



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



In the matter of:	)	
	)	
SSN:	)	ISCR Case No. 07-15696
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government, Richard Stevens, Esquire, Department Counsel  
For Applicant: Ronald C. Sykstus, Esquire

November 10, 2008

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**Decision**

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MASON, Paul J., Administrative Judge:

Applicant submitted his Security Clearance Application (SCA) on September 23, 2005. On March 16, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under foreign influence (Guideline B). The action was taken pursuant to 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 made effective within the Department of Defense for SORs issued on or after September 1, 2006.

Applicant's answer to the SOR is dated March 31, 2008. Based on a careful evaluation of all the evidence in the record, Applicant's eligibility for security clearance access is granted. At the hearing, the government submitted two exhibits (GE 1-2). I took administrative notice of several publications from United States Government agencies that describe the Taiwanese government, its human rights record internally, and its practice collecting intelligence from other countries. At the hearing, testimony

was taken from Applicant. He also submitted three exhibits (AE A through AE D). DOHA received the transcript on August 14, 2008.

### **Rulings on Procedure**

During the preliminary segment of the hearing, Applicant contended that administrative notice not be taken of Exhibits 5, 6, and 7 because the documents were irrelevant, in that the underlying information in the exhibits failed to contain any significant evidence concerning Applicant's predilection for foreign influence. I overruled the objection because the exhibits show that there have been recent events where Americans have been targeted for information. These events have led to successful prosecution of the parties involved.

### **Findings of Fact**

Applicant admitted all five factual allegations listed under the foreign influence guideline of the SOR, but denied that his immediate family members make him vulnerable to foreign influence. Applicant is 48 years old and married with two children. He has been employed by the same employer (a defense contractor) since 1992. He seeks a secret security clearance. This is the first time Applicant has applied for a security clearance.

Applicant was born in Taiwan in April 1960. In 1982, he received his Bachelor of Science degree in Engineering from a Taiwanese university. He served in the Taiwanese Army from 1982 to 1984. Every male 18 years of age or older has to serve in the military. From 1984 to 1986, he was employed at a computer software business. He met his future wife during this employment.

After marrying his wife in Taiwan in June 1986, Applicant came to the United States (U.S.) for additional education. He enrolled at a postgraduate program at a middle eastern U.S. university for two years, then transferred to a local university in 1988, and was awarded his Master of Science degree in Engineering in May 1992. In June 1992, Applicant began working permanently for his current employer as an engineer.

Applicant's first child, a boy, born in the U.S. in 1989, is 19 years old. His daughter was born in the U.S. in August 1993. Applicant has lived at the same address in the local area since 1997. Applicant purchased the plot, and a builder constructed the house.

The SOR indicates that Applicant traveled to Taiwan three times since coming to the U.S. in 1986. In 1999, Applicant traveled to Taiwan for his father-in-law's funeral during a three-day stay. He went back for his grandmother's funeral in 2000. When he

traveled to Taiwan in June 2006<sup>1</sup> for his father's 70<sup>th</sup> birthday, he used his United States (U.S.) passport that he received in June 2005.

Applicant became a naturalized citizen in May 2005, and received his U.S. passport one month later. Applicant's wife received her American citizenship in April 2003, two years earlier than Applicant because some of his naturalization paperwork was lost and he had to resubmit additional information.

Applicant has been employed by his employer since 1992, and enjoys his work. (Tr. 32) He wants to remain with his employer as he makes his American dream come true. (Tr. 36) If any effort is made to try to pressure or threaten him, Applicant will inform his security officer and the government if the circumstances warrant. (Tr. 37)

Applicant's father was born in Taiwan in August 1937, and is 71 years old; Applicant's mother is deceased. The father was a carpenter in the country's Air Force from 1958 to 1961. The record does not reveal the occupation of his father after his military obligation ended, but Applicant's notarized answers reflect that he was never employed by the Taiwanese government. (GE 2) Applicant's father has visited him about five times in the last 12 years, with the most recent visit occurring in June 2008. Sometimes, his father has traveled to the U.S. and returned home without visiting Applicant. Applicant's contact with his father is by phone only because his father does not use e-mail. The contacts range from weekly to monthly. Since his father lives in the same apartment building as his sisters, some of the phone contacts are made by Applicant's sisters to advise him on his father's condition. Applicant's contact with his sisters is less, and is triggered by changes in his father's health.

Applicant's younger brother and two sisters were born in Taiwan. His brother was born in January 1962. He became a helicopter flight instructor in the Taiwan Army in 1983. He retired from that position in 2006, then in October 2006, found employment with a Taiwanese defense contractor in engineering maintenance. (Tr. 25)

Applicant's contacts with his brother are less than with his sisters. The telephone contacts are sporadic, (Tr. 44) with the last physical contact occurring at their father's birthday in June 2006. Applicant's brother receives a pension through the government's military pension system.

