



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



In the matter of:	)	
	)	
	)	ISCR Case No. 07-12820
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Julie Edmonds, Esquire, Department Counsel  
For Applicant: Pro Se

May 19, 2008

**Decision**

CREAN, Thomas M., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigation Processing (e-QIP) on February 14, 2007. On October 28, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns for Applicant under Guideline B, Foreign Influence. 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.

Applicant acknowledged receipt of the SOR on November 7, 2007. She answered the SOR in writing on November 18, 2007, admitting all of the factual allegations in the SOR with explanation. She requested a hearing before an administrative judge. Department counsel was prepared to proceed on February 25, 2008, and I was assigned the case on February 27, 2008. DOHA issued a notice of hearing on March 6, 2008, and I convened the hearing as scheduled on April 8, 2008.

The government offered one exhibit, marked Government Exhibit 1, which was received without objection. Applicant submitted seven exhibits, marked Applicant Exhibits A through G, which were received without objection. Applicant testified on her behalf. DOHA received the transcript of the hearing (Tr.) on April 17, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Procedural and Evidentiary Rulings**

#### Request for Dismissal

Department Counsel request that SOR allegation 1.a. and 1.e be dismissed to conform to the government's evidence. Applicant had no objection. The motion was granted and SOR allegation 1.a. and 1.e. were dismissed. (Tr. 6-7)

#### Request for Administrative Notice

Department Counsel submitted a formal request for administrative notice of certain facts relating to Taiwan. (Tr. 11-12) The request and the supporting documents were not admitted into evidence but were included in the record as Hearing Exhibit I. Applicant had no objection to the request for administrative notice and the attached documents. The facts administratively noticed are set out in the Findings of Fact.

### **Findings of Fact**

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact. Applicant admitted all the factual allegations in the SOR with explanation. She also provided additional information to support her request for eligibility for a security clearance.

Applicant is 53 years old and has been employed as a principal engineer for a defense contractor since 1995. Applicant was born and raised in Taiwan and received her undergraduate degree in mathematics from a Taiwan university in 1978. She came to the United States and received her master's degree and doctorate in electrical engineering from United States universities. Immediately after receiving her doctorate, she started working for her defense contractor employer. She has held a security clearance since 1996. She has been separated from her husband since 1997. She has two children who were born in the United States and are United States citizens. One is a college graduate and the other a high school student. She became a United States citizen in 1990 and received a United States passport. She turned in her Taiwan passport to her facilities security officer and it was destroyed. (Tr. 16-20; Government Exhibit 1, Security Clearance Application, E-QIP, dated February 14, 2007)

Applicant's mother is a resident and citizen of Taiwan. She is 77 years old and a retired translator for a Japanese company. Her father is deceased. Her mother receives no funds or benefits, medical or otherwise, from the Taiwan government. Her

mother has visited her in the United States about five times in the last ten years. She talks to her by telephone about once a week and sometimes more often. (Tr. 21-22),

Applicant's mother lives with her 49 year old brother, his wife and daughter, who are citizens and residents of Taiwan. Applicant's brother is a doctor in a hospital and his wife is at home. She talks to her brother or his wife if they are home and answer the telephone when she calls her mother. Her sister-in-law and niece visited her in the United States in 2004. (Tr. 22-25)

Applicant's sister is a 46-year-old physical therapist professor at a Taiwanese university. The sister received her physical therapy doctorate at a United States university. She is married with one daughter. Her husband is also a physical therapist by profession but is now serving as a delegate to a local city government. She speaks to her sister by telephone about once every two months. She does not talk to her brother-in-law because he usually is busy and not home when she calls her sister. (Tr. 25-26)

She has another sister who is a citizen and resident of Taiwan. This sister is a doctor of internal medicine. Her husband is also a citizen and resident of Taiwan and is also a doctor. Applicant talks to this sister about every two months. The sister visited Applicant once in the United States when she accompanied their mother on a trip. (Tr. 26-29)

Applicant's aunt and uncle were born in Taiwan but have lived in Japan for over 45 years. Her uncle is a doctor in Japan. She only met them when they all attended her grandmother's funeral a few years ago. They have never visited her in the United States and she never talks to them. (Tr. 29-31)

