



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



In the matter of: )  
)  
) ISCR Case No. 21-00857  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Aubrey De Angelis, Esq., Department Counsel  
For Applicant: Rita M. Cherry, Esq., Applicant’s Counsel

April 21, 2022

**Decision**

CEFOLA, Richard A., Administrative Judge:

**Statement of the Case**

On May 20, 2021, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline B. The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant’s security clearance.

Applicant answered the SOR on June 29, 2021, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on August 23, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 27, 2022, scheduling the hearing for February 18, 2022. The hearing was convened as scheduled. The Government offered Exhibits (GX) 1 and 2, which were admitted without objection, and Hearing Exhibits (HXs) I and II for Administrative Notice. Applicant testified on his own behalf and called one witness. Applicant offered eight

exhibits, which I marked Applicant's Exhibits (AppXs) A through H. DOHA received the transcript of the hearing (TR) on March 1, 2022.

### **Procedural Rulings**

At the hearing, the Government requested I take administrative notice of certain facts relating to Taiwan and China. Department Counsel provided two summaries of the facts, identified as HEs I and II. 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 the allegations in SOR, with explanations and updates. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 35-year-old employee of a defense contractor, and is a Captain in the Air Force Reserve. (TR at page 15 line 14 to page 19 line 24, and GX 1 at pages 7 and 18.) He has held a security clearance since 2011 (GX 1 at page 90). He is married, has one child, and he and his family live in the United States. (TR at page 17 line 14 to page 18 line 1). From 2016~2018, Applicant attended National Taiwan University. This is where he met his wife, and all his other acquaintances noted in subparagraphs 1.d~1.j., which will be discussed further, below. (TR at page 16 line 21 to page 17 line 14.)

#### **Guideline B - Foreign Influence**

1.a. Applicant's wife is a citizen of China, whom he met in graduate school in Taiwan. (TR at page 17 lines 15~23, and at page 29 line 15 to page 30 line 2.) His wife is the "Executive Assistant for the CEO of a [U.S.] company . . . which handles traveling nurses." (TR at page 36 line 24 to page 37 line 3.)

1.b. Applicant's mother-in-law and father-in-law are citizens and residents of China. He has little, if any, relationship with his in-laws. "They don't speak English," and he does not speak their "local dialect." (TR at page 20 line 11 to page 21 line 2.) Applicant's father-in-law "was a public-school teacher," and his mother-in-law a "retired . . . accountant." (TR at page 36 at line 24 to page 37 line 3.)

1.c. Applicant's wife has three uncles, five aunts, two cousins, two grandmothers, and a grandfather who are citizens and residents of China. Only her uncle, who is a building inspector, arguably has any connection with the Chinese government. Applicant "never met him," and does not "even know his name." (TR at page 33 line 13 to page 34 line 15, and at page 37 line 19 to page 38 line 14.)

1.d. Applicant has a friend, whom he met at university in Taiwan, who is a citizen of and resides in Germany. He works “for a Taiwanese Company that manufacture semi-conductors.” Applicant’s only contact with this friend is “with [a] group chat . . . maybe once a month.” (TR at page 38 line 15 to page 39 line 7, see a/so TR at page 22 lines 7~21.)

1.e. Applicant’s “thesis advisor” is a citizen of Hong Kong and resides in Taiwan. He has “had zero contact with him since . . . [Applicant] delivered . . . [his] thesis . . . [in] Spring 2018,” about four years ago.

1.f. and 1.g. Applicant had friends who are citizens of Honduras and reside in Taiwan. The husband works for the Honduran embassy. Applicant has “zero contact with him.” The wife “does . . . a lot of non-profit kind of stuff.” Applicant texts her about “once every six months.” (TR at page 34 line 16 to page 35 line 3, and at page 40 line 1 to page 41 line 8.)

1.h. Applicant does not have any friends who are citizens and residents of Taiwan. (TR at page 41 line 9 to page 42 line 10.)

1.i. Applicant has a friend, whom he met at a university in Taiwan, who is a citizen of and resides in India. “He’s been involved in some, like green energy startup kind of stuff.” Applicant’s only contact with this friend is “in the group chat . . . maybe once a month.” (TR at page 42 lines 11~20.)

1.j. Applicant had a friend who is a citizen and resident of South Korea. They have “lost contact” with each other, “haven’t talked to her in a year or so.” (TR at page 42 line 21 to page 43 line 4.)

### **Notice**

I take administrative notice of the following facts regarding Taiwan: Taiwan is a democracy led by a president and parliament selected in multiparty elections. In 1979, the United States switched diplomatic recognition from Taiwan to China. Taiwanese espionage against the United States has not been limited to industrial espionage, but also to dual-use or military technology. (HX I.)

I take administrative notice of the following facts regarding the People’s Republic of China (China). China is an authoritarian state in which the Chinese Communist Party is the paramount authority. China has expansive efforts in place to acquire U.S. technology to include secrets and proprietary information. About 80 percent of all economic espionage prosecutions brought by the U.S. Department of Justice relate to the Chinese state. (HX II.)

## Policies

When evaluating an applicant's suitability for 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 applies for access to classified information seeks to enter 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 Executive Order (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

### 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. Three are potentially 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; and

(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 wife and in-laws are Chinese citizens. The evidence is sufficient to raise these disqualifying conditions.

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; and

(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.

Other than his wife, Applicant has little contact with foreign nationals, to include his in-laws. His wife lives and works in the United States. His loyalties clearly lie with the United States as testified to by his supervisor (TR at page 45 line 18 to page 49 line 7), and attested to by a retired Major General (AppX H).

### **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(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.

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 some warrant additional comment.

Applicant has a distinguished history of working in the defense industry and is respected by his superiors and colleagues. He performs well at his job. (AppXs A~D, and G and H.) Overall, the record evidence leaves me without questions or doubts as to

Applicant's eligibility and suitability for 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 the Directive, are:

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraphs 1.a~1.j:	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 and a security clearance. Eligibility for access to classified information is granted.

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Richard A. Cefola  
Administrative Judge