



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



In the matter of:	)	
	)	
SSN:	)	ISCR Case No. 06-10873
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff A. Nagel, Esquire, Department Counsel  
For Applicant: *Pro Se*

February 24, 2009

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**Decision**  
\_\_\_\_\_

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Security Clearance Application (SCA), on September 30, 2004. On October 23, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines B and C for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on October 23, 2008. He answered the SOR in writing on November 11, 2008, and requested a hearing before an Administrative Judge. DOHA received the request on December 22, 2008, and I received the case assignment on January 5, 2009. DOHA issued a notice of hearing that same day, and I convened the hearing as scheduled on January 22, 2009. The Government offered Exhibits (GXs) 1 through 3, which were received without objection.

Applicant testified on his own behalf. DOHA received the transcript of the hearing (TR) on February 3, 2009. I granted Applicant's request to keep the record open until February 5, 2009, to submit additional matters. On February 2, 2009, he submitted Exhibit A, which the Government forwarded, without objection, on February 23, 2009. The record closed on February 23, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

## **Procedural and Evidentiary Rulings**

### **Request for Administrative Notice**

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Taiwan. The request was granted. The request, and the attached documents, were not admitted into evidence, but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted the factual allegations in all the Subparagraphs of the SOR, with explanations, except for Subparagraph 2.c., which he denied.

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

The Applicant was born in Taiwan in 1975, initially immigrated to the U.S. in 1995, but continued his schooling, college, in Taiwan until 2000 (TR at page 17 line 23 to page 21 line 3, and GX 1 at page 1). After college, he returned to the U.S. to pursue his Masters Degree in 2000 (*Id*). His net worth in the U.S. is at least \$750,000, and his salary is about \$80,000 (TR at page 24 line 3 to page 25 line 10, and at page 28 lines 5~10, see *also* AppX A at pages 22~34).

1.a. The Applicant's parents are citizens of Taiwan (GX 1 at page 3). The Applicant's father is involved in financial planning, and lives six months out of the year in Taiwan and the other six months in the U.S. (TR at page 29 line 24 to page 32 line 12). His father has no connection with the Taiwanese government (*Id*).

The Applicant's mother is a retired accountant, who lives with the Applicant's sister in the U.S. (TR at page 32 line 21 to page 33 line 19). His mother also has no connection with the Taiwanese government (*Id*).

1.b. The Applicant's sister, a dual national with Taiwan, works for a city's government in the U.S. (TR at page 35 lines 4~19).

1.c. and 1.d. Through the Applicant's mother, who uses his name, the Applicant owns about \$87,000 of stock in Taiwanese companies, and has about \$10,000 in a

Taiwanese bank account (TR at page 36 line 3 to page 38 line 6, and at page 38 line 7 to page 39 line 19). Although these accounts are in the Applicant's name, he avers that he has little access to them, and his mother represents that she will "cooperate with . . . [her] son to transfer . . . [her] money out of his accounts in Taiwan and transfer the money to the U.S." (AppX A the last page).

1.e. The Applicant avers that he has transferred Taiwanese real estate, worth about \$128,500, to his father (TR at page 39 line 20 to page 41 line 6). However, despite his representation at his hearing, he has provided no documentation in support of this averment.

### **Guideline C - Foreign Preference**

2.a. and 2.b. After becoming a naturalized U.S. citizen in 2001, the Applicant traveled to Taiwan on five separate occasions, from 2004~2007, using his Taiwanese passport (TR at page 43 line 4 to page 48 line 8, and GX 2). He renewed that passport in December of 2005 (TR at page 48 line 9 to page 49 line 23, and GX 3).

2.c. The Applicant has returned his passport to the Taiwanese "Bureau of Counselor Affairs" (TR at page 49 line 24 to page 51 line 15).

2.d. Having lived "two-thirds" of his life in Taiwan, the Applicant is unwilling to renounce his Taiwanese citizenship (TR at page 52 lines 13~17, at page 54 line 25 to page 57 line 1, and at page 57 line 13 to page 59 line 5). He reiterated this stance several times during his testimony, and in his response to the SOR (*Id*).

I take administrative notice of the following facts: Taiwan has an elected democratic government. It has the 17<sup>th</sup> largest economy in the world and is a leading producer of high-technology goods. It engages in industrial and economic espionage. Proprietary information technology is high on the Taiwanese list of targeted information to be acquired by their agents from foreign governments and business. Although the U.S. now recognizes Taiwan as part of "one-China," it continues to maintain strong unofficial relations with Taiwan.

### **Policies**

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's over-arching adjudicative goal is a fair, impartial and common sense 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 access to classified information will be resolved in favor of 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 applicant or proven by Department Counsel. . . .” The Applicant has the ultimate burden of persuasion as to obtaining 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 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 10865 provides that 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**

Paragraph 6 of the new adjudicative guidelines sets out the security concern relating to Foreign Influence: “Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign 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 a foreign interest.”

Here, Subparagraph 7(a) is applicable: “*contacts with a foreign family member . . . 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.*” The Applicant’s parent’s are Taiwanese Nationals, and his father resides half the year in Taiwan. This is countered, however, by the first mitigating condition, as *“the nature of the relationships with foreign persons, the country in which these persons are located . . . 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 . . . and the interests of the U.S.”* The Applicant’s parents have no connection with the Taiwanese government, his mother resides in the U.S., as does his father for half of the year.

However, the disqualifying condition noted in Subparagraph 7(e) is also applicable: *“a substantial . . . financial or property interest in a foreign country, . . . which could subject the individual to heightened risk of foreign influence or exploitation.”* Despite his mother’s representation to “cooperate with . . . [her] son,” he still owns \$87,000 in Taiwanese stock, has \$10,000 in a Taiwanese bank account, and has failed to demonstrate he has transferred his \$128,500 in real estate to his father. I can find no countervailing mitigating condition.

### **Guideline C - Foreign Preference**

Paragraph 9 of the new adjudicative guidelines sets out the security concern relating to Foreign Preference: “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.”

Here, Subparagraph 10(a)(1) and (5) are applicable. *“exercise of any right, privilege or obligation of a foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to: (1) possession of a current foreign passport; . . . (5) using foreign citizenship to protect financial or business interests in another country.”* Although mitigating condition Paragraph 11(e) is applicable, as the Applicant’s *“passport has been . . . surrendered to the cognizant security authority,”* I can not find that crucial provisions of Paragraph 11(b) are also applicable. In answer to the SOR, and at his hearing, the Applicant repeatedly failed to express *“a willingness to renounce dual citizenship.”* He wishes to retain his Taiwanese citizenship to maintain a connection with the country where he spent two-thirds of his life, and to protect what financial interests he may have in Taiwan.

### **Whole Person Concept**

Under the whole person concept, the Administrative Judge must evaluate an Applicant’s eligibility for a public trust position by considering the totality of the Applicant’s conduct and all the circumstances. The 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) 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 public trust position must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

He has the support of his Product Manager, who has known the Applicant for two years (AppX A at page 21).

I considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. Overall, the record evidence leaves me with questions and doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant not mitigated the trustworthiness concerns arising from his Foreign Influence and Foreign Preference.

### **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:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Paragraph 2, Guideline C:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	Against Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Richard A. Cefola  
Administrative Judge