



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-01038
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

August 7, 2014

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**Decision**

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GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant’s mother, father, brother, sister-in-law, nephews, mother-in-law, father-in-law, and other extended-family members are citizens and residents of Taiwan. He exercised Taiwanese citizenship by using his Taiwanese passport to travel to Taiwan on numerous trips after becoming a U.S citizen and prior to the passport’s destruction. Security concerns raised under Foreign Influence and Foreign Preference are not mitigated.

**Statement of the Case**

Applicant submitted his electronic Security Clearance Application (e-QIP) on April 4, 2013. On April 17, 2014, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under the Guidelines for Foreign Preference and Foreign Influence. The action was taken under Executive Order (EO) 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) effective after September 1, 2006.

Applicant answered the Statement of Reasons on May 5, 2014, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on June 27, 2014. A notice of hearing was issued to Applicant on June 30, 2014, scheduling a hearing for July 29, 2014. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 3, which were admitted without objection. The Government also presented a letter sent to Applicant dated June 25, 2014, marked Hearing Exhibit (HE) I, to document that it forwarded copies of its exhibits to Applicant. Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on August 6, 2014.

## **Procedural Rulings**

### **Request to take Administrative Notice**

The Government requested I take administrative notice of certain facts relating to Taiwan. Department Counsel provided a five-page summary of the facts, with citations to 19 Government documents pertaining to Taiwan, marked HE II. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, and not subject to reasonable dispute. They are set out in the Findings of Fact.

## **Findings of Fact**

Applicant is 53 years old. He was born in Taiwan and immigrated to the United States when he was 26 or 27 years old. Prior to immigrating to the United States, he completed compulsory military service in the Taiwanese Army from August 1984 to June 1986. He was naturalized as a U.S. citizen in 1998. He is a dual citizen of both the United States and Taiwan. He possesses a Master's of Computer Science. He has been employed by a government contractor since 2004. He has held a security clearance in connection with his current employment without incident since 2006. He is married to a naturalized U.S. citizen. He resides with her. He has two adult children that are U.S. citizens by birth. Neither child has dual citizenship. (GE 1; GE 2; Tr. 26-28.)

The Government alleged that Applicant is ineligible for a clearance because his mother, father, brother, brother's wife, nephews, mother-in-law, father-in-law, wife's siblings, and extended family are all citizens and residents of Taiwan. His father-in-law is a retired member of the Taiwanese military. The SOR also alleged that Applicant acquired a Taiwanese passport in 2011, after his naturalization as a U.S. citizen in 1998. Applicant used his Taiwanese passport for travel to Taiwan in 2011 and 2012. Applicant admitted all allegations in SOR subparagraphs 1.a through 1.c and 1.e through 1.h, 2.a, and 2.b.<sup>1</sup> (Answer.)

Applicant's mother and father are citizens and residents in Taiwan. His mother is 78 years old. She is a homemaker. His father is 83 years old. He is a retired noodle maker. Applicant has telephonic contact with his parents every other week. He admits

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<sup>1</sup> The SOR skipped from allegation 1.c to 1.e. There is no allegation 1.d.

he is “bound to [his] parents by affection, influence, common interests and obligation.” (GE 2.) His parents are not affiliated with the Taiwanese government. (GE 1; GE 2; Tr. 24, 34-35, 41-42.)

Applicant’s brother is a citizen and resident of Taiwan. He works as a noodle distributor. He is married and has two adult sons. His wife is a homemaker and has never been employed outside their home. One of Applicant’s nephews is a minister to a church organization and the other nephew works for a private company doing inventory management. Applicant is bound to his brother, brother’s wife, and nephews by “affection, influence, obligation, and common interest.” (GE 2.) He communicates with his brother twice a year. His brother, brother’s wife, and nephews have no affiliations with any foreign government. (GE 1; GE 2; Tr. 36-37.)

Applicant’s mother-in-law and father-in-law are citizens and residents of Taiwan. His mother-in-law is a retired teacher and homemaker. His father-in-law was employed as “a soldier in the Taiwanese Army,” but retired from the Army prior to 1980. Applicant did not know his father-in-law’s rank. Applicant is bound to them by “affection, influence, obligation, and common interest.” (GE 1; GE 2; Tr. 38-40.)

