

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Applicant was born in Taiwan of Taiwanese parents. She came to the U.S. with her family about 10 years ago, when she was 15 years old. She completed high school, college, and graduate school in the U.S. She is engaged to a native-born U.S. citizen. She surrendered her Taiwanese passport when she learned it raised security issues, and she has stated her willingness to renounce her Taiwanese citizenship. Her parents are permanent U.S. residents, but they have temporarily returned to Taiwan to care for an elderly parent. They intend to live permanently in the U.S. as soon as they are no longer needed in Taiwan. Applicant has mitigated the security concerns based on foreign preference and foreign influence. Clearance is granted.

CASENO: 06-23076.h1

DATE: 04/06/2007

DATE: April 6, 2007

_____)
 In re:)
)
 -----) ISCR Case No. 06-23076
 SSN: -----)
)
 Applicant for Security Clearance)
 _____)

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

APPEARANCES

FOR GOVERNMENT

Stephanie C. Hess, Esq., Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

Applicant was born in Taiwan of Taiwanese parents. She came to the U.S. with her family about 10 years ago, when she was 15 years old. She completed high school, college, and graduate school in the U.S. She is engaged to a native-born U.S. citizen. She surrendered her Taiwanese passport when she learned it raised security issues, and she has stated her willingness to renounce her Taiwanese citizenship. Her parents are permanent U.S. residents, but they have temporarily returned to Taiwan to care for an elderly parent. They intend to live permanently in the U.S. as soon as they are no longer needed in Taiwan. Applicant has mitigated the security concerns based on foreign preference and foreign influence. Clearance is granted.

STATEMENT OF THE CASE

On November 16, 2006, 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 approved by the President on December 29, 2005, and implemented by the Department of Defense on August 30, 2006 (Guidelines). The SOR alleged security concerns raised under Guideline C (Foreign Preference) and Guideline B (Foreign Influence).

Applicant answered the SOR in writing on December 11, 2006, and elected to have a hearing before an administrative judge. The case was assigned to me on February 21, 2007, and heard on March 13, 2007, as scheduled. DOHA received the hearing transcript (Tr.) on March 23, 2007.

FINDINGS OF FACT

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

Applicant is a 25-year-old graduate research assistant at a university, working on federal research contracts. She was born in Taiwan, Republic of China, and came to the U.S. with her family when she was 15 years old. She attended high school, college, and graduate school in the U.S. She holds bachelor's and master's degrees in computer science (Tr. 5). She became a U.S. citizen in July 2002. She has never held a security clearance.

Applicant's parents are citizens of Taiwan, temporarily residing in Taiwan. They immigrated to the U.S. in 1996 and have become permanent U.S. residents. They retired while Applicant was in high school, bought a home in the U.S., and lived with Applicant while she attended high school (Tr. 50). Applicant's father owned a medical supply company until he retired, and her mother worked for the telephone company (Tr. 61). When her mother retired, she received her pension in a lump sum (Tr. 62). They have no connections to the government of Taiwan. They are financially secure, live on their savings, and do not depend on the government of Taiwan for any benefits. They have no business ties in Taiwan (Tr. 50).

Applicant's parents returned to Taiwan in 1999 (Tr. 59) to care for aging parents, of which only one is still living. It was a difficult decision for her parents to return to Taiwan (Tr. 60). They intend to return to the U.S. when they are no longer needed to care for the sole surviving parent (Tr. 51). One of Applicant's grandfathers was a doctor and the other was a merchant. Both grandmothers were housewives (Tr. 65).

Applicant's aunt and two uncles live in the U.S. She also has one aunt in Taiwan, with whom she has no contact (Tr. 64-65).

Applicant holds dual U.S.-Taiwanese citizenship by virtue of being born in Taiwan of Taiwanese parents (Tr. 48). She stated in her answer to the SOR and at the hearing that she is willing to renounce her Taiwanese citizenship (Tr. 48). She testified that the U.S. is her home and her “only country,” where she plans to live for the rest of her life (Tr. 55). She has not yet formally renounced her Taiwanese citizenship, because it requires that she gather a number of documents and personally appear before a government official in Taiwan (Tr. 56-57).

