



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



In the matter of:	)	
	)	
	)	ISCR Case No. 07-16117
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tom Coale, Esquire, Department Counsel  
John Bayard Glendon, Esquire, Department Counsel

For Applicant: *Pro Se*

July 8, 2008

**Decision**

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MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant completed Electronic Questionnaires for Investigations Processing (e-QIP), on May 23, 2007. On March 24, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline C (Foreign Preference). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended, and 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.

In an undated response, Applicant answered the SOR allegations by admitting all four allegations raised and submitting one document. The case was ultimately assigned to me on May 2, 2008. Department Counsel and Applicant agreed to a May 28, 2008, hearing date and a Notice of Hearing was issued on May 13, 2008.

The hearing took place as scheduled. Department Counsel submitted 10 exhibits (Ex.). which were accepted into the record as Exs. 1-10 without objection. Applicant submitted three exhibits, accepted as Exs. A-C without objection. No witnesses were called. The transcript (Tr.) was received on June 5, 2008. Based upon a review of the case file, exhibits, and testimony, security clearance is granted.

### **Administrative Notice**

The Government requested administrative notice of certain facts regarding Taiwan, including that country's precarious position in relation to the People's Republic of China and the U.S. Government's "one-China" policy. Citing to an eight year old Annual Report to Congress on Foreign Economic Collection and Industrial Espionage from the National Counterintelligence Center, it notes that Taiwan is an active collector of U.S. economic intelligence.<sup>1</sup> It points to a 2006 conviction of an individual found guilty of aiding Taiwan in information gathering. It also references several documents accepted into the record as Exs. 4-8. The Government's request is granted.

### **Findings of Fact**

Applicant is a 35-year-old program analyst who works for a defense contractor. She was born in Taiwan, but immigrated to the United States (U.S.) with her family when she was an 18-year-old. She became a naturalized U.S. citizen in 1996, three years before completing a bachelor's degree. Applicant is married and has no children.<sup>2</sup>

At the time of her application for a security clearance in 2007, Applicant possessed both a U.S. passport, issued in May 2002, and a passport issued by the Republic of China (ROC), issued in July 2002.<sup>3</sup> She considered herself to be a dual national of the U.S. and Taiwan. In early 2008, Applicant submitted her ROC passport for cancellation and applied for renunciation of her ROC/Taiwanese citizenship. On April 14, 2008, her renunciation of foreign citizenship was completed and a Certificate of Citizenship Renunciation was issued.<sup>4</sup> Her ROC passport, valid through 2012, was returned to her by the appropriate authorities and has been cancelled.<sup>5</sup> Applicant's exercise of dual citizenship and possession of an active Taiwanese passport were

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<sup>1</sup> Ex. 1 (Administrative Notice) and Ex. 7 (Annual Report to Congress, 2000).

<sup>2</sup> Applicant's husband is an immigrant from ROC. Like the rest of his own family, however, he is a naturalized U.S. citizen. Tr. 52-53.

<sup>3</sup> The ROC passport issued in 2002 was marked as valid through 2012, ten years. Consequently, it may be assumed the prior ROC passport was obtained in 1992, before Applicant became a naturalized U.S. citizen.

<sup>4</sup> Ex. B (Citizenship Renunciation documents and translations, dated April-May, 2008).

<sup>5</sup> Ex. C (Cancelled passport, photographic image).

subject to the first two of four allegations contained in the SOR.<sup>6</sup> These two issues are moot in light of Applicant's recent efforts and her supporting documents.

Remaining at issue are two extended trips to Taiwan.<sup>7</sup> In June 2002, Applicant was unemployed and had the free time to travel. She and her boyfriend went on a two week pleasure trip to Taiwan. She traveled on her ROC passport, which was nearing its expiration date the following month. With the exception of visiting a sister who was still residing in Taiwan, but who has since moved, the trip was purely a pleasure vacation.<sup>8</sup> While on holiday, Applicant experienced some dental problems which caused her physical pain and demanded immediate care.<sup>9</sup>

Applicant visited a dentist who proceeded to address a problematic wisdom tooth which required a root canal. Upon further examination, it was discovered that the tooth was impacted and multiple root canals were required.<sup>10</sup> The dentist also identified all of her wisdom teeth as having similar problems.<sup>11</sup> Such dental work then necessitated dental crown molding and fitting. The price of the dental work recommended was less expensive in Taiwan than it would have been in the U.S.<sup>12</sup> This was a major consideration given her lack of employment and insurance. She believes the dental charges billed would have been the same price regardless of her nationality.<sup>13</sup> The Government concedes that the dental work received was not a benefit of citizenship.<sup>14</sup>

The surgeries were conducted and medication was prescribed. Applicant was advised against air travel before she had recovered.<sup>15</sup> Her boyfriend flew home. Applicant remained in her sister's care through August 2002 before returning home.

