



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 13-00502

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel

For Applicant: *Pro se*

12/02/2016

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

An unacceptable risk of foreign influence exists because Applicant's father is a citizen of Taiwan, who spent most of his career working for Taiwan's government in an office that promotes the interests of the country abroad. Applicant has not shown that she can be counted to act fully in the U.S. interests. Personal conduct security concerns are established because she was not fully candid on her April 2013 security clearance application about her previous background investigation and clearance denial. Clearance is denied.

Statement of the Case

On April 4, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing a security concern under Guideline B, Foreign Influence, and Guideline E, Personal Conduct, and explaining why it was unable to grant or continue a security clearance to Applicant. The DOD CAF acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines for Determining Eligibility for access to Classified Information (AG) effective within the DOD on September 1, 2006.

Applicant responded to the SOR allegations on May 12, 2014, and she requested that a decision be made on the written record by an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The Government requested a hearing. (Tr. 9.) On March 4, 2016, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On April 22, 2016, I scheduled a hearing for May 16, 2016. Applicant was on temporary duty for her employer and did not receive the notice of the hearing until May 2, 2016.

I convened the hearing as scheduled. Applicant waived the 15-day advance notice of hearing required under ¶ E.3.1.8 of the Directive. Nine Government exhibits (GEs 1-9) were admitted into evidence without objection. Applicant testified, as reflected in a transcript (Tr.) received on May 27, 2016. Additionally, the Government requested that I take administrative notice of several facts pertinent to the Republic of China (Taiwan). A letter dated December 30, 2015, forwarding discovery of the proposed Government exhibits and the Government's Administrative Notice request to Applicant, was marked as a hearing exhibit (HE 1) but was not admitted as an evidentiary exhibit.

I held the record open for one month after the hearing for Applicant to submit documentary evidence and respond to the Government's Administrative Notice request. On June 17, 2016, Applicant submitted seven documents, which were marked as Applicant Exhibits (AEs A-G). Department Counsel indicated on June 27, 2016, that the Government had no objection, so AEs A-G were accepted into the record, and the record closed on that date.

Administrative Notice

At the hearing, the Government requested administrative notice of several facts pertinent to Taiwan, as set forth in an Administrative Notice request dated December 30, 2015. The Government's request was based on several U.S. government publications referenced in the document.¹ By letter dated December 30, 2015, Applicant was provided extracts of the source documents and the Internet addresses where she could access the publications.

Pursuant to my obligation to take administrative notice of the most current political conditions in evaluating Guideline B concerns (see ISCR Case No. 05-11292 (App. Bd. Apr. 12, 2007)), I informed the parties of my intent to take administrative notice, subject to the reliability of the source documentation and the relevance and materiality of the facts proposed. Applicant filed no objections to the facts set forth in the Government's Administrative Notice request. I held the record open after the hearing to

¹ The Government's request for administrative notice was based on a Congressional Research Service publication dated December 11, 2014; three joint communiques between the United States and the People's Republic of China from February 1972, January 1979, and August 1982; annual reports to Congress for 2000 and 2005 by the Office of the National Counterintelligence Center; four press releases and an October 2014 summary of export enforcement criminal cases from the U.S. Department of Justice; and a November 2014 report from the Defense Personnel and Security Research Center.

give Applicant the opportunity to propose facts for administrative notice. Applicant included in her post-hearing submissions election guides for presidential and legislative elections in Taiwan, which were entered as exhibits C and D without objection. She did ask that I take administrative notice of any specific facts.

Concerning the U.S. Department of Justice press releases and its summary of major U.S. export enforcement and economic espionage criminal cases, they were presented by the Government apparently to substantiate that Taiwan actively pursues collection of U.S. economic and proprietary information. Neither Applicant nor any of her family members were implicated in that criminal activity. With that caveat, the facts administratively noticed are set forth below.