Applicant’s wife has two brothers and one sister that are citizens of and reside in Taiwan. One brother-in-law is a self-employed headhunter for domestic help. He is divorced and has two children. The other brother-in-law is a shoemaker. He is married and has three minor sons. Applicant’s sister-in-law is a nurse administrator at a University. She is married and has four children. Applicant’s wife is bound to her siblings by “affection, influence, obligation, and common interest.” (GE 1; GE 2; Tr. 41.)

Additionally, Applicant has a number of extended family members, including an uncle and cousin, who are citizens and residents of Taiwan. However, he indicated that he does not have a “deep relationship” with any of them. (GE 2; Tr. 41.)

Applicant allowed his Taiwanese passport to expire after he became a U.S. citizen in 1998. However, he decided to renew it in 2011, after his parents raised a concern that he had no identification issued by Taiwan. He testified that Taiwanese identification was required in order for his parents to transfer property into his name. He used this Taiwanese passport twice to travel to Taiwan in 2011 and 2012. At some point after acquiring the Taiwanese passport in 2011, his parents transferred ownership of an apartment into his name. They also opened up a bank account in Taiwan in Applicant’s name. He testified he does not know the value of the apartment. He believes the bank account is valued at less than \$100. Applicant surrendered the Taiwanese passport to his facility’s security office on March 29, 2013, after he learned that possessing a foreign passport could raise security concerns. The passport was voluntarily destroyed. His parents are not aware of the passport’s destruction. He indicated, in a signed statement, that although he has not formally renounced his dual Taiwanese citizenship, he was willing to do so. (GE 2; GE 3; Tr. 34, 33-34, 41-42.)

Applicant owns a home in the United States valued at approximately \$900,000. He has a mortgage for approximately \$150,000 on that home. He also has a retirement account with an estimated value of \$300,000. (Tr. 33-34.)

Applicant submitted no evidence concerning the quality of his professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. He provided no character references describing his judgment, trustworthiness, integrity, or reliability.

## **Taiwan**

Taiwan was identified as an active collector of U.S. economic intelligence in the National Counterintelligence Center's 2000 Annual Report to Congress on Foreign Economic Collection and Industrial Espionage. Similarly, the 2008 Annual Report to Congress on Foreign Economic Collection and Industrial Espionage lists Taiwan as being involved with criminal espionage and export controls enforcement cases in 2008. Additionally, there have been various court cases involving the illegal export, or attempted illegal export, of U.S. restricted dual-use technology to Taiwan, including a criminal conviction of the Principal Deputy Assistant Secretary of State for East Asian and Pacific Affairs for illegally removing classified materials. The PRC also maintains intelligence operations in Taiwan through a bureau utilizing PRC nationals with Taiwanese connections. (HE II.)

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used 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, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense 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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable clearance 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 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 EO 10865 provides that adverse 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**

The security concern relating to the guideline for Foreign Influence 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.

The following conditions could raise security concerns under AG ¶ 7:

(a) 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; and

(d) sharing living quarters with a person or persons, regardless of their citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure or coercion.

AG ¶ 7(a) requires the presence of family members (or business or professional associates, friends, or other persons) who are citizens and/or residents of a foreign nation, for which there is substantial evidence of a heightened risk. The heightened risk required to raise one of these disqualifying conditions is a relatively low standard. Heightened risk denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or substantial assets in a foreign nation. Taiwan is a country that actively collects industrial information and engages in industrial espionage, and therefore a heightened risk is present. Applicant's mother, father, brother, brother's wife, nephews, mother-in-law, father-in-law, wife's siblings, and extended family are all citizens and residents of Taiwan. The evidence is sufficient to raise AG ¶ 7(a), with respect to Applicant's mother, father, brother, brother's wife, nephews, mother-in-law, father-in-law, and wife's siblings since he admits to having feelings of affection, influence, obligation, and common interests with all of them.

Applicant's wife, with whom he shares a residence, has a close emotional connection to her family in Taiwan. Such relationships could potentially create a heightened risk of foreign inducement, manipulation, pressure or coercion due to her bonds to her Taiwanese family members and Taiwan's history of efforts to commit industrial espionage. AG ¶ 7(d) applies.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8, including:

(a) the nature of the relationships with foreign persons, the country in which these people 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.;

(b) 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; and

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

Applicant has lived in the United States for more than 25 years. The majority of his assets are in the United States, with the exception of the apartment in Taiwan with an undisclosed value. His children were born and raised here. He has worked for a

government contractor since 2004 and has successfully held a security clearance since 2006. These factors weigh in the Applicant's favor and are mitigating, in part. However, he has close ties of affection for all of his family in Taiwan. I cannot hold that it is unlikely Applicant 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.; that he can be expected to resolve any conflict of interest in favor of the U.S. interest; or that there is little likelihood that his foreign relatives could create a risk for foreign influence or exploitation. Applicant bears the burden to introduce sufficient evidence to mitigate the Government's concerns with respect to those issues, and he has not met this burden. None of the above mitigating conditions apply.

### **Guideline C, Foreign Preference**

The security concern relating to the guideline for Foreign Preference is set out in AG ¶ 9:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 10. The following is potentially applicable in this case:

- (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 includes but is not limited to:
  - (1) possession of a current foreign passport; and
  - (2) using foreign citizenship to protect financial or business interests in another country.

Applicant is a dual citizen of the United States and Taiwan. He applied for and received a valid Taiwanese passport that he used to travel to Taiwan, despite that fact that he was a United States citizen and held a U.S. passport. He acquired the Taiwanese passport in 2011 at his parent's request so that they could legally transfer their property in Taiwan to him. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate foreign preference security concerns are described under AG ¶ 11. Three are potentially applicable:

- (a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

(b) the individual has expressed a willingness to renounce dual citizenship; and

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

Applicant's dual citizenship is not based solely on his parent's citizenship or birth in Taiwan. Applicant was born in Taiwan and obtained Taiwanese citizenship through birth there. After becoming a U.S. citizen, he actively exercised Taiwanese citizenship by acquiring a Taiwanese passport. Further, Applicant chose to use his Taiwanese citizenship, in order to legally receive a transfer of property from his parents. AG ¶ 11(a) does not fully provide mitigation.

Applicant stated that he was willing to renounce his Taiwanese citizenship, but he failed to reiterate that sentiment in his testimony or introduce documentation of any actions toward renunciation. The record evidence shows Applicant's decision to acquire a Taiwanese passport was based on strong personal ties with family members in Taiwan and his interest in obtaining an apartment from his parents. The security significance of Applicant's willingness to renounce his Taiwanese citizenship cannot be considered independently of the security significance of the totality of Applicant's conduct and circumstances.<sup>2</sup> Applicant's willingness to renounce dual citizenship is insufficient to establish mitigation under AG ¶ 11(b).

Applicant's employer destroyed his Taiwanese passport at Applicant's request. However, neither Applicant's parents nor the Taiwanese government are aware of the passport's destruction. The concern that he may act in such a way as to indicate a preference for Taiwan over the United States or that he may be prone to provide information or make decisions that are harmful to the interests of the United States has not been mitigated under AG ¶ 11(e) by the surrender of his Taiwanese passport.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance 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) 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.

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<sup>2</sup> ISCR Case No. 99-0295 (App. Bd. Oct. 20, 2000).



Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. I have incorporated my comments under Guideline B and C in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but warrant additional comment.

Applicant has strong ties to Taiwan through his family members there. He acquired a Taiwanese passport to appease his parents and to allow the transfer of property into his name. He failed to introduce any character evidence upon which to assess his character or trustworthiness. Applicant has not demonstrated that the potential for conflicts of interest, pressure, coercion, exploitation, or duress are mitigated by the record evidence.

### **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:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Paragraph 2, Guideline C:	Against APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant

## **Conclusion**

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

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Jennifer I. Goldstein  
Administrative Judge