



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



In the matter of:	)	
	)	
	)	ISCR Case No. 07-10830
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Emilio Jaksetic, Esquire, Department Counsel  
For Applicant: Pro Se

November 10, 2008

**Decision**

HOGAN, Erin C., Administrative Judge:

Applicant submitted an electronic questionnaire for investigations processing (e-QIP) on February 27, 2006. On March 25, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B, Foreign Influence, and Guideline C, Foreign Preference, for Applicant. 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

On May 8, 2008, and June 24, 2008, Applicant answered the SOR and requested a determination be made on the written record. Department Counsel prepared a File of Relevant Material (FORM) on July 11, 2008. The FORM was forwarded to Applicant on July 11, 2008. He received it on July 17, 2008. Applicant had 30 days from the receipt of the FORM to submit additional matters. He did not submit additional matters. The case was assigned to me on September 24, 2008. Based upon

a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

### **Administrative Notice**

In the FORM, Department Counsel requested that administrative notice be taken of certain factual information pertaining to the country of Taiwan referenced in 14 documents. (Item 8) The following is a summary of the facts which administrative notice is taken.

Taiwan is a multi-party democracy. Taiwan maintains a strong diplomatic and commercial relationship with the U.S. The U.S. and Taiwan have conducted joint military exercises. Taiwan's national security remains under constant threat from the People's Republic of China. Taiwan is known to be an active collector of U.S. economic intelligence.

### **Findings of Fact**

In his Answer to the SOR, dated January 14, 2008, Applicant admitted to all the SOR allegations.

Applicant is a 40-year-old senior developer employed with a Department of Defense contractor. He has worked for his current employer since February 2001. He has a bachelor's degree in computer science and a master of science in information systems, both from U.S. universities. He is married and has two children, a five-year-old daughter and a three-year-old son. This is his first time applying for a security clearance. (Item 4.)

Applicant was born and raised in Taiwan. He immigrated to the U.S. He became a U.S. citizen on October 20, 2005. (Item 4; Item 5) His wife is a citizen of Taiwan and has U.S. permanent resident status. She resides with Applicant in the U.S. She intends to apply for U.S. citizenship when she is eligible. His two children were born in the U.S. (Answer to SOR.)

One of Applicant's brothers is a permanent resident of the U.S. and a Taiwanese citizen. He intends to become a U.S. citizen when he is eligible. (Answer to SOR; Item 4; Item 5.)

Applicant's parents, another brother, and parents-in-law are citizens of and reside in Taiwan. His parents and in-laws are retired. His brother is employed with a private company. The record evidence is not clear what he specifically does. Applicant claims none of his family members, including his in-laws, have any contact with government officials. (Item 5.)

Applicant maintains a valid passport from Taiwan. His most recent passport was issued on November 20, 2003, and does not expire until November 20, 2013. Applicant

maintains the passport because it is easier to travel to Taiwan using his Taiwanese passport. He uses the passport for the sole purpose of visiting family members. He continues to use his Taiwanese passport after obtaining a U.S. passport in 2005 because when he travels on the U.S. passport, he can only stay in Taiwan for 29 days. If he wants to stay longer than 29 days he has to obtain a visa. He is not willing to surrender his Taiwanese passport or renounce his Taiwanese citizenship. (Item 4; Item 5.)

When Applicant is in Taiwan, he is eligible for national health insurance. (Item 5.) In November 2006, Applicant's wife began experiencing serious medical problems. In April 2007, Applicant took his wife back to Taiwan for medical treatment for breast cancer. On May 21, 2007, he returned to the U.S. in order to work. Applicant's wife and two children remained in Taiwan with family members for the duration of her medical treatment which was approximately nine months. His wife's treatment was also covered under Taiwan's national health insurance. (Item 2; Item 6.)

Applicant, his wife and two children traveled to Taiwan from January 2006 to February 2006. They traveled to Taiwan from January 31, 2007, to March 22, 2007. When they travel to Taiwan, they stay and visit with family members. (Item 5; Item 6.)

