



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



In the matter of: )  
)  
) ISCR Case No. 08-10426  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Melvin A. Howry, Esq., Department Counsel  
For Applicant: *Pro Se*

August 31, 2009

**Decision**

---

DAM, Shari, Administrative Judge:

Based upon a review of the record evidence as a whole, eligibility for access to classified information is denied.

**History of Case**

On May 6, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On April 9, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing 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 answered the SOR in writing on April 28, 2009, and waived his right to a hearing before an administrative judge. Department Counsel prepared a File of Relevant Material (FORM), containing eight Items, on May 28, 2009, and mailed Applicant a complete copy on June 2, 2009. Applicant received the FORM on June 10, 2009, and had 30 days from its receipt to file objections and submit additional information. Applicant submitted an exhibit on July 3, 2009, to which Department Counsel had no objection. DOHA assigned the case to me on July 24, 2009. I subsequently marked Applicant's document as Applicant Exhibit (AE A) and entered it into the record.

## **Procedural Ruling**

### **Request for Administrative Notice**

Within the FORM, Department Counsel submitted a formal request that I take administrative notice of certain facts relating to the Republic of China and Taiwan. Attached to the FORM are documents marked as Items I through XXIX pertinent to that request. Applicant did not object to my consideration of those Items. The request is granted. I have considered for administrative notice purposes said source documents provided, but not the persuasive briefs. I have also carefully considered only those source documents that pertain to the factual specifics of each country from Government sources and other credible sources. I have not considered any editorial or extrapolated comments or conclusions from unofficial sources. Hence, the facts administratively noticed are limited to matters of general knowledge, and not subject to reasonable dispute. The facts administratively noticed are set out below.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted the factual allegations contained under Paragraph 1 of the SOR, and provided additional information in support of his request for a security clearance. His admissions are included in the following findings of fact:

Applicant is 59 years old. He was born in China and raised in Taiwan. In June 1975, he graduated from a Taiwanese university with a bachelor's degree. As mandated by the Taiwanese government, he served in the Taiwanese navy for two years after college. In January 1978, he immigrated to the United States to attend graduate school. In June 1979, he earned a master's degree in computer science. Since then, he has worked in the United States. In September 1986, he became a naturalized U.S. citizen. In July 1997, he began working as a computer engineer for his current employer, a federal contractor. He completed his initial security clearance application (SF 86) at the same time. (Item 4; 5; 6) In December 1997, he renounced his Chinese citizenship. (AE A)

Applicant is married to a woman who was born in China. They were married in 1983 in the United States. They have one child who was born in China in 1986. His wife

became a naturalized U.S. citizen in 1991. His son became a naturalized U.S. citizen in 1996. His wife earned a graduate degree from a U.S. university. His son became disabled and visually impaired after an automobile accident in late 1997. (Item 3)

Applicant's parents, now deceased, were born in China. Applicant has two brothers. His oldest brother was born in China. He served in the Taiwanese Air Force as a civil engineer for about ten years and retired more than twenty years ago. He is a legal resident alien of the United States and citizen of Taiwan. He and his wife spend time in Taiwan caring for his wife's elderly parents, who are sick and live there. They also spend time in the United States. Applicant believes they will eventually live permanently in the United States. His brother's two sons graduated from U.S. universities. Applicant's younger brother is a naturalized U.S. citizen and resides in the United States. (Item 5; 6; 7)

Applicant has four sisters, three of whom were born in China. The fourth was born in Taiwan. Three of the sisters are naturalized U.S. citizens, residing in the United States. His other sister is a naturalized Canadian citizen, residing there. (Item 5; 6)

Applicant's elderly in-laws are citizens and residents of China. His mother-in-law visits Applicant yearly and helps care for Applicant's son. Applicant's father-in-law is 80 years old and retired from a manufacturing position 25 years ago. Applicant normally has little contact with him. (Item 7) He does not provide financial support for his in-laws. (Item 7)

