

KEYWORD: Foreign Influence; Foreign Preference

DIGEST: Applicant is a 51-year-old employee of a defense contractor. She was born in Taiwan, came to the U.S. to further her education in 1979, and became a U.S. citizen in 1993. Applicant has applied to formally renounce her Taiwanese citizenship. Applicant has mitigated the foreign influence concerns raised by her elderly mother in Taiwan. Clearance is granted.

CASENO: 06-14322h1

DATE: 04/30/2007

DATE: April 30, 2007

In re:)	
)	
-----)	
SSN: -----)	ISCR Case No. 06-14322
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
EDWARD W. LOUGHRAN**

APPEARANCES

FOR GOVERNMENT

Caroline H. Jeffreys, Esq., Department Counsel
Francisco Mendez, Esq., Department Counsel

FOR APPLICANT

Sheldon I. Cohen, Esq.

SYNOPSIS

Applicant is a 51-year-old employee of a defense contractor. She was born in Taiwan, came to the U.S. to further her education in 1979, and became a U.S. citizen in 1993. Applicant has applied to formally renounce her Taiwanese citizenship. Applicant has mitigated the foreign influence concerns raised by her elderly mother in Taiwan. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On August 24, 2006, DOHA issued a Statement of Reasons¹ (SOR) detailing the basis for its decision—security concerns raised under Guideline B (Foreign Influence) and Guideline C (Foreign Preference) of the Directive. Applicant answered the SOR in writing on September 23, 2006, and elected to have a hearing before an administrative judge. The case was assigned to me on January 18, 2007. A notice of hearing was issued on February 22, 2007, scheduling the hearing for March 28, 2007. The hearing was conducted as scheduled to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on April 11, 2007.

RULINGS ON PROCEDURE AND EVIDENCE

Applicant submitted a Motion for a Bill of Particulars, requesting notice of the facts that support SOR ¶ 2.a, which alleges Applicant “exercise[s] dual citizenship with Taiwan and the United States.” The Motion was marked as HE XIV. The Government responded with a Motion to Amend the Statement of Reasons, marked as HE XV, moving to delete SOR ¶ 2.b, and modify SOR ¶ 2.a, as follows:

After becoming a naturalized United States citizen in about October 1993, you exercised dual citizenship with Taiwan and the United States by applying for a Taiwanese passport in about May 1996, and then used it to travel to Taiwan.

Applicant did not object to the Motion to Amend the Statement of Reasons, and was satisfied that it answered their Motion for a Bill of Particulars. The Motion to Amend the Statement of Reasons was granted. SOR ¶ 2.a is now as stated above. SOR ¶ 2.b is deleted.

Department Counsel submitted a Motion for Appropriate Relief requesting that Applicant be ordered to disclose her witness list, to include contact numbers, and a summary of their expected testimony. The Motion was marked as HE XVI. Applicant’s response was marked as HE XVII. The motion was denied. Applicant’s Hearing Memorandum was marked as HE XVIII.

The Government offered one exhibit that was marked as Government Exhibit (GE) 1, and admitted without objection.

Department Counsel requested administrative notice be taken of the facts contained in Hearing Exhibit (HE) XIII. The source documents for the facts are U.S. Department of State, Background Note: Taiwan, dated October 2006 (HE I); Congressional Research Service, CRS Report for Congress, Taiwan: Recent Developments and U.S. Policy Choices, updated October 9, 2006 (HE II); Interagency OPSEC Support Staff, Intelligence Threat Handbook, select pages (HE III); Press release, U.S. Department of Justice, dated April 18, 2006 (HE IV); Press release, U.S. Department

¹Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (Directive).

of Justice, dated January 22, 2007 (HE V); Statement of Facts, *United States v. Keyser* (HE VI); National Counterintelligence Center, Annual Report to Congress on Foreign Economic Collection and Industrial Espionage - 2000 (HE VII); U.S. Department of State, Background Note: China, dated January 2007 (HE VIII); U.S. Department of State, Country Reports on Human Rights Practices - 2006: China, dated March 6, 2007 (HE IX); U.S. House of Representatives Select Committee Report, U.S. National Strategy and Military/Commercial Concerns with the People's Republic of China, dated January 3, 1999, select pages (HE X); Office of the National Counterintelligence Executive, Annual Report to Congress on Foreign Economic Collection and Industrial Espionage - 2005 (HE XI); U.S. Department of State, Consular Information Sheet: China, dated September 22, 2006 (HE XII).

I took administrative notice of the facts contained in HE I, II, VI, and VIII though XII, as substantially stated in HE XIII. I did not take administrative notice of the facts contained in HE III, IV, V, and VII. In accordance with ISCR Case No. 03-21434 (App. Bd. Feb. 20, 2007), those exhibits were remarked as Government Exhibits (GE) 2 through 5, and admitted.

