



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



In the matter of:)	
)	
)	ISCR Case No. 08-05323
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Emilo Jaksetic, Esquire, Department Counsel
For Applicant: *Pro Se*

October 9, 2008

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant has mitigated the government’s security concerns under Guideline C, Foreign Preference and Guideline B, Foreign Influence. Applicant’s eligibility for a security clearance is granted.

On July 23, 2008, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concerns under Guidelines C and 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 answered the SOR in writing on August 12, 2008, and requested a hearing before an Administrative Judge. The case was assigned to me on September 4, 2008. DOHA issued a notice of hearing on the same day and I convened the hearing as scheduled on September 25, 2008.

Request for Administrative Notice

The government offered Exhibits (GE) 1 and 2, which were admitted without objections. Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Taiwan. Applicant did not object and the request was approved. The request and the attached documents were not admitted into evidence but were included in the record as Hearing Exhibits (HE). I took administrative notice of the facts contained in HE I though XIV. I did not take administrative notice of the facts contained in the memorandum provided by Department Counsel dated August 21, 2008 offered as a hearing exhibit. In accordance with ISCR Case No. 03-21434 (App. Bd. Feb. 20, 2007), that document was remarked as GE 3 and admitted as a government exhibit. The facts administratively noticed are set out in the Findings of Fact, below.

Applicant testified and did not submit any exhibits. The record was held open until October 2, 2008, to allow Applicant an opportunity to submit documents. She did so and submitted one exhibit that was marked as Applicant Exhibit (AE) A. Department Counsel responded in writing which was marked as HE XV and had no objection. DOHA received the transcript of the hearing (Tr.) on October 2, 2008.

Findings of Fact

Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 39-year-old software programmer who has worked for a federal contractor since 2005 as a data base administrator. She was born in Taiwan and came to the U.S. in December 1994 to attend a master's degree program at an American university. She met her husband while attending the program. He was also from Taiwan and came to the U.S. in 1994 to attend school. They married in 1996 and have a son who was born in the U.S. in 2000. After she completed her master's degree in Information Systems Management she remained in the U.S. to acquire practical training. She was sponsored by different companies she worked for and remained in the U.S. legally on work visas. She became a naturalized U.S. citizen in September 2006. Her husband became a naturalized U.S. citizen in 2007 and resides in the U.S with Applicant and their son.¹

Appellant retained her Taiwanese passport after becoming a U.S. citizen. She did not believe keeping the passport had any impact on her citizenship. She understood Taiwanese law did not recognize dual citizenship and therefore her passport was basically null and void, although it had not expired. She did not think she had dual

¹ Tr. 29, 38-42, 51-53, 69.

citizenship status with the U.S. and Taiwan because this status is not recognized by Taiwan. She did not use her Taiwanese passport once she became a U.S. citizen.²

Applicant was unaware of the security implications of holding a foreign passport. She was made aware of the security concerns raised by her retaining her Taiwanese passport, even if it was not considered valid by Taiwan. Subsequent to the hearing Applicant surrendered her Taiwanese passport to her employer's facilities security officer.³ She stated she renounced any citizenship ties with Taiwan when she became a U.S. citizen.

Applicant's father passed away in 1996. Her mother, a retired teacher, is a citizen of Taiwan. Applicant sponsored her to be a permanent resident of the U.S. and her request has been approved. She is expected to travel to the U.S. on November 2, 2008, and will live with Applicant and her family. Once she has lived in the U.S. for five years she will then be eligible to apply for U.S. citizenship status. She currently is living in Taiwan with Applicant's brother. Applicant talks to her mother once a week. They discuss family issues. Applicant does not provide financial support to her mother.⁴

Applicant's brother is a citizen and resident of Taiwan. He works as a program manager for a major camera manufacturer, a private enterprise. Applicant is also sponsoring her brother for permanent resident status in the U.S. However, the wait for siblings requesting permanent resident status is much longer, approximately ten years, and his case is pending. When Applicant telephones her mother, if her brother is present, she will talk with him, but she does not call him directly. Applicant does not provide financial support to her brother.⁵

Applicant's father-in-law is a citizen and resident of Taiwan. He is a retired small business owner. He has never worked for the government and intends on remaining in Taiwan. Applicant testified that she seldom has any contact with him. Her husband contacts his father by telephone approximately once every three to six months.⁶

Applicant's mother-in-law became a U.S. citizen in December 2007. At the time Applicant completed her security clearance application (SCA) her mother-in-law was a permanent resident of the U.S. She has lived in the U.S with her daughter, Applicant's sister-in-law, for six years. Applicant has regular contact with her mother-in-law. She is

² Tr. 23-29, 43, 60, 77-78. Answer to SOR, Applicant provided documents to verify her family's immigration and naturalization status.

³ AE A. Applicant provided a notarized document from the Facilities Security Officer acknowledging acceptance of Applicant's passport and storage until she leaves employment and notification of the proper authorities in the event they return the passport.

⁴ Tr. 29-31-33, 49, 53, 70-73.

⁵ Tr. 31-33, 50-51, 73.

