



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



In the matter of:	)	
	)	
SSN:	)	ISCR Case No. 08-04488
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government:  
Daniel F. Crowley, Esquire, Department Counsel  
For Applicant: *Pro se*

January 30, 2009

**Decision**

METZ, John Grattan, Jr., Administrative Judge:

On 05 August 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines B and C.<sup>1</sup> Applicant answered the SOR 19 August 2008, and requested a hearing. DOHA assigned the case to me 2 October 2008, and I convened a hearing 28 October 2008. DOHA received the transcript (Tr.) 6 November 2008.

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<sup>1</sup>DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), 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 (RAG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

## Findings of Fact

Applicant admitted the allegations of the SOR. She is a 38-year-old engineer employed by a defense contractor since July 2002. She has not previously held a clearance.

Applicant was born in the Republic of China (Taiwan) in April 1970. She grew up there and was educated there through high school. After graduation, she worked several part-time jobs. She immigrated to the U.S. in December 1990, where she lived with her aunt and uncle—both U.S. citizens. When she first arrived in the U.S., her English was not very good, so she enrolled in English as second language (ESL) classes. When her English was good enough, she enrolled in college classes. She obtained her associate's degree in science from a local community college in May 1997. She obtained her bachelor's degree in electrical engineering from a nationally-prestigious university in August 2001, and later obtained her master's degree in telecommunications from another university in May 2007.

Applicant became a naturalized U.S. citizen in November 1997. She obtained her U.S. passport in July 1998. She previously had a Taiwanese passport that she obtained before immigrating to the U.S. Under U.S. immigration law, she was required to maintain that passport while she remained a legally-resident alien in the U.S. She used that passport to travel to Taiwan in December 1999, January 2000, May 2001, and October 2001, not aware of any reason for her to not use her Taiwanese passport. She renewed her Taiwanese passport in July 2002, again not aware of any reason not to. That passport remains valid until 2012, but Applicant has surrendered it to her corporate and site facility security officers (FSO), both of whom have acknowledged and accepted their obligation to report to the government if Applicant asks for the passport back. Applicant is aware of the possible consequences for her clearance if she does so (A.E. A).

Applicant's mother is a resident citizen of Taiwan, retired for 10 years from her job as an insurance agent for a private insurer. Applicant's step-father is also a resident citizen of Taiwan. He has been retired for 11 years from his job as a ticket seller in a small-town bus station, referred to by Applicant in her answer to DOHA interrogatories (G.E. 2) as "department of 8transportations (sic)." The record does not reflect whether this employment was with the Taiwanese government or a local government. Applicant's brother is a resident citizen of Taiwan, employed as a junior high math teacher in a private school. She talks to her brother and mother two or three times per month by telephone. She also has some high-school friends in Taiwan, who she speaks to by telephone three or four times per year. One is a housewife. Two others work in a commercial electronics company. She also visits these friends when she travels to Taiwan.

Since December 1999, when she became able to afford it, Applicant has traveled to Taiwan once per year on average. On one of her trips in 2000, she opened some bank accounts so she would have automated teller access to cash. She deposited her

travelers checks in her accounts and withdrew cash as necessary during her visit. Typically, she would leave about \$200 in the accounts when she left, but for her last trip in April 2008 (for her mother's birthday) she took extra money but had not spent as much as she thought she might, so the accounts now have approximately \$3,000 in them.<sup>2</sup> She derives no income from the accounts. It does not appear from the record that Applicant requires Taiwanese citizenship to retain these accounts. Because she maintains the accounts only for her travel convenience, she has expressed a willingness to close the accounts as necessary. She has also expressed her willingness to renounce her Taiwanese citizenship.

Taiwan is a multiparty democracy, whose authorities generally respect the human rights of its citizens. While Taiwan is an active collector of industrial information and engages in industrial espionage, the record does not demonstrate that the government of Taiwan targets U.S. intelligence information. Further, the record does not demonstrate that it seeks to exert pressure on U.S. citizens to collect information from family members residing in country or abroad.

Applicant's current supervisor—the person who hired her—testified that she had proven herself to be open, honest, trustworthy, and reliable in the six years he has known her. He was aware of her family background, but was aware of no reason she should not have a clearance.

### **Policies**

The Revised Adjudicative Guidelines list factors to be considered in evaluating an applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guidelines are Guideline C (Foreign Preference) and Guideline B (Foreign Influence).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

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<sup>2</sup>Applicant estimates her net worth in the U.S. at \$30,000.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an Applicant’s suitability for access in favor of the government.<sup>3</sup>

### Analysis

Under Guideline B (Foreign Influence), an applicant’s foreign contacts and interests may raise security concerns if the individual 1) has divided loyalties or foreign financial interests, 2) may be manipulated or induced to help a foreign person, group, organization, or government in a way contrary to U.S. interests, or 3) is vulnerable to pressure or coercion by any foreign interest. Foreign influence adjudications 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, whether the country is known to target U.S. citizens to obtain protected information and/or is associated with a risk of terrorism.<sup>4</sup> Evaluation of an individual’s qualifications for access to protected information requires careful assessment of both the foreign entity’s willingness and ability to target protected information, and to target ex-patriots who are U.S. citizens to obtain that information, and the individual’s susceptibility to influence, whether negative or positive. More specifically, an individual’s contacts with foreign family members (or other foreign entities or persons) raise security concerns only if those contacts create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.<sup>5</sup> In addition, security concerns may be raised by a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.<sup>6</sup>

In this case, the government did not establish that Applicant’s contacts with her family and friends in Taiwan created a heightened risk of exploitation, inducement, manipulation, pressure, or coercion. The government also did not establish that Applicant’s bank accounts in Taiwan were sufficient to create a heightened risk of influence or exploitation.

