



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



In the matter of: )  
)  
) ISCR Case No. 12-00084  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff Nagel, Esq., Department Counsel  
For Applicant: Thomas D. Farrell, Esq.

February 28, 2014

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant’s mother-in-law, father-in-law, two sisters-in-law, brother-in-law, his wife’s cousin, and his wife’s uncle are citizens and residents of Taiwan. He has traveled to Taiwan annually since 2005 to visit them. His brother-in-law works for a governmental agency in Taiwan. Applicant failed to mitigate the resulting Foreign Influence security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On September 3, 2013, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline B, Foreign Influence. The action was taken under Executive Order (EO) 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 adjudicative guidelines (AG) effective on September 1, 2006.

Applicant answered the Statement of Reasons on October 9, 2013, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on December 19, 2013. A notice of hearing was issued to Applicant on January 3, 2014, scheduling a hearing for January 21, 2014. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 3, which were admitted without objection. Applicant testified on his own behalf, called two witnesses, and offered Applicant's Exhibits (AE) 1 through 13, which were admitted into the record without objection. Applicant requested that the record be left open to allow him to submit additional evidence and his request was granted. On February 24, 2014, Applicant presented additional exhibits, marked AE 14 through AE 28. Department Counsel had no objections to AE 14 through AE 28, and they were admitted into the record. The record then closed. DOHA received the transcript of the hearing (Tr.) on January 28, 2014.

## **Procedural Rulings**

### **Request to take Administrative Notice**

The Government requested I take administrative notice of certain facts relating to Taiwan. Department Counsel provided a five-page summary of the facts, with citations to 19 Government documents pertaining to Taiwan, marked Hearing Exhibit (HE) I. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, and not subject to reasonable dispute. They are set out in the Findings of Fact.

### **Amendment to the SOR**

At the hearing, Department Counsel made a motion to amend the SOR, in order to correct a clerical error in the lettering of the subparagraphs. The SOR contained two different allegations, both lettered as 1.e. The second 1.e was amended to be 1.f and the subparagraph labeled 1.f was changed to 1.g to keep them in alphabetical order. Applicant had no objections to the amendment. The motion to amend was granted. (Tr. 26-27.)

## **Findings of Fact**

Applicant is 51 years old. He was born and raised in the United States. He only speaks English. He has been employed by a government contractor since 1990. He has held a security clearance in connection with his current and prior employment, without incident, since the mid-1980's. (GE 1; GE 2; AE 5; Tr. 36-50, 89-101.)

The Government alleged that Applicant is ineligible for a clearance because his mother-in-law, father-in-law, two sisters-in-law, brother-in-law, his wife's cousin, and her uncle are all citizens and residents of Taiwan. His brother-in-law works for a governmental agency in Taiwan. Applicant visits his wife's family members in Taiwan yearly. The SOR also identified that Applicant maintained a savings account, mutual funds, and stock accounts in Taiwan. Applicant admitted the presence of, and visits to,

his relatives in Taiwan as alleged in SOR subparagraphs 1.a through 1.e. He denied that he maintained a savings account, mutual funds, or stocks in Taiwan, as alleged in subparagraphs 1.f and 1.g.

Applicant is married and resides with his wife. They do not have children. His wife was born in Taiwan. Applicant met his wife in 2002, while she was in the United States studying at a local university. When they began dating, he reported this relationship with a foreign national to his facility security officer (FSO), as required by security regulations. Applicant married his wife in April 2005 in the United States. He reported his marriage to his FSO. His wife became a naturalized U.S. citizen in September 2011. She retains dual citizenship with Taiwan; however, she only uses her U.S. passport to travel. Applicant's wife works for a local telephone company. (Tr. 53-56, 60, 103-104.)

Applicant's wife knows little of what he does at work. Up until the week prior to the hearing, she only knew that he was an engineer for his company. She was not aware he had a security clearance until Applicant's attorney told her in preparation for the hearing. She testified that Applicant does not talk about work at home. (Tr. 58-59, 106.)

Applicant's parents-in-law are citizens and residents of Taiwan. They are both retired. Applicant's father-in-law is 71 years old. He worked as an elementary school teacher. His mother-in-law is 70 years old. She worked as a low-level clerk in a government office, where she ran errands for her employer. Neither of Applicant's parents-in-law speaks any English. Applicant's wife is closest to her mother, but she loves both her parents. His wife and mother-in-law communicate by phone once per week. Applicant and his wife visit her parents annually in Taiwan. Applicant has no contact with his parents-in-law other than during their annual visits to Taiwan. (GE 3; AE 2; AE 3; AE 4; AE 5; Tr. 61-63, 79, 84-85, 115-118.)