Summary of SOR Allegations

The SOR alleges under Guideline B that Applicant's father (SOR ¶ 1.a) and brother (SOR ¶ 1.b) are resident citizens of Taiwan with U.S. permanent residency status, and that Applicant's father works in city government in Taiwan (SOR ¶ 1.c). Under Guideline E, Applicant is alleged to have falsified material facts on her April 2013 Electronic Questionnaire for Investigations Processing (e-QIP) by denying that she had ever had her background investigated for security clearance eligibility (SOR ¶ 2.a) and by denying that she had ever been denied security clearance eligibility (SOR ¶ 2.b). Also under Guideline E, Applicant is alleged to have falsified material facts during an August 2007 hearing before a DOHA administrative judge by testifying that her Taiwanese passport expired in November 2002 and that she did not intend to renew it when in fact she renewed her Taiwanese passport in 2002 and used it to travel to Taiwan in March 2012 (SOR ¶ 2.c).

When Applicant answered the SOR, she admitted the allegations about her father. She denied that her brother was a resident citizen of Taiwan and explained that he had not been in Taiwan since 2000. Applicant denied the Guideline E allegations. According to her records, she had admitted on her e-QIP that she had been investigated and that she had been denied a clearance. Applicant also denied that she had testified falsely at her August 2007 hearing. The passport in her possession was expired, she was unaware that the Taiwanese government had issued her a new passport, and she was not the person who renewed it.

Findings of Fact

After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 33-year-old college graduate with two bachelor's degrees awarded in June 2004 and in January 2005. She has been employed by a defense contractor as a system engineer since October 2005. (GEs 1-3; Tr. 47-48.)

Applicant and her sister were born in the United States to Taiwanese citizens. Their father worked in public relations for Taiwan's government in a division that acted as a diplomatic agent or ambassador of Taiwan's interests abroad. (Tr. 66.) He traveled extensively because of his job and was working in the United States when Applicant and her sister were born. He was stationed in England when their brother was born. Since the United Kingdom did not confer citizenship based on birth, their brother has citizenship only with Taiwan. (Tr. 41.)

Applicant initially applied for a DOD security clearance in February 2006, submitting a Questionnaire for National Security Positions (SF 86) incorporated within an e-QIP dated February 13, 2006. Applicant disclosed that she held dual citizenship with the United States and of Taiwan through her parents, both citizens of Taiwan. She admitted that she held a Taiwanese passport "by default" from birth to present. Applicant also reported that her father was a resident of Taiwan. (GE 3.)

On January 30, 2007, DOHA issued an SOR to Applicant alleging foreign influence security concerns because of her father's Taiwan citizenship, Taiwan residency, and his employment for Taiwan's government. DOHA also alleged foreign influence security concerns because of Applicant's exercise of dual citizenship and possession of a Taiwanese passport. On August 22, 2007, I convened a hearing at which Applicant presented evidence showing that her Taiwanese passport expired in November 2002. She expressed a willingness to renounce her dual citizenship. Applicant also denied any effort or intent to renew her Taiwanese passport because she did not need it.² (Tr. 89.) On September 27, 2007, I denied security clearance eligibility for Applicant because of unmitigated foreign influence security concerns raised by her father's employment with the Taiwanese government and his Taiwanese citizenship and residency. I found the foreign preference concerns were mitigated by the expiration and cancellation of her Taiwanese passport with no intent to renew it and by her clear preference for the United States. (GE 8.) The DOHA Appeal Board upheld that decision on February 8, 2008. (GE 7.)

Applicant worked on unclassified projects, but the lack of security clearance eligibility precluded her from contributing on some military contracts. (Tr. 74-75.) Her manager asked her to reapply for security clearance eligibility in 2012 because of the passage of time and a change in her father's employment status. (Tr. 75.) On July 6, 2012, Applicant certified to the accuracy of an SF 86 incorporated within an e-QIP. Applicant disclosed that she held dual citizenship with Taiwan based on her parents being citizens of Taiwan, but she indicated that she had taken action to renounce her dual citizenship. She explained that she declared a willingness to renounce her citizenship with Taiwan in 2006, and she did not renew her Taiwanese identification

² The transcript of Applicant's August 2007 hearing is not part of the present record. The Government submitted as GE 8 the decision that I issued on September 27, 2007, denying Applicant security clearance eligibility because of unmitigated foreign influence security concerns. Some of the factual findings relevant to SOR ¶ 2.c come from that decision. Applicant admitted at her May 2016 hearing that she had testified at her August 2007 that her foreign passport had expired and that she did not intend to renew it. (Tr. 89-90.)

card when it expired. She disclosed that she held a Taiwanese passport from December 2002 to December 2012, which she used to travel to Taiwan in March 2012. (GE 2.)