Applicant's family does not know she has a security clearance. She only has a United States passport and uses it for her visits to Taiwan. Applicant visited her family in Taiwan from December 2000 until January 2001 with her two children. She returned for another visit in August 2001 because her father was ill. She returned in September 2001 when her father passed away. Her next trip was in April 2004 to attend her grandmother's funeral. Her last trip was in December 2006 when her mother suffered a stroke. She only traveled to Taiwan to visit her mother, attend funerals of relatives, or to see a sick family member. (Tr. 19-21)

Applicant owns her house in the United States. She has a retirement account with her employer. She does not own property or have investments in Taiwan. (Tr. 31-33)

Applicant is a valued employee of the defense contractor. She presented her performance evaluations for 2002, 2003, 2004, 2005, 2006, and 2007. She has been uniformly rated as meeting or exceeding expectations. (Applicant exhibits B, C, D, E, F, Performance Appraisals, various dates) Her direct supervisor noted he has worked with Applicant since 2005. She is professional in work and conduct and enjoyable to work

with. She is a highly skilled engineer who contributes to success on their projects. He has not observed any conflict between her actions and her holding a security clearance. (Applicant Exhibit A, Letter, dated April 1, 2008).

During World War II and after, a civil war was fought on the mainland of China between the Chinese Communist Party and the Nationalist Chinese. In 1949, the Chinese Communist Party was victorious and established a government on the mainland. The Nationalist Chinese fled to Taiwan and established a government. Taiwan has developed steadily since then and is now the world's 17<sup>th</sup> largest economy. Taiwan became a member of the World Trade Organization in 2002, further expanding its trade opportunities and further strengthening its standing in the global economy. This prosperity established economic and social stability.

Until 1986, Taiwan's political system was effectively controlled by one party, the Kuomintang. Since ending martial law in 1987, Taiwan has taken dramatic steps to improve respect for human rights and create a democratic political system. The United States has been committed to maintaining cultural, commercial, and other nonofficial relations with Taiwan since January 1979, when it formally recognized the government of the People's Republic of China (PRC) as the sole legal government of China. By formal act of Congress (Taiwan Relations Act of 1979), the United States is committed to provide Taiwan with military defensive arms in support of Taiwan's security and stability in the region. The United States also stated it would maintain cultural, commercial, and other unofficial relations with the people of Taiwan. Despite the United States clear and consistent position that Taiwan and the mainland are part of one China, United States commercial ties have expanded with Taiwan and the United States is supportive of Taiwan's membership in international organizations, such as the World Trade Organization and the Asian Development Bank. (*See Hearing Exhibits*, United States, Department of State's Background Note: Taiwan, dated October 2007.)

While still pursuing a closer relationship with Taiwan, the official United States position on Taiwan and mainland China seems to be a criticism of mainland China's buildup opposite Taiwan with periodic cautions and warnings to the effect that United States support for Taiwan is not unconditional, but has limits. Smooth United States and PRC relations are an important tool in cooperating against terrorism and maintaining stability in Pacific region. Faced with competing pressures and the continuing transformation on both the PRC and Taiwan systems, the United States government may be facing new and more difficult policy choices concerning Taiwan in the next few years. (*See Hearing Exhibits*, Congressional Research Service Report to Congress: Taiwan: Recent Developments and U.S. Policy Choices, dated October 9, 2006)

The government claims through Administrative Notice that Taiwan poses a threat to national security because, in the past, it was one of the countries most actively engaged in industrial espionage and the collection of foreign economic information.<sup>1</sup> It

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<sup>1</sup> See, Annual Report to Congress on Foreign Economic Collection and Industrial Espionage. While the report is undated, the government's request for administrative notice refers to the document as a 2000

presented information concerning individuals in the United States convicted of engaging in espionage practices with Taiwanese companies or officials. It is also noted that Taiwan has a democratic political system, has made dramatic steps toward improving its respect for human rights, has ended restrictions on freedom of the press and the formation of new political parties, and has relaxed restrictions on personal freedoms. (See, United States State Department Background Notes, Taiwan, dated April 2007; United States Department of State, Country Report on Human Rights Practices-2006, China (Taiwan Only) dated March 6, 2007). The relationship between the United States and Taiwan is defined in the Taiwan Relations Act which recognizes Taiwan. (Public Law 96-8) Taiwan has a long history of friendly relations with the United States, including substantial levels of foreign trade. Taiwan is an ally and friend but also poses a security threat because of efforts to obtain national security information.