Applicant's brother-in-law is a citizen and resident of Taiwan. He is 49 years old. He is employed as a manager for a Taiwanese government investigative agency. Applicant's wife testified, "I actually don't know his job as well . . . he did talk about [how] he will catch some criminals like a drug dealer." The record is void of detailed information about the structure and purpose of the specific investigative agency for which he works. He is married. His wife (one of Applicant's sisters-in-law) works as a registered nurse and is also a citizen and resident of Taiwan. Applicant's wife calls her brother once per year before their annual trip and brings small presents to him when she visits him in Taiwan. Applicant has little contact with his brother-in-law and sister-in-law. He sees them every two years for a couple of days in person. They have no telephone contact. Applicant's brother-in-law and sister-in-law do not speak English, so they are unable to communicate directly with Applicant. (GE 3; AE 2; AE 3; AE 4; AE 5; Tr. 63-64, 81, 85, 111-112, 118.)

Applicant's other sister-in-law (his wife's sister) is 38 years old. She is a citizen and resident of Taiwan, but attended school in the United States. She is not married and is unemployed. She speaks English. Applicant's wife communicates with her

through texts frequently. Applicant's wife is very close to her sister. (GE 3; AE 2; AE 3; AE 4; AE 5; Tr. 64-65, 67, 87, 120.)

Applicant's wife also has a cousin and an uncle that are citizens and residents of Taiwan. Her cousin works for a machinery company as a sales person. Her cousin speaks English. Her uncle is the president of a business. He cannot speak English. (GE 3; AE 2; AE 3; AE 4; Tr. 66.)

Applicant and his wife go to Taiwan annually to visit her family. Their first visit to Taiwan together was in 2005, after their marriage. They stay at Applicant's parents-in-law's home for approximately two weeks each year on their visits. He last visited Taiwan in 2012. He reports all of his trips to Taiwan to his FSO. (GE 3; AE 2; AE 3; AE 4; Tr. 68-70, 95-98, 110-111, 122.)

Applicant's wife individually maintained nine different accounts in Taiwan, including savings accounts, mutual funds, and stocks. Applicant did not know of her foreign holdings until he asked her when completing the DOHA interrogatories dated March 27, 2013. Their collective value totaled \$141,820.90 as documented by Applicant. Applicant's wife testified that the accounts were created over the course of her life for different purposes like a college fund, a wedding gift from her parents, savings from her first job, etc. She had not closed the accounts because she did not need the money and there was a high degree of difficulty involved in closing the accounts. She was required to personally go to each individual bank or brokerage in Taiwan where the accounts were opened with a special stamp and her passbook. She could not close the accounts on-line. However, in Applicant's post-hearing exhibits, he documented that his wife had visited Taiwan and closed eight of the nine accounts. She transferred the money into U.S. accounts. She retains only one account in Taiwan, a stock valued at \$4,869. She attempted to close this account, but was unable to close it due to securities regulations and the current reorganization of the company in which she holds the stock. (AE 10; AE 21 through AE 28; Tr. 70-78, 82, 87, 105-109, 123-127.)

Applicant and his wife documented that they have assets in the United States totaling over \$1,500,000. They have no delinquent debt and live frugally. All of Applicant's extended family members live in the United States and are U.S. citizens. (AE 14 through 20; Tr. 98-103.)

Applicant is the foremost expert in his field, according to a witness that testified on his behalf. The witness spoke highly of Applicant's honesty, integrity, and loyalty to the United States. Applicant recently won the most prestigious award his company has for his contributions. He has been deemed a "National Treasure" by his management. He also has been awarded a number of other awards for his excellent performance. His performance appraisals show he is relentless in his pursuit of technical excellence; exceptional in his problem solving abilities; and is an excellent mentor, technical lead, and a great role model. He receives annual training on industrial espionage. (AE 11; AE 12; AE 13; Tr. 36-50, 89-95.)

## Taiwan

In 1979, the United States changed its diplomatic recognition from Taipei to Beijing and recognized the People's Republic of China (PRC) as the sole legal government of China. However, the United States maintains unofficial relations with Taiwan through the American Institute in Taiwan. The United States provides no developmental assistance to Taiwan, but has engaged in the sale of Apache helicopters to Taiwan. (AE 6 through AE 9.)