Applicant has never talked to his brother about what the brother does in his employment as a contractor. Applicant has only a general idea about what his brother does (Tr. 28), and he received that information from his sister. (Tr. 63, 64)

Applicant's older sister was born in Taiwan in March 1957. According to GE 2, she is not employed by the government. She is divorced from her husband who works in a furniture manufacturing plant. Applicant's younger sister was born in Taiwan in

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<sup>1</sup> Applicant traveled to Taiwan in June and not January 2006, as alleged in the SOR. See, AE D.

December 1963. She has never been employed by the government. Her husband was a manufacturer of connectors that lock little resistors into computer boards. He lost his business and is now working for a machine tool company. (Tr. 46-49)

Applicant's mother-in-law was born in Taiwan in November 1940. She has never been employed by the government. Applicant's father-in-law is deceased.

Applicant, his father and brother have served in the Taiwanese military. (GE 2, section 3) None of his other immediate family members have ever been employed by, or been a member of any foreign government, an agency or part of a foreign government, foreign military, a municipal government in a foreign country, or business/educational institution, or other organization that is wholly or partially owned by a foreign government, or a smaller governmental structure in Taiwan. (*Id.* at section 3 and 4) Applicant has no financial interests in any foreign country; he estimates his net worth in the U.S. to be approximately \$600,000.00. (*Id.* at sections 21 and 22)

### **Character Evidence**

The Director of Engineering services began working for Applicant's employer in 1996, after 30 years of service in the U.S. Air Force. From his daily professional contact with Applicant over the past 12 years, where the Director may see Applicant up to a dozen times a day (Tr. 74), and traveling with Applicant on projects around the U.S., and having continually observed Applicant's quality work, the Director has no reservations about recommending him for a position of trust with the government, even with the director's knowledge that Applicant's brother is a retired officer in the Taiwanese Army. (Tr. 80-83)

The President of Applicant's employer hired Applicant on a part-time basis in the early 1990s while Applicant was still in graduate school. When Applicant graduated in May 1992, the President hired him full time. From her daily observations of him since 1992, the President considers him a diligent, trustworthy worker who is conscientious about security issues. (Tr. 108) Since December 2000, the President has rewarded Applicant's quality work on a yearly basis with a letter of congratulations and a cash bonus. (AE C)

Applicant's wife testified she has been married to Applicant for the past 22 years. They have two children, ages 19 and 15. His wife became a citizen in 2003, and received her security clearance in May 2007. Applicant's wife received her Master's degree in Computer Science and for the last five years, has been employed by a computer software business.

Applicant and his wife have been members of their church for the last five years. Applicant operates the media group sound control duties for church services or special events, while his wife operates the power point apparatus for lyrics and videos. (Tr. 61) In addition, they lead a weekly religious study group for new immigrants of the church. They pass along their own experiences so the new immigrants can make swifter

adjustments to life in the U.S. With their involvement in church activities including the children's program, Applicant and his wife enjoy a good reputation among church members. (Tr. 117) Applicant's son participated in the children's program until he enrolled in college. Applicant's daughter still takes part along with twenty college students, who currently volunteer their time for the children's program. (Tr. 96) Applicant and his wife also participate in the Parents/Teachers Association (PTA) by collecting fees for sport and recreational events. (Tr. 54, 97)

### **Administrative Notice**

Taiwan, a country with a democratic system of government, was established by refugees from mainland China (PRC) in 1949. While the U.S. has recognized only the PRC as the sole government of China since January 1979, under the Taiwan Relations Act of 1979, the U.S. still conducts unofficial relations with Taiwan. The country is a major trading partner with the U.S., as well as other countries around the world. Taiwan belongs to the World Trade Association. and has a lengthy history of cooperation with the U.S. military in intelligence missions in previous regional military conflicts. Taiwan receives most of its defensive weapons from the U.S. to ensure the country's defensive capability. The country is an active collector of U.S. economic intelligence information. Since ending martial law in 1987, the government has taken dramatic measures to increase respect for human rights and to improve the Taiwanese democratic system of government.

### **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 flexible rules of law that recognize the complexities of human behavior, and are to be applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's ultimate adjudicative goal is a fair, impartial and common sense decision. According to the AG, the entire process is a careful, thorough evaluation 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. Reasonable doubt concerning personnel being considered for access to classified information will be resolved in favor of the national interest. 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 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 is not restricted to normal duty hours. Rather, the relationship is an-around-the-clock responsibility between an applicant and the federal government. 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.

### **Analysis**

6. *The Concern.* “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 U.S. citizens to obtain protected information and/or is associated with the risk of terrorism.” ¶ 6.

The mere possession of family ties in a foreign country is not automatically disqualifying under the FI guideline. ISCR Case No. 98-0507 (App. Bd. Dec. and Rem. Ord., May 17, 1999) at 10. However, the citizenship/residence status of Applicant’s father, brother and sisters in Taiwan, and Applicant’s three trips to Taiwan since 1999, create the potential for foreign influence under Foreign Influence (FI) disqualifying condition (DC) 7.a. (*contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or a resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion*).

