



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 20-00307
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

10/14/2020

Decision

HESS, Stephanie C., Administrative Judge:

This case arises under Guideline B (Foreign Influence). Applicant failed to mitigate the potential security concerns raised by his ties to family members and his property interest in Taiwan. Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) on December 22, 2017. On April 13, 2020, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guideline B. The DOD acted under Executive Order (Ex. Or.) 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 DOD on June 8, 2017.

Applicant submitted his Answer to the SOR on April 29, 2020, and requested a decision on the record without a hearing. Department Counsel submitted the Government’s written case on August 4, 2020. On August 17, 2020, a complete copy of the file of relevant material (FORM), which included Government Exhibits (GX) 1 through

5, was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. The Defense Office of Hearings and Appeals (DOHA) transmittal letter is dated April 6, 2020, and Applicant's receipt is dated April 22, 2020. The DOHA transmittal letter informed Applicant that he had 30 days after receiving it to submit information. DOHA received his response on September 1, 2020. The DOHA transmittal letter and receipt are appended to the record as Administrative Exhibit (Admin. Ex.) 1. The case was assigned to me on September 29, 2020.

Procedural Issues

In the FORM, Department Counsel submitted memoranda requesting that I take administrative notice of facts concerning Taiwan and China (P.R.C). (GX 4; GX 5.) In his response, Applicant objected to the request for administrative notice of facts concerning China. In support of this objection, Applicant stated that his family has "lived exclusively in Taiwan for many generations, neither he nor his family have any ties to the PRC, and that Taiwan is an independent democratic state and a strong ally of the United States. I denied Applicant's objection. I have taken administrative notice of the relevant facts discussed below and given the appropriate weight to those facts.

Under Guideline B, one of the relevant factors in assessing whether an Applicant's foreign family members are vulnerable to government coercion or inducement is the human rights record of the specific foreign nation. Therefore, I *sua sponte* took administrative notice of relevant facts, as set forth below, regarding Taiwan's human rights record as delineated in the U.S. Department of State's 2019 report on Taiwan's human rights practices. (*U.S. Department of State, Bureau of Democracy, H.R. and Lab., Taiwan* (March 11, 2020); <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/taiwan/>).

Findings of Fact

The SOR alleges under Guideline B that Applicant's mother is a citizen and resident of Taiwan. Applicant denies this allegation stating that his mother passed away in January 2020. The SOR also alleges that Applicant's two brothers are citizens and residents of Taiwan and that one brother works in the telecom field and the other works in the engineering field. The SOR further alleges that Applicant's mother-in-law is a citizen and resident of Taiwan, Applicant's wife is a dual citizen of Taiwan and the United States, and Applicant owns a home in Taiwan worth approximately \$100,000. Applicant admits each of these allegations. However, he denies that any of these circumstances should raise security concerns.

Applicant, 54, is a software engineer currently employed by a defense contractor since December 2017. He was born in Taiwan and attended high school, college, and graduate school in Taiwan. After receiving his master's degree in 1991, he was required to serve two years in the military. Applicant was a junior lieutenant in the Taiwanese Army from July 1991 until May 1993. In approximately 1994, Applicant moved to the United

States where he attended a university from 1994 until 1997, and received a second master's degree. He became a naturalized U.S. citizen in December 2006. Applicant and his wife married in Taiwan in 1995. They have two adult children, both born in the United States. This is Applicant's first application for a security clearance. (GX 2.)

In his answer, Applicant stated that one of his brothers is a general manager for a telecom company and his other brother is a civil engineer employed by a private company that "the nature of [their] work makes it unlikely that [Applicant] would be placed in a position where [Applicant] must choose between foreign and U.S. interests due to [Applicant's] relationship with [them]." He further stated that he is not in "frequent regular communication" with either of his brothers and that he does not discuss his work with them "in a way that could lead to security concerns."