In the interim, Applicant's ROC passport expired in July 2002. Before leaving for her trip, Applicant had no intention of renewing the ROC passport, having recently acquired a U.S. passport in May 2002. When her dental issues required she stay beyond the expiration date, she had to apply for a replacement in order to return

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<sup>6</sup> SOR allegations 1.a (dual citizenship issue) and 1.b. (possession of valid foreign passport issue).

<sup>7</sup> SOR allegations 1.c (2006 trip) and 1.d (2007 trip).

<sup>8</sup> Tr. 15.

<sup>9</sup> Tr. 48.

<sup>10</sup> Applicant was unclear as to precise work her procedures entailed. *Compare* Tr. 13 and Tr. 29; 48.

<sup>11</sup> Tr. 48.

<sup>12</sup> Tr. 49.

<sup>13</sup> *Id.*

<sup>14</sup> Tr. 61.

<sup>15</sup> Tr. 14.

home.<sup>16</sup> Having recently acquired a U.S. passport, she had not previously considered renewing the ROC passport.<sup>17</sup> That replacement passport was eventually issued with a July 30, 2002, date of issuance and it allowed her to leave Taiwan and return to the U.S.

Four years later, the sister who Applicant visited in Taiwan emigrated from Taiwan to the U.S. Like the rest of Applicant's immediate family, that sister is now a naturalized U.S. citizen.<sup>18</sup> Today, her only contact with citizens in Taiwan are with a couple of casual acquaintances. Her main contact in Taiwan is a man she knew when she was a schoolgirl. They chat in passing every few months as Internet pals.<sup>19</sup>

In 2006, Applicant and the man she has since married were choosing a place for a vacation. An offer was extended for her to attend a female acquaintance's marriage in Taiwan. When the wedding was mentioned to the Internet pal, he offered Applicant the use of an apartment he owned at a very reasonable rate.<sup>20</sup> The couple consequently decided to accept the invitations and go to Taiwan in late May to early June for a two week holiday. Applicant traveled on her U.S. passport. Once there, they attended the wedding and otherwise treated the trip as a pleasure holiday.<sup>21</sup>

Applicant has never visited mainland China, has no plans to visit mainland China, and has no immediate plans to return to Taiwan. If she wished to visit, she is unable to do so for the next four years due to an administrative mix-up with her 2006 exit paperwork.<sup>22</sup> Her renunciation of ROC/Taiwan citizenship is considered permanent, thus requiring her use of her U.S. passport should she ever return in the future.<sup>23</sup>

## **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,

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<sup>16</sup> Tr. 14.

<sup>17</sup> See, e.g., Tr. 14.

<sup>18</sup> Tr. 16.

<sup>19</sup> Tr. 43.

<sup>20</sup> Tr. 42.

<sup>21</sup> See, e.g., Tr. 29-30.

<sup>22</sup> Tr. 46.

<sup>23</sup> Tr. 54.

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. Under AG ¶ 2(c), this 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.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." <sup>24</sup> The burden of proof is something less than a preponderance of evidence. <sup>25</sup> The ultimate burden of persuasion is on the applicant. <sup>26</sup>

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). "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>27</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>28</sup> The decision to deny an individual a security clearance is not necessarily

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<sup>24</sup> See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>25</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>26</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

a determination as to the loyalty of an applicant.<sup>29</sup> It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of the evidence, I find Guideline C (Foreign Preference) to be the most pertinent to the case. Conditions pertaining to this adjudicative guideline that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

### Analysis

Based upon consideration of the evidence, I find the following adjudicative guideline to be the most pertinent to the evaluation of the facts in this case: **Guideline C – Foreign Preference**. Conditions pertaining to this adjudicative guideline that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, are set forth and discussed in the appropriate sections below.

