



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
 [REDACTED] ) ISCR Case No. 19-02587  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Andre M. Gregorian, Esq., Department Counsel  
For Applicant: William H. Henderson, Personal Representative  
05/26/2020

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**Decision**

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MARINE, Gina L., Administrative Judge:

This case involves security concerns raised under Guideline B (Foreign Influence). Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on January 4, 2017. On October 4, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline B. The DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on June 8, 2017.

Applicant answered the SOR on November 26, 2019, and initially requested a hearing before an administrative judge. On January 23, 2020, he withdrew his request for a hearing and requested a decision on the written record without a hearing. On January 31, 2020, the Government sent Applicant a complete copy of its written case, a file of relevant material (FORM), including documents identified as Items 1 through 6. He was given an opportunity to submit a documentary response setting forth objections,

rebuttal, extenuation, mitigation, or explanation to the Government's evidence. He received the FORM on February 2, 2020, and timely submitted his response, to which the Government did not object. Applicant did not object to Items 1 through 4. Items 1 and 2 are the pleadings in the case. Items 3 and 4 are admitted into evidence. Applicant objected to Items 5 and 6, which are the Government's Administrative Notice requests concerning Taiwan and China. Given the nature of the documents, Items 5 and 6 are appended to the record as hearing exhibits (HE I and II, respectively) rather than as evidentiary exhibits. Applicant's objections are addressed in the Procedural Matters section, below.

Applicant's SOR answer included documents that are marked and admitted into evidence as Applicant Exhibits (AE) A through H. Applicant's FORM response included documents containing his objections to the Government's Administrative Notice requests and an Administrative Notice request about Taiwan that are appended to the record as HE III through V. His response also contained another Administrative Notice request that is marked and admitted into evidence as AE I. AE I and Item 4 are further discussed in the Procedural Matters section, below. The case was assigned to me on March 11, 2020.

### **Procedural Matters**

Item 4 was not authenticated as required by Directive ¶ E3.1.20. However, I conclude that Applicant waived any objection to Item 4. The Government included in the FORM a prominent notice advising Applicant of his right to object to the admissibility of Item 4 on the ground that it was not authenticated. Applicant was also notified that if he did not raise any objection to Item 4 in his response to the FORM, or if he did not respond to the FORM, he could be considered to have waived any such objection, and that Item 4 could be considered as evidence in his case. Applicant did not raise an objection to Item 4 in his FORM response or otherwise.

Applicant objected to my taking administrative notice of the U.S. Government's pronouncements concerning Taiwan and China, as outlined in HE I and HE II. The objection is overruled. These pronouncements are relevant to Applicant's specific circumstances. They reflect the official position of the U.S. government, derived from official U.S. government publications, and therefore, are factual and relevant within the context of the security clearance determination. Paragraph 6 of Guideline B of the AG requires consideration of the identity of the foreign country in which the foreign contact or financial interest is located. HE I and HE II contain facts that reflect the U.S. Government's official positions regarding the internal and external affairs of foreign countries, as well as their international relations with the U.S. and other countries, which are essential to the analysis in Guideline B cases.

I have taken administrative notice of the facts about Taiwan and China that are contained in HE I, II, and V. Those facts are not repeated verbatim, but are summarized in the Administrative Notice section, below.

I, *sua sponte*, declined to take administrative notice of the facts contained in AE I because I am unable to conclude that they are the official positions of the U.S. Government. AE I is a technical report analyzing the data of a DOD agency, which was authored by a private-sector individual on behalf of a defense contractor and distributed by that agency. There is no indication either within the report or proffered by Applicant that the agency adopted the analysis and conclusions of the author. Nevertheless, because AE I was proffered by Applicant without objection by the Government, I have considered it as a learned treatise. Because this *sua sponte* action did not affect either the relative positions of the parties or my decision, prior notice to the parties was not required.

### **Findings of Fact**

Applicant admitted each of the SOR allegations. His admissions are incorporated in my findings of fact. Applicant, age 51, has been married since 1997. He has two children, ages 16 and 20. He earned a bachelor's degree (in 1991) and master's degree (in 1993) in Taiwan. He earned a second master's degree (in 2000) in the United States. He has been employed as a software engineer by two employers since he arrived in the United States – the first from 1999 through 2016; and the second, a defense contractor, since 2016. This is his first application for a security clearance. (Items 1, 3)

Applicant and his wife are Taiwanese citizens by birth. Applicant entered the United States in 1997. His first U.S. employer sponsored his green card. At their first opportunity, he and his wife became naturalized U.S. citizens in 2010. Their children are U.S. citizens by birth. His wife earned her bachelor's and master's degrees in the United States. She works for a U.S. private-sector employer. (Items 1, 3)

