

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: The government's evidence failed to establish that Applicant was at heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion because of her limited family connections to Taiwan. She also established a clear preference for the U.S. Clearance granted.

CASENO: 06-22258.h1

DATE: 09/28/2007

DATE: September 28, 2007

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 In Re: )  
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 SSN: ----- )  
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 Applicant for Security Clearance )  
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ISCR Case No. 06-22258

**DECISION OF ADMINISTRATIVE JUDGE  
JOHN GRATTAN METZ, JR**

**APPEARANCES**

**FOR GOVERNMENT**

Emilio Jaksetic, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

\_\_\_\_\_The government's evidence failed to establish that Applicant was at heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion because of her limited family connections to Taiwan. She also established a clear preference for the U.S. Clearance granted.

### **STATEMENT OF THE CASE**

Applicant challenges the 16 April 2007 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of her clearance because of unresolved foreign preference and foreign influence concerns.<sup>1</sup> On 8 May 2007, she answered the SOR and requested a hearing. DOHA assigned the case to me 12 July 2007 and I convened a hearing 30 August 2007. DOHA received the transcript (Tr.) 12 September 2007.

### **PROCEDURAL ISSUES**

At hearing, Department Counsel conceded that the record evidence produced by Applicant in her Answer and at her hearing demonstrated that, while the government had a good faith basis for allegation 1.b., the allegation was ultimately refuted by unequivocal evidence. Accordingly, I find allegation 1.b. for Applicant.

### **FINDINGS OF FACT**

Applicant admitted the allegations of the SOR, except for SOR, 1.b. Accordingly, I incorporate her admissions as findings of fact. She is a 51-year-old assistant facility security officer for a defense contractor, and seeks reinstatement of the interim clearance she held without incident from approximately 2004 until January 2007.

Applicant was born in the Republic of China (Taiwan) in March 1956. She grew up there and was educated there. She married in August 1979, and she and her husband immigrated to the U.S. in 1980. They had a daughter in September 1985, and a son in November 1987, both native-born U.S. citizens. Applicant became a naturalized U.S. citizen in October 1987. Her husband had also become a naturalized U.S. citizen, but he died in March 1993. All of Applicant's financial interests are in the U.S. She has no intent to return to Taiwan to live.

Applicant obtained her first U.S. passport in February 1988. She renewed it in May 1998. In 1996, Applicant learned from a friend that Taiwan was changing the format for its passports. Without thinking about the fact that, as a U.S. citizen, she no longer needed a Taiwanese passport,<sup>2</sup> she re-applied for a Taiwanese passport in February 1996. She never used this passport to travel or

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<sup>1</sup>Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated 2 January 1992—as amended and modified, most recently in August 2006 (Directive).

<sup>2</sup>Until her naturalization as a U.S. citizen in October 1987, Applicant was required by U.S. law to maintain a valid Taiwanese passport. There is no evidence in the record to indicate whether that passport, or a required replacement, was still valid in 1996, when the format change precipitated Applicant's action in renewing her Taiwanese passport.

for any other purpose. All her foreign travel—including her return trips to Taiwan—have been on her U.S. passports. She use her U.S. passport, with appropriate Taiwanese visas, to travel there in 2000 and 2007. Her Taiwanese passport expired in February 2002. She has no intent to renew it.

Applicant's parents are citizens and residents of Taiwan. Now 80 and 71 years old, they are retired from jobs that were not connected to the government of Taiwan. They are financially independent, and live on their own. Applicant provides no financial support. She contacts them occasionally to see how they are doing and check on their health. However, in Chinese culture, the ultimate responsibility for caring for her parents resides with her brother.

Applicant is the oldest of four children. Her next oldest sister resides in the U.S. and is in the process of obtaining her U.S. citizenship. She has a brother and sister who are citizens and residents of Taiwan. Her brother works for a retail chain store, and her sister is a homemaker who helps her husband in their gift shop. These employments are not connected to the government of Taiwan. Applicant's siblings are financially independent, and receive no financial support from her. She has infrequent contact with them.

Taiwan is a multiparty democracy, whose authorities generally respect the human rights of its citizens. While Taiwan is an active collector of industrial information and engages in industrial espionage, the record does not demonstrate that the government of Taiwan targets U.S. intelligence information. Further, the record does not demonstrate that it seeks to exert pressure on its citizens to collect information from family members residing in country or abroad.