Applicant stated that his mother-in-law is "not working or participating in any political or professional organization." He further stated that his relationship with his mother-in-law is unlikely to put him in a position of conflict between foreign and U.S. interests. Since 2006, Applicant has traveled to Taiwan annually with the stated purposes of tourism and visiting family. He has visited with his family and his mother-in-law in person on each of these visits. (GX 2; GX 3.)

Applicant's wife is a dual citizen of Taiwan and the United States. She maintains her Taiwanese citizenship for ease of travel to visit her elderly mother. Applicant is also a dual citizen of Taiwan and the United States. He stated on his e-QIP that Taiwan has affordable medical coverage for citizens and he maintains his Taiwanese citizenship in case of a medical emergency. (GX 2.)

Applicant was issued a Taiwanese passport in 2006 that expired in 2016. He traveled to Taiwan using this passport annually from 2006 through 2015. In 2016, Applicant was issued a Taiwanese passport that expires in 2026. He used this passport to travel to Taiwan in 2016, 2017, and 2018. Applicant stated in his personal subject interview (PSI) that he uses his Taiwanese passport to travel to Taiwan instead of his U.S. passport due to the restriction on the number of days he is permitted to stay in country when using his U.S. passport. (GX 3.)

Applicant owns a home in Taiwan worth approximately \$100,000. When listing the home on his e-QIP, Applicant stated that the home was a "gift from [his] parent." (GX 2.) In his answer, he stated that he purchased the home in his name for his parents to live in during their retirement. The home is currently uninhabited and after a "culturally appropriate period" of mourning of one year, he plans to sell the home.

Applicant purchased a house in the United States in 2009. He stated in his answer that his children were born U.S. citizens, he and his wife have lived solely in the United States for more than 20 years, and they have been naturalized citizens for more than 15 years. He further stated that he and his family consider themselves to be U.S. citizens "first and foremost" and that they have "demonstrated [their] allegiance" to the United States by exercising their rights as citizens by "paying taxes, voting, serving for jury duty,

and supporting [their] local community.” During his PSI, Applicant expressed his willingness to relinquish his Taiwanese citizenship if required to do so by his employer.

The United States and Taiwan enjoy a robust unofficial relationship. The 1979 U.S. - P.R.C. Joint Communiqué switched diplomatic recognition from Taipei to Beijing. In the Joint Communiqué, the United States recognized 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. The Joint Communiqué also stated that the people of the United States will maintain cultural, commercial, and other unofficial relations with the people of Taiwan. The United States does not support Taiwan independence.

The 2019 U.S. Department of State report on human rights in Taiwan noted that there were no reports of significant human rights abuses. However, throughout 2019, Beijing adopted a more coercive policy toward Taiwan, seeking to isolate and intimidate Taipei into unification on Beijing’s terms. In January 2019, General Secretary Xi delivered a major speech wherein he claimed that Taiwan’s unification with the P.R.C was inevitable and indicated that the “one country, two systems” model was the only acceptable arrangement for unification. That model has been consistently rejected by the Taiwanese public and presidential administrations, prompting Beijing to intensify its multipronged campaign to coerce and isolate Taiwan. In implementing this policy, Beijing sharply escalated its military, diplomatic, and economic pressure against Taiwan, including interfering in Taiwan’s media to shape public opinion on China and cross-Strait relations. The deliberate crossing of the Taiwan Strait median line by Chinese fighter aircraft in March 2019 was the first such crossing in 20 years and marked a sharp escalation in the military pressure Beijing has increasingly applied against Taipei. China signaled that its intensifying campaign of military coercion had become official in a key policy document released in July 2019.

The United States faces a serious threat to its national security from Chinese intelligence operations. China aggressively targets U.S. sensitive and protected information and Chinese actors are the world’s most active perpetrators of economic espionage. Taiwan has also been an active collector of U.S. economic technologies that have sensitive military applications. There have been multiple cases involving the illegal export, or attempted illegal export, of U.S. restricted, dual-use, or military technology to Taiwan or by Taiwanese nationals. The dual-use of military technologies that have been targeted include, but are not limited to, classified materials, trade secrets, weapons technologies, and high-tech microelectronics.