Applicant's mother and father are citizens and residents of Taiwan. His mother, age 75, is a homemaker. His father, age 86, retired from the Taiwanese Navy in 1986 as instructor at the military service school. Applicant visits his parents in Taiwan once per year. He communicates with his father by phone once per month, and with his mother by phone once every week. (Items 1, 3, 4)

Applicant's two brothers are citizens and residents of Taiwan. Brother 1, age 49, retired from the Taiwanese Army in 2012 as an aircraft mechanic. From 2013 through 2016, he attended and then graduated from a theological seminary. He has been employed as a pastor by a community church since 2017. Brother 1 is married with two school-aged children. Brother 1's spouse is a homemaker and part-time piano teacher. Applicant visits Brother 1 in Taiwan once per year, and communicates with him by phone or email two times per year. (Items 1, 3, 4)

Brother 2, age 47, is employed as an engineer by a private-sector electronics company. His company, an original design manufacturer with 64,000 employees, produces computers, computer-related equipment, and televisions for a variety of clients around the world. Brother 2 is married with two school-aged children. Brother 2's spouse is a homemaker and an elementary-school substitute teacher. Applicant visits

Brother 2 in Taiwan once per year, and communicates with him by phone or email once every two to three months. (Items 1, 3, 4)

Applicant's mother-in-law (MIL), age 73, is a homemaker. He visits her in Taiwan once every one to two years. He communicates with her by phone once every three months. His father-in-law is deceased. (Items 1, 3, 4)

Applicant has traveled to Taiwan every year since 1997, except for 2002 and 2009, to visit the family members described above. During his trips to Taiwan, Applicant is accompanied by his wife and children and they stay with Applicant's parents. They have never experienced any security-significant issues while in Taiwan. (Item 1 at 12; Item 3 at 10-12, 39-50; Item 4 at 2, 4)

Applicant has owned his home in the United States since 2002. His wife maintains a bank account with a balance of \$600 or less in Taiwan that is only used for convenience during trips to Taiwan. His wife co-owns, with her mother and brother,<sup>1</sup> two properties in Taiwan that they inherited from his wife's father. His wife's one-third interest in those properties totals \$33,000. The value of his wife's bank account and property interests in Taiwan represent less than 2.5 percent of their family's overall net worth and is not important to their overall financial situation. The value of the assets they own in the United States totals approximately 1.4 million dollars, including their home (the mortgage on which has been paid off), education and retirement savings, personal property, and regular savings. (Item 1 at 11; Item 3 at 33-37; Item 4 at 5)

Although Applicant has never had access to classified information, both of his U.S. employers have entrusted him with sensitive proprietary information. He received trainings on information, personnel, and physical security procedures from his first U.S. employer. As a defense contractor, he has received basic security indoctrination training and annual online training regarding the safeguarding of sensitive material, protection of personal information on social media, export controls, and handling/reporting of suspicious contacts. He is "very security conscious at work" and has "never been involved in a security violation." If he is ever approached by anyone and asked to provide information concerning his work, classified or not, to any foreign country or entity, he will decline immediately and notify the FBI. He will immediately report any suspicious contact, including those with Taiwanese nationals, to his employer's security representative. He keeps the contact information for the FBI and his employer's security office in his mobile phone so that he will have it with him at all times. To-date, he has never been involved in any conduct or situation that needed to be reported. (Item 1 at 12)

Applicant and his wife chose to remain and raise their children in the United States because they "recognized and agreed with the freedom, quality, politics, and many other aspects of life in the [United States]." They value the "career opportunities, work environment, education system, and healthy living environment available [in the United States]." Applicant's experience living in and visiting Taiwan has made him more

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<sup>1</sup> There are no other facts about Applicant's brother in the record. It is unknown in which country he resides or of which country he is a citizen.

appreciative of the rights, privileges, freedoms, and way of life that he and his family enjoy in the United States. The United States has been his home for 22 years, which is most of his adult life, and is the only country to which Applicant feels loyalty, allegiance, and attachment. (Item 11, 13)

With respect to the potential conflict of interest his Taiwanese family poses, Applicant stated:

I would never do anything for the benefit of another country that might work to the disadvantage of the [United States]. I would never do anything that might be detrimental to the national security interests of the [United States]. I am willing to support the defense of the United States against other country[sic], including Taiwan should the relationship between the [United States] become adversarial. . . .

I feel familial affection and obligation to my relatives in Taiwan, but my desire and obligation to maintain the security of the United States supersedes my obligation to my relatives in Taiwan. I can say without equivocation that I feel no divided loyalty or allegiance between the United States and Taiwan. The only country to which I feel national allegiance and loyal[sic] is the United States of America. . . . I could never be influenced to do anything detrimental to the interests of the [United States], even under threat of harm to my relatives in Taiwan. If I were ever asked to choose between the security interests of the United States and the safety, security, and wellbeing of my relatives in Taiwan, I would chose the security interest of the United States without hesitation. . . . (Item 1 at 9, 12)

Friends and colleagues who know Applicant well commended his character, judgment, and work ethic. They also praised his patriotism and loyalty towards the United States. Applicant is active in his church and community. His supervisors lauded his work performance. (AE A through H)

### **Administrative Notice**

The United States recognizes the Government of the People's Republic of China as the sole legal government of China, acknowledging the Chinese position that there is but one China and Taiwan is part of China. In 2019, China made clear its increasingly uncompromising stance towards Taiwan's independent status and sense of urgency regarding unification.

