



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



In the matter of: )  
)  
) ISCR Case No. 09-04216  
SSN: )  
)  
Applicant for Security Clearance )

**Appearances**

For Government:  
Braden M. Murphy, Esquire, Department Counsel  
For Applicant: David Burgess, Personal Representative

October 29, 2010

**Decision**

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,<sup>1</sup> Applicant’s clearance is denied.

On 17 December 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines B, Foreign Influence and C, Foreign Preference.<sup>2</sup> Applicant timely answered the SOR and requested a hearing. DOHA assigned the case to me 7 March 2010, and I convened a hearing 8 April 2010. DOHA received the transcript 16 April 2010.

---

<sup>1</sup>Consisting of the transcript (Tr.) and Government exhibits (GE) 1-3.

<sup>2</sup>DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on 1 September 2006.

## Findings of Fact

Applicant admitted the allegations of the SOR, except for SOR 1.e. She is a 54-year-old junior acquisition specialist employed by a defense contractor since November 2008. She has not previously held a clearance. She owned and ran a restaurant for many years.

Applicant was born in the Republic of China (Taiwan) in February 1956. She grew up and was educated there through high school. After graduation, she ran away from home and got married in 1975. She and her spouse moved frequently: Japan, Taiwan, Japan, Hong Kong, France. In 1978, they separated, and Applicant returned to Taiwan. She came to the U.S. in February 1980. Later that year, they divorced.

Applicant became a naturalized U.S. citizen in September 1993. She got her most recent U.S. passport in August 2007. She also had a Taiwanese passport that she used to enter the U.S. in 1980. Under U.S. immigration law, she had to retain the passport while she was legally-resident in the U.S. However, she later renewed the passport after becoming a naturalized U.S. citizen, unaware of any reason not to. She used the passport to travel to Taiwan in February 2003; April, September, November, and December 2004; November and December 2005; January, March, May, and September 2006; October 2007; and March 2008—14 trips in just over four years. Using her Taiwanese passport allowed her to travel to Taiwan with no restrictions on the length of her stay and without having to obtain a visa. She was also leaving for Taiwan the evening after the hearing, albeit traveling on her U.S. passport.

Applicant also renewed her Taiwanese passport in March 2007. That passport remains valid until 2017, but she surrendered it in September 2009 to her corporate facility security officer (FSO), who has acknowledged and accepted the obligation to report to the government if Applicant asks for the passport back. Applicant is aware of the possible consequences for her clearance if she does so.

Applicant's parents, her two adopted children, and three siblings are resident citizens of Taiwan. Her only cousin is a citizen of Taiwan but resides in the People's Republic of China (PRC) with her husband. She has a sister who is a dual citizen of the U.S. and Taiwan, living in the U.S. with her husband—a U.S. born citizen. Applicant's parents are in their 80s and in ill health. Her mother has Alzheimer's disease and her father has colon cancer. Indeed, the purpose of her April 2010 trip to Taiwan was to consult with her siblings about her father's proposed cancer surgery, and to be there if he were to die of complications from the surgery.

The family structure above is actually more convoluted than it appears because of Chinese culture. Applicant's cousin is her biological sister. Applicant's father and her uncle were the only two male family members to escape the Chinese mainland when the communists took over. Her uncle and his wife never had children, so when Applicant's parents were going to have another child they decided—in keeping with Chinese custom—to let the uncle and his wife adopt the child, to have someone to be

their heir and to look after them in their old age. The child grew up as Applicant's cousin, and only became aware of her lineage when she was older.

Similarly, Applicant's two adopted children are her biological nephews. The younger of her two brothers had two children, and when he divorced, he got custody. However, he was severely injured in a motorcycle accident in 2000, and was unable to care for his children. Ordinarily, under Chinese custom, Applicant's older brother would take responsibility for providing for them, but he declined, as did both Applicant's sisters. The family conclave decided that Applicant should provide for them.