Applicant testified and offered 23 exhibits that were marked Applicant Exhibits (AE) A through W. AE I and T were duplicates of HE I and XI, and were withdrawn by Applicant. The remaining 21 exhibits were admitted. GE 6 was offered and admitted.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 51-year-old employee of a defense contractor. She is single with no children. Applicant was born in Taiwan. She received her bachelor's degree in Taiwan in 1978. She came to the United States in 1979, to further her education. She received a Ph.D. from an American university in 1987. Applicant became a U.S. citizen in about October 1993.²

Applicant's father passed away a long time ago. Her mother is 76 years old. She is a citizen and resident of Taiwan. She has an elementary school education, and does not work. Applicant's mother visited Applicant and Applicant's brother in the United States on three occasions, in 1980, when Applicant's niece was born, 1990 or 1991, and 2004 or 2005. Applicant has not seen her mother since that trip. She talks to her mother about twice a month. Applicant would like her mother to immigrate to the U.S., but her mother has decided to remain in Taiwan.³

Applicant's only sibling is a citizen and resident of the United States. He received a Master of Science degree in engineering from a U.S. university. He came to the U.S. before Applicant, and

²Tr. at 142-143, 179; GE 1.

³Tr. at 148-150, 167-168; Applicant's response to SOR; GE 1 at 16-22.

became a U.S. citizen before her, in 1990. He is married with two adult children. His wife is a U.S. citizen. Both of his children were born in the United States.⁴

Applicant's brother inherited the family house in Taiwan from his grandparents more than 30 years ago. At that time only male children could inherit property. An old house was on the property. The house was torn down and a four apartment building was constructed. Two apartments were sold to finance the construction. Applicant's mother lives in one of the remaining apartments. She lives off the rent from the fourth apartment. She does not earn a pension from the government of Taiwan. Applicant's brother sends their mother about \$3,000 per year to supplement her income. Applicant sends her about \$500 per year.⁵

Applicant obtained a Taiwanese passport in about May 1996. She obtained the passport so that she could travel to Taiwan for more than two weeks if her mother became ill. Her mother was frequently ill and had an operation, but did not inform Applicant or her brother. Applicant later discovered that she could also travel for longer than two weeks with her U.S. passport. She never used the Taiwanese passport, and did not renew it after it expired in 2002. She traveled to Taiwan in 2000 and 2002. She used her U.S. passport when she traveled to Taiwan on both occasions. She obtained a visa from Taiwan for the 2002 trip. The visa authorized her to stay in Taiwan for 60 days, with multiple entries.⁶

Applicant has applied to renounce her Taiwanese citizenship. Additional forms and documents are being obtained from Applicant's mother in order to process the application. Applicant attempted to return her expired Taiwanese passport to the Taiwan government, but they refused to take it until all the documents are received. Once she receives all the documents, Applicant will submit the documents and her expired passport to Taiwanese authorities.⁷

Applicant does not own any foreign property or assets. She owns her house in the United States, and her net worth is approximately \$500,000.⁸

Applicant has worked as an engineer for several employers. A former supervisor, who testified on Applicant's behalf, described her as honest, hard-working, and reliable.⁹ Applicant and the Government both introduced copies of the report of Applicant's background investigation. There was nothing derogatory in the report. Friends, associates and co-workers all spoke very highly of

⁴Tr. at 148-149; GE 1 at 16-22.

⁵Tr. at 166-167; AE B.

⁶Tr. at 152-156; AE D, E.

⁷Tr. at 156-163; AE V, W.

⁸Tr. at 151, 178-179; AE B.

⁹Tr. at 63-70.

her.¹⁰ Appellant is very active in her religious community. One of the members of Applicant's religious community has a child with a learning disability. Applicant volunteered to assist in teaching the child. The mother testified that Applicant is honest, enthusiastic, reliable, and a good person.¹¹ Other witnesses stated Applicant was a person of integrity, a mentor, a role model, dedicated, and a good friend who treats people with kindness and honesty.¹²

In 1949, Taiwan was populated by refugees fleeing a civil war in China. That same year, Communists in mainland China established the People's Republic of China (PRC), and a separate, independent government was established in Taiwan. The PRC does not recognize Taiwan, and insists there is only "one China."¹³

Taiwan is a multi-part democracy. Through nearly five decades of hard work and sound economic management, Taiwan has transformed itself from an underdeveloped, agricultural island to an economic power that is a leading producer of high-technology goods.¹⁴

