



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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-----, ----- ) ISCR Case No. 08-11564  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Jennifer I. Goldstein, Esquire, Department Counsel  
For Applicant: *Pro Se*

March 30, 2010

**Decision**

WHITE, David M., Administrative Judge:

Applicant retired after serving almost 22 years as an officer in the Taiwanese Navy. His brother, who remains in Taiwan, also served for 20 years. Both ended their careers as department directors at Taiwan’s Naval Technology Development Center. He and his second wife became U.S. citizens in 2006, but remain dual citizens of Taiwan and have close family members who are resident citizens there. The evidence is insufficient to mitigate resulting security concerns. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Applicant submitted a security clearance application on August 23, 2007.<sup>1</sup> On July 6, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline B (Foreign Influence).<sup>2</sup> The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of

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<sup>1</sup>Item 4.

<sup>2</sup>Item 1.

Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the revised adjudicative guidelines 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 July 29, 2009, and requested that his case be decided by an administrative judge on the written record without a hearing.<sup>3</sup> Department Counsel submitted the Government's written case on August 27, 2009. A complete copy of the File of Relevant Material (FORM)<sup>4</sup> was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant signed the document acknowledging receipt of his copy of the FORM on September 21, 2009, and returned it to DOHA. He submitted written comments clarifying and updating certain facts in response to the FORM on October 13, 2009, and expressed no objection to my consideration of the evidence submitted by Department Counsel or to my taking administrative notice of facts concerning Taiwan. On October 19, 2009, Department Counsel stated that she had no objection to my consideration of Applicant's response to the FORM. I received the case assignment on November 12, 2009.

### **Findings of Fact**

Applicant is a 54-year-old employee of a defense contractor. He served as an officer in the Taiwanese Navy from August 1977 to March 1999. He has never held a U.S. security clearance. He is married for the second time, with three children, ages 26, 18, and 16.<sup>5</sup> In his response to the SOR, he formally admitted each allegation.<sup>6</sup> Applicant's admissions, including his statements in response to DOHA interrogatories,<sup>7</sup> are incorporated in the following findings.

Applicant was born and raised in Taiwan. He attended post-graduate school at a U.S. university from 1990 to 1995. During his final tour of duty in the Taiwanese Navy, he served as a department director at the Naval Technology Development Center in Taiwan. For the first eight months after he retired from the Taiwanese Navy, he worked as Management Information Services (MIS) Manager for a large U.S.-based accounting and consulting firm in Taiwan. In August 1999, he moved to the U.S. and took a job as a

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<sup>3</sup>Item 3.

<sup>4</sup>The Government submitted six Items in support of the SOR allegations, and 15 U.S. Government source documents in support of a request for administrative notice of facts concerning Taiwan.

<sup>5</sup>Item 4.

<sup>6</sup>Item 3.

<sup>7</sup>Item 5.

senior software engineer with a private company. In May 2001, he took a similar position with a different private company that lasted for two months. From July 2001 to July 2002, he was unemployed, after which he was self-employed as a software consultant for 16 months. Another private company hired him as a senior software engineer during January and February 2004, following which he was unemployed for another six months. He resumed self-employment as a software consultant from August 2004 to August 2006. He then moved to a different state to accept employment as a senior database administrator for two succeeding contractors at his current location.<sup>8</sup>

Applicant was married to his first wife from 1983 to 1988. They had one child in 1983, who is a citizen and resident of Taiwan living with his mother. During the five years Applicant was in the United States for postgraduate school, he had two additional children. They are both native-born U.S. citizens, and reside with his current wife in their home in the state where he first settled in 1999. At least one of them holds dual citizenship with Taiwan. Applicant married his current wife in Taiwan during 1999, shortly before they moved to the United States. She was also born and raised in Taiwan. They both became naturalized U.S. citizens on September 20, 2006, and hold dual citizenship with Taiwan.<sup>9</sup>

Applicant's mother (age 78), father (age 84), sister (age 53), brother (age 49), son (age 26), and mother-in-law (age 73) are all citizens and residents of Taiwan. Applicant's older brother (age 56) and his wife are Taiwanese citizens, who were granted permanent resident status in the United States in March 2008, and now reside here.<sup>10</sup> Applicant's younger brother also served as an officer in the Taiwanese Navy for 20 years. His final position there was also as a department director at the Naval Technology Development Center. Applicant went to Taiwan in November 2008 to visit his mother.<sup>11</sup>

Applicant stated that he receives no pension, retirement pay, or other form of payment from Taiwan despite being retired from their navy after almost 22 years of service. He said he has no financial assets there. Although he was either unemployed or self-employed as a consultant for all but one month of the five years between July 2001 and August 2006, he has no delinquent debts and claims a net worth of \$100,000.<sup>12</sup> He was issued a Taiwanese passport in April 2004, because his previous passport expired and he was not yet a U.S. citizen. That passport was destroyed by his Facility Security Officer in October 2008.<sup>13</sup>

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<sup>8</sup>Item 4; Item 5.

<sup>9</sup>Item 4; Item 5.

<sup>10</sup>Applicant's response to the FORM; Item 4.

<sup>11</sup>Item 5.

<sup>12</sup>Item 4; Item 5.

<sup>13</sup>Item 5; Item 6.