On April 20, 2013, Applicant certified to the accuracy of another SF 86. Applicant explained that she held derivative citizenship with Taiwan from February 1983 to December 2012, but that she was no longer a citizen of Taiwan because she had no assets, no identification or work permits, and no residency in Taiwan. She explained that she had declared a willingness to renounce her foreign citizenship in 2006, and that she did not renew her Taiwanese identification card or Taiwanese passport when they expired. Applicant again indicated that she held a valid Taiwanese passport from December 2002 to December 2012. (GE 1.)

On June 4, 2013, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). Regarding steps taken to renounce her Taiwan citizenship, Applicant indicated that a security officer at work asked her in 2006 whether she would be willing to renounce her foreign citizenship and that she signed a document renouncing her foreign citizenship. Applicant expressed her belief that her foreign citizenship was completely renounced when her Taiwanese passport expired in December 2012. About her foreign passport, Applicant explained that her mother told her that she would shred it when it expired. Applicant indicated that she obtained a Taiwanese passport because her mother thought it would ease travel within Asia. Applicant admitted that she had used her Taiwanese passport in March 2012 in lieu of her U.S. passport for convenience (shorter line at Taiwan's airport). She expressed her belief that security authorities had approved her foreign passport, and she denied an intention to renew it. (GE 4.)

In response to foreign preference inquiries from DOHA, Applicant indicated on December 16, 2013, that her expired Taiwanese passports were destroyed, so she could not provide proof of surrender. She indicated that one passport was destroyed before her defense contractor employment. The other passport was destroyed before she applied for a clearance, and she knew she had to destroy it in front of a facility security officer. Applicant admitted that she used a Taiwanese passport in July 2000 and March 2012 for "ease of travel into Taiwan." Applicant denied any duty, obligation, or responsibility to Taiwan, explaining that she no longer held Taiwanese citizenship. (GE 6.)

At her security clearance hearing in May 2016, Applicant initially testified that she did not have a valid Taiwanese passport in 2007. (Tr. 44-45.) Applicant later elaborated that when she completed her first security clearance application, she asked her mother about the dates on her Taiwanese passport and was told that it had expired. (Tr. 103.) Applicant did not have possession of her Taiwanese passport issued in 2002 because her mother had put the passport in a safe deposit box in a bank; her mother had renewed it;³ and neither she nor her mother realized that the passport was valid until

³ At her May 2016 hearing, Applicant did not recall having had a passport picture taken to renew her Taiwanese passport. However, she recalled having had a passport photo taken when she was in high school to renew her U.S. passport. (Tr. 109.) Applicant's current U.S. passport (GE 9) was issued in

2011, when they were planning their March 2012 trip to Taiwan to visit relatives, and they thought it would be convenient for her to have a Taiwanese passport for that trip. (Tr. 44-45, 81-82.) By then, she had already been denied a clearance, and she thought it was “probably not an issue” if she used her Taiwanese passport. She did not consider the implications to her future security clearance eligibility because she was thinking of leaving her job at that time. (Tr. 90-96.)

Applicant’s post-hearing submissions include a sample Taiwanese passport renewal form which shows that the signature of a parent or guardian is required for minors under age 20. The sample also shows that the passport applicant is required to sign the form unless he or she is unable to do so. (AE B.) Applicant asserts that her mother was able to renew her passport for her in 2002 using passport pictures taken when she was in high school because she was under age 20. (AE A.)

