



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



In the matter of:	)	
	)	
	)	ISCR Case No. 22-01394
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Aubrey M. De Angelis, Esq., Department Counsel  
For Applicant: *Pro se*

04/27/2023

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**Decision**

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HALE, Charles C., Administrative Judge:

This case arises under Guideline B (Foreign Influence). Applicant mitigated the potential security concerns raised by his close ties to family members in Taiwan. Clearance is granted.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on September 20, 2021. On October 26, 2022, 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 November 1, 2022, and requested a decision on the record without a hearing. Department Counsel submitted the Government’s written case on January 4, 2023. On January 7, 2023, a complete copy of the file of relevant material (FORM), which included Items 1 through 7, was sent to Applicant, who was given an opportunity to file objections and submit material to refute,

extenuate, or mitigate the Government's evidence. Items 1 and 3 are pleadings in the case and Item 2 is procedural correspondence. Applicant received the FORM on February 7, 2023. The DOHA transmittal letter informed Applicant that he had 30 days after receiving the FORM to submit information or objection. Applicant did not submit a response or object to the Government's evidence. Items 4 and 5 are admitted into evidence. The case was assigned to me on April 3, 2023.

### **Procedural Issues**

Department Counsel submitted Items 6 and 7 and asked that I take administrative notice of relevant facts about Taiwan. Without objection, I have taken administrative notice of the facts contained in the request. The facts are summarized in the written request and will not be repeated verbatim in this decision. Of particular note:

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. The United States maintains cultural, commercial, and other unofficial relations with the people of Taiwan. 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. Taiwan is an active collector of U.S. economic technologies that have sensitive military applications.

### **Findings of Fact**

The SOR alleges under Guideline B that Applicant's two grandfathers, uncle, two aunts, and a cousin are citizens and residents of Taiwan. Applicant admits each of these allegations. (SOR ¶¶ 1a through 1d). His admissions are incorporated in my findings of fact.

Applicant is 27 years old. He was born in Taiwan. He has worked for a defense contractor since August 2021. He came to the United States with his parents in 1999. His parents live in the United States and maintain dual citizenship with both countries. He and his parents became U.S. citizens in 2010. He holds both U.S. and Taiwanese passports. His sister was born in the United States in 2000 and resides in the United States. He graduated high school in 2015 and received his bachelor's degree in 2019. (Item 4 at 14-15.)

From 2014 through 2018, while he was a student, Applicant traveled each year to Taiwan during the summer months. (Item 5 at 10.) He used his Taiwan passport to travel to Cambodia and Japan while visiting Taiwan. (Item 4 at 5.) He has not traveled back to Taiwan since he graduated from college in 2019. (Item 4 at 14-15 and Item 5 at 10.) He indicated he would renew his Taiwanese passport because it made traveling to Taiwan

easier. (Item 5 at 5.) He told the investigator he would not renounce his Taiwanese citizenship because he could see himself retiring to Taiwan. (Item 5 at 4.) He went on to state he does not know a lot about Taiwan and that he considers himself an American first because “he has lived most of his life in the [United] States.” He added he does not have a “strong allegiance to the Taiwan government.” (Item 5 at 4.)

During his seven trips to Taiwan, he visited the relatives alleged in the SOR. He speaks with each relative approximately once or twice a year. He listed “by affection” in his interrogatory response for how he was bound to each. (Item 5 at 10-11.) Both his maternal grandfather and uncle served in the Taiwanese army. His grandfather was a doctor and has since retired. His uncle served the mandatory military service time and is also now retired. (Item 5 at 6-7.) None of the relatives alleged have any affiliation with the Taiwan government or defense industry. (Item 5 at 10-11.)

### **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 condition is potentially applicable:

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(a) requires 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.

Guideline B security or trustworthiness concerns are 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, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 02-22461, 2005 DOHA LEXIS 1570 at 11-12 (App. Bd. Oct. 27, 2005) (citing ISCR Case No. 02-26976 at 5-6 (App. Bd. Oct. 22, 2004)) (discussing Taiwan).

I considered the totality of Applicant’s ties to Taiwan sufficient to raise AG ¶ 7(a).

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.

When foreign family ties are involved, the totality of an applicant’s family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). Applicant discussed during his security clearance interview and in his interrogatory responses his visits to his family in Taiwan. There is no

evidence he provides financial support. There is no evidence his family has ties to the government. Applicant has not traveled to visit his relatives in Taiwan since 2018 and his contacts have become less frequent since he graduated college. AG ¶ 8(a) applies.

Applicant considers himself an American first, and at age 27, his retirement plans are several decades in the future. The relationships alleged are not immediate family members. His immediate family all reside in the United States. The record evidence is sufficient to mitigate the concern under AG ¶ 8(b).

### **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 Guidelines B in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). I weighed this consideration in reviewing Applicant's security clearance interview, which was thorough, and affirmed by him in response to interrogatories. 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 mitigated the security concerns raised by his contacts with his family in Taiwan. Accordingly, I conclude he has 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):                      FOR APPLICANT

Subparagraphs 1.a through 1.d:

For Applicant

**Conclusion**

I conclude that it is clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Charles C. Hale  
Administrative Judge