Applicant adopted her two nephews at her mother's urging, albeit reluctantly. To adopt them, she had to own property in Taiwan. In 2004, she bought an apartment (with money given to her by her mother) and opened a bank account. Applicant adopted her nephews in 2006, and wanted to bring them to the U.S. However, she discovered that U.S. law did not allow her to bring her sons into the U.S. unless they had resided with her for the last two years—outside the U.S. She could not do that with her work situation, so her sons stayed in Taiwan. Applicant's parents, her sons, and her disabled brother lived in the apartment.<sup>3</sup> Her sister is the legal guardian of her sons. Applicant pays the utility bills, and sends her sister money for groceries and other expenses. She has weekly contact with her sister.

Applicant's brother is retired Taiwanese military, and works for a government-funded institute. None of her other relations have any connection to the Taiwanese government. Applicant voted in a Taiwanese election in 2008 at the urging of her father.

Applicant owns two houses in the U.S. and lives in one of them with her boyfriend. Except for the Taiwanese bank account she uses to send money to her sister to take care of apartment expenses, all her financial accounts are in the U.S.

Taiwan is a multiparty democracy, whose authorities generally respect the human rights of its citizens. While Taiwan is an active collector of industrial information and engages in industrial espionage, the record does not demonstrate that the government of Taiwan targets U.S. intelligence information. Further, the record does not demonstrate that it seeks to exert pressure on U.S. citizens to collect information from family members residing in country or abroad. However, the intelligence services of the PRC are extremely active in Taiwan. The PRC is a repressive, totalitarian government with foreign policy goals antithetical to the U.S., although it has cooperated with the U.S. in the global war on terrorism in recent years. It has an active, effective intelligence service that targets U.S. intelligence and economic information, and operates against its citizens in the U.S. and elsewhere.

Applicant's character witnesses—including supervisors and her boyfriend—consider her honest and trustworthy and an excellent employee. They believe her completely loyal to the U.S. and recommend her for her clearance.

---

<sup>3</sup>Estimated to be worth \$200,000.

## Policies

The adjudicative guidelines (AG) list factors for evaluating a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also reflect a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). Any one disqualifying or mitigating condition is not, by itself, conclusive. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guidelines are Guideline B (Foreign Influence) and Guideline C (Foreign Preference).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the government.<sup>4</sup>

## Analysis

Under Guideline B (Foreign Influence), an applicant's foreign contacts and interests may raise security concerns if the individual 1) has divided loyalties or foreign financial interests, 2) may be manipulated or induced to help a foreign person, group, organization, or government in a way contrary to U.S. interests, or 3) is vulnerable to pressure or coercion by any foreign interest. Foreign influence adjudications can and should consider the identity of the foreign country in which the foreign contact or financial interest is located—including, but not limited to, whether the country is known to target U.S. citizens to obtain protected information and/or is associated with a risk of terrorism.<sup>5</sup> Evaluation of an individual's qualifications for access to protected information requires careful assessment of both the foreign entity's willingness and ability to target protected information, and to target ex-patriots who are U.S. citizens to obtain that information, and the individual's susceptibility to influence, whether negative or positive. More specifically, an individual's contacts with foreign family members (or other foreign

---

<sup>4</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>5</sup>AG ¶ 6.

entities or persons) raise security concerns only if those contacts create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.<sup>6</sup> In addition, security concerns may be raised by a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.<sup>7</sup>

In this case, the Government established that Applicant's contacts with her family in Taiwan created a heightened risk of exploitation, inducement, manipulation, pressure, or coercion. The Government also established that Applicant's bank account and property ownership in Taiwan created a heightened risk of influence or exploitation.

Taiwan and the U.S. enjoy excellent foreign relations. Although Taiwan is an active collector of commercial information, it has not been demonstrated to target protected U.S. information, nor has it been demonstrated to target U.S. citizens to obtain protected information. Given that Taiwan generally respects the human rights of its citizens, the risk that it might seek protected information—or succeed in obtaining such information—from Applicant is low. Put another way, Taiwan's ability to target protected information is high, its willingness, low.