Applicant visited Taiwan in 1992, 1994, 1996, 2007, and 2008. In 1992, he brought his son to visit his father. In 1994, he visited his father, who had been diagnosed with cancer. In 1996, he went there for his father's funeral. In 2007, he traveled to Taiwan, alone, seeking medical help for his son's vision impairment. He met with a physician, who was unable to be of assistance. During that trip, he stayed with his brother. He subsequently went to Shanghai to visit his father-in-law before returning to the United States. In 2008, he and his wife went to Taiwan for a two-week vacation. (Answer; Item 7)

Applicant admitted that he may travel to Taiwan in the future, but denies that he ever said he would go to China. However, he has no immediate plans to go to Taiwan. (Answer)

There is no derogatory information in the file concerning Applicant's police or financial records. He has never been fired from a job. He has never used illegal drugs, or been involved in an alcohol-related incident. (Item 5; 6) Applicant is very appreciative of the health care benefits available to his son in the United States. He is grateful to his employer and colleagues for the support they have given him since his son's accident. (Item 3)

## People's Republic of China

The People's Republic of China (PRC) is a one-party Communist totalitarian state with a population of over one billion people. It has an economy growing at 10% annually and expanding military forces, including its naval forces. It engages in industrial and military espionage on a regular basis against the United States and other countries. The United States and the PRC have been rivals since 1948, when the Communists took control of mainland China, and the Nationalist government fled to the island of Taiwan. Taiwan remains an issue of contention between the two countries. (Item I) The *2007 Report to Congress of the U.S.-China Economic and Security Review Commission* noted that the PRC has a large and aggressive intelligence gathering operation in the United States, particularly in the scientific and military fields. The PRC engages regularly in military, economic, and industrial espionage, including stealing nuclear weapons technology, missile design information, and commercial technology. The PRC also obtains commercial information through the use of front companies, buying dual-use technologies, and the direct collection of technology by non-intelligence agencies and individuals. The People's Liberation Army (PLA) is integrated into the civil industrial base in the PRC, known as the "digital triangle." (Item V) The *2007 Report to Congress of the U.S.-China Economic and Security Review Commission* states that the linkages between the military and Chinese commercial information technology companies and the R&D institute are longstanding, "as telecommunications and information technology in China were originally under military auspices and the commercial relationships with state and military research institutes remain important." (*Id.* at 102) China poses "a growing threat to national security due to China's sustained efforts to obtain U.S. technology illegally." (Item IV at 38)

Additionally, the U.S. State Department reported that the PRC has a poor human rights record, including but not limited to, denial of free speech and press, fair and open trials, and other basic rights recognized by the international community. It also suppresses political dissent, using arbitrary arrests, forced confessions, and mistreatment of prisoners as part of its operational methods to maintain control of its population. (Item III) Chinese security personnel routinely place tourists under surveillance. (Item II)

## Taiwan

The Nationalist Government of the late Chinese president Chiang Kai-shek was defeated by the Communist forces of Mao Tse-Tung in 1948 for control of China. While the Communists established their government on mainland China, the Nationalists fled to the island of Taiwan and re-established their government there. Taiwan has a population of 23 million people, and a multi-party parliamentary democracy, which has evolved over the past 60 years. Taiwan did \$466 billion in trade in 2007, having developed a strong economy over the years. In 1979, the United States formally changed its recognition from Taiwan to the Communist PRC government on the mainland of China as the sole legal government of China. (Item XVI) The United States maintains an unofficial relationship with Taiwan under the 1979 Taiwan Relations Act,

and sells defense military equipment to Taiwan pursuant to that law. Taiwan maintains a large military establishment. Taiwan is known as an active collector of U.S. economic intelligence. (Items XV; XXVII; XIX)

## **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 overarching adjudicative goal is a fair, impartial, and commonsense 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.

