



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



In the matter of:)	
)	
)	ISCR Case No. 23-01677
)	
Applicant for Security Clearance)	

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel
For Applicant: *Pro se*

07/02/2024

Decision

BENSON, Pamela C., Administrative Judge:

Based on a review of the pleadings, testimony, and exhibits, I conclude that Applicant has mitigated the concerns related to foreign influence raised by the presence of his sibling and uncle living in Taiwan, and his foreign financial interest. His request for national security eligibility and a security clearance is granted.

Statement of the Case

On December 11, 2023, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudication Services (CAS) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B (foreign influence). This action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines implemented by the DOD on June 8, 2017.

On January 18, 2024, Applicant responded to the SOR and admitted all three SOR allegations. He also submitted an untranslated inheritance document from Taiwan, and

he requested a decision be issued in this matter based upon the administrative record. (Answer) After he received the Government's brief that was provided with the File of Relevant Material (FORM), Applicant changed his mind and requested that he have a hearing before a DOHA judge instead. His request was granted.

On April 30, 2024, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, scheduling the hearing for May 9, 2024. The hearing proceeded as scheduled. Department Counsel submitted three documents, Government Exhibits (GE) 1 through 3, and a disclosure letter dated March 7, 2024. I marked the disclosure letter as Hearing Exhibit (HE) I. Applicant testified and submitted six documents labeled as Applicant's Exhibits (AE) A through F. All proffered documents were admitted into evidence without objection.

The Government requested I take administrative notice of certain facts relating to Taiwan. Department Counsel provided a five-page summary of the facts, supported by 11 Government references pertaining to Taiwan, identified as HE III. 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 not subject to reasonable dispute. They are set out in the Findings of Fact.

The Government also requested that I take administrative notice of certain facts relating to the People's Republic of China (China) due to its relationship to Taiwan. Department Counsel provided a nine-page summary of the facts, supported by 21 Government references pertaining to China, identified as HE 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 not subject to reasonable dispute. They are set out in the Findings of Fact.

Applicant objected to the China administrative notice because he and his family have no connection to that country. I accepted both administrative notice documents into the record, but what weight I would assign to the China administrative notice, if any, I would leave to my discretion after the hearing concluded. The administrative notice materials are included in the record to show the basis for concluding that the noticed facts are generally accepted within the U.S. government and are not subject to reasonable dispute. The Defense Office of Hearings and Appeals (DOHA) received the transcript (Tr.) on May 16, 2024.

Findings of Fact

The SOR alleges foreign influence security concerns based on Applicant's family members, a brother and uncle, in Taiwan. Applicant also inherited 1/4th interest in a home that is also co-owned with his uncle and brother. In his Answer, Applicant admitted all of the allegations. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact:

Applicant is 59 years old. He was born in Taiwan. He earned a bachelor's degree from a university in Taiwan in May 1988. He was obligated to serve in the Taiwanese

Army from August 1988 to June 1990. He entered the United States in 1991, and he became a naturalized U.S. citizen in 1997. In May 1997, he graduated from a U.S. university with a master's degree, and in May 2000, he graduated from the same university with his doctorate degree. He has been employed by a federal contractor since February 2023. He was previously employed by another federal contractor from July 2021 to November 2022 as an engineer, until his position was eliminated through a workforce reduction. He was married in 2003 and divorced in 2018. He has two sons, ages 19 and 20. (GE 1; Tr. 24-32)

Applicant's brother and uncle are citizens and residents of Taiwan. (SOR ¶¶ 1.a and 1.b) His uncle is elderly and retired. His brother works as a realtor and is not connected with the Taiwanese government or military. He is married but does not have any children. Applicant communicates with his brother using the internet on a casual basis, such as on holidays and on his birthday. His brother does not know that Applicant is in the process of obtaining a DOD security clearance. Applicant does not maintain contact with his uncle. (Tr. 34-39, 40-43, 57-58)

Applicant's grandfather owned a house, which passed to Applicant's father (50%) and uncle (50%) when his grandfather passed away. Applicant's father passed away in 2019, and his interest then passed to Applicant (25%) and his brother (25%). (SOR ¶ 1.c) The house is multi levels. The first level is rented out for business. Applicant's quarter-share of the house is worth approximately \$300,000. He testified that the building is quite old, and it is not compliant with the current code in Taiwan to withstand an earthquake. He is unable to sell his interest in the house because all co-owners must also agree to the sale per the instructions in the deed. The rental income from the business is provided to his uncle, who still lives by himself in the building, and Applicant's mother, in the United States. The last time Applicant traveled to Taiwan was in 2019 to attend his father's funeral. Applicant submitted his most recent Electronic Questionnaire for Investigations Processing (e-QIP) on February 16, 2023. He disclosed all of his foreign contacts and interests in the e-QIP, as required. (GE 1; Tr. 35-39, 43-52)

Applicant's mother and two sisters are naturalized U.S. citizens living in the United States. His mother has lived in the United States for over 50 years, and his sisters for over 30 years. Applicant bought a house in State A, worth approximately \$900,000. His mother and sister currently live in the home. He is uncertain of the value of his retirement portfolio that is here in the United States, but he believes it is sufficient for his needs.