Examining Applicant's circumstances, the Government also established that there was a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion because of Applicant's contacts with family in Taiwan. Applicant has resided in the U.S. nearly half her life, and most of her adult life. Her most significant financial interests are all in the U.S. however, her contacts with her parents, siblings, and children run deeper than normal. Beginning in 2003, she traveled extensively to Taiwan to participate in family counsels about dealing with her disabled brother and his children. She was persuaded to adopt her brother's children, and to that end reasserted her Taiwanese citizenship by renewing her Taiwanese passport, purchasing property, and opening the necessary bank account to deal with the property. The trouble she went through to adopt her nephews was not insignificant, and the value of the apartment she purchased is significant, even compared to her holdings in the U.S. She voted in Taiwanese elections in 2008 because it was important to her father for her to do so. Applicant's conduct since 2003 reveals the core security concern that she is subject to influence by her family through their shared values of Chinese culture and custom. The fact that Taiwan itself does not currently exploit those connections to obtain sensitive information does not vitiate the fact that Applicant could be exploited through her family if that changed. I resolve Guideline B against Applicant.

The Government established a case for disqualification under Guideline C by showing that Applicant had possessed a Taiwanese passport, renewed it in March 2007, and used it to travel to Taiwan and verify her Taiwanese citizenship so she could

---

<sup>6</sup>AG ¶ 7.(a).

<sup>7</sup>AG ¶ 7.(e).

open a bank account, purchase property, and adopt her nephews—despite becoming a naturalized U.S. citizen in September 1993.<sup>8</sup> She also voted in Taiwanese elections in 2008. Although U.S. law recognizes dual citizenship, it does not encourage it—for a variety of practical reasons. Her conduct raises security concerns under the adjudication guideline for foreign preference, perhaps more accurately described as divided preference. She did not mitigate the Guideline C security concerns.

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

Applicant's active exercise of dual citizenship after becoming a naturalized U.S. citizen was done deliberately and clearly undertaken to meet her family obligations. Her dual citizenship is not due solely to her birth in Taiwan.<sup>9</sup> She has not expressed her willingness to close her accounts, sell her property, or renounce her Taiwanese citizenship.<sup>10</sup> She exercised her Taiwanese citizenship as an adult after becoming a U.S. citizen,<sup>11</sup> the use of her foreign passport was not approved,<sup>12</sup> and the U.S. Government did not encourage her vote in the foreign election.<sup>13</sup> Although she surrendered her passport to her security office and understands the potential consequences to her clearance should she regain possession of it, that action is not enough to overcome the adverse concerns raised by her other conduct.<sup>14</sup> I resolve Guideline C against Applicant.

---

<sup>8</sup>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 included but is not limited to: (1) possession of a current foreign passport; (5) using foreign citizenship to protect financial . . . interests in another country; (7) voting in a foreign election; (b) action to acquire or obtain recognition of a foreign citizenship by an American citizen;

<sup>9</sup>¶ 11.(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

<sup>10</sup>¶ 11.(b) the individual has expressed a willingness to renounce dual citizenship;

<sup>11</sup>¶ 11.(c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;

<sup>12</sup>¶ 11.(d) use of a foreign passport is approved by the cognizant security authority;

<sup>13</sup>¶ 11.(f) the vote in a foreign election was encouraged by the United States Government.

<sup>14</sup>¶ 11.(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated;

### **Formal Findings**

Paragraph 1. Guideline B:           AGAINST APPLICANT

    Subparagraphs a-h:           Against Applicant

Paragraph 2. Guideline C:           AGAINST APPLICANT

    Subparagraphs a-c:           Against Applicant

### **Conclusion**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance denied.

---

JOHN GRATTAN METZ, JR  
Administrative Judge