According to Directive ¶ E3.1.14, the Government is required to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and 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 Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline B, Foreign Influence**

The security concern relating to this guideline is articulated in AG ¶ 6:

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 two conditions that could raise a security concern and may be disqualifying in this case:

(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; and

(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 desire to help a foreign person, group, or country by providing that information.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contact with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

Applicant’s brother is a citizen and part-time resident of Taiwan. His in-laws are citizens and residents of China. He periodically has contact with all three family members. In 2007, he stayed with his brother who was residing in Taiwan at the time. His mother-in-law visits him yearly. During his 2007 visit to Taiwan, he visited his father-in-law in China. These close relationships, especially with his mother-in-law, create a heightened risk of foreign pressure or attempted exploitation because PRC agents

reside in Taiwan and China, and actively seek intelligence, classified, and economic information from United States sources and businesses. Applicant's connections to his relatives also create a potential conflict of interest because the relationships are sufficiently close and consistent to raise a security concern about his desire to help them, or Taiwan, or China, by providing sensitive or classified information. After the Government raised foreign influence security concerns, the burden shifted to Applicant to establish any appropriate mitigating conditions.

Three Foreign Influence Mitigating Conditions under Guideline ¶ 8 are potentially applicable to the disqualifications raised:

(a) 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.;

(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. interest; and

(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.

Guideline ¶¶ 8(a) and 8(c) do not apply. Applicant did not establish that "it is unlikely [he] will be placed in a position of having to choose between the interests of [his brother and in-laws] and the interests of the U.S." His frequent contacts and close relationships with his family members could potentially force him to choose between the United States and the PRC or Taiwan. He did not meet his burden of showing there is "little likelihood that [his relationships] could create a risk for foreign influence or exploitation."

Guideline ¶ 8(b) has some application because Applicant has "such deep and longstanding relationships and loyalties in the U.S., that [he] can be expected to resolve any conflict of interest in favor of the U.S. interest." He has lived in the United States since 1978. He became a U.S. citizen in 1986. His wife and son are naturalized U.S. citizens, residing in the United States. His brother and three sisters are naturalized U.S. citizens, residing in the United States. He has worked for U.S. companies since earning his graduate degree from a U.S. university in 1979, and for his current employer for 12 years. He renounced his Chinese citizenship in 1997.

## 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 relevant 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.

Substantial mitigating evidence weighs in favor of granting Applicant's security clearance. Applicant has lived in the United States for 31 years and has been a naturalized citizen for 23 years. When he became a U.S. citizen, he swore allegiance to the United States. His spouse and son are also naturalized citizens, residing with him. They are his closest family members. His brother and three sisters are naturalized U.S. citizens. Because all these family members live in the United States, they are less vulnerable to coercion or exploitation by a foreign power. The realistic possibility of such pressure or duress with regard to those members is low. There is no evidence he has ever taken any action which could cause potential harm to the United States. He renounced his Chinese citizenship, and he has worked diligently for a defense contractor since 1997.

Five circumstances weigh against Applicant in the whole person analysis. First, the PRC is a nuclear power and the PRC's government is a rival of the United States. More importantly for security purposes, the PRC and Taiwan actively seek classified and industrial/economic information. They may attempt to use his sibling living in Taiwan or in-laws living in China to obtain such information. Second, he had significant connections to Taiwan before he immigrated to the United States in 1978. He was born in Taiwan, and served in the Taiwanese military for two years. Third, his brother and sister-in-law are Taiwanese citizens, and still live in Taiwan, despite his brother's resident-alien status. Fourth, he has frequent and non-casual contact with his mother-in-law and brother. His mother-in-law visits him once a year. He visited his brother in Taiwan and his father-in-law in China two years ago. Since 1992, he visited his family in Taiwan five times and China once. These contacts with his brother and in-laws are manifestations of his affection and regard for them. Fifth, he plans to visit Taiwan in the future.

"Because of the extreme sensitivity of security matters, there is a strong presumption against granting a security clearance. Whenever any doubt is raised . . . it is deemed best to err on the side of the government's compelling interest in security by