The United States does not support Taiwan independence. However, the United States and Taiwan enjoy a robust unofficial relationship. The 1979 Taiwan Relations Act provides the legal basis for this relationship and enshrines the United States' commitment to assist Taiwan in maintaining its defensive capability. In 2019, the United States took significant steps to demonstrate support for and expand cooperation with Taiwan in the areas of defense and security.

China poses a serious threat to the national security of the United States. It remains the most active strategic competitor responsible for cyber espionage against the U.S. Government. China's pursuit of intellectual property, sensitive research and development plans, and U.S. person data remains a significant threat to the U.S. Government. Taiwan has been an active collector of U.S. economic technologies that have sensitive military applications. Numerous cases have arisen involving the 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." (*Egan* 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." (EO 10865 § 2)

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. 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." (EO 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. (*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. 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. (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; AG ¶ 2(b))

## **Analysis**

### **Guideline B: Foreign Influence**

The security concern under Guideline B (Foreign Influence) 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 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 following are potentially relevant disqualifying conditions under this guideline:

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;

AG ¶ 7(d): counterintelligence information, whether classified or unclassified, that indicates the individual's access to classified information

or eligibility for a sensitive position may involve unacceptable risk to national security; 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.

Applicant's direct ties to his mother, father, two brothers, and mother-in-law establish AG ¶¶ 7(a) and 7(b) based on the heightened risk associated with Taiwan and the potential conflict of interest that arises from his connection to them. His indirect tie to his mother-in-law through his wife establishes AG ¶ 7(e). Applicant's father and brothers' employment in the Taiwanese military and technology sector establishes AG ¶ 7(d). A heightened risk is associated with Taiwan due to China's espionage against the United States and its own active collection of U.S. economic technologies that have sensitive military applications. Applicant bears the burden of persuasion to mitigate these concerns. (ISCR Case No. 99-0532 at 7 (App. Bd. Dec. 15, 2000))

Application of the AG is not a comment on an applicant's patriotism but merely an acknowledgment that people may act in unpredictable ways when faced with choices that could be important to a loved one, such as a family member. (ISCR Case No. 08-10025 at 4 (App. Bd. Nov. 3, 2009)). Family relationships can involve matters of influence or obligation. (ISCR Case No. 02-04786 (App. Bd. Jun. 27, 2003)). As a matter of common sense and human experience, there is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse. (ISCR Case No. 01-03120 (App. Bd. Feb. 20, 2002)). Moreover, Applicant's marital relationship provides a conduit for susceptibility to foreign influence because of the vulnerabilities associated with his in-laws that may pass to him through his wife. (ISCR Case No. 03-24144 at 3-4 (App. Bd. Dec. 6, 2005))

The following mitigating condition under this guideline is established:

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.

Applicant has resided in the United States for 23 years and chosen it as his permanent home. Since he immigrated, Applicant pursued his second postgraduate degree from a U.S. university and has had a successful career working for U.S. companies, including a defense contractor. At their first opportunity, Applicant and his wife became naturalized U.S. citizens. Their children are U.S. citizens by birth. All of their significant assets are in the United States, including their home, which they have owned for over 17 years and is mortgage-free.



Applicant maintains strong familial ties to a country associated with a heightened risk. While the positions previously held by his father and brother have no lingering security significance, his brother's employment in the technology sector remains a concern. Despite these compelling familial ties to Taiwan, his much deeper ties are in the United States. Applicant and his wife's significant financial interests, plans for their future, and loyalties are longstanding and firmly rooted in the United States. Therefore, I conclude that Applicant would resolve any conflict of interest in favor of the U.S. interest. Accordingly, Applicant has met his heavy burden to mitigate the Government's Guideline B concerns.

### **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the AG, each of which is to be evaluated in the context of the whole person. In evaluating the relevance of an individual's conduct, an 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.

I have incorporated my comments under Guideline B in my whole-person analysis, and I have considered the factors AG ¶ 2(d). I weighed the disqualifying and mitigating conditions under Guideline B, and evaluated all the evidence in the context of the whole person and the heightened risk associated with Taiwan. Applicant has mitigated the security concerns raised by his ties to citizens and residents of Taiwan. Accordingly, I conclude that he has carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

### **Formal Findings**

Formal findings on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraphs 1.a – 1.d:	For Applicant

## **Conclusion**

I conclude that it is clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Clearance is granted.

Gina L. Marine  
Administrative Judge