Between June 1998 and December 2004, while she was a student, Applicant traveled to Taiwan during school breaks to visit her parents and to visit other countries in the Far East. Now that she is employed full-time and engaged to be married, she spends her free time in the U.S. with her fiancé (Tr. 52). She traveled to Taiwan once since completing her education, accompanied by her fiancé, to have professional wedding photographs taken in accordance with Taiwanese custom (Tr. 52). Although Applicant and her fiancé traveled to Taiwan for the traditional formal wedding photographs, they intend to be married in the U.S., contrary to Taiwanese tradition. Applicant’s parents intend to come to the U.S. for the wedding (Tr. 62-63).

Applicant’s Taiwanese passport was renewed in December 2001, before she became a U.S. citizen. She used her Taiwanese passport until December 2003, even after she became a U.S. citizen. She was a student on limited income and used her Taiwanese passport to avoid the cost of obtaining a visa (Tr. 49). However, when she learned her possession and use of a Taiwanese passport raised security concerns, she surrendered it (Applicant’s Exhibit (AX) A; Tr. 49).

Applicant traveled to the Peoples Republic of China (PRC) in May 2006 with her fiancé, a U.S. citizen who works for the same employer, when he was invited to participate in an international software conference. Her fiancé does not speak Chinese, and she accompanied him to be his translator, because she “doesn’t trust those Chinese at all” (Tr. 52). She regards the Chinese as unfriendly and hostile to all foreigners. Even though she speaks fluent Chinese, they regarded her as foreign because of her different accent (Tr. 66). In accordance with their employer’s policy on foreign travel, they both reported their planned travel to China beforehand and filed debriefing reports afterwards (AX B and C; Tr. 53). Applicant’s debriefing report reflects that no incidents or foreign contacts of security interest occurred during the trip.

Applicant’s supervisor for the past nine months testified on her behalf. He testified that she has been entrusted with sensitive, non-classified materials and has done a “great job.” He regards her as loyal and hard working (Tr. 70-71). She has done nothing to cause him to doubt her loyalty or reliability (Tr. 73).

Applicant’s fiancé testified he has known her since 1999, when they both started college (Tr. 76). He is now a Ph.D. candidate. He and his professor attended a “highly prestigious” international software engineering conference in China, and Applicant accompanied him to be his translator (Tr. 77). He testified Applicant is very independent and very trustworthy. He was with Applicant when she obtained her U.S. citizenship, and he described it as a very happy occasion because she could now feel “like she really belonged here and she had her freedom.” (Tr. 79.)

I granted Department Counsel’s request to take administrative notice of adjudicative facts about Taiwan and the PRC (Tr 40). The request, including the 12 enclosures documenting the facts to be noticed, is incorporated in the record as Hearing Exhibit I. At my direction, Department

Counsel submitted one additional document after the hearing to update the basis for administrative notice. The additional document is included in the record as Hearing Exhibit II.

Taiwan is a multiparty democracy, established as a separate, independent government by refugees from mainland China in 1949. The People's Republic of China (PRC) does not recognize Taiwan's independence and insists there is only one China. The U.S. recognized Taiwan as an independent government until January 1979, when it formally recognized the PRC government as the sole legal government of China. Taiwan maintains a large military establishment to protect itself from the PRC. It is an active collector of U.S. economic intelligence.

The PRC has an authoritarian government dominated by the Communist Party. It has a poor human rights record. It has large and increasingly sophisticated military forces. The U.S. and the PRC have been rivals since the Cold War, with particular disagreement on the status of Taiwan. Despite political disagreements, the U.S. and the PRC have become major economic and trading partners. The PRC aggressively targets sensitive and protected U.S. technology and military information, using worldwide intelligence operations, including those in Taiwan. U.S. citizens of Chinese ancestry are considered prime intelligence targets. Travelers to the PRC can expect to be placed under surveillance, with their hotel rooms, telephones, and fax machines monitored and personal possessions, including computers, searched without their knowledge or consent.

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 Guidelines ¶¶ 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* Guidelines ¶ 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." Guidelines ¶ 9. A disqualifying condition may arise from "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," including but not limited to "possession of a current foreign passport." Guidelines ¶ 10(a)(1). This disqualifying condition was raised by Applicant's possession and use of a Taiwanese passport.

Since the government produced substantial evidence to raise the disqualifying condition in Guideline ¶10(a)(1), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. Applicant has the burden of proving a mitigating condition, and the burden of disproving it is never shifted 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 evidence that "dual citizenship is based solely on parents' citizenship or birth in a foreign country." Guidelines ¶ 11(a). Applicant did not actively seek Taiwanese citizenship, but holds it solely because she was born in Taiwan of Taiwanese parents. She applied for and received U.S. citizenship in 2002. I conclude this mitigating condition is established.

