



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



In the matter of: )  
)  
) ISCR Case No. 10-07431  
)  
Applicant for Security Clearance )

**Appearances**

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

October 28, 2011

**Decision**

METZ, John Grattan, Jr., Administrative Judge:

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

On 31 January 2011, 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> Applicant timely answered the SOR, requesting a hearing. DOHA assigned the case to me 3 June 2011, and I convened a hearing 18 July 2011. DOHA received the transcript 26 July 2011.

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<sup>1</sup>Consisting of the transcript (Tr.), Government exhibits (GE) 1-7, hearing exhibits (HE) I-II, and Applicant exhibit A.

<sup>2</sup>DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), 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. He is a 73-year-old consultant employed by a defense contractor since January 2007. He has not previously held an industrial clearance, but seeks renewal of the clearance he held for nearly 30 years as a civilian employee of a U.S. military department. The consultant work he does is for the same military department (indeed for the same colleague) that employed him directly until his January 2007 retirement from Government service.

Applicant was born in what is now the Republic of China (Taiwan) in July 1938. In 1938, Japan occupied much of China, despite resistance by the nominally united front of the Chinese Nationalist People's Party (KMT) and the Chinese Communist Party (CCP), otherwise bitter enemies for control of China since at least 1927. After the Japanese surrender in 1945, the war between the CCP and the KMT resumed for control of China, resulting in the creation of the People's Republic of China (PRC) on the mainland and the Republic of China (ROC) on Taiwan in 1949.

Applicant grew up on Taiwan and was educated there through college, obtaining his undergraduate degree in electrical engineering in 1962. He came to the U.S. in August 1964 to pursue higher education, obtaining his master's degree in July 1967 and his doctorate in July 1970. In August 1970, he married another native-born Chinese in the U.S. They have one child, U.S. born, and two grandchildren, also U.S. born.

Applicant became a naturalized U.S. citizen in December 1976. His wife was naturalized in June 1974. Applicant has a current U.S. passport, issued in July 2007 (GE 6), and had at least one other U.S. passport, issued in January 1998 (GE 7). Presumably, he maintained a valid Taiwanese passport as required by U.S. immigration law until his naturalization in December 1976, but he also had a Taiwanese passport issued in May 1995 that he kept for sentimental reasons but never used (GE 2-5). It expired in May 2001.

In May 1977, Applicant went to work for the U.S. Government as a ceramics engineer, work he did until his retirement in January 2007. He obtained his first clearance as a Government employee in 1977, although he also held a clearance from 1975 to 1977 when he was employed at his agency through an intergovernmental personnel program with his university employer (Tr. 77). He had additional background investigations in at least February 1992 and October 2001, that resulted in clearances in June 1992 and October 2003 (HE I). He had access until August 2006, when he went on terminal leave before his retirement.

Applicant's October 2001 clearance application (GE 2) contains all the foreign influence information alleged in the SOR, except for trips to Taiwan in 2003 and 2006 and to the PRC in 2007. The 2003 trip was on Government business. The 2006 trip was to bury his mother. The 2007 was on Government business. This is the only "new" foreign influence information contained in Applicant's April 2008 clearance application (GE 1).

The foreign travel already adjudicated by Applicant's U.S. Government employer falls into the same categories as the "new" travel. Applicant flew to Taiwan in 1994 to bury his father. He flew to Taiwan in 1995 to visit his father's grave with his mother in keeping with Chinese custom. He flew to Taiwan in 1996 and 1997 to visit family, in 1998 for a family wedding, and in 1999 to visit family. He flew to Taiwan in 2000 and 2003 on Government business. Applicant flew to the PRC in 1998 to bury his mother-in-law. He flew to the PRC in 1999 to visit his mother-in-law's grave in keeping with Chinese custom. He flew to the PRC in 2000 and 2007 on Government business. All his foreign travel has been on his U.S. passport (Tr. 79).

The U.S. Government also previously adjudicated the fact that Applicant has two brothers who are resident citizens of Taiwan. They are both businessmen with no connection to the Taiwanese government. Applicant also has two sisters who are dual U.S./Taiwanese citizens and live in Taiwan. They are housewives. Applicant also has numerous siblings who live in the U.S. Most of them are also U.S. citizens.

Applicant has an acquaintance who is a professor at the National Taiwan University, the university where Applicant obtained his undergraduate degree. They met at a U.S. Government-approved conference. The professor asked Applicant to make a scientific presentation at the university, which Applicant did—with U.S. Government approval. Applicant also participates in community organizations and events at which he has met, in a purely social capacity, officials affiliated with Taiwanese government organizations that have a similar interest in the community organizations and events. Applicant is well aware of his reporting requirements if any of those officials try to obtain protected information. Indeed, Applicant served as an officer in one of the community organizations in the mid-1990s, with the knowledge and approval of his agency (Tr. 70). Applicant gave extensive explanations of his foreign contacts during subject interviews in June 2008 (GE 3) and in a sworn statement in September 2009 (GE 4).

