



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 07-15356
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Eric H. Borgstrom, Esq., Department Counsel  
For Applicant: *Pro se*

September 26, 2008

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**Decision**  
\_\_\_\_\_

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns under Guideline B (Foreign Influence), raised by Applicant's family ties to Taiwan and Thailand. Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application on September 8, 2006. On April 30, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny his application, citing security concerns under Guideline B. 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 May 5, 2008; answered it on May 12, 2008; and requested an administrative determination without a hearing. DOHA received the request on May 15, 2008. Department Counsel requested a hearing on June 2, 2008 (Hearing Exhibit (HX) I), and was ready to proceed on June 12, 2008. The case was assigned to me on July 22, 2008. DOHA issued a notice of hearing on July 28, 2008, scheduling the hearing for August 19, 2008. I convened the hearing as scheduled. Government Exhibits (GX) 1 and 2 were admitted in evidence without objection. Applicant testified on his own behalf, and submitted Applicant's Exhibits (AX) A through W, which were admitted without objection. I granted Applicant's request to keep the record open until September 2, 2008, to submit additional documentary evidence. He timely submitted AE X through CC, and they were admitted without objection. DOHA received the transcript (Tr.) on August 27, 2008. The record closed on September 2, 2008.

### **Administrative Notice**

Department Counsel requested that I take administrative notice of relevant facts about Taiwan and Thailand (HX II). I took administrative notice as requested, without objection from Applicant (Tr. 28). The facts administratively noticed are set out below in my findings of fact.

### **Amendment of SOR**

After both sides had presented their evidence, Department Counsel moved to amend the SOR by adding an allegation that Applicant's three brothers-in-law, one sister-in-law, and their spouses are citizens and residents of Thailand (Tr. 94). I explained to Applicant the authority for amending the SOR and the implications for him, and I informed him I would give him additional time to submit additional evidence regarding the additional allegation in the SOR. He did not object to the amendment, and I granted the motion to amend the SOR (Tr. 95-99). He timely submitted additional evidence, as noted above in the Statement of the Case.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a-1.e and 1.g. He partially admitted ¶ 1.f. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant was born in Taiwan in October 1967. He obtained a bachelor's degree in Taiwan, and then he was drafted and performed mandatory military service in the Taiwanese military from 1989 to 1991. After he was discharged, he came to the U.S. He lived for one year with his sister and brother-in-law, improving his English and preparing for graduate school. He obtained a master's degree in physics in June 1994 (AX G; Tr. 15) and a second master's degree in electrical engineering in December 1998 (AX H and I). He enrolled in a doctoral program (AX J and K), but he did not complete it. He

has authored several scholarly articles and participated in numerous seminars and conferences on electronic signal processing (AX L and M).

Applicant became a U.S. citizen in October 1997. He has been employed as a senior engineer for a government contractor since October 2006 (AX A). He has an interim clearance, but he has never held a final security clearance (Tr. 15-16).

Applicant met his wife while he was obtaining his first master's degree, and they were married in June 1998 (Tr. 57; AX C). They have two children who are U.S. citizens. His wife was born in Thailand in March 1968 (AX AA and BB). She obtained her bachelor's degree in Thailand, came to the U.S. in 1992, obtained a doctorate in chemistry, and became a U.S. citizen in June 2004. She holds dual citizenship by virtue of her birth in Thailand.

Applicant's wife's mother is deceased, and her father is a citizen and resident of Thailand who owned a jewelry shop but is now retired (Tr. 81). She has four married siblings, three brothers who own and operate a small jewelry shop (AX CC), and a sister who is a housewife (AX Z). All her family members live in Bangkok (GX 2 at 9). She maintains contact with her family in Thailand, and she visited them for approximately three months from December 2002 to February 2003 and again from September to December 2004 (AX N). Her younger sister and her spouse visited Applicant and his wife in the U.S. in August 2006, when her sister's spouse received his M.B.A. degree from a U.S. university (Tr. 84).

Applicant's father was born in China, left China around 1949, and is a citizen and resident of Taiwan. He retired from a position in the Taiwan tax department and lives in a nursing home (Tr. 61). Based on Applicant's description, it appears his father was an auditor or low-level supervisor (Tr. 78). Applicant telephones his father about every other week (Tr. 86).

