



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



In the matter of: )  
)  
) ISCR Case No. 14-02632  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Tovah Minster, Esq., Department Counsel  
For Applicant: *Pro se*

06/25/2015

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant's foreign family contacts create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion, and an unacceptable security risk. Moreover, Applicant exercised his Taiwanese citizenship after becoming a U.S. citizen. The mitigating information is insufficient to fully overcome the foreign influence and foreign preference security concerns. Clearance denied.

**Statement of the Case**

On August 4, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline C (foreign preference) and Guideline B (foreign influence).<sup>1</sup> Applicant answered the SOR on December 1, 2014, and elected to have his case decided on the written record.

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<sup>1</sup> The DOD acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (AG), implemented by the DOD on September 1, 2006.

A copy of the Government's file of relevant material (FORM), dated January 27, 2015, was provided to him by transmittal letter dated February 19, 2015. Applicant received the FORM on April 13, 2015. He was allowed 30 days to submit any objections to the FORM and to provide material in extenuation and mitigation. Applicant did not respond to the FORM or submit any information. The case was assigned to me on May 21, 2015.

### **Procedural and Evidentiary Rulings**

The Government requested that I take administrative notice of facts concerning the government of Taiwan (the Republic of China) based on documents published by the federal government and reported federal-court criminal cases. Applicant did not object, and I granted the request.

### **Findings of Fact**

Applicant admitted all the SOR allegations. His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact:

Applicant is a 35-year-old engineer employed by a government contractor. He was born in Taiwan to Taiwanese parents. He immigrated to the United States at age three in 1983. He has one brother born in the United States. Applicant became a U.S. naturalized citizen in 1993. He has never been married and has no children. Applicant was hired by his current employer in 2001. He was granted a secret-level security clearance in 2004.

Applicant's most recent U.S. passport was issued to him in 2010, and it will not expire until 2020. Applicant disclosed in his 2013 SCA travel to several European countries, Canada, and Mexico between 2007 and 2013. I assume he travelled to those countries using a previously issued U.S. passport. However, there is no evidence showing what passport he used to travel to those countries.

Applicant requested and was issued a Taiwanese passport in November 2006, which will not expire until November 2016. He travelled to Taiwan in 2007, 2010, and 2013 using his Taiwanese passport to visit family and friends living in Taiwan. Applicant's grandmother and extended family members (uncles, aunts, and cousins) are residents and citizens of Taiwan. He claimed that he used both his U.S. passport and his Taiwanese passport to travel to Taiwan, and that both passports were stamped by the Taiwanese and U.S. customs officials upon his entry and exit of both countries. Applicant also claimed that he destroyed his Taiwanese passport. He submitted no documentary evidence to support his claims.

Applicant provided no information on whether he has financial and property interests in Taiwan, in any other foreign country, or in the United States. Concerning his relatives who are residents and citizens of Taiwan, Applicant provided no information concerning their jobs, whether they served in the Taiwanese military, worked for, or

received pensions paid by the Taiwanese government. Applicant also provided little information concerning the manner and frequency of his contacts with his relatives in Taiwan, or whether they travel to the United States to visit with him.

Applicant noted that he has been living in the United States since age three. He considers the United States his home and he considers himself an American. He believes that his contact with his relatives in Taiwan is infrequent because he does not visit them often, and if he does, it is only for short periods. He stated that his relatives have no influence on his sense of loyalty to the United States.

Taiwan has a multi-party democracy with universal suffrage. It is the 21st-largest economy in the world, and its high-tech industry plays a key role in the global economy. Taiwan is ranked highly in terms of freedom of the press, health care, public education, economic freedom, and human development.

Taiwan is one of the most active collectors of U.S. economic and proprietary information. Since 2000, Taiwan has been repeatedly involved in criminal espionage and export control violations of U.S. restricted, dual-use technology with military applications. Illegal technology transfers, even to private Taiwanese entities, are a significant concern because foreign government entities, including intelligence organizations and security services, have capitalized on private-sector acquisitions of U.S. technology which in turn flows to foreign governments.

### **Policies**

Eligibility for access to classified information may be granted “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. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

## **Analysis**

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

AG ¶ 9 explains the concerns about foreign preference stating:

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.

AG ¶ 10 indicates four conditions that could raise security concerns and may be disqualifying 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;
- (2) military service or a willingness to bear arms for a foreign country;
- (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;
- (4) residence in a foreign country to meet citizenship requirements;
- (5) using foreign citizenship to protect financial or business interests in another country;
- (6) seeking or holding political office in a foreign country;
- (7) voting in a foreign election;

(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen;

(c) performing or attempting to perform duties, or otherwise acting, so as to serve the interests of a foreign person, group, organization, or government in conflict with the national security interest; and

(d) any statement or action that shows allegiance to a country other than the United States: for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship.

