

STATEMENT OF THE CASE

On February 12, 2007, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) alleging facts and security concerns under Guideline B (Foreign Influence), and Guideline C (Foreign Preference). The SOR informed Applicant that based on available information, DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to grant her access to classified information and submitted the case to an administrative judge for a security determination.¹

On April 3, 2007, Applicant answered the SOR, admitted the two allegations under Guideline B, denied the two allegations under Guideline C, and requested a decision without a hearing. On July 31, 2007, Department Counsel prepared a File of Relevant Material (FORM), which was mailed on August 6, 2007. Applicant received it on August 10, 2007. She answered the FORM on August 29, 2007, and submitted additional information for consideration within the 30-day period. On September 14, 2007, the case was initially assigned to another administrative judge. It was transferred to me on September 19, 2007, due to case load considerations.

FINDINGS OF FACT

Applicant denied SOR ¶¶ 1.a and 1.b. She admitted SOR ¶¶ 2.a and 2.b, with explanations. Her admissions are incorporated herein as findings of facts. After a thorough review of Applicant's answers to the SOR and the FORM, and the FORM evidence, I make the following additional findings of facts.

Applicant is a 40-year-old senior software engineer who has worked for a Department of Defense (DoD) contractor since June 2005. She was born, raised, and educated in the Republic of China (Taiwan). Sometime in the 1980s she immigrated to the United States.² From September 1989 to February 1992 she attended a U.S. university where she received a masters degree in arts. She married a U.S.-born-citizen in 2004. Applicant became a naturalized U.S. citizen in April 2005, and received her U.S. passport in May 2005.

Applicant's work history shows that since 1995 she has worked for six different companies, but always in the information technology field as a software consultant or engineer (GE 3). In June 2005, Applicant started working with her current employer, a government contractor.

She denied having any foreign property, business connections, or financial interest in any foreign country. She also denied being employed by, or acting as a consultant for, or having any

¹ See Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992) (Directive), as amended. On August 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised adjudicative guidelines (AG) to all adjudications and other determinations made under the Directive in which the SOR was issued on or after September 1, 2006.

² There is no evidence in the FORM to determine when Applicant entered the United States or the circumstances concerning her arrival to the United States.

contact with foreign governments. She believes that none of her relatives works for a foreign government.

Applicant was issued a Taiwanese passport sometime prior to emigrating to the United States. In January 2002, she renewed her Taiwanese passport to be able to travel to Canada. The passport had an expiration date of January 2012. Since her arrival to the United States, Applicant traveled for pleasure to Taiwan and Hong Kong in May-June 2000; to the United Kingdom for business in July 2000; to Hong Kong and China for business during August-September 2000; to China and Hong Kong during September-October 2000; to China, Taiwan, and Hong Kong for business during November-December 2000 (she visited her family during this trip); to Canada for pleasure in July 2002; to France and the United Kingdom for pleasure in July 2005; to Canada in August 2006; to Japan in November 2006; and to Taiwan in November 2006.³

Most of her foreign travel was job-related. However, it appears that when ever she visited China or Taiwan on job-related matters she took the opportunity to visit her family in Taiwan. When she received the SOR in February 2007, Applicant realized her possession and use of a Taiwanese passport would adversely affect her ability to receive access to classified information. In December 2004, Applicant renounced her Taiwanese citizenship and invalidated her Taiwanese passport by cutting off a corner of the document.⁴ Applicant averred that since receipt of her U.S. passport she has use it exclusively for her travels.

Applicant has three siblings. Her 50-year-old brother was born in Taiwan. He became a naturalized U.S. citizen in September 1992. After his divorce, Applicant's brother went back to Taiwan where he lived for the next 10 years. Around 2002, he was indicted by U.S. authorities for giving his airplane boarding pass to someone else to enter the United States. He pled guilty to undisclosed charges, was sentenced to confinement, and placed on probation for three years (GE 5). Applicant claimed that by coincidence, she was in Hawaii when her brother was indicted. She provided him with financial assistance (\$3,000) during the ordeal. Applicant's brother is currently importing Chinese merchandise into the United States in anticipation of the Olympic games scheduled to be held in China. He travels to China frequently. There is no additional information concerning her brother's employer or whether he has contact with the Chinese government.

Applicant also has two sisters, ages 46 and 45, who are residents and citizens of Taiwan. She claimed not to be close to her 46-year-old sister, and that they have had no contact since her mother's funeral in 1990. She works for a hotel in Taipei and is married to a Taiwanese citizen. There is no information concerning her 46-year-old sister's husband's occupation or employer. Applicant is close to her 45-year-old sister, and they have telephone contact once every two to three weeks. They also communicate via e-mail (GE 5). Applicant's sister was a part-time lecturer at a Taiwanese university and performed research. She is currently a doctorate program student at a Taiwanese university.⁵ She is single and according to Applicant her sister supports the general policies of the United States (GE 5).

