



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



In the matter of: )  
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Applicant for Security Clearance )

ISCR Case No. 13-01093

**Appearances**

For Government: David F. Hayes, Esq., Department Counsel  
For Applicant: Laura J. Baker, Esq.

05/30/2014

**Decision**

LYNCH, Noreen A., Administrative Judge:

This case involves security concerns raised under Guideline B (Foreign Influence). Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application on February 28, 2013. On November 20, 2013, the Department of Defense (DOD) sent her a Statement of Reasons (SOR) citing security concerns under Guideline B (Foreign Influence). DOD acted 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 adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant received the SOR and timely requested a hearing before an administrative judge. The case was assigned to me on February 28, 2014. A notice of hearing was issued on March 10, 2014, scheduling the hearing for March 27, 2014. The hearing was postponed for good cause and rescheduled for April 24, 2014.

Government Exhibits (GX) 1 and 2 were admitted in evidence without objection. Applicant testified, presented the testimony of two witnesses, and submitted Applicant Exhibits (AX) A-P, which were admitted without objection. DOHA received the transcript (Tr.) on May 2, 2014.

### **Administrative Notice**

Department Counsel requested that I take administrative notice of relevant facts about the People's Republic of China (PRC) and Taiwan. The request and supporting documents are attached to the record as HX I. Applicant also presented administrative notice and supporting documents. (HX II) I admitted the documents into the record and took administrative notice as requested by Department Counsel and Applicant. The facts administratively noticed are set out below in my findings of fact.

### **Findings of Fact**

In her answer to the SOR, Applicant admitted the factual allegations in the SOR under Guideline B and offered explanations. She provided additional information to support her case. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant was born and educated in Taiwan, receiving a university degree. Applicant came to the United States 33 years ago (1979), and became a naturalized U.S. citizen in September 1981. In December 1980, she married an American citizen who worked abroad in various locations. She accompanied him and lived in Taiwan, Moscow, Pakistan, Spain, and China. They are now divorced. Applicant received another degree from a U.S. university. During that time, she worked for the U.S. government and had clearances from another agency. This is her first application for a DOD security clearance. (GX 1)

Since 2010, Applicant has been the CEO of her own consulting firm. The company provides technological service to federal government agencies. (Tr. 24) She employs about 100 persons, including her son and daughter, who are both U.S. citizens. (Tr. 23) She has worked as a defense contractor since 1999. (GX 1) All of Applicant's business interests are in the United States.

From 2004 until 2006, Applicant worked for a quasi-governmental organization in Taiwan as a senior systems engineer. The company promotes information technology (IT) services. Applicant translated information. She noted that this was the only job that she could find. (Tr. 51) Applicant began this work shortly after she visited her mother who was ill. In 2005, Applicant wanted to spend some time with her mother whom she rarely saw. Applicant spent 18 months in Taiwan. She did not have any contacts with Taiwanese officials. (Tr. 52)

Applicant's two half brothers are citizens and residents of China. They are both retired. She has not seen them, except for five times in 32 years, nor does she have

direct phone contact with them. They do not speak English or use the internet. They have not served in the military. Applicant acknowledged that she has no communication with her half sister who is a citizen and resident of China. In fact, she has never met her. (AX B) Applicant's mother died in 2008.

Applicant's three former co-workers are citizens and residents of Taiwan. Two of them are a married couple, who temporarily lived in one of Applicant's rental properties in the United States. (Tr. 41) They no longer do so. Applicant has seen them twice in the last five years. (Tr. 26) Applicant sponsored them for work visas (H-1B) and they both work in public trust positions for her company. The third person works as a computer programmer in a federal agency that her company supports as a contractor. (AX B)

Applicant's company sponsors two Indian citizens who reside in the United States. One person has received a green card and works as a software developer for a federal agency. The second person has applied for a green card and works as a web developer for a U.S. Government agency in the United States. A third person no longer works for Applicant and she has no contact with her.

A co-worker who is a citizen of Malaysia and resides in the United States has a green card. He works as a senior developer for a federal agency.

Applicant maintains contact with a friend who is a citizen and resident of Taiwan. Applicant met her in 2005, but she is now retired. Her husband is a U.S. citizen. She talks to her friend via Skype or Google talk about once a month.

A high school friend of Applicant's, who lives in South Africa, is a dual citizen of Taiwan and South Africa. Applicant has met with her less than five times in the last 30 years. They seldom communicate.

Applicant has a college friend who is a dual citizen of Taiwan and Canada, but resides in Canada. Applicant acknowledges that she sees her once every five years.

Applicant explained that she takes great pride in providing employment to a diverse set of people and makes it her personal mission to help them find success in the United States as she did. (Tr. 23) She noted that a background check is completed on employees who are foreign nationals. Since the projects serve the federal government, all of the workers are required to have a clearance process. This security clearance process is conducted by the U.S. government.

In 2006 and 2011, Applicant traveled to Taiwan for a conference as part of her employment with a contractor. She reported such travel to authorities. (Tr. 30) She stated that she has never been contacted by anyone from Taiwan seeking employment in her firm. (Tr. 42)

Applicant is involved in the community. She is a member of the Taiwanese American Chamber of Commerce. (Tr. 63) She and her son are also involved in various charitable organizations. She traveled to Afghanistan last year with her son to distribute clothing, shoes, books, and computers to children. Applicant reports and registers the project and trips with the U.S. Embassy.

