



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



In the matter of:	)	
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	)	ISCR Case No. 14-02427
Applicant for Security Clearance	)	

**Appearances**

For Government: Robert J. Kilmartin, Esquire, Department Counsel  
For Applicant: *Pro se*

May 28, 2015

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**DECISION**

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ROSS, Wilford H., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP), on February 19, 2014. (Item 4.) On September 11, 2014, the Department of Defense issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines B (Foreign Influence) and C (Foreign Preference) concerning Applicant. (Item 1.) The action was taken 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) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on October 14, 2014, and requested a decision without a hearing by an administrative judge from the Defense Office of Hearings and Appeals (DOHA). (Item 3.) Department Counsel submitted the Government’s File of Relevant Material (FORM) to Applicant on December 10, 2014.<sup>1</sup>

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<sup>1</sup>Department Counsel submitted five Items in support of the SOR allegations. Item 5 is inadmissible and will not be considered or cited as evidence in this case. It is the summary of an unsworn interview of Applicant conducted by an interviewer from the Office of Personnel Management on March 14, 2014. It was never

Applicant acknowledged receipt of the FORM on December 21, 2014. She was given 30 days from receipt of the FORM to submit any additional documentation. Applicant elected not to submit any additional information. The case was assigned to me on March 12, 2015. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is granted.

## **Procedural Ruling**

### **Request for Administrative Notice**

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to the Republic of China (Taiwan). (FORM at 3.) The request and the referenced documents were not admitted into evidence but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

## **Findings of Fact**

Applicant is 54, married, and has a master's degree. She is employed by a defense contractor and seeks a security clearance in connection with her employment in the defense industry. Before beginning employment with her current company in January 2014 Applicant had never had her background investigated for a security clearance. (Item 4 at Sections 13 and 25.)

Applicant admitted all the allegations in the SOR. Those admissions are findings of fact. She also submitted additional information in support of her request for access to classified information.

### **Paragraph 1 (Guideline B - Foreign Influence)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because she has foreign contacts and interests that could lead to the exercise of poor judgment, unreliability or untrustworthiness on her part, or make her vulnerable to pressure or coercion.

Applicant was born in Taiwan in 1960. She came to the United States in 1988. She received her master's degree from an American university in 1997. Applicant became an American citizen in July 1999. Her husband is also an American citizen. They have a 24-year-old native-born American daughter. (Item 4.)

Applicant's husband was a dual citizen of Taiwan and the United States. At one time he held both American and Taiwanese passports. The Taiwanese passport has been surrendered to Applicant's employer's facility security officer (FSO). Item 3 at page

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adopted by Applicant as her own statement, or otherwise certified by her to be accurate. Under Directive ¶ E3.1.20, this Report of Investigation summary is inadmissible in the absence of an authenticating witness.

4 is a letter from the FSO confirming that the husband's passport has been surrendered to her.<sup>2</sup>

Applicant has two siblings. Her brother is also an American citizen. Her sister is a citizen and resident of Taiwan. From 2002 to 2007 she lived with Applicant and her husband while going to school here in the United States. (Item 3 at 5-6.) She then returned to Taiwan. Applicant stated in Item 3 at page 1:

The reason she [Applicant's sister] didn't stay in US after the graduation and pursuit [sic] citizenship is considering my father's wellbeing [sic]. At that time, my mother already passed away and we were busy building our life in US. Since we didn't have close relatives within our family, my father would be all alone and live by himself. Considering his age and health, my sister decided to move back to Taiwan and lived with my father.<sup>3</sup>

Applicant admits having a bank account in Taiwan, which holds approximately \$20,000. Applicant obtained the account for two reasons. First, so she had available funds in Taiwan for travel there. Second, Applicant and her siblings were going to move her parents' remains to a new location. However, it turned out the cost to move her parents was too great and the plan was abandoned. She goes on to state:

So the account was no longer needed since all my affairs regarding my father in Taiwan had ended. I talked to the bank in Taiwan and tried to close [the] account then wired [sic] the money back to US and found out it only could be done while the owner of the account was present. I am planning [to] fly back to Taiwan [to] close the account soon. (Item 3 at 2.)

## **Paragraph 2 (Guideline C - Foreign Preference)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because she has acted in a way that shows a preference for another country ahead of the United States.

Applicant has a current and valid United States passport issued to her in March 2010. (Item 4 at Section 8.)

Applicant at one time had a Taiwanese passport. It was issued to her in June 2008. Applicant surrendered her Taiwanese passport to her company's FSO on January 30, 2014. (Item 4 at Section 10.)

Allegation 2.b of the SOR states that a concern of the Government is that Applicant used her Taiwanese passport after becoming an American citizen. She made

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<sup>2</sup>Applicant lives in one state and her company is headquartered across the country in another state.

<sup>3</sup>Applicant's mother passed away in 1995, her father in 2012. Her mother-in-law and father-in-law are also deceased. (Item 4 at Section 18.)

four trips to Taiwan between 2008 and 2012, as well as two trips to the People's Republic of China in 2011 and 2013. As stated, Applicant's father's health began to decline in 2007. She obtained the passport to travel to Taiwan more easily, and especially to stay there for extended periods of time. In 2010 Applicant quit her then job to spend even more time with him. She went to Taiwan in August 2012 to stay with him during his final illness. He died on November 27, 2012. She stayed until June 2013, stating, "I had to continue stay in Taiwan to arrange the funeral and follow his wish, finding new home for his cats." (Item 4 at Section 10.)

Applicant suffers from high blood pressure. After an emergency call from her father in August 2012 Applicant flew to Taiwan so quickly that she was unable to obtain sufficient blood pressure medication for herself. She was able to obtain a two week supply in Taiwan because she held a Taiwanese passport. This \$30 prescription is the only foreign benefit she has ever received since becoming a U.S. citizen. (Item 4 at Section 20A.)