On January 1, 1979, the United States formally recognized the PRC as the sole legal government of China. The U.S. also announced that it would maintain cultural, commercial, and other unofficial relations with the people on Taiwan. The Taiwan Relations Act (TRA) signed into law on April 10, 1979, created the legal authority for the conduct of unofficial relations with Taiwan. The American Institute in Taiwan, a private nonprofit corporation with offices in Taiwan, is authorized to issue visas, accept passport applications, and provide assistance to U.S. citizens in Taiwan. A counterpart organization was established by Taiwan. It has multiple offices in the U.S.¹⁵

Maintaining strong, unofficial relations with Taiwan is a major U.S. goal. The U.S. does not support Taiwan independence, but it does support Taiwan's membership in appropriate international organizations such as the World Trade Organization (WTO), which it accessed in 2002, Asia-Pacific Economic Cooperation (APEC) forum, and the Asian Development Bank. In addition, the U.S. supports appropriate opportunities for Taiwan's voice to be heard in organizations where its membership is not possible.¹⁶

The TRA enshrines the U.S. commitment to assisting Taiwan maintain its defensive capability. The U.S. continues to sell appropriate defensive military equipment to Taiwan, in accordance with the TRA. President Bush publicly stated in 2001 that the United States would do "whatever it takes" to help Taiwan's defense and approved a substantial sale of U.S. weapons to Taiwan, including destroyers, anti-submarine aircraft, and diesel submarines. The White House also

¹⁰GE 6; AE F.

¹¹Tr. at 85-102.

¹²Tr. at 109-110, 122-124, 137-138.

¹³HE I at 3, 6.

¹⁴*Id.* at 1, 7.

¹⁵*Id.* at 8-9.

¹⁶*Id.* at 9.

was more accommodating to visits from Taiwan’s officials than previous U.S. Administrations, and permitted visits from Taiwan’s president in 2001 and 2003, and Taiwan’s vice president and defense minister in 2002.¹⁷

Since then, there have been changes in U.S.-Taiwan relations. Taiwan’s new president disavowed key concepts long embraced by the opposing party - the “status quo” that there is only one China and Taiwan is part of it - and instead has adopted the more provocative position that Taiwan already “is an independent, sovereign country,” a “status quo” he promises to maintain. There was also a series of recent corruption scandals.¹⁸

In response to Taiwan’s political developments, the Administration appears to have dialed back its earlier enthusiasm for supporting Taiwan’s initiatives. While still pursuing a close relationship with Taiwan, U.S. officials now appear to be balancing criticisms of the PRC military buildup opposite Taiwan with periodic cautions and warnings to the effect that U.S. support for Taiwan is not unconditional, but has limits.¹⁹

China is a large and economically powerful country, with a population of over a billion people and an economy growing at about 10% per year. China has an authoritarian government, dominated by the Chinese Communist Party. China has a poor record with respect to human rights, suppresses political dissent, and its practices include arbitrary arrest and detention, forced confessions, torture, and mistreatment of prisoners.²⁰

Both China and Taiwan are known to be active collectors of U.S. economic intelligence. The PRC also maintains intelligence operations in Taiwan.²¹

POLICIES

“[N]o one has a ‘right’ to a security clearance.”²² 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.”²³ The President 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

¹⁷HE II at 2.

¹⁸*Id.*

¹⁹*Id.*

²⁰HE VIII, IX, X, XII.

²¹HE IV, XI, GE 2-5.

²²*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

²³*Id.* at 527.

consistent with the national interest to do so.”²⁴ An applicant has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance. The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.²⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.²⁶ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.²⁷

The Directive sets forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the adjudicative process factors listed in ¶ 6.3 and ¶ E2.2.1 of the Directive.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guidelines are set forth and discussed in the conclusions section below.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Guideline B, Foreign Influence

A security risk may exist when an individual’s immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Foreign Influence Disqualifying Condition (FI DC) E2.A2.1.2.1 (*An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of,*

²⁴Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

²⁵ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

²⁶*Id.*; Directive, ¶ E2.2.2.

²⁷Exec. Or. 10865 § 7.

or resident or present in, a foreign country) applies. Applicant's mother is a citizen and resident of Taiwan.

Since the government produced substantial evidence to establish FI DC E2.A2.1.2.1, the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate security concerns raised by these facts. Applicant has the burden of proving mitigation, and the burden of disproving it is never shifted to the government.²⁸

I considered all the Foreign Influence Mitigating Conditions (FI MC), and especially FI MC E2.A2.1.3.1 (*A determination that the immediate family member(s), (spouse, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States*) and FI MC E2.A2.1.3.3 (*Contact and correspondence with foreign citizens are casual and infrequent*).