One of Applicant's former supervisors ( the company facility security officer) testified how extremely trustworthy she found her over the more-than-five years she supervised her, a sentiment that was echoed in her character references from her current employer (A.E. C). In addition, she has never had a security violation.

### **POLICIES AND BURDENS**

The Revised Adjudicative Guidelines list factors to be considered in evaluating an applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guidelines are Guideline C (Foreign Preference) and Guideline B (Foreign Influence).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute,

extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.<sup>3</sup>

## CONCLUSIONS

The government established a case for disqualification under Guideline C by showing that Applicant obtained a Taiwanese passport in February 1996, despite becoming a naturalized U.S. citizen in October 1987.<sup>4</sup> However, Applicant mitigated the Guideline C security concerns. Although she has been a dual citizen of Taiwan and the United States since her birth, her Taiwanese citizenship has little security significance because it is based solely on her parents' citizenship.<sup>5</sup> For her conduct to fall within the security concerns of Guideline C, she must have acted in a way to indicate a preference for a foreign nation over the United States. However, inimical intent or detrimental impact on the interests of the United States is not required before the government can seek to deny access under Guideline C. The government has a compelling interest in ensuring those entrusted with this nation's secrets will make decisions free of concerns for the foreign country of which they may also be a citizen.

Applicant's active exercise of dual citizenship after becoming a naturalized U.S. citizen was done deliberately, but unwittingly. She was not aware of any prohibition on holding a foreign passport. Indeed, there is no such proscription except in the context of clearance adjudications. She never used the passport for any purpose. She has expressed a willingness to surrender the passport, and in any event, the passport expired over five years ago.<sup>6</sup> Further, given her work performance while holding an interim clearance from 2004 to January 2007, she demonstrated that she can be counted on to always act in preference to the United States. I resolve Guideline C for Applicant.

Under Guideline B (Foreign Influence), an applicant's foreign contacts and interests may raise security concerns if the individual 1) has divided loyalties or foreign financial interests, 2) may

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<sup>3</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>4</sup>Revised Adjudicative Guidelines, ¶ 10.(a) exercise of any right, privilege, or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This included but is not limited to: (1) possession of a current foreign passport; (b) action to acquire or obtain recognition of a foreign citizenship by an American citizen;

<sup>5</sup>Revised Adjudicative Guidelines, ¶ 11.(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

<sup>6</sup>¶ 11.(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated;

be manipulated or induced to help a foreign person, group, organization, or government in a way contrary to U.S. interests, or 3) is vulnerable to pressure or coercion by any foreign interest. Foreign influence adjudications 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, whether the country is known to target U.S. citizens to obtain protected information and/or is associated with a risk of terrorism.<sup>7</sup> Evaluation of an individual’s qualifications for access to protected information requires careful assessment of both the foreign entity’s willingness and ability to target protected information, and to target ex-patriots who are U.S. citizens to obtain that information, and the individual’s susceptibility to influence, whether negative or positive. More specifically, an individual’s contacts with foreign family members (or other foreign entities or persons) raise security concerns only if those contacts create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.<sup>8</sup>

In this case, the government failed to establish a case for disqualification under Guideline B. Considering first the country involved, Taiwan and the U.S. enjoy excellent foreign relations. Taiwan has not been demonstrated to target protected U.S. information, nor has it been demonstrated to target U.S. citizens to obtain protected information. The risk that Taiwan might seek protected information from Applicant is low, if not non-existent.

Considering Applicant’s circumstances, the government produced no evidence that there was a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion because of Applicant’s limited family contacts in Taiwan. Applicant has resided in the U.S. longer than she lived in Taiwan. Her financial and most important family connections are all in the U.S. Her contacts with her parents and siblings are minimal. There is nothing in the circumstances of their being in Taiwan, or in Applicant’s contacts with them, to heighten the risk that she could be impelled or compelled to provide protected information to Taiwan. I resolve Guideline B for Applicant.

### **FORMAL FINDINGS**

#### Paragraph 1. Guideline C: FOR APPLICANT

Subparagraph a:	For Applicant
Subparagraph b:	For Applicant

#### Paragraph 2. Guideline B: FOR APPLICANT

Subparagraph a:	For Applicant
Subparagraph b:	For Applicant
Subparagraph c:	For Applicant

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<sup>7</sup>Revised Adjudicative Guidelines, ¶ 6.

<sup>8</sup>Revised Adjudicative Guidelines, ¶ 7.(a).

**DECISION**

In light of all 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 granted.

**John G. Metz, Jr.**  
**Administrative Judge**