⁶ Tr. 33-35.

aware of one trip to Taiwan her mother-in-law has made. Applicant's husband has only one sibling, his sister, who is a citizen of the U.S. Her husband is also a citizen of the U.S.⁷

Applicant traveled to Taiwan in 2002 to introduce her son to her parents. She was not yet a U.S. citizen so was required to use her Taiwanese passport. Due to her mother's declining health, she traveled again in 2006 and 2007. She carried her Taiwanese passport with her after she became a U.S. citizen, but did not present it to immigration officials. She was concerned on her trips to Taiwan after becoming a U.S. citizen that officials would require some type of Taiwanese documentation or her Taiwanese passport because she was obviously of Taiwanese decent. She was unfamiliar with the procedures and was concerned that she would be required to have documentation, so she retained her passport and took it with her on the trips. She did not use it and has not used it since becoming a U.S. citizen.⁸

Applicant visited her mother, grandmother, and brother, while in Taiwan. She has three uncles that live in close proximity to her mother and she visited them also. None of her relatives are employed by the Taiwanese government. She has had no other contact with her uncles, except to see them when she was in the country.⁹

Applicant does not have any property or financial interests in Taiwan. She owns a residence in the U.S. that she and her husband purchased in 1999 for approximately \$293,000. They have retirement investments worth about \$120,000.¹⁰

Taiwan¹¹

In 1949, Taiwan was populated by refugees fleeing a civil war in China. That same year, Communists in mainland China established the People's Republic of China (PRC), and a separate, independent government was established in Taiwan. The PRC does not recognize Taiwan, and insists there is only "one China."

Taiwan is a multi-part democracy. Through nearly five decades of hard work and sound economic management, Taiwan has transformed itself from an underdeveloped, agricultural island to an economic power that is a leading producer of high-technology goods. On January 1, 1979, the United States formally recognized the PRC as the sole legal government of China. The U.S. also announced that it would maintain cultural, commercial, and other unofficial relations with the people on Taiwan. The Taiwan Relations Act (TRA) signed into law on April 10, 1979, created the legal authority for the

⁷ Tr. 35-36, 57-59.

⁸ Tr. 44, 54-56.

⁹ Tr. 46-49.

¹⁰ Tr. 54, 61-69, 74-75.

¹¹ All of the information about Taiwan is contained in the Hearing Exhibits that were provided.

conduct of unofficial relations with Taiwan. The American Institute in Taiwan, a private nonprofit corporation with offices in Taiwan, is authorized to issue visas, accept passport applications, and provide assistance to U.S. citizens in Taiwan. A counterpart organization was established by Taiwan. It has multiple offices in the U.S.

Maintaining strong, unofficial relations with Taiwan is a major U.S. goal. The U.S. does not support Taiwan independence, but it does support Taiwan's membership in appropriate international organizations such as the World Trade Organization (WTO), which it joined in 2002, Asia-Pacific Economic Cooperation (APEC) forum, and the Asian Development Bank. In addition, the U.S. supports appropriate opportunities for Taiwan's voice to be heard in organizations where its membership is not possible.

The TRA enshrines the U.S. commitment to help Taiwan maintain its defensive capability. The U.S. continues to sell appropriate defensive military equipment to Taiwan, in accordance with the TRA. President Bush publicly stated in 2001 that the United States would do "whatever it takes" to help Taiwan's defense and approved a substantial sale of U.S. weapons to Taiwan, including destroyers, anti-submarine aircraft, and diesel submarines. The current White House also was more accommodating to visits from Taiwan's officials than previous U.S. Administrations, and permitted visits from Taiwan's president in 2001 and 2003, and Taiwan's vice president and defense minister in 2002.

Since then, there have been changes in U.S.-Taiwan relations. Taiwan's new president disavowed key concepts long embraced by the opposing party - the "status quo" that there is only one China and Taiwan is part of it - and instead has adopted the more provocative position that Taiwan already "is an independent, sovereign country," a "status quo" he promises to maintain. There was also a series of recent corruption scandals.

In response to Taiwan's political developments, the Administration appears to have dialed back its earlier enthusiasm for supporting Taiwan's initiatives. While still pursuing a close relationship with Taiwan, U.S. officials now appear to be balancing criticisms of the PRC military buildup opposite Taiwan with periodic cautions and warnings to the effect that U.S. support for Taiwan is not unconditional, but has limits. Taiwan is known to be an active collector of U.S. economic intelligence.

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 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 C, Foreign Preference

Under AG ¶ 9 the security concern involving foreign preference arises: "When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States."

AG ¶ 10 describes conditions that could raise a security concern and may be disqualifying: I have specifically considered AG ¶ 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 includes but is not limited to: (1) possession of a current foreign passport”) and (b) (action to acquire or obtain recognition of a foreign citizenship by an American citizen.) Applicant retained her foreign passport after she became a U.S. citizen and was unaware of the security implications. I find (a) applies. Taiwan does not recognize dual citizenship. Applicant has never sought recognition as a dual citizen or exercised any right that could be interpreted to be acting as a dual citizenship. No other disqualifying conditions apply.