In his response to the SOR, Applicant points out that Taiwan is a democratic country which has had favorable relations with the U.S. for over a century. He does not feel compelled to apologize for his decision to maintain his Taiwanese citizenship but he is equally proud of his decision to become a naturalized citizen. He had no malicious intent when he decided to keep and use his Taiwanese passport for entry and exit from Taiwan. He uses his Taiwanese passport as a matter of convenience. He maintains his status as a Taiwanese citizen primarily to be eligible for health benefits for himself and his family during travel to Taiwan. He states this proved invaluable when his wife was diagnosed with breast cancer. He traveled to Taiwan on several occasions to visit his wife during her medical treatment. Applicant considers the fact that this is being used against him a cruel irony and an injustice. (Item 2.)

### **Policies**

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 the adjudicative process. The Administrative Judge's over-arching adjudicative goal is a fair, impartial and common sense 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.

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 applicant or proven by Department Counsel. . . .” The Applicant has the ultimate burden of persuasion as to obtaining a favorable security 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 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.

Section 7 of Executive Order 10865 provides that 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 guideline notes several disqualifying conditions that could raise security concerns. Of the Foreign Influence Disqualifying Conditions (FI DC), the following potentially apply to Applicant's case.

FI DC ¶ 7(a) (*contact with a 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*) applies with respect to Applicant's relatives who are citizens of and reside in Taiwan. His parents, parents-in-law, and brother are citizens of and reside in Taiwan. He and his family have traveled on numerous occasions to visit family members in Taiwan. Applicant's numerous visits to Taiwan to visit family members create a heightened risk of foreign exploitation, manipulation and inducement.

FI DC ¶ 7(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*) applies for the same reason. The record is not clear how often Applicant has contact with his relatives in Taiwan while he is in the U.S. (i.e., telephonic, e-mail). Applicant and his family's close ties to his relatives in Taiwan is evident based on their numerous visits to Taiwan. With regard to his parents-in-law, there is a rebuttable presumption that an applicant has ties of affection for, or obligation to, his spouse's immediate family members. (ISCR Case No. 01-03120 at 4 (Appeal Board, February 20, 2002))

FI DC ¶ 7(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*) potentially applies with respect to Applicant's wife because she is not a U.S. citizen. However, she is a permanent U.S. resident. Applicant's relationship with his wife does not create a heightened risk of foreign inducement, manipulation, pressure or coercion. FI DC ¶ 7(d) does not apply.

Applicant has a brother who is a citizen of Taiwan who resides in the U.S. He is a permanent resident and intends to apply for U.S. citizenship when he is eligible. I find no foreign influence concerns with respect to Applicant's brother who resides in the U.S.

The guideline also includes conditions that could mitigate security concerns arising from Foreign Influence. The following Foreign Influence Mitigating Conditions (FI MC) have the potential to apply in Applicant's case.

FI MC ¶ 8(a) (*the nature of the relationship with foreign persons, the country in which these persons are located, or the position 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.)* does not apply. Family contacts and ties with persons in a foreign country are not automatically disqualifying but require the applicant to present evidence in mitigation and extenuation that he qualifies for a security clearance. Although Applicant stated that his parents and parents-in-law are retired, no information was provided about their employment prior to retiring. He indicated that his brother in Taiwan works for a private company but did not state what the company does or his brother's position in the company. Applicant did not provide sufficient information which would support application of this mitigating condition.

FI MC ¶ 8(b) (*there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, or 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*) does not apply. Applicant clearly has a sense of loyalty and obligation to his family members in Taiwan. While Applicant has attended college and lived in the U.S. a number of years, I cannot conclude that he can be expected to resolve any conflict of interest in favor of U.S. interests. He still has emotional ties to his home country which is indicated by his unwillingness to renounce his Taiwanese citizenship. Although Applicant has longstanding ties to the U.S., concerns remain because of his significant ties to his relatives in Taiwan. FI MC ¶ 8(b) cannot be applied.

