



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



In the matter of:	)	
	)	
----- <sup>1</sup>	)	ISCR Case No. 09-00118
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Eric Borgstrom, Esq., Department Counsel  
For Applicant: *Pro se*

April 29, 2010

**Decision**

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FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns under Guidelines B (Foreign Influence) and C (Foreign Preference) raised by Applicant's connections to Taiwan. Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application on April 10, 2008. On October 2, 2009, the Defense Office of Hearings and Appeals (DOHA) sent her a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny her application, citing security concerns under Guidelines B and C. DOHA acted 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

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<sup>1</sup> In several of the documents in the record, Applicant identifies herself by using her middle name instead of her first name. (Tr. 24.) Her middle name is not included in the heading of the Statement of Reasons or the caption of this decision.

(Directive); and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

Applicant received the SOR on October 9, 2009; answered it on October 14, 2009; and requested a determination on the record without a hearing. DOHA received the request on October 30, 2009. Department Counsel requested a hearing on December 1, 2009, and was ready to proceed on January 11, 2010. The request for a hearing is attached to the record as Hearing Exhibit (HX) I. The case was assigned to me on January 19, 2010. DOHA issued a notice of hearing on January 26, 2010, scheduling the hearing for February 19, 2010. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 3 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through C, which were admitted without objection. I kept the record open until March 5, 2010 to enable her to submit additional documentary evidence. She timely submitted AX D. Department Counsel's comments about AX D are attached to the record as HX III. (HX II is discussed below.) DOHA received the transcript (Tr.) on February 26, 2010.

### **Administrative Notice**

Department Counsel requested that I take administrative notice of relevant facts about Taiwan. The request and the documents attached as enclosures were not admitted in evidence but are attached to the record as HX II. I took administrative notice as requested by Department Counsel. The facts administratively noticed are set out below in my findings of fact.

### **Correction of SOR**

On motion of Department Counsel, I corrected SOR ¶ 2.b to allege that Applicant's Taiwanese passport will expire in July 2010, instead of July 2001 as originally alleged. (Tr. 84-85.)

### **Findings of Fact**

In her answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a, 1.b, 2.a, and 2.c. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is a 27-year-old guidance navigation and control engineer employed by a defense contractor since September 2007. She was promoted to her current position in the summer of 2008. (Tr. 42.) She has received two performance awards from her employer. (AX B and C.) She has never held a clearance.

Applicant was born in Taiwan. She moved to Canada with her family when she was nine years old. She returned to Taiwan to attend middle school three years later and then returned to Canada for three years, where she completed high school. (Tr. 35-38.) Her parents remained in Taiwan to care for their parents while she attended high

school, and she lived in a dormitory. (Tr. 38-39.) She came to the United States in August 2001 to attend college. Applicant completed her undergraduate education and received a master's degree in May 2006.

Applicant became a U. S. citizen in June 2007. She uses Facebook, an internet social website, to stay in contact with some of her middle school friends in Taiwan and the United States. She does not know if her Taiwanese friends are connected to the government of Taiwan. She has numerous friends in the United States. Her boyfriend is a U.S. citizen. (Tr. 60-61, 71.)

Applicant's parents obtained U.S. permanent resident cards in August 2001. (AX D.) They have since returned to Taiwan. Applicant talks to her parents by telephone every two weeks. (Tr. 57.) She has no assets in Taiwan, does not depend on her parents for financial support, and provides no financial support to her parents. (Tr. 55-56, 70.)

Applicant's father is the manager of a frozen food company. His company bids on government contracts and regularly sells food products to the government for use by the Taiwanese military. (Tr. 47.) Her mother is not employed outside the home. Her brother is a dual citizen of Taiwan and the United States, and he resides in the United States. Her two sisters are dual citizens of Taiwan and Canada, and they both reside in the United States.

Applicant traveled to Taiwan every year from 2002 to 2008 to visit her family. She did not surrender her Taiwanese passport when she became a U.S. citizen, and she used her Taiwanese passport when she traveled to Taiwan in 2007 because she had not yet received her U.S. passport. (Tr. 64.) She used her Taiwanese passport again in November 2008, because it allowed her to stay in the country more than 30 days. (GX 2 at 7.) The Taiwanese passport does not expire until July 2011, but she surrendered it to her facility security officer in February 2010. (AX A.)

Applicant testified she has no intention to return to Taiwan, except to visit. She has spent so much time in the United States and Canada that she finds it difficult to fit into the culture of Taiwan. (Tr. 73-74.)

I have taken administrative notice of the following adjudicative facts about Taiwan. It is a multi-party democracy, established as a separate, independent government by refugees from mainland China in 1949. The People's Republic of China (PRC) does not recognize Taiwan's independence and insists there is only one China. The United States recognized Taiwan as an independent government until January 1979, when it formally recognized the PRC government as the sole legal government of China. Taiwan has developed a strong economy and has significant economic contacts with the PRC. The PRC maintains intelligence operations in Taiwan, using PRC nationals with Taiwanese connections. Taiwan maintains a large military establishment to protect itself from the PRC. For many years, Taiwan has been an active collector of U.S. economic intelligence, and there have been numerous instances of U.S.

companies involved in illegal export, or attempted export, of sensitive, dual-use technology to Taiwan. There is also some evidence that Taiwanese intelligence officials have specifically targeted U.S. citizens to obtain protected and classified information. Taiwan is a stable and vibrant democracy, and there is no evidence that the government of Taiwan is likely to resort to coercive measures against its citizens to collect economic intelligence.

## Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to 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.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is not necessarily a determination as to the loyalty of the applicant. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines

presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

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

The SOR alleges Applicant's parents are citizens and residents of Taiwan (SOR ¶ 1.a) and she traveled to Taiwan every year from 2002 through 2008 (SOR ¶ 1.b). The security concern under this guideline is set out in AG ¶ 6 as follows:

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.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Furthermore, "even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security." ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at \*\*15-16 (App. Bd. Mar. 29, 2002). Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, the nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family

member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the United States.

Two disqualifying conditions under this guideline are relevant: AG ¶ 7(a) (“contact with a foreign family member . . . if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion”); and AG ¶ 7(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”). Applicant’s contacts with her parents and her connections to Taiwan create the “heightened risk” contemplated by AG ¶ 7(a) and the “potential conflict of interest” contemplated by AG ¶ 7(b). Both disqualifying conditions are raised.

Applicant’s annual travel to Taiwan was to visit her parents and other family members. As such, it has no independent security significance. See ISCR Case No. 02-26978 (App. Bd. Sep. 21, 2005).

Since the government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 7(a) and (b), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Security concerns under this guideline may be mitigated by showing that “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.” AG ¶ 8(a). Applicant has a close relationship with her family members and a social relationship with some of her middle school classmates in Taiwan. Her father’s company does business with the government on a regular basis. I conclude that AG ¶ 8(a) is not established.

Security concerns under this guideline also may be mitigated by showing “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.” AG ¶ 8(b). Although Applicant is close to her family, she feels no emotional or cultural attachment to Taiwan. She has lived apart from her family since high school, and her testimony and demeanor at the hearing suggest that she has become quite independent. Her siblings, most of her friends, and her current boyfriend are citizens and residents of the United States. Her career aspirations are focused on the United States. She has been a U.S. citizen for a relatively short period of time, but she has lived in a Western culture since high school, and she applied for U.S. citizenship shortly after she became eligible. The possibility of Applicant being subjected to indirect

pressure through her parents is unlikely, because Taiwan is not known to abuse its citizens to obtain foreign economic intelligence. I conclude AG ¶ 8(b) is established.

Security concerns under this guideline also may be mitigated by showing that “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.” AG ¶ 8(c). Applicant’s contacts with her middle school classmates are limited to Facebook exchanges. The evidence about her Taiwanese classmates and the content of their conversations is sparse and is insufficient to establish this mitigating condition.

### **Guideline C, Foreign Preference**

The SOR alleges Applicant exercised her Taiwanese dual citizenship by possessing and using a Taiwanese passport. The concern under this guideline is as follows: “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 ¶ 9.

Dual citizenship standing alone is not sufficient to warrant an adverse security clearance decision. ISCR Case No. 99-0454 at 5, 2000 WL 1805219 (App. Bd. Oct. 17, 2000). Under Guideline C, “the issue is not whether an applicant is a dual national, but rather whether an applicant shows a preference for a foreign country through actions.” ISCR Case No. 98-0252 at 5 (App. Bd. Sep. 15, 1999).

The security concern under this guideline is not limited to countries hostile to the U.S. “Under the facts of a given case, an applicant’s preference, explicit or implied, even for a nation with which the U.S. has enjoyed long and peaceful relations, might pose a challenge to U.S. interests.” ADP Case No. 07-14939 at 4 (App. Bd. Mar. 11, 2009).

A disqualifying condition may arise from “exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen,” including but not limited to “possession of a current foreign passport.” AG ¶ 10(a)(1). Applicant’s possession and use of her Taiwanese passport after becoming a U.S. citizen raise this disqualifying condition.

Security concerns under this guideline may be mitigated by evidence that “dual citizenship is based solely on parents’ citizenship or birth in a foreign country.” AG ¶ 11(a). Applicant derived her Taiwanese citizenship from her parents, but she actively exercised it by keeping and using her Taiwanese passport. This mitigating condition is applicable, but its mitigating effect is diminished by Applicant’s active exercise of Taiwanese citizenship after becoming a U.S. citizen.

Security concerns based on possession or use of a foreign passport may be mitigated if “the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.” AG ¶ 11(e). This mitigating condition is established.

## Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the relevant circumstances. An 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 have incorporated my comments under Guidelines B and C in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is well-educated and intelligent, but she is young and inexperienced regarding the security clearance process. She was very candid and sincere at the hearing. She surrendered her Taiwanese passport when she learned that it raised security concerns. She has spent more of her life in the United States and Canada than in Taiwan, and she is more comfortable with the Western culture than the culture of Taiwan. Although her parents have returned to Taiwan, they have demonstrated their affinity for Western culture by educating their children in Canada and the United States and obtaining U.S. permanent resident cards. Although her father sells food products to the Taiwanese government from time to time, her parents are not employed by the government or a high technology business where they would be more likely to be involved in economic espionage, vulnerable to exploitation, or likely conduits of indirect pressure on Applicant.

After weighing the disqualifying and mitigating conditions under Guidelines B and C, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on foreign influence and foreign preference. Accordingly, I conclude she has carried her burden of showing that it is clearly consistent with the national interest to grant her eligibility for access to classified information.



### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline B (Foreign Influence):                   FOR APPLICANT

    Subparagraphs 1.a-1.b:   For Applicant

Paragraph 2, Guideline C (Foreign Preference):               FOR APPLICANT

    Subparagraphs 2.a-2.c:   For Applicant

### **Conclusion**

In light of all of the circumstances, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

LeRoy F. Foreman  
Administrative Judge