



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



In the matter of: )  
 )  
 [Redacted] ) ADP Case No. 12-03783  
 )  
 Applicant for Public Trust Position )

**Appearances**

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

05/15/2013

**Decision**

FOREMAN, LeRoy F., Administrative Judge:

This case involves trustworthiness concerns raised under Guidelines B (Foreign Influence) and C (Foreign Preference). Eligibility for assignment to a public trust position is denied.

**Statement of the Case**

Applicant submitted an application for eligibility for a public trust position on December 13, 2011. On September 12, 2012, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging trustworthiness concerns under Guidelines B and C. DOD acted under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended (Regulation); and the adjudicative guidelines (AG) implemented by DOD on September 1, 2006.

Applicant received the SOR on September 25, 2012; answered it on October 9, 2012; and requested a determination on the record without a hearing. Department Counsel submitted the Government's written case on February 27, 2013. On March 8,

2013, a complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on March 21, 2013, and did not respond. The case was assigned to me on May 8, 2013.

### **Administrative Notice**

At the request of Department Counsel, I have taken administrative notice of relevant facts about Taiwan. The request and supporting documents were included in the FORM. The facts administratively noticed are set out below in my findings of fact.

### **Findings of Fact**

Applicant is a 36-year-old senior systems engineer employed by a federal contractor since June 1998. He was born in Taiwan, came to the United States in June 1988, and became a U.S. citizen in July 1998. He has not renounced his Taiwanese citizenship.

Applicant attended a U.S. university from September 2000 to May 2003 and earned a master's degree. In February 2008, he married a citizen of Taiwan, who now resides with him in the United States.

Applicant's father is a retired employee of a county government in Taiwan. His mother has never worked outside the home. He has monthly telephonic contact with his parents.

Applicant has two sisters, ages 51 and 49, who are citizens and residents of Taiwan. One is an elementary school teacher and the other is employed by a Chinese university in Taiwan. He has weekly Internet contact with his two sisters in Taiwan. He also has three sisters, ages 47, 45, and 42, who are citizens and residents of the United States. His security clearance application reflects that he traveled to Taiwan in 2006, 2008, and 2011 to visit his family. (Item 3 at 35-39.)

Applicant's father-in-law and mother-in-law are citizens and residents of Taiwan. His father-in-law is a co-owner of a printing company. The record does not reflect whether his mother-in-law is employed outside the home.

Applicant renewed his Taiwanese passport in March 2011, after becoming a U.S. citizen. In a personal subject interview in February 2012, he told an investigator that he had not used his Taiwanese passport since obtaining a U.S. passport, and that he was willing to surrender his Taiwanese passport because he does not use it. (Item 4 at 1.) However, in his response to the SOR, he stated that he is required to enter Taiwan with a Taiwanese passport to avoid being subjected to compulsory military service in Taiwan. (Item 2 at 3.) There is no evidence that he has surrendered, destroyed, or otherwise invalidated his Taiwanese passport.

Applicant voted in the Taiwanese presidential elections in March 2000 and 2004. In his answer to the SOR, he stated that he voted in Taiwan to ensure that the country would elect a president who favors interaction with the United States instead of one who befriends China. (Item 2 at 3.)

Taiwan is a multi-party democracy, established as a separate, independent government by refugees from mainland China in 1949. The People's Republic of China does not recognize Taiwan's independence and insists there is only one China. The U.S. recognized Taiwan as an independent government until January 1979, when it formally recognized the Chinese government as the sole legal government of China. Taiwan has developed a strong economy and has significant economic contacts with China. China aggressively targets sensitive and protected U.S. technology and military information, using worldwide intelligence operations, including those in Taiwan. For many years, Taiwan has been one of the most active collectors of U.S. economic intelligence, and there have been numerous instances involving illegal export or attempted export of sensitive, dual-use technology to Taiwan.

### **Policies**

Positions designated as ADP I and ADP II are classified as "sensitive positions." Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3. The standard that must be met for assignment to sensitive duties is that the person's loyalty, reliability, and trustworthiness are such that assigning the person to sensitive duties is "clearly consistent with the interests of national security." Regulation ¶ C6.1.1.1. Department of Defense contractor personnel are entitled to the procedural protections in the Directive before any final unfavorable access determination may be made. Regulation ¶ C8.2.1.

A person who seeks access to sensitive 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. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information.

When evaluating an applicant's suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions 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. The 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 protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of national security. The Government must present substantial evidence to establish controverted facts alleged in the SOR.