### **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. 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

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report. There are a number of examples in this report of espionage on U.S. economic and industrial activities by Taiwanese officials or companies. Also of note is a Private Industry Survey by officials of the National Counterintelligence Center listing Taiwan as one of the most active collectors of economic and industrial espionage. The list of most active collectors was developed by contacting nearly a dozen selected Fortune 500 companies for their view of the problem of foreign economic collection and industrial espionage. Only a small sampling, 12 of 500, of companies were contacted. The companies and individuals contacted are not identified. The report was given minimal weight.

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**

There is a security concern because 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 the U.S. interests, or is vulnerable to pressure or coercion by any foreign interests. 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 consideration 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)

Applicant has contact through visits and telephone calls with her mother, brother, two sisters, sister-in-law, and brothers-in-law, who are all citizens and residents of Taiwan. She has contact with an aunt and uncle who are Taiwan citizens that reside in Japan. These contacts raise security concerns under Foreign Influence Disqualifying Conditions (FI DC) AG ¶ 79(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 FI DC AG ¶ 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). Each individual contact by itself may not create a heightened risk of

foreign influence, but the totality of the contacts may indicate a heightened risk of foreign influence.

I have considered Foreign Influence Mitigating Conditions AG ¶ 8(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 interest of the U.S.); AG ¶ 8(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 AG ¶ 8(c) (Contact or communication with foreign citizens is so casual or infrequent that there is little likelihood that it could created a risk for foreign influence or exploitation) and determine all apply to Applicant's circumstances.

Under the old adjudicative guidelines, a disqualifying condition based on foreign family members could not be mitigated unless an applicant could establish that the family members were not "in a position to be exploited." The Appeal board consistently applied this mitigating condition narrowly, holding that its underlying premise was that an applicant should not be placed in a position where he is forced to make a choice between the interest of the family member and the interest of the United States. (See, ISCR Case No. 03-17620, App. Bd, Apr. 17, 2006; ISCR Case No. 03-24933, App. Bd. Jul. 28, 2005; ISCR Case No. 03-02382, App. Bd. Feb. 15, 2005; and ISCR Case No. 03-15205, App. Bd. Jan. 21. 2005). Thus, an administrative judge was not permitted to apply a balancing test to assess the extent of the security risk. Under the new guidelines, however, the potentially conflicting loyalties may be weighed to determine if an applicant can be expected to resolve any conflict in favor of the U.S. interest.

In determining if Applicant's family in Taiwan cause security concerns, I considered that Taiwan is an ally of the United States, has a defense agreement with the United States, and is one of the United States' substantial trading partners. I considered that Taiwan improved its human rights position and its people enjoy basic freedoms. While the United States has a one-China policy, the United States does maintain cultural, commercial, and other ties with Taiwan. I considered that Taiwan does engage in economic and other types of espionage, and there are instances of Taiwan officials and companies engaging in such espionage with individuals in the United States. There are no indications in these instances Taiwan was targeting United States citizens to provide economic or other sensitive information. I also considered that faced with new and competing national interest, the United States policy toward Taiwan could change. While Taiwan is a country that is friendly to the United States, it could engage in espionage against United States interests. Friendly countries may have profound disagreements with the United States or have engaged in espionage against United States economic, scientific, or technical interest. A friendly relationship is not determinative, but it makes it less likely that a foreign government would attempt to exploit a United States citizen through relatives or associates in that country. Taiwan

is not a hostile country, nor is its interests inimical to the United States. The United States and Taiwan are large democracies, enjoy good relations, and are trading partners. It is reasonable to consider that Taiwan would not take any action to jeopardize their friendly position with the United States because of their need for trade and defense assistance from the United States. It would be considered an act unfriendly to the interest of the United States to coerce its citizens with relatives in the United States to pressure their United States relatives to provide economic or other espionage information against the interest of the United States. While none of the considerations by themselves dispose of the issue, they are all factors to be considered in determining Applicant's vulnerability to pressure or coercion from his family members in Taiwan.