Notwithstanding the facially disjunctive language of FI MC E2.A2.1.3.1 ("agents of a foreign power or in a position to be exploited"), it requires proof that an applicant's family member(s), cohabitant(s), or associate(s) in question are (a) not agents of a foreign power, and (b) not in a position to be exploited by a foreign power in a way that could force the applicant to choose between the person(s) involved and the United States.²⁹

Applicant's mother has no association with the government of Taiwan, and is not an agent of a foreign power. In determining the second prong of FI MC E2.A2.1.3.1, I specifically considered the nature of the government of Taiwan, as discussed above, and the risk of espionage. Because of Taiwan's intelligence operations, I am unable to totally apply FI MC E2.A2.1.3.1.

FI MC E2.A2.1.3.3 does not apply because Applicant's contacts with her mother are not casual or infrequent.

Guideline C, 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.

Based on all the evidence, Foreign Preference Disqualifying Condition (FP DC) E2.A3.1.2.1 (*The exercise of dual citizenship*) and FP DC E2.A3.1.2.2 (*Possession and/or use of a foreign passport*) apply in this case. Applicant obtained and used a Taiwanese passport after becoming a U.S. citizen. This constitutes an exercise of her Taiwanese citizenship.

I have considered all the Foreign Preference Mitigating Conditions (FP MC), and I especially considered FP MC E2.A3.1.3.1 (*Dual citizenship is based solely on parents' citizenship or birth in a foreign country*) and FP MC E2.A3.1.3.4 (*The individual has expressed a willingness to renounce*

²⁸Directive ¶ E3.1.15; ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

²⁹ISCR Case No. 02-14995 (App. Bd. Jul. 26, 2004).

dual citizenship). I do not find FP MC E2.A3.1.3.1 totally applicable. Applicant actively exercised her dual citizenship by using a Taiwanese passport after becoming a U.S. citizen. FP MC E2.A3.1.3.4 is applicable. Applicant has not only expressed a willingness to renounce dual citizenship; she has formally begun the process to renounce her Taiwanese citizenship.

Whole Person Analysis

The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. In evaluating Applicant's case, I have considered the adjudicative process factors listed in the Directive. I have also considered every finding of fact and conclusion discussed above.

Applicant was born in Taiwan, but followed her only brother to the United States in 1979, to further her education. She remained and became a U.S. citizen in 1993. She obtained a Taiwanese passport in 1996, thinking it would assist if she had to go to Taiwan should her mother become ill. She realized she did not need a Taiwanese passport, never actually used it, and did not renew it after it expired in 2002. She has taken steps to formally renounce her Taiwanese citizenship.

Applicant's only remaining connection to Taiwan is her elderly mother. Applicant would like her mother to immigrate to the U.S. Her mother is set in her ways and chooses to remain in Taiwan. She lives off the rent from the apartment owned by Applicant's brother, with some assistance from Applicant and her brother.

Applicant's brother and his wife are U.S. citizens and their two adult children were born here. Like Applicant, he is a successful engineer. Applicant has close ties to her community, particularly through her religious activities. She has substantial assets in the U.S., including her home. She is highly regarded in her community and the workplace.

Taiwan is an ally of the United States. However, 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."³⁰ The distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly.

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. 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

³⁰ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

associated with or dependent upon the government, or the country is known to conduct intelligence operations against the U.S.

China has an authoritarian government, a bad human rights record, and has a very aggressive espionage program. The U.S. officially supports the “one China” policy. However, to treat China and Taiwan the same is to ignore reality. They currently function as separate entities. That is not to say that China is irrelevant to this case. China conducts intelligence operations in Taiwan. The threat to Taiwan from China is real. It is this threat that is the impetus to Taiwan’s defense spending. It also provides motivation for Taiwan’s intelligence gathering. The threat from China also provides motivation for Taiwan to keep the U.S. as a friend, as it is dependent on the U.S. for its arms and defense.

Taiwan is a democracy, does not have a poor human rights record, and is dependent upon the United States for arms, as well as its defense against China. Taiwan is known to conduct intelligence operations against the United States, but there is no indication that Taiwan utilizes coercion against its citizens for espionage purposes. Many of our allies conduct intelligence gathering against the U.S. Taiwan would be risking a great deal by raising the stakes, and attempting to use duress against one of its citizens in an attempt to coerce a U.S. citizen to commit espionage. Applicant’s mother is also not a good candidate for coercion. She is not dependent upon the government of Taiwan. She is stubborn. She did not inform Applicant or her brother that she had an operation, because she did not want to bother them. Applicant has established that her mother in Taiwan does not create a heightened risk of foreign pressure, coercion, exploitation, or duress. It is extremely unlikely that Applicant would ever have to choose between the interests of her mother or Taiwan, and the interests of the U.S.

After weighing the disqualifying and mitigating conditions and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on foreign influence and foreign preference.

FORMAL FINDINGS

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

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Paragraph 2. Guideline C: FOR APPLICANT

Subparagraph 2.a: For Applicant

DECISION

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

Edward W. Loughran
Administrative Judge