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 colleague and coworker for more than the last ten years described him as "personally trustworthy, professionally trustworthy, and loyal to the United States (Tr. 31)." Applicant's area of expertise—materials engineering—is particularly valuable to the U.S. because the technology of materials engineering is heavily concentrated in Asia and Applicant's ability to speak fluent Chinese allowed him to serve as the

agency's eyes and ears in Asia, for both classified and unclassified technology. Indeed, Applicant continues to work for the agency as a consultant at the specific request of his former work colleague (Tr. 42).

Applicant owns his home in the U.S. and parts of several businesses at various locations in the U.S. None of these businesses are related to his professional qualifications. His net worth in the U.S. is over \$7,000,000. He has no assets in Taiwan, although he may inherit a small estate from his deceased mother after Taiwan takes its share in estate taxes and the remainder is divided among his many siblings.

### **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 guideline is Guideline B (Foreign Influence).

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>3</sup>

### **Analysis**

As an administrative matter, Applicant's background had to be reinvestigated in April 2008 because his last background investigation for his Government employment had been completed more than two years earlier (October 2003), outside the window for transferring his clearance as a matter of reciprocity (HE II). Notwithstanding that the Government is never bound by its earlier clearance determinations, nor is it estopped

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<sup>3</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

from reinvestigating an Applicant for clearance anytime if conditions warrant, issuing an SOR in this case was not necessary.

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>4</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 entities or persons) raise security concerns only if those contacts create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.<sup>5</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>6</sup>

In this case, the Government established a case for disqualification under Guideline B to the same, but no greater, extent than has existed ever since Applicant first obtained a clearance in 1975. Indeed, a strong argument can be made that the security concerns surrounding Applicant's foreign contacts have only lessened over the years. In 1975, Applicant was a soon-to-be-newly-minted U.S. citizen who had only lived in the U.S. for 11 years. In 2011, Applicant has lived in the U.S. for 47 of his 73 years, 35 of them as a U.S. citizen, with an established track record of dealing appropriately with protected information.

The Government argues that "it is unclear to what extent this information [foreign contacts reported on Applicant's 2001 clearance application] was explored during the prior investigation." (HE II). However, this argument gives insufficient weight to the Government's earlier investigations and clearance decisions. First, there is a presumption of regularity that the military department conducted a thorough background investigation of Applicant based on his application—which disclosed all the foreign contacts at issue in this case. Second, the military adjudication facility reviewing the 2001 clearance application is not known for laxity in reviewing its clearance applications.

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<sup>4</sup>AG ¶ 6.

<sup>5</sup>AG ¶ 7.(a).

<sup>6</sup>AG ¶ 7.(e).

If anything, the military department is known for the strictness of its adjudications. Third, the military adjudication facility reviewing the 2001 clearance application has access to information not available to DOHA—counterintelligence information on Applicant's foreign contacts produced through the military department's intelligence organizations. Finally, the Government produced the 2001 clearance application and had access to, if not the complete history of Applicant's clearances, the history of his clearances since February 1992. Presumptively, the Government had access to the complete background investigation from the 2001 application, which would show exactly how thoroughly Applicant's foreign contacts had been reviewed in 2001.

Taiwan and the U.S. enjoy excellent foreign relations. Although Taiwan is an active collector of U.S. economic and proprietary information, it has not been demonstrated to target protected U.S. information through targeting U.S. citizens in a manner contemplated by the AG. The cases cited by the Government for administrative notice involve persuasive, not coercive, methods. 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 did not establish 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. over half his life, over half his adult life, and nearly half his life as a U.S. citizen. His extensive financial interests are overwhelmingly in the U.S. His contacts with his siblings run no deeper than normal. His contacts with Taiwanese officials are exclusively social in the context of community organizations in the U.S. His other contacts with non-family foreign contacts are all related to his employment by the Government and to his consultant work for the Government. Further, Applicant is well aware of his reporting obligations should any of these foreign contacts attempt to obtain protected information, and he has a demonstrated history of reporting contacts or requesting approval both for professional and social contacts.

Conceding the necessity of a new background investigation for Applicant to obtain an industrial clearance, the fact remains that the case for granting his clearance was overwhelmingly made by the documents in the Government's possession before the SOR was issued. The fact of Applicant's past clearances, standing alone, does not guarantee granting this clearance, but the fact of his past access without security incident, coupled with no new evidence of security significance in the current investigation warrants a favorable conclusion. Applicant is today as he was over 35 years ago—perfectly positioned to channel protected information to the Taiwanese government. However, he has proven himself trustworthy over nearly 35 years. There is no evidence in the record to suggest that that would change because he has moved into the contractor world. I resolve Guideline B for Applicant.

### **Formal Findings**

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraphs a-g: For Applicant

### **Conclusion**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance granted.

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JOHN GRATTAN METZ, JR  
Administrative Judge