Directive ¶ E3.1.14. 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 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). An applicant has the ultimate burden of demonstrating that it is clearly consistent with national security to grant eligibility for a public trust position.

## **Analysis**

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

The SOR alleges that Applicant's wife is a citizen of Taiwan (SOR ¶ 1.a), and his parents, two sisters, and father-in-law are citizens and residents of Taiwan (SOR ¶¶ 1.b, 1.c, and 1.d). 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.

Three disqualifying conditions under this guideline are relevant to this case:

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;

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; and

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.

AG ¶¶ 7(a) and (d) require substantial evidence of a "heightened risk." 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.

Where family members are involved, the totality of an applicant’s family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). “[T]here is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person’s spouse.” ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at \* 8 (App. Bd. Feb. 20, 2002).

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.

None of Applicant’s family members or in-laws is employed by the government of Taiwan or its military forces. However, one of his sisters is employed by a Chinese university in Taiwan. I conclude that Taiwan’s record of economic espionage, the connection of Applicant’s sister to a Chinese university, and China’s intelligence operations in Taiwan are sufficient to establish the “heightened risk” under AG ¶¶ 7(a) and (d) and raise the potential conflict of interest under AG ¶ 7(b).

Three mitigating conditions under this guideline are potentially relevant:

AG ¶ 8(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;

AG ¶ 8(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

AG ¶ 8(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.

AG ¶ 8(a) is not established. Applicant has multiple family members in Taiwan. His sister is employed by a Chinese university. Taiwan has a record of active economic espionage targeting U.S. restricted technology, and the China employs aggressive intelligence operations in Taiwan.

AG ¶ 8(b) is not established. Applicant has lived in the United States for almost 25 years, and has been a U.S. citizen for almost 15 years. Three of his sisters are U.S. citizens. However, he has strong family ties in Taiwan. He renewed his Taiwanese passport after becoming a U.S. citizen, and he has voted twice in Taiwanese elections.

AG ¶ 8(c) is not established. There is a rebuttable presumption that contacts with an immediate family member in a foreign country are not casual. ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002). Applicant has not rebutted this presumption.

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

The SOR alleges that Applicant obtained a Taiwanese passport after becoming a U.S. citizen and continues to possess it (SOR ¶¶ 2.a and 2.b), and that he voted in Taiwanese elections in March 2000 and March 2004 (SOR ¶ 2.c). The concern under this guideline is set out in AG ¶ 9: “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.”

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).

The relevant disqualifying condition is AG ¶ 10(a): “exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen,” including but not

limited to “(1) possession of a current foreign passport . . . [and] (7) voting in a foreign election.” Applicant’s admissions establish both AG ¶¶ 10(a)(1) and (7).

The following mitigating conditions are potentially relevant:

AG ¶ 11(a): dual citizenship is based solely on parents’ citizenship or birth in a foreign country;

AG ¶ 11(b): the individual has expressed a willingness to renounce dual citizenship; and

AG ¶ 11(e): the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

Although Applicant acquired his Taiwanese citizenship by his virtue of his parents’ citizenship and place of birth, he has actively exercised his citizenship by obtaining a Taiwanese passport and voting in Taiwanese elections. He has not expressed willingness to renounce his dual citizenship and has not destroyed, surrendered, or otherwise invalidated his Taiwanese passport. None of the above mitigating conditions is established.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an Applicant’s eligibility for a public trust position by considering the totality of the Applicant’s conduct and all the circumstances.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a public trust position must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. In applying the whole-person concept, an administrative judge must evaluate an applicant’s eligibility for a public trust position by considering the totality of the applicant’s conduct and all 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.

I have incorporated my comments under Guideline B and C in my whole-person analysis. Because Applicant requested a decision on the record, my opportunity to

evaluate his sincerity and credibility has been limited. After weighing the disqualifying and mitigating conditions under Guideline B, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the trustworthiness concerns based on foreign influence and foreign preference. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with national security to grant him eligibility for a public trust position.

**Formal Findings**

Paragraph 1, Guideline B (Foreign Influence):	AGAINST APPLICANT
Subparagraphs 1.a-1.d:	Against Applicant
Paragraph 2, Guideline C (Foreign Preference):	AGAINST APPLICANT
Subparagraphs 2.a-2.c:	Against Applicant

**Conclusion**

I conclude that it is not clearly consistent with national security to grant Applicant eligibility for a public trust position. Eligibility for a public trust position is denied.

LeRoy F. Foreman  
Administrative Judge