Applicant has lived the majority of his life in the United States. His children, mother, and two sisters live in this country. He testified that in the event China would invade Taiwan and confiscate his quarter-share of the foreign property, there is nothing he could do about it. He is not connected in any way to China. He also said that he could not be coerced by Taiwan under any circumstances, to include using his brother, uncle, or his quarter interest in the house, to dictate his actions. (Tr. 32-35, 53-54, 64)

Administrative Notice

I have taken administrative notice of the following facts concerning **Taiwan**:

Taiwan is a multiparty democracy; whose authorities generally respect the human rights of its citizens. Taiwan is an active collector of industrial information and engages in industrial espionage, as shown by the administrative notice documents in the record. However, the record does not demonstrate that the Taiwanese government seeks to exert pressure on U.S. citizens to collect information from family members residing in country or abroad. Finally, it is worth noting that the U.S. Government, and the Defense Department in particular, have a close and continuing relationship with Taiwan and its military, in accordance with the Taiwan Relations Act of 1979, which has governed policy in the absence of diplomatic relations or a defense treaty with Taiwan. In 2018 the Secretary of Defense stated, "The Department of Defense remains steadfastly committed to working with Taiwan to provide the defense articles and services necessary to maintain sufficient self-defense consistent with our obligation set out in our Taiwan Relations Act. We oppose all unilateral efforts to alter the status quo and will continue to insist any resolution of differences accord with the will of the people on both sides of the Taiwan Strait."

China

I take administrative notice of the facts set forth in the Administrative Notice documents concerning China, which are incorporated herein by reference. China is a large and economically powerful country, with a population of more than a billion people and an economy growing at about 10% per year. China has an authoritarian government, dominated by the Chinese Communist Party. It has a poor record with respect to human rights, suppresses political dissent, and engages in arbitrary arrests and detentions, forced confessions, torture, and mistreatment of prisoners. China is one of the most aggressive countries in seeking sensitive and protected U.S. technology and economic intelligence. It targets the United States with active intelligence gathering programs, both legal and illegal. As a result, it is a growing threat to U.S. national security. In addition, China views Taiwan as part of China. China has engaged in many different coercive diplomatic and military activities, seeking to isolate and intimidate Taiwan into unification on China's terms.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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 the adjudicative process. The administrative judge's overarching

adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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.”

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.” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of 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 under this guideline 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.

Two disqualifying conditions under this guideline are relevant to this case:

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; 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.

Taiwan is an active collector of industrial espionage. Accordingly, Applicant's family connections in that country have the potential to generate a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion under AG ¶ 7(a). The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contact with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. In addition, though not specifically alleged, I have considered China's activities and attitude with regard to Taiwan and the United States. (See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).)

Applicant has a foreign property interest in a house that he co-owns with his uncle and brother in Taiwan. His estimated share is worth approximately \$300,000. Due to his financial connection to Taiwan, AG ¶ 7(f), is applicable.

The following mitigating conditions under this guideline are potentially relevant:

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, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;

AG ¶ 8(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; 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.

I have carefully considered the fact that Applicant's brother and uncle live in Taiwan, and he also owns a 25% interest in a home worth about \$300,000. In this particular case, I find that Applicant has mitigated the security significance because he has minimal contact with his brother, and virtually no contact with his elderly uncle. These family members have no connection with the Taiwanese government or military. Applicant has lived in the United States longer than he has lived in Taiwan. He obtained his advanced education here. Applicant's family, consisting of his mother, two sisters, and his two sons, live in the United States. In addition, Applicant has substantial financial interests in the United States, and as such, his foreign property interest could not be used as a means to effectively pressure or coerce him. He has forged deep relationships within the United States, and he can be expected to resolve any conflict of interest in favor of the U.S. interest, should any conflict arise. AG ¶¶ 8(a), (b), (c) and (f) apply. Foreign influence security concerns are mitigated.

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline B and the factors in AG ¶ 2(d) in this whole-person analysis.

Applicant has shown himself to be a patriotic American citizen and a contributor to the defense industry. He can be expected to resolve any conflict of interest in favor of the United States due to his sense of loyalty and deep personal connections to this country. Overall, the record evidence leaves me without questions or doubts as to Applicant's suitability for national security eligibility and 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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraphs 1.a.-1.c.:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, I conclude that it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Pamela C. Benson
Administrative Judge