³ GE3 (Applicant's security clearance application and her response to DOHA interrogatories.

⁴ Applicant's response to the FORM.

⁵ Applicant's answer to the FORM.

Applicant's husband was born in the United States. They met in Hong Kong in 2000 while they were both there for business. They were married in the United States in December 2004. Applicant's mother-in-law was born in the People's Republic of China (China) in 1930. She became a naturalized U.S. citizen in March 1967, and is a resident of the United States. Applicant's husband has extended family members living in Taiwan. Her mother-in-law keeps in contact with those relatives. Applicant stated she has not established lasting contacts with her relatives in Taiwan (GE 5).

I take administrative notice of the following facts. Taiwan is a stable multi-party democracy, its government is friendly to the United States, and it has a good human rights record. Since the end of World War II, Taiwan has developed into a major international trading power and has become the world's 17th largest economy. There are on-going tensions between Taiwan and China. Taiwan seeks to become an independent State, an aspiration which is strongly opposed by China, which sees Taiwan as a province of China. Despite their differences, contact between the two sides has grown significantly over the last decade. China is Taiwan's largest trading partner, and Taiwan is China's fifth largest. The United States has recognized China as the only legal government of China, and that Taiwan is part of China.

Additionally, I take administrative notice of Taiwan's active and historic roles as collector of competitive information and perpetrator of industrial espionage against U.S. companies producing militarily critical technologies such as information systems, sensors and lasers, and electronics.

China has an authoritarian, Communist government. China has a poor human rights record, suppresses political dissent, practices arbitrary arrest and detention, forced confessions, torture, and other prisoner mistreatment.

China is a nuclear power with a large Army. China is geographically vast, and has a population of over one billion people. It has significant resources, and an economy that in recent years has expanded about 10% per year. China aggressively competes with the United States in many areas. China's competitive relationship with the United States exacerbates the risk posed by Applicant's relatives.

China aggressively collects military, economic, proprietary, and industrial information about the United States because of the following circumstances: (1) its position as a global superpower; (2) its military, political, and economic investments in the Pacific Rim and Asia; (3) its leading role in development of advanced technology that China desires for economic growth; and (4) China considers the large number of Americans of Chinese ancestry as intelligence targets. China's active intelligence gathering programs focus on sensitive and protected U.S. technologies.

POLICIES

The Directive sets forth adjudicative guidelines (AG) which must be considered in evaluating an Applicant's eligibility for access to classified information. The administrative judge must take into account both disqualifying and mitigating conditions under each AG applicable to the facts and circumstances of the case. The guidelines are not viewed as inflexible ironclad rules of law. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. Each decision must reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive, and the whole person concept.⁶ Having considered the record evidence as a whole, I conclude Guideline B (Foreign Influence) and Guideline C (Foreign Preference) are the applicable relevant AGs.

BURDEN OF PROOF

The purpose of a security clearance decision is to determine whether it is clearly consistent with the national interest to grant or continue an applicant's eligibility for access to classified information.⁷ A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest to ensure each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own.

The government has the initial burden of proving controverted facts alleged in the SOR. To meet its burden, the government must establish by substantial evidence⁸ a *prima facie* case that it is not clearly consistent with the national interest for the applicant to have access to classified information. The responsibility then shifts to the applicant to refute, extenuate or mitigate the government's case. Because no one has a right to a security clearance, the applicant carries a heavy burden of persuasion.⁹ The "clearly consistent with the national interest" standard compels resolution

⁶ AG ¶ 2(a). ". . . The adjudication process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. . . ." The whole person concept includes the consideration of "the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the extent to which participation is voluntary; the presence or absence of rehabilitation and other permanent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; and the likelihood of continuation or recurrence. . . ."

⁷ See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁸ ISCR Case No. 98-0761, at 2 (App. Bd. Dec. 27, 1999)(Substantial evidence is more than a scintilla, but less than a preponderance of the evidence); ISCR Case No. 02-12199, at 3 (App. Bd. Apr. 3, 2006)(Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record); Directive, ¶ E3.1.32.1.

⁹ *Egan*, *supra* n.7, at 528, 531.

of any reasonable doubt about an applicant's suitability for access to classified information in favor of protecting national security.¹⁰

The scope of an administrative judge's decision is limited. Nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. Executive Order 10865, § 7.

CONCLUSIONS

Under Guideline B (Foreign Influence), the government's concern is that foreign contacts and interests may be a security concern. If 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. AG ¶ 6.