Because of her birth in Taiwan, she was a citizen there. However, Applicant states, "I . . . no longer can enter Taiwan as citizen since I no longer have the Taiwanese passport. Currently the only citizenship I own is US only." (Item 4 at Section 10.)

### **Administrative Notice**

Applicant has contacts with Taiwan. Accordingly, it is appropriate to look at the current situation concerning Taiwan. Taiwan is a multiparty democracy, whose authorities generally respect the human rights of its citizens. Taiwan is an active collector of industrial information and engages in industrial espionage, as shown by the administrative notice documents in the record. However, the record does not demonstrate that the government of Taiwan targets US intelligence information. Further, the record does not demonstrate that it seeks to exert pressure on US citizens to collect information from family members residing in country or abroad. Finally, it is worth noting that the US Government, and the Defense Department in particular, have a close and continuing relationship with Taiwan and its military, in accordance with the Taiwan Relations Act of 1979, which has governed policy in the absence of diplomatic relations or a defense treaty with Taiwan. In 2011 the principal assistant secretary of defense for Asian and Pacific security affairs testified to Congress, "Today, the United States has a deep security relationship with Taiwan, as indicated by the administration's strong record on arms sales. . . . We will continue to make available to Taiwan defense articles and services to enable it to maintain a sufficient self-defense capability." (Tyrone C. Marshall Jr. American Forces Press Service, *Official Cites Importance of Stability in Taiwan Strait*, <http://www.defense.gov/news/newsarticle.aspx?id=65543> (October 4, 2011).)

## Policies

Security clearance decisions are not made in a vacuum. When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used as appropriate 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2(a) 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the 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, and has the ultimate burden of persuasion as to obtaining 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. Security clearance decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to protect or 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.

Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination 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**

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the applicant's conduct and the holding of a security clearance. If such a case has been established, the burden then shifts to the applicant to go forward with evidence in rebuttal, explanation or mitigation, which is sufficient to overcome or outweigh the Government's case. The applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

#### **Paragraph 1 (Guideline B - Foreign Influence)**

The concern under Guideline B is styled as follows at 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 Disqualifying Conditions apply to this case under AG ¶ 7 based on the fact that Applicant has family and financial connections to Taiwan:

(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;

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

(e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.

Applicant has provided compelling evidence to show that the following Mitigating Conditions under AG ¶ 8 also apply to this particular case, given her particular situation:

(a) 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.;

(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

(f) the value or routine nature of the foreign business, financial or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

Applicant has lived in the United States for more than half of her life, and her husband is also an American citizen, as is their daughter. Her husband has surrendered his Taiwanese passport, and only considers himself an American. The bank account in Taiwan was opened for a particular purpose. Now that Applicant has decided that it is too expensive to move her parents' remains, she expresses a credible intent to close the account and move the money to the United States. Applicant has shown that her loyalties are to the United States. Based on my analysis of the available information, Applicant has overcome the adverse inference arising from contacts with Taiwan. Guideline B is found for Applicant.

## **Paragraph 2 (Guideline C - Foreign Preference)**

In this case the Government has met its initial burden of proving by substantial evidence that Applicant is a dual citizen of Taiwan and the United States, that she had a valid Taiwan passport, and that she obtained blood pressure medication in Taiwan on a one-time emergency basis.

Applicant has mitigated the Government's concerns about the above conduct. The concern is stated thus under this Guideline at 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.

Disqualifying Condition AG ¶ 10 applies to the facts of this case:

Conditions that could raise a security concern and may be disqualifying include:

(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

(3) accepting . . . medical . . . benefits from a foreign country.

Applicant used her Taiwan passport when she went to Taiwan between 2008 and 2012, ending with the death of her father. It is worth noting that Applicant was not working in the defense industry at that time and had no knowledge of security requirements. Almost immediately after starting work for her current employer, and finding out that her Taiwanese passport was a potential security issue, she sent her passport to the FSO. Accordingly, “the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated,” as required by Mitigating Condition AG ¶ 11(e).

At the beginning of her last trip to Taiwan, Applicant ran out of her blood pressure medication. She accepted Taiwanese medical benefits to obtain \$30 worth of medicine. This minimal activity has no security significance.

Applicant has stated that she only considers herself an American citizen and is willing to renounce her Taiwan citizenship. Mitigating Condition ¶ 11(b) applies to this case, “the individual has expressed a willingness to renounce dual citizenship.” Mitigating Condition AG ¶ 11(a) also applies as her “dual citizenship is based solely on parents’ citizenship or birth in a foreign country.” Guideline C is found for Applicant.

### **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. 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. 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. My Guideline B and C analysis is applicable to the whole-person analysis as well. I have also specifically examined the intelligence activities of Taiwan. The evidence shows that Applicant has been an American citizen since 1999. Her job, husband and daughter are all in the United States. With the death of her father in 2012, her sister became the only relative in Taiwan. Applicant's actions on entering the defense industry, and finding out the security concerns of her Taiwanese passport, show someone who is concerned about her security responsibilities and willing to take affirmative action to fulfill them. I find that there is little or no "potential for pressure, coercion, exploitation, or duress" as set forth in AG ¶ 2(a)(8). Using the whole-person standard, Applicant has mitigated the security significance of her alleged foreign preference and foreign connections, and is eligible for a security clearance.

On balance, it is concluded that Applicant has successfully overcome the Government's case opposing her request for a DoD security clearance. Accordingly, the evidence supports a finding for Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the Government's Statement of Reasons.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraphs 1.a through 1.c:	For Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraphs 2.a through 2.c:	For Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

WILFORD H. ROSS  
Administrative Judge