Taiwan was identified as an active collector of U.S. economic intelligence in the National Counterintelligence Center's 2000 Annual Report to Congress on Foreign Economic Collection and Industrial Espionage. Additionally, there have been various court cases involving the illegal export, or attempted illegal export, of U.S. restricted dual-use technology to Taiwan, including a criminal conviction of the Principal Deputy Assistant Secretary of State for East Asian and Pacific Affairs for illegally removing classified materials. The PRC also maintains intelligence operations in Taiwan through a bureau utilizing PRC nationals with Taiwanese connections. (HE I)

## Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, 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, administrative judges apply the guidelines 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(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.

Under Directive ¶ E3.1.14, the government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the 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." The

applicant has the ultimate burden of persuasion to obtain a favorable clearance 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 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 EO 10865 provides that adverse 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* EO 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 the guideline for Foreign Influence is set out 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.

The following conditions could raise security concerns under AG ¶ 7:

(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;

(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;

(d) sharing living quarters with a person or persons, regardless of their citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure or coercion; and

(e) 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.

AG ¶ 7(a) requires the presence of family members (or business or professional associates, friends, or other persons) who are citizens and/or residents of a foreign nation and substantial evidence of a heightened risk. Applicant's mother-in-law, father-in-law, brother-in-law, two sisters-in-law, his wife's uncle, and her cousin are all citizens and residents of Taiwan. The heightened risk required to raise one of these disqualifying conditions is a relatively low standard. Heightened risk denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or substantial assets in a foreign nation. Taiwan is a country that actively collects industrial information and engages in industrial espionage, and therefore a heightened risk is present. His brother-in-law's managerial position in the government of Taiwan also presents heightened risk through those family ties. The evidence is sufficient to raise AG ¶ 7(a), with respect to Applicant's mother-in-law, father-in-law, brother-in-law, two sisters-in-law, his wife's uncle, and her cousin.

Applicant's connections to his brother-in-law, a manager for a Taiwanese governmental investigative agency, also create a potential conflict of interest between Applicant's obligation to protect sensitive information or technology and his desire to help his brother-in-law or his wife's other family members by providing that information. AG ¶ 7(b) applies.

Applicant's wife, with whom he shares an apartment, has a close emotional connection to her mother and sister. Although she is not as close to her father and brother, she also keeps in contact with both. Each relationship could potentially create a heightened risk of foreign inducement, manipulation, pressure or coercion due to her bonds to her Taiwanese family members and Taiwan's history of efforts to commit industrial espionage. AG ¶ 7(d) applies.

AG ¶ 7(e) requires the presence of a substantial business, financial, or property interest in a foreign country, and evidence of a heightened risk associated with that foreign interest. Applicant's wife only has \$4,869 worth of stock still in Taiwan. Applicant and his wife's joint assets in the United States total \$1.5 million. The stock in Taiwan belongs solely to Applicant's wife. Her Taiwanese stock holdings represent less than 1% of their entire combined net worth. This does not represent a "substantial business, financial, or property interest," and it is not owned by Applicant. AG ¶ 7(e) does not apply.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8, including:

(a) the nature of the relationships with foreign persons, the country in which these people 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 has lived his entire life in the United States. All of his assets are in the United States. His extended family and friends reside here. He has devoted his professional life to working for government contractors. He has made significant contributions to the security of the United States through his work and is recognized as a national treasure by his employer. He reported his relationship to his FSO when he started dating his wife and when they married in 2005. He testified that he communicates with his wife's relatives infrequently because they do not share a common language. These factors weigh in the Applicant's favor and are mitigating, in part.

However, without knowing more details about Applicant's brother-in-law's governmental job and the Taiwanese agency for which he works, I cannot hold that it is unlikely Applicant 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.; that he can be expected to resolve any conflict of interest in favor of the U.S. interest; or that there is little likelihood that his foreign relatives could create a risk for foreign influence or exploitation. Applicant bears the burden to introduce sufficient evidence to mitigate the Government's concerns with respect to those issues, and he has not met this burden.

### **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 the 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. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but warrant additional comment.

Applicant is a patriotic American citizen, whose work has been of particular value to our military mission. However, his brother-in-law is a manager for a governmental investigative agency in Taiwan. Taiwan is an active collector of U.S. industrial intelligence. The potential for conflict of interest, pressure, coercion, exploitation, or duress is insufficiently mitigated by the record evidence.

### **Formal Findings**

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

<b>Paragraph 1, Guideline B:</b>	<b>Against APPLICANT</b>
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:	For Applicant
Subparagraph 1.g:	For Applicant

## **Conclusion**

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

---

Jennifer I. Goldstein  
Administrative Judge