Applicant stated, “If there is a conflict [sic] of interests between United States and any other countries, my first and foremost concern would be United States, where my most important relatives, my wife, my daughter, and my son, live.”<sup>14</sup> He also stated that there is no person, group, or organization in a foreign country to which he owes a duty, obligation, or responsibility (personal, family, social, professional) that he would be expected to honor or perform if he was asked to do so.<sup>15</sup> He provided no evidence concerning the quality of his professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

I take administrative notice of the facts concerning Taiwan that are set forth in Part III of the FORM. Of particular significance are the facts that Taiwan is among the most active collectors of U.S. economic and proprietary information, and has been involved with numerous attempts to illegally acquire restricted U.S. technology. Moreover, the People’s Republic of China (PRC) maintains substantial intelligence collection activities in Taiwan. The primary mission of Taiwan’s military is the defense of Taiwan against the PRC, which is seen as the predominant threat and which has not renounced the use of force against Taiwan. Taiwan’s Ministry of Defense has stated that acquiring submarines, a move directed at the PRC, remains a top priority.

### **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 (DCs) and mitigating conditions (MCs), which are to be used 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 AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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

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<sup>14</sup>Applicant’s response to the FORM.

<sup>15</sup>Item 5, Part 3, Question 23.

classified information will be resolved in favor of the 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, “[t]he 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 clearance decision.” Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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.

## **Analysis**

### **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. Department Counsel argued that the evidence in this case established two foreign influence DCs:

(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.

Although not asserted by Department Counsel, AG ¶ 7(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;" was also raised by substantial evidence.

Taiwan is known to target U.S. citizens to obtain protected information, and has a significant interest in acquiring defense-related and advanced naval technology. The PRC also has substantial intelligence operations active in Taiwan. Accordingly, family and professional connections there have more potential to generate heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion under AG ¶¶ 7(a) and (d) than would similar connections in many other countries.

Applicant shares living quarters with his wife, whose mother is a resident citizen of Taiwan. His father, mother, brother, sister, and eldest child are also resident citizens of Taiwan. These immediate-family relationships are all presumed to be close and loving, and Applicant offered no evidence to the contrary. Both he and his brother served more than 20 years as officers in the Taiwanese Navy, culminating as directors of major departments at Taiwan's Naval Technology Development Center. Applicant's claim that he owes no personal, family, or professional duty, obligation, or responsibility to anyone in Taiwan is not credible in light of his history of successful and honorable service in that nation's defense and ties to family there.

These facts meet the Government's burden of production by raising all three of the aforementioned foreign influence DCs. Applicant's contacts, relationships, and connections with Taiwan, and his lengthy naval service there culminating in naval technology development, shift a heavy burden to him to prove mitigation under applicable Appeal Board precedent.

AG ¶ 8 provides conditions that could mitigate security concerns. Those with potential application in mitigating AG ¶¶ 7 (a), (b), and (d) security concerns are:

(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.

Applicant did not demonstrate that it is unlikely that he could be placed in a position of having to choose between the interests of a foreign individual or government and those of the United States due to his professional history and family ties in Taiwan. He has close relationships with his parents, siblings, mother-in-law, and child, all of whom are resident citizens there, and visited his mother in November 2008. Accordingly, he failed to establish the mitigating conditions set forth in AG ¶¶ 8 (a) and (c).

The evidence also fails to establish mitigation under AG ¶ 8(b). Applicant asserted that his "first and most concern" in any conflict of interest situation would be for the United States because his wife and two younger children live here. That statement is not corroborated, and is significantly weakened by the remaining record evidence. Applicant dedicated almost 22 years to the military defense of Taiwan, and most of his immediate family is still there. He has no record of service or sacrifice for the United States that would demonstrate any deep or longstanding relationships or loyalties under Appeal Board precedent.

### **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.

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 pertinent facts and circumstances surrounding this case. Security concerns do not involve any personal misconduct, dishonesty, irresponsibility, or disloyal activity. The primary whole-person issues of concern under these circumstances are his relationships with Taiwanese relatives, and his personal connection to Taiwan where he was born and lived for the first 44 years of his life. For almost 22 of those years, he served as an officer in the Taiwanese Navy, and became a specialist in naval technology development, as did his brother. It would be unrealistic to conclude that he has no ongoing obligations and loyalties toward his family members and former colleagues in Taiwan, and he provided insufficient evidence to support such a finding. These considerations raise the potential for pressure, coercion, exploitation, or duress, and the likelihood of continuation or recurrence. (AG ¶¶ 2 (8) and (9).)

Applicant offered no evidence of professional, social, or financial ties to the United States that might weigh in favor of a whole-person finding of exceptional allegiance to United States interests. He also provided no evidence, beyond his successful Taiwanese naval service, tending to establish his responsibility, trustworthiness, or reliability. His claim that he has no ongoing financial ties with Taiwan are doubtful given his status as a retired naval officer and his absence of delinquent debt after supporting a family of four during a five-year period of unemployment and self-employment as a software consultant from 2001 to 2006.

Overall, the record evidence leaves me with substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising from foreign influence considerations.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant, except that one brother is a U.S. resident.
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant



## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

DAVID M. WHITE  
Administrative Judge