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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant’s 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.” See 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. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

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; see AG ¶ 2(b).

Analysis

Guideline B, Foreign Influence

The concern is set forth 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 following disqualifying conditions are potentially applicable: AG ¶ 7

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(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

AG ¶ 7(f): substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest.

AG ¶¶ 7(a), 7(e), and 7(f) require evidence of a “heightened risk.” The “heightened risk” required to raise these disqualifying conditions is a relatively low standard. “Heightened risk” denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or owning property in a foreign country. The mere possession of ties with family in Taiwan is not, as a matter of law, disqualifying under Guideline B. However, if an applicant has such a relationship, this factor alone is

sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See Generally ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001). The totality of Applicant's family ties to a foreign country as well as each individual family tie must be considered. "[T]here 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, 2002 DOHA LEXIS 94 at * 8 (App. Bd. Feb. 20, 2002); see also ISCR Case No. 09-06457 at 4 (App. Bd. May 16, 2011).

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, "even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security." ISCR Case No. 00-0317, (App. Bd. Mar. 29, 2002).

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an Applicant's family members are vulnerable to government coercion or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the United States. Although Taiwan's human rights record is good, Taiwan's active efforts to collect U.S. technologies and the illegal export, or attempted illegal export, of such technologies places a high burden of persuasion on Applicant to demonstrate that his relationships with his family members in Taiwan do not pose a security risk.

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(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's contacts with his family members and his mother-in-law include annual in-person visits in Taiwan. Such contact is frequent and not casual. While Applicant asserted that he does not discuss his work with his brothers in a way that could create security concerns, this statement implies that Applicant does discuss his work with his brothers to some degree. Applicant is employed by a U.S. defense contractor as a software engineer. The mere knowledge of this position by persons in Taiwan or China create a heightened risk of vulnerability to exploitation or coercion.

It is unclear from the record whether Applicant purchased the home in Taiwan for his parents to reside in during their retirement before or after becoming a U.S. citizen. It is also unclear from the record what the value of Applicant's assets in the United States are in light of the \$100,000 value of his home in Taiwan. However, \$100,000 is a significant amount of money. While Applicant explained why he is compelled to maintain the home in Taiwan until after January 2021, the foreign property interest currently remains his.

Applicant became a naturalized U.S. citizen in 2006. He has established substantial ties with the United States, including purchasing a house, and has exercised his rights as a citizen by voting, serving on jury duty, and paying his taxes as required. He declared his willingness to renounce his Taiwanese citizenship if required to do so by his employer. However, given the totality of Applicant's ties to his family members in Taiwan and his property interest there, doubt remains as to whether Applicant can necessarily be expected to resolve any conflict of interest in favor of the U.S. None of the mitigating conditions apply.

Whole-Person Concept

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. An 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 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 I have also considered the following:

Although his military service was mandatory, Applicant nonetheless served as an officer in the Taiwanese Army for two years immediately prior to moving to the United States. Applicant and his wife are dual citizens of the United States and Taiwan, and travel to and from Taiwan using their Taiwanese passports. Applicant maintains his Taiwanese citizenship to take advantage of Taiwan's low-cost medical care in the event of a medical emergency. Applicant's wife maintains her Taiwanese citizenship to facilitate travel to Taiwan to visit her elderly mother. While dual citizenship, possession of a foreign passport, foreign travel, and mandatory military service are not in and of themselves disqualifying, the ongoing exercise of his rights as a Taiwanese citizen, combined with his prior military service and his close family ties and property interest in Taiwan heighten the potential for a conflict of interest for Applicant.

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 not mitigated the security concerns raised by his contacts with his family and his property interest in Taiwan. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to grant his eligibility for access to classified information.

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:

Paragraph 1, Guideline B (Foreign Influence):	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b through 1.f:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Stephanie C. Hess
Administrative Judge