In 2014, Applicant testified before a Senate committee concerning U.S. Taiwan relations and their role in regional prosperity and stability. She spoke about the 20 years of environmental cooperation between the United States and Taiwan. She noted that Taiwan participates in about 60 international organizations as well as hundreds of international NGOs. (AX 1)

A federal contractor praised Applicant's firm and noted that since 2012, the company has been a major partner to a large government agency. Applicant's company has supported its mission to enhance emergency services. Applicant and her staff were described as hard working, dedicated individuals who support and serve the public. (AX G)

### **Administrative Notice**

China is an increasingly industrialized world economic and military power. The country has a population in excess of one billion people who are governed by an authoritarian, communist regime. Geographically vast and developmentally diverse, the country has significant natural resources to help support its growing economy. China devotes most of its industry and domestic production to its military forces, and it has a strategic nuclear arsenal. China is in direct competition with the United States in many geopolitical and economic areas, and is known to actively collect military, economic, and industrial information from and about the United States. In 2012, it was reported to Congress that the Chinese are the world's most active and persistent perpetrators of economic espionage. Chinese attempts to collect U.S. technological and economic information will continue at a high level and will represent a growing and persistent threat to U.S. economic security. The nature of the cyber threat will evolve with continuing technological advances in the global information environment.

However, China and the United States are also major trading partners and share other common interests. After the terrorists attacks of September 2001, the two countries worked closely in counter-terrorism efforts. China and the United States also have worked closely on regional issues, especially those involving North Korea. However, U.S.-China relations are sometimes complicated by events in Taiwan and Hong Kong. China is one of the most active collectors of U.S. defense information and technology.

The Chinese government has an abysmal human rights record. Officials continue to engage in suppression of personal and electronic expressions of political dissent. Arbitrary arrest and detention, forced confessions, torture, and other prisoner

mistreatment are commonplace. Government and law enforcement practices are largely unchecked by any independent review.

Taiwan is a modern democracy with vibrant public participation during which demonstrations may become confrontational. The U.S. Department of State urges caution within the vicinity of any public demonstrations. Overall crime is noted as low.

Taiwan has a close relationship with the United States in international trade, scientific and technological cooperation, environmental protection, and security protection. The United States recently emphasized its friendship with Taiwan and its commitment to strengthening U.S.-Taiwan relations through Taiwan Relations Act.

### **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 have 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.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance 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 that may disqualify the applicant

from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. 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. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).

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

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).

## **Analysis**

### **Guideline B, Foreign Influence**

The security concern under this guideline is set out in AG ¶ 6:

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.

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)

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, “even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security.” ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at \*\*15-16 (App. Bd. Mar. 29, 2002). 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 United States, 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 United States. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. *See generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) (reversing decision to grant clearance where administrative judge did not consider terrorist activity in area where family members resided).

Applicant is a naturalized U.S. citizen from Taiwan. She has lived in the United States since 1979. She was married to a U.S. citizen and as a result of the marriage, her two adult children are U.S. citizens. She has two half brothers and a half sister who are citizens and residents of China and Hong Kong. She maintains contact with a friend who is a citizen and resident of Taiwan. Applicant visited her ill mother in 2005 and worked for a quasi-governmental organization, while in Taiwan with her mother. But her mother is now deceased. The other persons listed are either employees who are living in the United States or friends who reside in other countries.

“[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 ties of affection to family members who are citizen-residents of China and Taiwan. Her contact with them ranges from calls to visits. Applicant has not rebutted this presumption.

After considering the totality of Applicant’s family ties as well as each individual tie, I conclude that Applicant’s family ties are sufficient to raise a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. Applicant traveled to Taiwan several times for work and to visit family. Based on all these circumstances, I conclude that AG ¶¶ 7(a) and, (b) are raised.

Security concerns under this guideline can 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). China engages in economic and industrial espionage, and it has been involved in incidents involving illegal importation of restricted, dual-use technology from the United States. Applicant lived and worked in Taiwan, not China. Taiwan does not pose the same heightened risk in industrial espionage. For these reasons, I conclude that AG ¶ 8(a) is established.

Security concerns under this guideline can 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). Applicant is a U.S. citizen and was educated in the United States. I accept her claim that she is a loyal American. She has longstanding ties and relationships in the United States, and a long career working for U.S. national interests, both abroad and stateside. She is the founder and CEO of a growing business that supports U.S. government missions. Her two children are U.S. citizens and work with her in the United States. Her half brothers and sister have no knowledge of her work. She has not even met her half sister. Her other family members are in the United States. She has spoken about her undivided loyalty to the United States. All of Applicant’s business interests are in the United States. Applicant travels to Taiwan for her work and has reported the travel. The employees that were hired and mentioned in the SOR have been screened by the United States government in background investigations. I find Applicant has such deep and longstanding relationships and loyalties in America that she can be expected to resolve any conflict between the interests of the United States and the interests of her contacts in China or Taiwan in favor of the United States. Thus, I conclude that AG ¶ 8(b) is established.

On balance, Applicant has met her burden of persuasion in response to the Government’s case. The security concerns about possible foreign influence are mitigated.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of the applicant’s conduct and all relevant circumstances. An 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) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation



