

KEYWORD: Foreign Preference; Foreign Influence; Personal Conduct

DIGEST: Applicant performed mandatory military service in the Taiwanese Army before emigrating to the U.S. and becoming a U.S. citizen. He did not disclose his foreign military service on his security clearance application. His mother-in-law is a citizen and resident of Taiwan. He had email exchanges with three former college classmates in Taiwan. He has refuted the allegations of foreign preference and intentional falsification of his security clearance application, and he has mitigated the security concern based on foreign influence. Clearance is granted.

CASENO: 06-07892.h1

DATE: 08/30/2007

DATE: August 30, 2007

In Re:)	
)	
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SSN: -----)	ISCR Case No. 06-07892
)	
Applicant for Security Clearance)	

**DECISION OF ADMINISTRATIVE JUDGE
LEROY F. FOREMAN**

APPEARANCES

FOR GOVERNMENT

Richard Stevens, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant performed mandatory military service in the Taiwanese Army before emigrating to the U.S. and becoming a U.S. citizen. He did not disclose his foreign military service on his security clearance application. His mother-in-law is a citizen and resident of Taiwan. He had email exchanges with three former college classmates in Taiwan. He has refuted the allegations of foreign preference and intentional falsification of his security clearance application, and he has mitigated the security concern based on foreign influence. Clearance is granted.

STATEMENT OF THE CASE

On April 26, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny Applicant a security clearance. This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive); and the revised adjudicative guidelines (AG) approved by the President on December 29, 2005, and implemented effective September 1, 2006. The SOR alleges security concerns under Guidelines C (Foreign Preference), B (Foreign Influence), and E (Personal Conduct).

Applicant answered the SOR in writing on May 17, 2007, and he submitted a supplemental answer on May 22, 2007. A hearing was requested by Department Counsel in accordance with Directive ¶ E3.1.8 (Tr. 14). The case was assigned to me on July 23, 2007, and heard on August 13, 2007, as scheduled. I kept the record open to enable Applicant to submit additional evidence. I received additional evidence on August 21, 2007, and it was admitted as Applicant's Exhibit (AX) DD. DOHA received the transcript (Tr.) on August 22, 2007.

FINDINGS OF FACT

Applicant's admissions in his answer to the SOR and at the hearing are incorporated into my findings of fact. I make the following findings:

Applicant is a 48-year-old senior network engineer for a defense contractor. He has worked for his current employer since March 2002. He does not have a clearance.

Applicant's performance appraisals from 2003 to the present have all rated him as far exceeding expectations, except for one year when he was rated as consistently exceeding expectations (AX O-S). His colleagues and supervisors describe him as talented, loyal, conscientious, hard-working, and committed to his family (AX T-W). He and his family are heavily involved in scholastic, cultural, and community activities (AX X-CC).

Applicant was born and educated in Taiwan, receiving a bachelor of science in civil engineering in July 1982 (AC X). He performed mandatory military service in the Taiwanese Army from September 1982 to June 1984 (AX D). Military-age men were required to satisfy their military service obligation before they were permitted to leave Taiwan (AX A and B). He came to the U.S. in August 1984 to continue his education (AX E at 2), and he has never returned to Taiwan to visit friends or family (Tr. 81).

In December 1987, Applicant received a master's degree in operations research and statistics from a U.S. educational institution (Tr. 7). Applicant met his wife, a citizen of Taiwan who was born in the Republic of Korea, while working on his master's degree. They were married in the U.S. in October 1988, and they both became U.S. citizens in August 2000. They have two children who are native-born U.S. citizens.

Applicant sends his two sons to Chinese school for two hours each Sunday, because he wants them to learn to speak and write Chinese and learn about Chinese culture (Tr. 85). He believes that Chinese is becoming an international business language, making fluency in that language and familiarity with Chinese culture valuable economic assets (Tr. 86).

Applicant's father served as a logistics officer in the Taiwanese Air Force for about six years shortly after World War II (AX I)¹. His mother worked as a civilian secretary for the Taiwanese Air Force at the same time. His sister became a U.S. citizen in 1985, and she sponsored both parents when they came to the U.S. and became U.S. citizens during the late 1980s and early 1990s (Tr. 87). His parents are retired (Tr. 92).

Applicant's mother-in-law is a citizen and resident of Taiwan. His father-in-law is deceased. His mother-in-law visited the U.S. on three occasions: Applicant's marriage, the birth of his first son in 1991, and the birth of his second son in 1997 (Tr. 69). His telephonic contact with his mother-in-law is limited to brief, courteous greetings on special occasions such as her birthday or the Chinese New Year (Tr. 70). His telephone records reflect 15 calls to Taiwan during the past year, of which eight were received by his mother-in-law's answering machine (AX N; Tr. 70-71). The telephone calls were initiated by Applicant's wife (Tr. 70).

Between January 2005 and February 2007, Applicant had email contact with three former college classmates in Taiwan. Applicant initiated the contact after seeing a classmate's name on the college website. None of his former classmates are connected to the Taiwanese government or military or involved in information technology. One of his classmates is a professor of civil engineering at a private, church-affiliated university (Answer to SOR; GX 3; AX M at 3). They had one telephone call and three or four emails exchanging news articles, but their exchanges "died down quickly" and ended in October 2005 (GX 2 at 21; Tr. 72). Similarly, Applicant had one telephone call and four or five emails with another classmate who studied literature and pursued a career in the arts rather than engineering, the last email occurring in February 2007 (Tr. 109).

Applicant had a more extensive exchange with a third former classmate, an environmental engineer. They exchanged 30-40 emails. For the first three months, they exchanged about two emails a week, and then the frequency quickly dwindled. The emails consist of exchanges of general family information, family photographs, greeting cards, news articles, movie clips, cartoons, jokes, and one article about self-administered cardiopulmonary resuscitation (AX DD; Tr. 104-06).

Applicant's last telephone conversation with this friend was in May or June 2005 (Tr. 105), and his last email as of the date of the hearing was in June 2007 (AX DD at 93-96). The June 2007 email was preceded by a Chinese New Year greeting in February 2007, with no intervening exchanges (AX DD at 83-89).

Applicant executed a security clearance application (SF 86) on April 27, 2005. He answered "no" to question 11, asking, "Have you ever served in the military?" He did not disclose his mandatory military service in the Taiwanese Army. In his answer to the SOR and at the hearing, he

¹ SOR ¶ 2.a alleged that Applicant's parents served in or worked for the Taiwanese Air Force for approximately 20 years. At Department Counsel's request, I amended SOR ¶ 2.a to substitute "six years" for "20 years" to conform to the evidence (Tr. 122-24).

explained that he answered the question in the negative because he thought it applied only to service in the U.S. military.

Taiwan is a multiparty democracy established as a separate, independent government by refugees from mainland China in 1949. It is a major trading partner of the U.S. (Hearing Exhibit (HX) I at 2). It has a long history of cooperation with the U.S. military, including participation in U.S.-sponsored clandestine intelligence missions during the Cold War, in Korea, and in Vietnam (AX F, G, J, K, L). Although Applicant's father served in the Taiwanese Air Force shortly after World War II and worked in civil aviation after his military service, he did not directly participate in Taiwanese-U.S. clandestine missions (Tr. 90).

Until January 1979, the U.S. recognized Taiwan's independence. After that date, the U.S. formally recognized the People's Republic of China (PRC) as the sole legal government of China and adopted a "one China" policy. Taiwan has significant economic contacts with the PRC, but its national security remains under constant threat from the PRC, prompting Taiwan to maintain a large military establishment. Taiwan obtains most of its defensive weapons from the U.S. (Hearing Exhibit (HX I, Enclosure I at 8-9). The Taiwan Relations Act, 22 U.S.C. §§ 3301-3316, is the legal basis for the unofficial relationship between the U.S. and Taiwan and the U.S. commitment to ensuring Taiwan's defensive capability. Taiwan is an active collector of U.S. economic intelligence (HX I at 2, 4-5).