AG ¶ 7 sets out conditions that could raise a security concern and may be disqualifying in this case, including:

(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;

(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;

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.¹¹ Applicant has frequent contacts and a close relationship of affection and/or obligation with at least one of her sisters who is a resident and citizen of Taiwan. In addition, she has a close relationship of affection and/or obligation with her brother who, although a naturalized U.S. citizen, has been living in Taiwan since the early 1990s. These contacts create a heightened risk of foreign pressure or attempted exploitation because there is the possibility that Taiwanese agents may exploit the opportunity to obtain intelligence, classified, or economic information about the United States. Her connection to her siblings also creates a potential conflict of interest because her relationships are

¹⁰ See *Id.*; AG ¶ 2(b).

¹¹ See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

sufficiently close to raise a security concern about her vulnerability to possible coercion through her siblings in Taiwan.

The government produced substantial evidence raising these two potentially 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.

Three foreign influence mitigating conditions under AG ¶ 8 are potentially applicable to these disqualifying conditions:

(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

(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.

After considering the totality of the facts and circumstances in Applicant's case, I conclude that none of the mitigating conditions apply. It was Applicant's responsibility to refute, extenuate, or mitigate the government's foreign influence concerns. Applicant's evidence is insufficient to do so. The evidence shows Applicant has strong feelings of affection and a strong sense of obligation to her brother and at least one of her sisters. The closeness of the relationship is shown by Applicant's telephone and e-mail contacts with her sister. Her travels to Taiwan underscore her deep feelings of affection and/or obligation to her sister. Additionally, Applicant has feelings of affection and obligation towards her brother as shown by her providing economic support for him after he was indicted and prosecuted in the United States.

In deciding whether Applicant's family members are in a position to be exploited, I considered Taiwan's form of government.¹² Taiwan is a multi-party democracy. Its government is friendly to the United States, and has a good human rights record. Notwithstanding Taiwan's desire for independence, the United States has recognized China as the only legal government of China, and that Taiwan is part of China. Taiwan has historically played an active role as a collector of competitive information and perpetrator of industrial espionage against United States. This coupled with Taiwan's trading interests, and their trading relationship with China, heighten the security

¹² The focus is not the country or its people, but its rulers and the nature of the government they impose. This approach recognizes that it makes sense to treat each country in accordance with the level of security concern or threat it presents to the United States.

concerns. Taiwanese agents may attempt to use Applicant's family living in Taiwan to obtain such information.

Considering the totality of the circumstances, Applicant did not establish it is unlikely she will be placed in a position of having to choose between the interests of her family and the interests of the United States. Her frequent contacts and close relationship with her family could potentially force her to choose between the United States and Taiwan. Applicant's family in Taiwan remains vulnerable. She did not meet her burden of showing there is little likelihood that her relationship with her family could create a risk for foreign influence or exploitation.

AG ¶ 8(b) partially applies because Applicant has developed a sufficient relationship and loyalty to the United States, that she can be expected to resolve any conflict of interest in favor of the United States' interest. She became a naturalized U.S. citizen in 2005, and her husband and her brother are U.S. citizens. All of her financial and business interests are in the United States, and she has embraced the American way of life. Furthermore, Applicant renounced her Taiwanese citizenship to mitigate possible security concerns. Although this mitigating condition is partially applicable, these facts are insufficient to overcome the security concerns.

Under Guideline C (Foreign Preference), the government's concern is that 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.

Applicant's possession of a valid Taiwanese passport constitutes an exercise of dual citizenship and raises security concerns under Guideline C. Her possession of a Taiwanese passport permitted her to exercise the rights and privileges of foreign citizenship. Foreign preference disqualifying condition AG 10(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 . . . (1): possession of a current foreign passport, applies.*

In December 2004, Applicant renounced her Taiwanese citizenship and invalidated her Taiwanese passport by cutting off a corner of the document. Foreign preference mitigating conditions AG ¶ 11 (b): *the individual has expressed a willingness to renounce dual citizenship,* and AG ¶ 11 (e): *the passport has been destroyed, surrendered . . . , or otherwise invalidated,* apply. Applicant mitigated the security concerns under this guideline.

I have carefully weighed all evidence, and I applied the disqualifying and mitigating conditions as listed under the applicable AGs. I specifically considered Applicant's answers to the SOR and the FORM. I also considered that she became a naturalized U.S. citizen in 2005, that she is married to a U.S. citizen, and that she renounced her Taiwanese citizenship. Considering all available information, and the whole person concept, I find Applicant's available information is not sufficient to mitigate the foreign influence security concern.

FORMAL FINDINGS

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

Paragraph 1, Foreign Preference Subparagraphs 1.a -1.b	FOR APPLICANT For Applicant
Paragraph 2, Foreign Influence Subparagraphs 1.a -1.b	AGAINST APPLICANT Against Applicant

DECISION

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

Juan J. Rivera
Administrative Judge