Security concerns under this guideline also may be mitigated by if "the individual has expressed a willingness to renounce dual citizenship." Guidelines ¶ 11(b). This mitigating condition is established because Applicant expressed her willingness to renounce her Taiwanese citizenship in her answer to the SOR and again at the hearing.

Security concerns may be mitigated by showing that "exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor." Guidelines ¶ 11(c). This mitigating condition is only partly established. Applicant used her Taiwanese passport several times before becoming a U.S. citizen, but she

continued to use it until December 2003, even though her 21st birthday was in June 2002 and she became a U.S. citizen in July 2002.

Finally, security concerns based on possession or use of a foreign passport may be mitigated if “the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.” Guidelines ¶ 11(e). This mitigating condition was established by Applicant’s surrender of her Taiwanese passport.

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.” Guidelines ¶ 6.

A disqualifying condition under this guideline 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.” Guidelines ¶ 7(a). A disqualifying condition also 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.” Guidelines ¶ 7(b).

Both disqualifying conditions are raised in this case. By residing in Taiwan, Applicant’s parents have created a heightened risk of exploitation, inducement, manipulation, pressure, or coercion by governmental and non-governmental agents acting on behalf of the Taiwanese government, PRC government, or non-governmental business agents in Taiwan or the PRC. Thus, the disqualifying condition in Guidelines ¶ 7(a) is raised. Furthermore, Applicant remains close to her parents, and a potential conflict of interest may be raised by Applicant’s desire to protect her parents or relieve them from exploitation, inducement, manipulation, pressure, or coercion by providing them or foreign agents with sensitive information or technology. Thus, the disqualifying condition in Guidelines ¶ 7(b) is also raised.

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.” Guidelines ¶ 8(a). 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).

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.

Taiwan is a democracy with close ties to the U.S. It is unlikely it 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. Neither of Applicant’s parents worked in a high-technology or scientific business. They have no connections with the Taiwanese government and no business connections that would make them amenable to participating in industrial espionage. Her parents returned to Taiwan out of family necessity, not choice. They are financially independent. Their loyalties and many family ties are in the U.S.

Applicant’s parents do not live under the control of the repressive PRC government. Although they are vulnerable to efforts by PRC agents operating in Taiwan to exploit them, their vulnerability in Taiwan is not appreciably different than it would be in the U.S. I conclude the mitigating condition in Guideline ¶ 8(a) is established.

Security concerns under this guideline also may be mitigated by show that “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.” Guidelines ¶ 8(b). Applicant has deep loyalty and a sense of obligation to her parents, but she is also fiercely independent. Both she and her parents have only minimal loyalty to Taiwan and no loyalty whatsoever to the PRC. Applicant’s future is in the U.S. with her U.S.-born fiance. She was educated in the U.S., has strong loyalty to the U.S., and has longstanding family connections in the U.S. I conclude this mitigating condition is established.

Applicant’s travel to Taiwan was a manifestation of her devotion to her parents, but it has no other independent security significance. Her travel to the PRC was solely in connection with her fiance’s employment. No incidents of security significance occurred during this trip. Security concerns based on foreign contacts can be mitigated by evidence that “the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country.” Guidelines ¶ 8(e). Applicant and

her fiance complied with their employer's reporting and debriefing requirements, thereby establishing this mitigating condition.

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. Guidelines ¶¶ 2(a)(1)-(9). Many of these factors are incorporated in the above discussions of Guidelines B and C, but some merit additional comment.

Applicant grew from adolescence to adulthood in the U.S. She is fiercely independent and has strong emotional ties to the U.S. She was articulate, sincere, and very credible during the hearing. She has done everything reasonably possible to demonstrate her sincerity and reliability. She has demonstrated that both she and her parents would strongly resist any effort by Taiwanese or PRC operatives to exploit or influence her.

After weighing the disqualifying and mitigating conditions under Guidelines C and B, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on foreign preference and foreign influence. Accordingly, I conclude she has carried her burden of showing that it is clearly consistent with the national interest to grant her 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
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant

Paragraph 2. Guideline B:

FOR APPLICANT

Subparagraph 2.a:

For Applicant

Subparagraph 2.b:

For Applicant

Subparagraph 2.c:

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