Applicant's mother is a citizen of Taiwan. She has Alzheimer's disease and lives in a nursing home in the U.S. Applicant cannot communicate with her because of her mental condition (Tr. 86).

Applicant has four living siblings: a sister who is a citizen and resident of the U.S.; a sister who is a citizen of the U.S., married to a U.S. citizen, and teaches Mandarin in a Christian school in Hong Kong (AX N and O); a sister who is a citizen and resident of Australia; and a brother who became a Canadian citizen in May 2001, then became a U.S. citizen in July 2008, and resides in the U.S. (Tr. 62).

Applicant traveled to Taiwan in December 2000, September 2004, and December 2004; and he traveled to Thailand in December 2002 and February 2003. All travel was to visit his father or his wife's family, sometimes combining business travel with family visits (AX Q through W).

None of Applicant's family in Taiwan and none of his wife's family in Thailand are politically connected or politically active. Applicant's father is the only member of either family who was a government employee.

Applicant has been an active member of his church for more than 13 years. Applicant's minister describes him as a "sincere, responsible, and faithful" member of the church (AX B). He purchased a home in 2007, after renting since 1992 (AX D, E, and F). He has filed U.S. income tax returns every year since 1992 (AX P). He believes every U.S. citizen has an obligation to vote, and he has voted in every U.S. presidential election (Tr. 92).

I have taken administrative notice that Taiwan is a multi-party democracy, established as a separate, independent government by refugees from mainland China in 1949. The People's Republic of China (PRC) does not recognize Taiwan's independence and insists there is only one China. The U.S. recognized Taiwan as an independent government until January 1979, when it formally recognized the PRC government as the sole legal government of China. Taiwan has developed a strong economy and has significant economic contacts with the PRC, but it also maintains a large military establishment to protect itself from the PRC. Commercial ties between the U.S. and Taiwan have expanded since 1979. For many years, Taiwan has been an active collector of U.S. economic intelligence, and there have been numerous instances of efforts to export sensitive, dual-use U.S. technology to Taiwan.

I have also taken administrative notice that Thailand is a constitutional monarchy. In September 2006, military leaders overthrew the democratically elected government, abolished Parliament, declared martial law, and issued decrees limiting free speech, free press, and freedom of assembly. After the coup, the U.S. suspended foreign aid, military training, and peace-keeping programs with Thailand. Those programs were resumed after a democratically-elected government was elected in December 2007 and took office. Thailand has an open-market economy with considerable foreign investment and an increasingly diversified manufacturing sector, but about 40% of Thailand's labor force is agricultural. The U.S. is Thailand's largest export market and third largest supplier. The U.S. and the new government of Thailand have resumed the good relations that existed before the coup. Thailand's current foreign policy emphasizes a close security relationship with the U.S. Before and after the coup, there were reported instances of disappearance, torture, and arbitrary arrest and detention. There has been increased terrorism and politically motivated violence, particularly in the far south of Thailand. The incidents are focused primarily on Thai government interests, but have targeted tourist areas.

### **Policies**

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The

President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “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 and modified.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the revised adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s over-arching adjudicative goal is a fair, impartial and common sense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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.

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is not necessarily a determination as to the loyalty of the applicant. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## Analysis

### Guideline B, Foreign Influence

The SOR, as amended, alleges Applicant's father and mother are citizens of Taiwan and his father resides in Taiwan (SOR ¶ 1.a and 1.b); his spouse is a dual citizen of Taiwan and the U.S. (SOR ¶ 1.c); his father-in-law, three brothers-in-law, one sister-in-law, and their spouses are citizens and residents of Thailand (SOR ¶ 1.d and 1.h); he served in the Taiwanese military from 1989 to 1991 (SOR ¶ 1.e); and he traveled to Taiwan in September 2004, December 2004, December 2003, and December 2000, and to Thailand in February 2003 and December 2002 (SOR ¶ 1.f and 1.g). The security concern under this guideline is set out in AG ¶ 6 as follows:

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.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at \*\*15-16 (App. Bd. Mar. 29, 2002). Nevertheless, the nature of a nation's government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the U.S. In considering the nature of the government, an administrative judge must also consider any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006).