Taiwan and the U.S. enjoy excellent foreign relations. Although Taiwan is an active collector of commercial information, it has not been demonstrated to target protected U.S. information, nor has it been demonstrated to target U.S. citizens to

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<sup>3</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>4</sup>Revised Adjudicative Guidelines, ¶ 6.

<sup>5</sup>Revised Adjudicative Guidelines, ¶ 7.(a).

<sup>6</sup>Revised Adjudicative Guidelines, ¶ 7.(e).

obtain protected information. Given that Taiwan generally respects the human rights of its citizens, the risk that it might seek protected information—or succeed in obtaining such information—from Applicant is low, if not non-existent.

Examining Applicant's circumstances, the government produced no evidence that there was a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion because of Applicant's contacts with family and friends in Taiwan. Applicant has resided in the U.S. nearly half her life, and most of her adult life. Her most significant financial interests are all in the U.S. Her contacts with her parents, sibling, and friends are normal. There is nothing in the circumstances of their being in Taiwan, or in Applicant's contacts with them, to heighten the risk that she could be impelled or compelled to provide protected information to Taiwan. Similarly, her bank accounts in Taiwan amount to about 10 per cent of her net worth, an amount I consider insubstantial under the circumstances of this case.

Even if I were to assume that the government had established security concerns based on her contacts with Taiwanese nationals and her bank accounts, I conclude that she has mitigated the security concerns.<sup>7</sup> Her contacts in Taiwan are routine, Taiwan generally respects the rights of its citizens, and none of her contacts in Taiwan are, or have been, involved in activities that would make it likely that Applicant would have to choose between their interests or those of the U.S.<sup>8</sup> Similarly, both the value and nature of her bank accounts are such that they are unlikely to be used effectively to influence her.<sup>9</sup> The balances are not significant, and the fact that Applicant left the money in her accounts after her last visit suggest that those sums are not necessary for her routine financial transactions in the U.S. I resolve Guideline B for Applicant.

The government established a case for disqualification under Guideline C by showing that Applicant obtained a Taiwanese passport in February 1996 and has opened and retained bank accounts in Taiwan, despite becoming a naturalized U.S. citizen in October 1987.<sup>10</sup> However, Applicant mitigated the Guideline C security concerns. Although she has been a dual citizen of Taiwan and the United States since her birth, her Taiwanese citizenship has little security significance under the

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<sup>7</sup>Indeed, the government's closing argument focused not on Applicant's contacts in Taiwan vis-a-vis the Taiwanese government, but on perceived risks posed by the fact that Taiwan is infiltrated with agents from the People's Republic of China (PRC). Presumably, Applicant would not be able to distinguish these agents from any other ethnic Chinese on Taiwan. Assuming this is so, the government has still failed to establish how Applicant might be influenced to provide protected information to the Taiwanese government—or to the PRC acting under cover.

<sup>8</sup>Revised Adjudicative Guidelines, ¶ 8.(a).

<sup>9</sup>Revised Adjudicative Guidelines, ¶ 8.(f).

<sup>10</sup>Revised Adjudicative Guidelines, ¶ 10.(a) 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. This included but is not limited to: (1) possession of a current foreign passport; (5) using foreign citizenship to protect financial . . . interests in another country;

circumstances of this case. It is largely based on her parents' citizenship.<sup>11</sup> Further, her Taiwanese citizenship does not appear to be required for her to maintain her bank accounts there.

For Applicant's conduct to fall within the security concerns of Guideline C, she must have acted in a way to indicate a preference for a foreign nation over the United States. However, inimical intent or detrimental impact on the interests of the United States is not required before the government can seek to deny access under Guideline C. The government has a compelling interest in ensuring those entrusted with this nation's secrets will make decisions free of concerns for the foreign country of which they may also be a citizen.

Applicant's active exercise of dual citizenship after becoming a naturalized U.S. citizen was done deliberately, but unwittingly. She opened her Taiwanese bank accounts for her convenience traveling to Taiwan, not to indicate any preference for Taiwan. She has expressed her willingness to close her accounts and renounce her Taiwanese citizenship.<sup>12</sup> She was not aware of any prohibition on holding a foreign passport. Indeed, there is no such proscription except in the context of clearance adjudications. She has surrendered her passport to her security office and understands the potential consequences to her clearance should she regain possession of it.<sup>13</sup> Further, given her work performance since 2002, she demonstrated that she can be counted on to always act in preference to the United States. I resolve Guideline C for Applicant.

### Formal Findings

#### Paragraph 1. Guideline B: FOR APPLICANT

Subparagraph a:	For Applicant
Subparagraph b:	For Applicant
Subparagraph c:	For Applicant
Subparagraph d:	For Applicant
Subparagraph e:	For Applicant
Subparagraph f:	For Applicant
Subparagraph g:	For Applicant
Subparagraph h:	For Applicant

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<sup>11</sup>Revised Adjudicative Guidelines, ¶ 11.(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

<sup>12</sup>¶ 11.(b) the individual has expressed a willingness to renounce dual citizenship;

<sup>13</sup>¶ 11.(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated;

Paragraph 2. Guideline C: FOR APPLICANT

Subparagraph a: For Applicant  
Subparagraph b: For Applicant  
Subparagraph c: For Applicant  
Subparagraph d: For Applicant

**Conclusion**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance granted.

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JOHN GRATTAN METZ, JR  
Administrative Judge