I have weighed Applicant's renunciation of his Taiwanese citizenship. While this certainly evidences Applicant's preference for the United States, it does not address the security concerns raised in this case under Guideline B, which are focused on the heightened risk of foreign exploitation of Applicant due to his close foreign contacts and those of his wife and the risk of a conflict of interest between the interests of his foreign relatives and the interests of the United States. As noted above, the record in this case establishes significant security concerns under AG ¶¶ 7(a), 7(b), and 7(e). I have also weighed the limited mitigating evidence provided by Applicant. As a new U.S. citizen as of the date of his SCA, he failed to provide significant evidence showing that he enjoys deep and longstanding relationships and loyalties in the United States. I have also considered the testimony of Applicant that I have noted above to be less than fully candid. A lack of complete candidness and trustworthiness in an applicant's hearing testimony weighs against one's eligibility.

After weighing the disqualifying and mitigating conditions under Guideline B, and evaluating all the evidence in the context of the whole person, I conclude Applicant has failed to mitigate the security concerns raised by the circumstances of his foreign family members and his wife's.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1. Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant
Subparagraph 1.c:	For Applicant

[2] The factors are: (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.

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

John Bayard Glendon
Administrative Judge