Applicant has raised Foreign Influence Mitigating Conditions (FI MC) ¶ 8(a) (the nature of the relationship 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 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 interest of the United States). Applicant's mother is a retired translator for a company and has no ties to the Taiwanese government. She is not dependent on the government for subsistence. Applicant's siblings are medical professionals working for private businesses in Taiwan. They are not dependent on the Taiwanese government for their subsistence. Applicant talks to her mother frequently, at least once a week. She talks to her siblings less but it is still often at about every other month. Applicant made a number of trips to Taiwan for normal visits to her family, or when they are sick, or for funerals. Her mother and siblings have come to the United States to visit her. It is clear that they have a close family relationship. Her contact with her immediate family is frequent and not casual. Applicant has little if any contact with her brother-in-law, who is a government official. Since the contact is so minimal, his position as a government official does not create a security concern. Applicant's information concerning her family members' living conditions, life style, and professions, shows it is unlikely Applicant will be placed in a position to choose between the interests of his family and friend and the interests of the United States. Applicant established her family members in Taiwan are ordinary citizens leading normal lives. They do not present a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. The positions and activities of her family and the fact they are in Taiwan show that it is unlikely that Applicant will be placed in a position of being coerced or pressured to choose between these people and her interests in protecting the national security of the United States. FI MC ¶ 8(a) applies.

Applicant has raised 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, government, or country is 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). Applicant's vulnerability to duress is also important. Applicant has been in the United States for over 23 years, and a United States citizen for over 18 years. She has two children born and educated in the United



States, who are citizens of the United States. Applicant's assets, her house and retirement funds are in the United States and she has no financial interest in Taiwan. She has held a security clearance for over 13 years without any problems. Applicant's numerous and repeated trips to Taiwan were solely for the purpose of visiting family. Applicant has demonstrated that she is not unusually vulnerable to duress. Applicant has a normal sense of loyalty or obligation to her family in Taiwan. But she also has long standing relationship and connections in the United States. She has demonstrated that these relationships will lead her to resolve any conflict of interest in favor of the United States. FI MC ¶ 8(b) applies.

Applicant has raised 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) in connection to her aunt and uncle in Japan. Applicant has the burden of presenting information to refute, extenuate, or mitigate the security concerns raised by the government. Applicant has only met her aunt and uncle one time at the funeral of her grandmother. At best, this is only minimal contact and she hardly knows them. The contact is so casual and infrequent there is little likelihood that it could create a risk for foreign influence or exploitation. Because of the lack of a relationship with her aunt and uncle, there is no reason to discuss the security significance of the nature of the relationship between Japan and the United States. Accordingly, FI MC 8(c) applies to her aunt and uncle in Japan.

Accordingly, Applicant has met her heavy burden to show that her family contacts in Taiwan and Japan do not cause a security concern. I conclude FI MC AGs ¶¶ 8(a), (b), and (c) are established.

### **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. The "whole person" concept requires consideration of all available information about Applicant, not a single item in isolation, to reach a common sense determination concerning Applicant's security

worthiness. Applicant's family in Taiwan both individually and collectively are in positions and circumstances that make it unlikely Applicant will be placed in a position to choose between the interests of her family and the interest of the United States, or that she can be exploited, pressured, or coerced because of them. Her contacts with her family in Taiwan are strong but they do not create a conflict of interest between the family members and her loyalty to the United States. Applicant has been in the United States for over 28 years and a citizen of the United States for over 18 years. Her children were born here and are United States citizens. She has accumulated significant assets in the United States, and has no property interests in Taiwan. Her supervisor and her employer consider her to be a good worker and not a security risk. She has successfully held a security clearance for over 13 years. She does not discuss her work with her family in Taiwan. She travels to Taiwan periodically to visit family rather than any connection to the Taiwanese government. She established that her contacts with her family in Taiwan and Japan do not indicate a security risk. Applicant's life story is an example of the success of many immigrants to the United States. She came to the United States to better herself through education. She remained here and became a United States citizen. The family enjoys a typical United States life style. Overall, on balance the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from foreign influence.

### **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:	FOR APPLICANT
Subparagraph 1.a:	Withdrawn
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Withdrawn
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant

## **Conclusion**

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

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THOMAS M. CREAN  
Administrative Judge