The PRC has an authoritarian government dominated by the Chinese Communist Party. It has a large and increasingly sophisticated military. It is the fourth largest economy in the world, and its primary trading partners include Taiwan and the U.S. (HX I, Enclosure VIII at 9, 13). The U.S. is a primary intelligence target of the PRC, which uses illegal means, including espionage, to steal advanced technology from the U.S. The PRC maintains intelligence operations in Hong Kong, Macau, and Taiwan, using PRC nationals with connections in those locations (HX I at 2-3).

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 occupy a position . . . that will give that person 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 and modified. Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the guidelines. Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, the disqualifying conditions and mitigating conditions under each specific guideline, and the factors listed in the AG ¶¶ 2(a)(1)-(9).

A person granted access to classified information enters into a special relationship with the government. The government must be able to have a high degree of trust and confidence in persons with access to classified information. However, the decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865

§ 7. It 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 which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *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. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. 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).

CONCLUSIONS

Guideline C (Foreign Preference)

The concern under this guideline is as follows: “When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.” AG ¶ 9. A security concern may be raised by “exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen,” including but not limited to military service for a foreign country. AG ¶ 10(a)(2). In this case, Applicant’s military service was mandatory, not voluntary, and it occurred before he emigrated to the U.S. and became a U.S. citizen. The concern under AG ¶ 10(a)(2) is not raised by the evidence. No other disqualifying conditions under this guideline are raised. The security concern under this guideline is resolved in Applicant’s favor.

Guideline B (Foreign Influence)

The concern under this guideline is as follows: “Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.” AG ¶ 6.

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, 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. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). Nevertheless, the nature of a nation’s government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an applicant’s family members are vulnerable to government coercion. 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 U.S.

Two disqualifying conditions under this guideline are relevant to this case. First, a disqualifying condition may be raised by “contact 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). Second, a disqualifying condition may be raised by “connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information.” AG ¶ 7(b). Both conditions are raised by evidence that Applicant’s mother-in-law is a citizen and resident of Taiwan (SOR ¶ 2.b) and evidence of Applicant’s contacts with former classmates who are citizens and residents of Taiwan (SOR ¶ 2.c).

Applicant refuted the allegation in SOR ¶ 2.d that his former classmate is employed at a government-operated university. The evidence shows his classmate works at a private, church-affiliated university. This allegation is resolved in Applicant’s favor.

The service of Applicant’s parents in the Taiwanese Air Force (SOR ¶ 2.a) does not raise any disqualifying conditions under this guideline. AG ¶¶ 7(a) and (b) are not raised, because they are citizens and residents of the U.S., not Taiwan. AG ¶ 7(d) (“sharing 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”) is not raised because Applicant does not live with his parents. AG ¶¶ 7(f) (“failure to report, when required, association with a foreign national”), 7(g) (“unauthorized association with a suspected or known agent, associate, or employee of a foreign intelligence service”), and 7(h) (“indications that representatives or nationals from a foreign country are acting to increase the vulnerability of the individual to possible future exploitation, indecement, manipulation, pressure, or coercion”) are not raised because his parents are not foreign nationals, representatives of a foreign government, or connected with a foreign intelligence service.

Mindful that 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)), I have also considered that there is no contact or connection between Applicant’s parents and his mother-in-law, and his parents have no continuing contacts with former Air Force colleagues or the

Taiwanese government. The record reflects that his parents have severed all contacts with Taiwan and established a new life as U.S. citizens and residents. I resolve SOR ¶ 2.a in Applicant's favor.

Since the government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 7(a) and (b), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15; *see* ISCR Case No. 99-0424, 2001 DOHA LEXIS 59 (App. Bd. Feb. 8, 2001). 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).

Security concerns under this guideline may be mitigated by showing that "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 U.S." AG ¶ 8(a). "[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).

Applicant has minimal contact with his mother-in-law. He met his wife while studying in the U.S., was married in the U.S., and has never returned to Taiwan. His mother-in-law visited him and his spouse on only three special occasions. Applicant has only infrequent courtesy telephone calls with his mother-in-law. I conclude that Applicant has rebutted the presumption that he has ties of affection for his mother-in-law, but he did not address, and therefore has not rebutted, the presumption that he has ties of family obligation.