Regarding Applicant’s mother-in-law, the DOHA Appeal Board has held that there is a rebuttable presumption that an applicant has close ties of affection, or at least obligation, to members of his wife’s family. ISCR Case No. 01-03120 at 8 (App. Bd. Feb. 20, 2002). Therefore, a potential for foreign influence extends to Applicant’s mother-in-law who is a resident citizen of Taiwan.

To determine whether Applicant faces a heightened risk of foreign influence due to the citizenship/residence of his foreign family members depends a number of factors other than the citizenship and residence of members, including the political character of the foreign country in question, its relationship to the U.S., and the prospects an applicant's family members may be subject to pressure or coercion. If the foreign family member is associated/employed or dependent on the government, or the government is authoritarian, then the chances for foreign influence directed to and through the foreign family member are more likely. Even friendly nations like Taiwan, i.e., those that may have the same type of democratically elected government as the U.S., with a history of good relations, do not always have the same interests. Taiwan has targeted the U.S. for economic information. But, Taiwan has also become a strategic partner with the U.S. on defensive issues, and has significantly improved its human rights record with its citizens. Given the defensive and commercial interests Taiwan has in common with the U.S., the country is not likely to jeopardize that relationship by applying coercive or non-coercive pressure on its citizens to reach naturalized American citizens.

None of Applicant's family members work for the Taiwanese government or any foreign government. Applicant's father, 71 years old, has visited Applicant five times in the last eleven years. The former husband of Applicant's older sister works in a furniture manufacturing plant. The husband of Applicant's younger sister works in a machine tool company. Applicant's relations with his father and siblings appear to be grounded upon family rather than commercial relationships. His three trips to Taiwan were either to visit or bury his family members. Applicant's brother is currently employed as a defense contractor in engineering maintenance, after a long career as a helicopter pilot. There is no evidence in the record that his brother has been involved in gathering intelligence, either as a pilot or in his current contractor position. There is very little information in the record concerning Applicant's mother-in-law. Viewing the record in its entirety, it is unlikely Applicant will be pressured into a position of having to choose between his family members in Taiwan and interests of the U.S. FC MC 8.a. (*the nature of the relationships 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.*) applies.

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 long lasting 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*) also applies to show there is no conflict of interest between Applicant, his foreign family members and the U.S. Applicant has a net worth in the U.S. of about \$600,000.00. He and his family have lived in the local area since 1993. He and his family have been living at the same address since 1997. In sum, Applicant's accomplishments as a U.S. citizen in his professional career and family life provide ample evidence to conclude he will resolve even a potential conflict of interest in favor of the U.S. Though 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 inapplicable because of Applicant's regular contacts with his father, the level of contact does not disqualify Applicant's security clearance application. Applicant's trips to Taiwan have no independent security significance under the FI guideline. Accordingly, Subparagraphs 1.a. through 1.d. are found for Applicant.

### **Whole Person Concept (WPC)**

I have examined the evidence with the disqualifying and mitigating conditions in my ultimate finding for Applicant under the FI guideline. I have also weighed the circumstances within the context of nine variables known as the whole person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors: (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 the participation was 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.

After marrying his wife in June 1986, Applicant immigrated to the U.S. to advance his education. After spending two years at a school in the middle eastern part of the U.S., he transferred to a local university in 1988 to continue his graduate studies, and began working part-time for his current employer. After he was awarded his Master's degree in Mechanical Engineering in May 1992, his current employer hired him permanently in June 1992. For 16 years, Applicant has provided a quality work product and dedication to security issues that the Director of engineering and the President of the company find very commendable. The President has acknowledged Applicant eight times since 2000 for his outstanding job performance.

The commitment that is found in Applicant's 16-year professional career can readily be found in his family life. He has been married to his wife for 22 years, and they have two children, 19 and 15. His wife has been working at a computer software business for the past five years, and obtained her security clearance in May 2007. Applicant and his wife have become very active in all facets of their church, and have watched their children provide meaningful contributions to the religious study program and the children's program of the church. Given Applicant's strong professional, family and economic roots (approximately \$600,000.00 net worth) in the U.S., and his credible testimony at the hearing, his potential for foreign influence is very improbable. The foreign influence guideline is resolved in Applicant's favor.



## 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 (Foreign Influence, Guideline B):	FOR APPLICANT
Subparagraph 1.a.	For Applicant
Subparagraph 1.b.	For Applicant
Subparagraph 1.c.	For Applicant
Subparagraph 1.d.	For Applicant
Subparagraph 1.e.	For Applicant

## Conclusion

In light of all of the circumstances presented by the record in this case, 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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Paul J. Mason  
Administrative Judge