



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 20-00034
)	
Applicant for Security Clearance)	

Appearances

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

12/02/2020

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 close ties to family members in Taiwan. Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) on August 14, 2018. On April 24, 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 May 22, 2020, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on September 24, 2020. On that same day, 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 September 24, 2020, and Applicant's receipt is dated October 5, 2020. The DOHA transmittal letter informed Applicant that he had 30 days after receiving it to submit information. Applicant did not submit a response. The DOHA transmittal letter and receipt are appended to the record as Administrative Exhibit (Admin. Ex.) 1. The case was assigned to me on November 24, 2020.

Procedural Issues

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 parents, brother, and in-laws are citizens and residents of Taiwan and that Applicant provides financial support to his mother. Applicant admits each of these allegations. His admissions are incorporated in my findings of fact.

Applicant, 43, is being sponsored for a security clearance for a systems engineer position with a defense contractor since August 2018. His interim clearance was denied. He currently works as a regulatory compliance engineer for a non-government contractor. He was born in Taiwan. In compliance with Taiwan's mandatory two-year military-service requirement, he enlisted in the Army in 1997 and served until 1999. In 2000, Applicant came to the United States on a student visa. He received his associate's degree in 2003 and his bachelor's degree in 2005. Applicant and his wife married in Taiwan in 2006, and they have two children ages 10 and 8. Applicant became a naturalized U.S. citizen in 2009. Applicant's wife became a naturalized U.S. citizen in 2003. This is Applicant's first application for a security clearance. (GX 2.)

At the time that Applicant completed his e-QIP in August 2018, both he and his wife were dual citizens of Taiwan and the United States. However, Applicant stated that he and his wife had submitted the required paperwork for renouncing their Taiwanese citizenships. He possessed a then-valid U.S. passport that expired in November 2019. During his November 2018 personal subject interview (PSI), Applicant presented an official document to the investigator that showed that Applicant had renounced his Taiwanese citizenship in September 2018. Applicant remains in possession of a Taiwanese passport that expired in 2015 and was functionally destroyed when Applicant

renounced his Taiwanese citizenship. During his PSI, Applicant also stated that his wife completed the same renunciation process. (GX 2; GX 3.)

Applicant has daily telephonic contact with his mother, father, and brother. Applicant provides \$200 a month in support to his mother. None of Applicant's family members in Taiwan, to include his in-laws, has any government or military affiliation. He has traveled to Taiwan to visit his family numerous times. Applicant's mother-in-law has a U.S. permanent resident card and travels from Taiwan to the United States every six months. She lives with Applicant and his wife while in the United States. (GX 2; GX 3.) It is unclear from the record what, if any, contact Applicant and/or his wife have with her family members or friends in Taiwan.

Applicant purchased a house in the United States in 2009. He stated during his PSI that he and his wife are solely U.S. citizens with loyalty and allegiance only to the United States.

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; 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.

AG ¶¶ 7(a) and 7(e) 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; and

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's contacts with his family members include daily telephone calls and periodic in-person visits in Taiwan. Applicant's mother-in-law, who possesses a U.S. permanent resident card but remains a Taiwanese citizen, resides with Applicant on an annual basis. Such contact is frequent and not casual. It is also likely that Applicant, either personally or through his wife, has contact with additional members of Applicant's wife's family and/or her friends.

Applicant completed his higher education in the United States and became a naturalized U.S. citizen in 2009. Applicant and his wife, who has been a U.S. citizen since 2003, renounced their Taiwanese citizenship's in 2018. Their children were born in the United States. He has established substantial ties with the United States, including purchasing a house in 2009. He stated that his loyalties are only to the United States. However, given Applicant's close ties to his family members in Taiwan, as demonstrated through his daily telephone calls, doubt remains as to whether Applicant can necessarily be expected to resolve any conflict of interest in favor of the United States. 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:

Applicant has been a U.S. citizen for 11 years and he and his wife renounced their Taiwanese citizenships over two years ago. However, his close ties to his family members in Taiwan heightens 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
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Subparagraphs 1.a through 1.d:	Against Applicant
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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