The concern regarding foreign preference is that when an individual acts in such a way as to indicate a preference for a foreign country over the U.S., then he or she may be prone to provide information or make decisions that are harmful to the interests of the U.S.<sup>30</sup> Conditions that could raise a security concern and may be disqualifying include exercise of any right, privilege, or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member.<sup>31</sup> At the time the SOR was issued, Applicant possessed a valid, current ROC passport, which was sufficient to give rise to Foreign Preference Disqualifying Condition (FP DC) AG ¶ 10(a)(1) (*possession of a current foreign passport*). Previously unexplained, Applicant's dental work in Taiwan was sufficient to raise security concerns and give rise to FP DC ¶ 10(a)(3) (*accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country*). Similarly, her identification of herself as a dual U.S.–Taiwan citizen gave rise to FP DC ¶ 10(b) (*action to acquire or obtain recognition of a foreign citizenship by an American citizen*). With such disqualifying conditions raised, the burden shifted to Applicant to explain or mitigate the security concerns raised under this guideline.

Applicant provided proof she successfully renounced her Taiwanese/ROC citizenship and obtained the cancellation of her ROC-issued passport prior to the May 2008 hearing, obviating the applicability of the disqualifying conditions identified above and the first two of the four allegations set forth in the SOR. Consequently, only the extensive dental work received in 2002 while in Taiwan remains at issue inasmuch as two pleasure trips to Taiwan are not sufficient to raise a FP DC alone.

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<sup>29</sup> Executive Order 10865 § 7.

<sup>30</sup> AG ¶ 9.

<sup>31</sup> AG ¶ 10(a).

In describing her 2002 trip to Taiwan, Applicant explained the trip was originally planned as a two week holiday with her then-boyfriend to visit Taiwan and see her sister. A dental emergency occurred, demanding immediate medical attention. Unemployed and uninsured, she decided to stay in Taiwan for care which would be both immediate and which would cost less than it would in the U.S. A medical warning not to fly during her recuperation, the necessity of multiple of root canals, and the preparation of crowns protracted her stay, as did the need to obtain a new ROC-issued passport to permit her to travel out of Taiwan once her old passport expired. Given the extensive and painful nature of the procedures described, her extended stay for medical procedures and familial care is understandable. The Government conceded that the dental care received was not a government benefit received based on her prior Taiwanese citizenship. Consequently, she has addressed FP DC AG ¶ 10(a)(3) as well. With only the fact that Applicant took two pleasure trips to Taiwan remaining, the potential disqualifying conditions raised have been nullified.

Applicant's testimony, however, also raised foreign preference mitigating conditions (FP MC). Her former dual citizenship status was based solely on her birth in Taiwan, thus raising FP MC AG ¶ 11(a) (*dual citizenship is based solely on parents' citizenship or birth in a foreign country*). Applicant has not only expressed a willingness to renounce her dual citizenship, she has successfully completed the ROC-Taiwan renunciation process, thus raising FP MC AG ¶ 11(b) (*the individual has expressed a willingness to renounce dual citizenship*). Finally, Applicant has also returned her ROC-issued passport to the appropriate authorities. It has been formally accepted and both officially cancelled and facially marked as such. Therefore, FP MC ¶ 11(d) (*the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated*) applies. With all of her immediate family, her husband, and her in-laws living in the U.S. as U.S. citizens, with only a very small number of casual, infrequently contacted acquaintances remaining in Taiwan, Applicant has little to no contact with Taiwan, ROC, or its people. Her life and her preferences are here in the U.S. In light of the above, Applicant has mitigated foreign preference security concerns.

### **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 public trust position 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, as well as the “whole person” factors noted above. Applicant is a mature, credible, and forthright individual who has severed all official ties to the country of her birth. Her dual citizenship was nullified with renunciation of her Taiwanese citizenship and her one remaining government benefit, her ROC-issued passport, was cancelled. Both her family and her husband’s family have emigrated to the U.S. *en masse*, and Applicant has been a U.S. citizen since she was a teen. Her only remaining ties to Taiwan are two or three causal friends.

Today, Applicant’s sole country of preference is the U.S., and her only passport is U.S.-issued. No evidence has been presented that she has any residual indications of foreign preference which have not been addressed, nor is there any hint that she might be prone to provide information or make decisions that are harmful to the U.S. Consequently, foreign preference security concerns are mitigated. I conclude it is clearly consistent with national security to grant Applicant a security clearance. Clearance is granted.

**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 C:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	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. Clearance is granted.

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ARTHUR E. MARSHALL, JR.  
Administrative Judge