I have considered all the mitigating conditions applicable to this guideline. Specifically I have considered AG ¶ 11(e) (“the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.”) Applicant provided appropriate documentation to show she surrendered her Taiwanese passport to her employer’s facilities security officer. I find (e) applies.

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern regarding foreign influence: “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.”

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. I have especially considered (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”); (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 desires to help a foreign person, group, or country by providing that information”) and (d) (“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”). Applicant’s husband and mother-in-law are U.S. citizens residing in the U.S. and therefore the factual allegations regarding their citizen status raised in the SOR are no longer a security concern and no disqualifying conditions apply to them. However, her mother, brother, and father-in-law are citizens and residents of Taiwan, thereby creating a potential heightened risk and a potential conflict of interests. I find (a) and (b) apply. Applicant’s husband’s father is a citizen and resident of Taiwan. In addition, Applicant’s mother is moving to the U.S. to reside with

her. Therefore, because Applicant lives with her husband and her mother will soon be residing with her, I find (d) applies.

AG ¶ 8 describes conditions that could mitigate the security concerns raised. I have considered all of them and especially considered (a) (“the nature of the relationships with foreign persons, the country in which these person are located, or the positions or activities of those person 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.”); (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. interests”); and (c) (“contact or communication with foreign citizens is so casual or infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.”)

Taiwan is a democracy, does not have a poor human rights record, and is dependent upon the United States for arms, as well as its defense against the Peoples Republic of China. Taiwan is known to conduct intelligence operations against the United States, but there is no indication that Taiwan utilizes coercion against its citizens or former citizens for espionage purposes. Many of our allies conduct intelligence gathering against the U.S. Taiwan would be risking a great deal by raising the stakes, and attempting to use duress against one of its citizens in an attempt to coerce a U.S. citizen to commit espionage. Applicant’s mother, brother, and father-in-law are not good candidates for coercion as they are not dependent upon the government of Taiwan.

Applicant has virtually no contact with her father-in-law and her husband has minimal contact, a phone call once every three to six months. She will see him when she visits Taiwan, but that is likely to be very infrequent, if at all, once her mother moves to the U.S. I also find that Applicant’s sense of loyalty and obligation to him is minimal. He is a retired small businessman and it makes it unlikely that she would have to make a choice between his interest and those of the U.S. I find because she has very little contact with him and it is unlikely a conflict would arise, but in the event it did, she can be expected to be resolved in favor of the U.S. I find (a) partially applies and (b) fully applies to her father-in-law. I find her relationship with her father-in-law is casual and infrequent, however because her husband has some contact with him I find (c) only partially applies.

Applicant’s relationship with her mother and brother are much closer. Even though she does not speak with her brother often, she is sponsoring him for entry into the U.S. as she did with her mother. Her mother is soon to be a permanent resident in the U.S. and will live with Applicant. She is a retired teacher, with no ties to the government. I find the nature of the relationship between Taiwan and the U.S. to be such that it is unlikely Applicant would be placed in a position of having to choose between her family and the interests of the U.S. Applicant’s mother’s retired status with

no ties to the Taiwanese government, her imminent emigration and the fact that Applicant is rooted with her family in the U.S. reinforce this position. Applicant's brother has applied for permanent resident status, but the process is longer for siblings. He works for a private company. Her brother will remain in Taiwan until his immigrant status is granted.

I find the relationships Applicant has with her relatives in Taiwan and the status of Taiwan as an American ally as described above make it unlikely that Applicant would be put in a position of having to choose between the interests of her family members or the interests of the U.S. In the unlikely event that was to occur, I find she can be expected to resolve any conflict of interest in favor of the U.S. It is clear, Applicant has settled in the U.S. with her family, has an established career, and her personal wealth are all tied to the U.S. Therefore, I find (b) applies and (a) partially applies to Applicant's mother and brother.

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) 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 commonsense 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. Applicant's mother, brother and father-in-law are citizens of Taiwan. Her mother will soon be a permanent U.S. resident, but the others remain in Taiwan. She has some contact with her brother and her husband has some contact with his father.

There are significant factors supporting approval of Applicant's access to classified information. Applicant has lived in the U.S. since 1994. She and her husband are both naturalized U.S. citizens. Her son was born in the U.S. and is a U.S. citizen. Her husband's sister and mother are both U.S. citizens and reside in the U.S. Applicant has all of her property interests in the U.S. and none in Taiwan. She and her husband have careers in the U.S. She and her family are firmly rooted in the U.S. She has sponsored her mother and brother for permanent U.S. resident status. Her mother will move to the U.S. in the next month. Her brother's paperwork is complete, but he must wait longer. None of her relatives or her husband's has ties to the Taiwanese

government. She never considered herself to be a dual citizen even though she retained her Taiwanese passport after she became a U.S. citizen. She never used it and when she became aware that retaining it raised a security concern, she surrendered it her employer's facility security officer. Although Taiwan is an active collector of industrial espionage, as are many countries, there is no evidence that they target their citizens or former citizens with coercive methods in their quest for sensitive or classified information. Overall, 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 preference and, 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 C:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph, Guideline B:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	For Applicant
Subparagraph 2.e:	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.

Carol G. Ricciardello
Administrative Judge