Applicant immigrated to the United States at age three. He became a naturalized U.S. citizen in 1993, and has been issued U.S. passports since then, the most recent in 2010. After becoming a U.S. citizen, Applicant requested and was issued a Taiwanese passport in 2006. He used his Taiwanese passport for his travel convenience, and in preference of his U.S. passport, to travel to Taiwan in 2007, 2010, and 2013. Applicant claimed that he destroyed his Taiwanese passport, presumably in 2014. However, he presented no evidence to support his claim.

Foreign preference disqualifying condition AG ¶¶ 10(a) and (b) are supported by the evidence. If these conditions are not mitigated it would disqualify Applicant from eligibility to hold a security clearance.

AG ¶ 11 provides conditions that could mitigate the security concerns for foreign preference:

(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;

(c) 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;

(d) use of a foreign passport is approved by the cognizant security authority;

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

(f) the vote in a foreign election was encouraged by the United States Government.

Considering the scant evidence in this case, none of the mitigating conditions are reasonably raised by the evidence and do not apply. Applicant exercised his Taiwanese

citizenship after becoming a naturalized U.S. citizen in 1993. He requested and was granted a Taiwanese passport in 2006, and he used it in preference of his U.S. passport. He received privileges and benefits reserved for Taiwanese citizens. Although Applicant claimed he destroyed his Taiwanese passport, he presented no documentary evidence to support his claim. He has not offered to renounce his Taiwanese citizenship. He failed to mitigate the security concerns alleged under Guideline C.

## **Guideline B, Foreign Influence**

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

[I]f the individual has divided loyalties or foreign financial interests, [he or she] 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 guideline indicates two conditions that could raise a security concern and may be disqualifying under AG ¶ 7 in this case:

- (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
- (b) 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.

Applicant’s grandmother and his extended family members are citizens and residents of Taiwan. The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.<sup>2</sup>

Applicant, directly or through his parents, has frequent contacts and a close relationship of affection and obligation with his grandmother and his Taiwanese extended family members. These contacts create a risk of foreign pressure or

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<sup>2</sup> See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

attempted exploitation because there is always the possibility that Taiwanese agents or individuals operating in Taiwan may exploit the opportunity to obtain sensitive or classified information about the United States. Applicant's relatives in Taiwan create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion, both directly or through his grandmother or family members in Taiwan.

The Government produced substantial evidence raising these three disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove a mitigating condition. The burden of disproving a mitigating condition never shifts to the Government. AG ¶¶ 7(a) and 7(b) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

(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;

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) 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; 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 was born in Taiwan and immigrated to the United States at age three. He was raised and educated in the United States. He has lived in the United States for 32 years. He became a naturalized U.S. citizen in 1993. He has been working for a

government contractor since 2001, and was granted a secret-level clearance in 2004. Applicant presented no evidence concerning his contact with his Taiwanese relatives who are citizens and residents of Taiwan. Nor did he present any evidence about whether he has financial and property interests in Taiwan, in any other foreign country, or in the United States.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationships with family members living in Taiwan. Although there is no evidence that Taiwanese government agents, or other entities, have approached or threatened Applicant or his family living in Taiwan, he is nevertheless potentially vulnerable to threats, coercion, inducement, and manipulation made against him or his family members living in Taiwan.

Considering Taiwan's government, its relationship with the United States, and its ongoing pervasive espionage practices against the United States, Applicant is not able to fully meet his burden of showing there is "little likelihood that [his relationships with his relatives, friends, and associates who are Taiwanese citizens and living in Taiwan] could create a risk for foreign influence or exploitation." AG ¶¶ 8(a) and (d) have limited applicability and do not mitigate the foreign influence concerns.

Applicant has been living in the United States for 32 years. He considers the United States his home and he considers himself an American. He believes that his contact with his relatives in Taiwan is infrequent because he does not visit them often, and if he does, it is only for short periods. He stated that his relatives have no influence on his sense of loyalty to the United States.

Notwithstanding, the risk of coercion, persuasion, or duress are significant because Taiwan has an extensive, pervasive history of engaging in economic and technological espionage against the United States.

### **Whole-Person Concept**

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c).

I have incorporated my comments under Guidelines C and B in my whole-person analysis. I considered that Applicant has lived in the United States most of his life. He became a naturalized U.S. citizen in 1993, his parents are naturalized U.S. citizens, and he has a brother who was born in the United States. He has worked for a government contractor since 2001. Applicant considers the United States his home and he considers himself an American. He believes that his contact with his relatives in Taiwan is infrequent, and stated that his relatives have no influence on his sense of loyalty to the United States.

Notwithstanding, Applicant's foreign family contacts create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion, and an



unacceptable security risk. Moreover, Applicant exercised his Taiwanese citizenship after becoming a U.S. citizen. The mitigating information taken together is insufficient to fully overcome the foreign preference and foreign influence security concerns.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude Applicant has not carried his burden of persuasion and the foreign influence and foreign preference security concerns are not mitigated. Eligibility for access to classified information is denied.

### **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 C:	AGAINST APPLICANT
Subparagraphs 1.a, 1.b:	Against Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a, 1.b:	Against Applicant

### **Conclusion**

In light of all of the circumstances, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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JUAN J. RIVERA  
Administrative Judge