Applicant's mother-in-law is 75 years old, retired, and unconnected with the Taiwanese government, military, or industries likely to be involved in industrial espionage. His three former classmates are unconnected to the Taiwanese government or military. One is a professor of civil engineering, one is an environmental engineer, and one has pursued a career in the arts. None of his former classmates are involved in high-technology, computer-related businesses. While the PRC is known to collect intelligence through its connections in Taiwan, Applicant's mother-in-law and college classmates are unlikely targets because they are unconnected to the government, military, or high-technology businesses.

Taiwan is not known to abuse its citizens as an intelligence-gathering tool. Taiwan is a close ally, friend, and trading partner of the U.S., and is dependent on the U.S. for its defense. The nature of Taiwan's government, its human rights record, and its relationship with the U.S. are clearly not determinative. Nevertheless, they are all relevant factors in determining whether Taiwan would risk damaging its relationship with the U.S. by exploiting or threatening its private citizens in order to force a U.S. citizen to betray the U.S. After evaluating all the evidence, I conclude the mitigating condition in AG ¶ 8(a) is established.

Security concerns under this guideline also may be mitigated by showing "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(b). While Applicant has some sense of obligation to his mother-

in-law, all his immediate family members are citizens and residents of the U.S. He has resided in the U.S. for 27 years and is deeply involved in pursuing the American dream for himself and his family. I conclude the mitigating condition in AG ¶ 8(b) is established.

Security concerns under this guideline also may be mitigated by showing that “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.” AG ¶ 8(c). Applicant’s contact with his mother-in-law is limited to courteous holiday greetings once or twice a year. Applicant’s contact with two of his classmates was infrequent from the beginning. It was more frequent with a third former classmate, but those contacts have dwindled down to an occasional email. The level of conversation with all three friends has been superficial and does not show the depth of personal interest or involvement sufficient to raise a security concern. *See* ISCR Case No. 04-08870 at 3 n.1) (App. Bd. Nov. 29,2006). I conclude that the mitigating condition in AG ¶ 8(c) is partially established.

Guideline E (Personal Conduct)

The concern under this guideline is as follows: “Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.” AG ¶ 15. The relevant disqualifying condition in this case is “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.” AG ¶ 16(a).

When a falsification allegation is controverted, as in this case, the government has the burden of proving it. An omission, standing alone, does not prove an applicant’s state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant’s state of mind at the time of the omission. *See* ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) (explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

Applicant’s explanation for not disclosing his mandatory military service in the Taiwanese Army was plausible. At the hearing, he was very candid, sincere, and credible. I conclude he has refuted the allegation of intentional falsification, and that no disqualifying conditions under this guideline are raised.

Whole Person Analysis

In addition to considering the specific disqualifying and mitigating conditions under each guideline, I have also considered: (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 applicant’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. AG ¶¶ 2(a)(1)-(9).

Applicant is a mature, well-educated, intensely loyal adult. He cut his ties to Taiwan in 1984, and he never looked back until he decided to check the website of his alma mater and initiated the contacts with former classmates. His conversations with his foreign former classmates have never progressed beyond superficial exchanges.

Applicant's enrollment of his two sons in Chinese classes does not reflect a preference or inclination toward China. Instead, it reflects Applicant's desire to acquaint his sons with China's rich history and culture and prepare them for living in a world where China is a significant political and economic player.

Applicant was very candid, articulate, and sincere at the hearing. He and his entire immediate family have made their lives in the U.S. The likelihood that he would succumb to attempted pressure, coercion, exploitation, or duress is nil.

After weighing the enumerated disqualifying and mitigating conditions, considering the nature of the countries involved, and evaluating all the evidence in the context of the whole person, I conclude Applicant has refuted the allegations under Guidelines C and E, and he has mitigated the security concerns under Guideline B. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to grant him a security clearance.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline C: FOR APPLICANT

Subparagraph 1.a: For Applicant

Paragraph 2. Guideline B:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	For Applicant
Paragraph 3. Guideline E:	FOR APPLICANT
Subparagraph 3.a:	For Applicant

DECISION

In light of all of the circumstances in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Clearance is granted.

LeRoy F. Foreman
Administrative Judge