Applicant's military service was mandatory, and it occurred before he became a U.S. citizen. As such, it raises no security concerns. See AG ¶ 11(c) (Under Guideline

C, an exercise of an obligation of foreign citizenship can be mitigated if it occurred before the individual became a U.S. citizen.)

Applicant's foreign travel, alleged in SOR ¶¶ 1.f and 1.g, was to visit family members and in connection with his employment. To the extent that his travel was a manifestation of his family ties, it has no independent security significance. See ISCR Case No. 02-26978 (App. Bd. Sep 21, 2005).

Three disqualifying conditions under this guideline are relevant to this case. First, a disqualifying condition may be raised by "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." AG ¶ 7(a). Second, a disqualifying condition may be raised by "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." AG ¶ 7(b). Third, a security concern may be raised if an applicant is "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" AG ¶ 7(d). When family members are involved, the totality of an applicant's family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003).

Taiwan is an active practitioner of economic espionage directed at the U.S., but there is no evidence Taiwan abuses its citizens to gather intelligence. Applicant's father was a low-level bureaucrat in the Taiwanese government, not involved in policy-making, military affairs, or intelligence. His father has never been involved in the high-technology arena in which Applicant works. There is no evidence in the record that Thailand targets the U.S. for military or economic espionage, but the recent upheavals in government and the presence of insurgents and anti-government terrorists are sufficient to raise the "heightened risk" encompassed in AG ¶¶ 7(a) and (d). Considering the totality of Applicant's foreign family ties, I conclude AG ¶¶ 7(a) and (d) are raised.

Applicant's spouse holds dual U.S.-Thai citizenship, and her father, siblings, and their spouses are citizens and residents of Thailand. I conclude the potential conflict of interest encompassed in AG ¶ 7(b) is raised.

Since the government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 7(a), (b), and (d), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Security concerns under this guideline can be mitigated by showing that “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.” AG ¶ 8(a). Applicant’s mother resides in the U.S. and is mentally incompetent, making it very difficult to influence or exploit her, but Applicant is close to his father, and his spouse is close to her father and siblings. Taiwan conducts economic intelligence against the U.S. Thailand suffers from politically-motivated terrorism and occasional abuses by security forces, but its newly-elected democratic government is friendly to the U.S. Applicant’s in-laws in Thailand are not politically active, and they live in Bangkok, not in the far south of Thailand where the violence is centered. Although the likelihood of a conflict of interest is not great, the evidence falls short of showing it is “unlikely.” Accordingly, I conclude AG ¶ 8(a) is not established.

Security concerns under this guideline also can be mitigated by showing “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.” AG ¶ 8(b). Applicant left Taiwan many years ago and has no emotional or political ties to the government of Taiwan. His ties to his parents, and his spouse’s ties to her family are not “minimal,” but Applicant has developed deep and longstanding relationships and loyalties in the U.S. He has lived, studied, and worked in the U.S. since about 1992, and he has been a U.S. citizen since 1997. He met his spouse in the U.S., and she has been a U.S. citizen since 2004. He has two small children who are citizens of the U.S. and whose future is in the U.S. Three of his four siblings are citizens of the U.S., and two of them reside in the U.S. His ailing mother resides in the U.S. with one of his siblings. His only family member residing in Taiwan is his father. He has been an active member of his church for more than 13 years. All of his financial assets are in the U.S. I am satisfied that Applicant would resolve any conflict of interest in favor of the interests of the U.S. Therefore, I conclude AG ¶ 8(b) is established.

### **Whole Person Concept**

Under the whole person concept, an 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. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual’s age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation



for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

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. Some of the factors in AG ¶ 2(a) were addressed above, but some warrant additional comment. I incorporate my comments above under Guideline B in my whole person analysis.

Applicant is a mature, well-educated adult. He was meticulously prepared, articulate, candid, sincere, and credible at the hearing. He is proud of his work and fully committed to being a good citizen of the U.S. After weighing the disqualifying and mitigating conditions under Guideline B, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on foreign influence. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

### **Formal Findings**

I make the following formal findings for or against Applicant on the allegations set forth in the SOR, as required by Directive ¶ E3.1.25:

Paragraph 1, Guideline B (Foreign Influence):	FOR APPLICANT
Subparagraphs 1.a-1.h:	For Applicant

### **Conclusion**

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

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LeRoy F. Foreman  
Administrative Judge