



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



In the matter of: )  
 )  
----- ) ISCR Case No. 18-02984  
 )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government:  
Andrew Henderson, Esq., Department Counsel

For Applicant:  
*Pro se*

March 31, 2020  
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**Decision**  
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ROSS, Wilford H., Administrative Judge:

Based on a review of the pleadings and exhibits, I conclude that Applicant has mitigated the concerns related to foreign influence raised by the presence of his wife’s relatives in the Republic of China – Taiwan (Taiwan), and her other connections to Taiwan. His request for national security eligibility and a security clearance is granted.

**Statement of the Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on November 18, 2015. (Item 2.) On March 6, 2019, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective within the Department of Defense on or after June 8, 2017.

Applicant notarized his Answer to the SOR (Answer) on March 29, 2019, and requested his case be decided on the written record in lieu of a hearing. (Item 1.) On May 28, 2019, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM), consisting of four documents, was provided to Applicant, who received the file on June 14, 2019. Applicant was given an opportunity in the FORM to submit additional information for my consideration. Applicant submitted an additional personal statement on July 3, 2019. Department Counsel indicated he had no objection, and the statement is admitted into evidence as Applicant Exhibit A. The case was assigned to me on August 12, 2019.

**Procedural Rulings**

As part of the FORM, the Government requested I take administrative notice of certain facts relating to Taiwan. Department Counsel provided a five-page summary of the facts, supported by eleven Government documents pertaining to Taiwan, identified as Administrative Notice - I (AN - I). The documents provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

**Findings of Fact**

Applicant admitted SOR allegations 1.a through 1.f. He denied allegation 1.g. He also submitted additional information in his Answer and Applicant Exhibit A. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 38 years old and married with one child. He has a master's degree. He is applying for national security eligibility and a security clearance in connection with his employment with a defense contractor as a global intelligence analyst.

**Paragraph 1 – Guideline B (Foreign Influence)**

Applicant is a native-born American citizen. From 2005 through 2008 Applicant lived and worked in Taiwan. He met his wife, a native-born citizen of Taiwan, during this period. Applicant and his wife were married in the United States in 2008. They have lived in the United States since that time. She became a naturalized American citizen in 2013. Applicant and his wife have one native-born American child. (Item 2 at Sections 11, 12, and 17; Item 3.)

Applicant's mother-in-law, father-in-law, and brother-in-law are citizens and residents of Taiwan. Applicant has minimal contact with these relatives of his wife. He travels to Taiwan approximately once every two years so his wife can visit her family. Otherwise his contact is limited to occasional contact over Skype or telephone. None of these people have any connection to the Taiwanese government. (Answer; Applicant Exhibit A.)

Applicant's wife worked for a Taiwanese government organization in the United States from 2009 until about the time she became an American citizen in 2013. Her job was clerical in nature. Since leaving this employment Applicant's wife has maintained social contact with several former co-workers. Her closest contact currently works for an American police department. (Answer; Item 3; Applicant Exhibit A.)

Applicant was interviewed by investigators from the Office of Personnel Management (OPM) in 2010 and 2017. The respective Reports of Investigation are contained in Item 3. During both investigations Applicant stated his wife believed another employee of the Taiwanese organization where she worked was a possible Taiwanese intelligence agent (Mr. A). Applicant's wife had casual, work-related, contact with Mr. A during her employment. Applicant met Mr. A twice in casual social situations. They have had no contact with Mr. A since Applicant's wife left that employment in 2013. Item 3 shows that Applicant, and his wife, freely provided extensive information about this person to each investigator. According to the ROI, Applicant's wife stated, "[Mr. A] worked in a division where everyone knew that the division dealt with National Security for Taiwan." This is the only evidence in the available record to support the alleged fact that Mr. A was a Taiwanese intelligence agent.

## Taiwan

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 Taiwanese government seeks to exert pressure on U.S. citizens to collect information from family members residing in country or abroad. Finally, it is worth noting that the U.S. 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 2018 the Secretary of Defense stated, "The Department of Defense remains steadfastly committed to working with Taiwan to provide the defense articles and services necessary to maintain sufficient self-defense consistent with our obligation set out in our Taiwan Relations Act. We oppose all unilateral efforts to alter the status quo, and will continue to insist any resolution of differences accord with the will of the people on both sides of the Taiwan Strait." (Department of Defense, *Remarks by Secretary Mattis at Plenary Session of the 2018 Shangri-La Dialogue*, <https://www.defense.gov/Newsroom/Transcripts/Transcript/>

[Article/1538599/remarks-by-secretary-mattis-at-plenary-session-of-the-2018-shangri-la-dialogue/](#) (June 2, 2018).)

## **Policies**

When evaluating an applicant's suitability for national security eligibility and a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used 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, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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 national security eligibility will be resolved in favor of the 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.

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 national security eligibility 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 EO 10865 provides that adverse 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

### Paragraph 1 - Guideline B (Foreign Influence)

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

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 may be 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 guideline notes several conditions that could raise security concerns under AG ¶ 7. Four are arguably applicable in this case:

- (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;
- (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;
- (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; and
- (g) unauthorized association with a suspected or known agent, associate, or employee of a foreign intelligence entity.

Applicant's in-laws live in Taiwan. His wife was employed by the Taiwanese government until 2013, and she may have continuing contacts with some co-workers. She believed one of her former co-workers to be a Taiwanese intelligence officer. The evidence is sufficient to raise these disqualifying conditions.

Taiwan is an active collector of industrial espionage. Accordingly, Applicant's family connections in that country have the potential to generate a heightened risk of

foreign exploitation, inducement, manipulation, pressure, or coercion under AG ¶ 7(a). The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. (See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).)

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 including:

(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;

(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;

(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 agency head or designee;

(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 minimal contact with his wife's family members who live in Taiwan. He is a native-born American citizen, and his wife is also a citizen. AG ¶¶ 8(a), (b), and (c) apply.

Applicant is knowledgeable about his security responsibilities, and evinced a credible intent to rebuff any attempts by foreign actors to influence him. In 2010 and again in 2017 he and his wife discussed her employment with the Taiwanese

government, and their suspicions about Mr. A with OPM investigators. AG ¶ 8(e) applies.

I have carefully considered the fact that Applicant's wife's family lives in Taiwan. I have also considered the fact of her former employment with a Taiwanese government organization in the United States. In this particular case, I find that Applicant has mitigated the security significance arising from these facts for the following reasons. As stated, Applicant and his wife have repeatedly, openly and extensively discussed with investigators any possible connections they may have to Taiwan. Applicant has completely mitigated the security significance of his and his wife's connections to Taiwan. Paragraph 1 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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (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.

Under AG ¶ 2(b), 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.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but warrant additional comment. Applicant has shown himself to be a talented and patriotic American citizen and member of the defense industry. He can be expected to resolve any conflict of interest in favor of the United States due to his sense of loyalty to the United States. There is very minimal, if any, potential for pressure, coercion, exploitation, or duress.

Overall, the record evidence leaves me without questions or doubts as to Applicant's suitability for national security eligibility and a security clearance. For all these reasons, I conclude Applicant mitigated the Foreign Influence security concerns.

## **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.g: 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 national security eligibility for a security clearance. Eligibility for access to classified information is granted.

Wilford H. Ross  
Administrative Judge