FI MC ¶ 8(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*) is not applicable. Applicant's relationship with his family members who live and reside in Taiwan cannot be considered casual and infrequent.

Security concerns remain due to Applicant's relatives who are citizens of and reside in Taiwan. Foreign Influence concerns are not mitigated. Guideline B is found against Applicant.

### **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 disqualifying conditions that could potentially raise security concerns. Foreign Preference Disqualifying Condition (FP DC) 10(a) (*exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through foreign citizenship of a family member. This includes but is not limited to: (1) possession of a current foreign passport; and (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country*) applies.

Applicant possesses a valid Taiwanese passport which does not expire until 2013. He uses the passport for convenience when he travels to Taiwan. He also maintains his Taiwanese citizenship in order to remain eligible for health care benefits in Taiwan. Applicant's possession and use of a Taiwanese passport after becoming a U.S. citizen is considered an exercise of his rights of foreign citizenship and raises a security concern under foreign preference.

The guideline also includes conditions that could mitigate security concerns arising from Foreign Preference. The following Foreign Preference Mitigating Conditions (FP MC) have the potential to apply in Applicant's case.

FP MC ¶ 11(a) (*dual citizenship is based solely on parents' citizenship or birth in a foreign country*) does not apply. While Applicant obtained his dual citizenship based on his birth in Taiwan, he exercised his dual citizenship by using his Taiwanese passport after becoming a U.S. citizen. He made a conscious decision to maintain his Taiwanese citizenship, primarily for more convenient travel to Taiwan and in order to maintain he and his family's eligibility for health care benefits.

FP MC ¶ 11(b) (*the individual has expressed a willingness to renounce dual citizenship*) does not apply. Applicant is not willing to renounce his Taiwanese citizenship. While Applicant has valid reasons for not renouncing his Taiwanese citizenship, it does not mitigate the security concerns under foreign preference.

FP MC ¶ 11(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*) does not apply. Applicant continues to exercise his rights and privileges of Taiwanese citizenship after becoming a U.S. citizen in October 2005.

FP MC ¶ 11(d) (*use of a foreign passport is approved by the cognizant security authority*) is not applicable to the facts of this case.

FP MC ¶ 11(e) (*the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated*) does not apply. Applicant has no intention of surrendering his Taiwanese passport.

FP MC ¶ 11(f) (*the vote in a foreign election was encouraged by the United States Government*) is not applicable because there is nothing in the record evidence suggesting Applicant voted in a foreign election.

Applicant has not mitigated the Foreign Preference concerns because he intends to maintain and use his Taiwanese passport, and intends to exercise his rights as a Taiwanese citizen in order to be eligible for health care benefits in Taiwan. Applicant has the burden to mitigate the security concerns raised under foreign preference. He has not met his burden. Guideline C is found against 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. 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) 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." Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense 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 the facts and circumstances surrounding this case. Guideline B is a security concern that affects applicants through no fault of their own. The government need not prove an applicant is a bad person before it can deny or revoke access to classified information. Even good people can pose a security risk because of facts and circumstances not under their control. An applicant with good character and personal integrity can pose a security risk because the applicant has close relatives in a country that is hostile to the United States. (ISCR 01-26893, at 9-10 (Appeal Board, October 16, 2002)) While the government of Taiwan is not hostile to the U.S, it has been known to commit espionage against U.S. companies. Applicant did not provide sufficient evidence to mitigate the concerns raised based on his family members' status as citizens and residents of a foreign country. Applicant's decision to maintain his Taiwanese passport as well as his Taiwanese citizenship after becoming a U.S. citizen raised security concerns under foreign preference. Applicant has not mitigated the concerns raised under foreign influence and foreign preference.

## 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:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant



Paragraph 2, Guideline C:

AGAINST APPLICANT

Subparagraph 2.a:

Against Applicant

Subparagraph 2.b:

Against Applicant

Subparagraph 2.c:

Against Applicant

### **Conclusion**

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

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ERIN C. HOGAN  
Administrative Judge