About her family members with foreign citizenship, Applicant gave the same U.S. address for her parents and brother, then all citizens of Taiwan, when she completed her SF 86 in July 2012. She indicated that her brother had his U.S. “green card.” Applicant responded affirmatively to an inquiry into whether she had sponsored any foreign national to come to the United States as a student, for work, or U.S. permanent residence. She listed her father, gave her mother’s U.S. address for him, and indicated that he had been in the United States from “01/2011 To Present.” In response to an inquiry concerning her clearance investigations, Applicant reported that the DOD had denied her security clearance eligibility in 2007 because her father worked at the time for an organization affiliated with Taiwan’s government. However, she also stated that the office had been disbanded and her father no longer worked there. (GE 2.) Applicant now admits that despite the reorganization of her father’s division around January 2012, her father was kept on the payroll in Taiwan, and he was in the United States for only short family visits of one week or two, once in the summer of 2012 and then again at the holidays in late 2012. (Tr. 57-60, 64.) Applicant saw no contradiction in reporting a U.S. address for her father despite the fact that he spent most of his time in Taiwan in 2012. Her father’s permanent residence was with her mother in the United States, he rented living quarters in Taiwan, and her mother could not afford her U.S. mortgage payment without his income. Additionally, her father had been in the United States for four [sic] years before January 2012 and had his belongings shipped to her mother’s home when he returned to Taiwan in early 2012 awaiting reassignment. (Tr. 60-64.)

Applicant indicated on her April 2013 SF 86 that her parents and brother were living in the United States. In response to an SF 86 inquiry into whether she or any member of her immediate family had contact with a foreign government in the last seven years, she indicated that her father had contact between January 2012 and April 2012 with the government-affiliated information office in Taiwan for purposes that she described as “job transition.” (GE 1.)

November 2009 when she was 26, so she may have had her photo taken when she was in high school for her previous passport, which was issued in March 1999. (GE 7.) She would have been 19 in December 2002, when her Taiwanese passport was apparently renewed.

During her June 2013 interview with the OPM investigator, Applicant provided an address in Taiwan for her father and indicated that he had recently returned to Taiwan for employment.⁴ She admitted that she had in-person contact with her father once a year, when he was in the United States, and contact by email monthly. Applicant indicated that her father was working in public relations in Taiwan, but that he had left his previous position in January 2012 when his division was dissolved.⁵ In response to a request from DOHA to verify the OPM investigator's report of her June 2013 interview, Applicant indicated on December 16, 2013, that her mother had become a U.S. citizen and that the office that provided public affairs for Taiwan's government still existed, but that her father left that employment when his division was dissolved. (GE 4.) In response to foreign influence inquiries, Applicant explained that her father had been employed as a press secretary from July 1980 to January 2012 in an office affiliated with Taiwan's government. Applicant added that her father received his U.S. permanent residency in 2011, and he resided in the United States from 1980-1984, 1994-1997, and 2009-2012 for his work.⁶ Her father went to Taiwan in January 2012 to seek another position, where he rented a room "while looking for work in the public relations/press domain." However, she continued to maintain that her father's permanent address was in the United States with her mother. (GE 5.)

In May 2016, Applicant testified that her father had accepted a position in a Taiwanese cultural office tasked with promoting Taiwan's arts and culture abroad, cultural and student exchanges, and inviting foreign performers to Taiwan. (Tr. 68-69.) That entity is separate from the office where he worked from about 1980 to 2012, which has diplomatic responsibilities in representing Taiwan's government abroad. (Tr. 70.) Her father retired from his employment in Taiwan in July 2015 and moved to the United States in August 2015. (Tr. 40, 111.) He is not yet eligible for U.S. citizenship because of his considerable time spent outside the country. (Tr. 52.) Applicant's brother has lived in the United States since he was three years old. He was in the United States as a dependent on their father's work visa and then on a student visa until 2011, when he acquired his "green card." (Tr. 52-53.) Her brother has not been to Taiwan since 2000, when he, Applicant, and their mother traveled to visit maternal relatives. (Tr. 40, 77.) Applicant's sister sponsored their mother for U.S. naturalization. (Tr. 54.) Applicant has weekly contact with her mother and brother by telephone and monthly contact in person. Applicant's brother lives with their mother. (Tr. 72.) Applicant joins her mother for a show or dinner and her brother for a sporting event, dinner, or movies. (GE 4.) Applicant did not elaborate about the extent of her contacts with her father since his retirement and move to the United States. It may reasonably be inferred that he is

⁴ Applicant testified that her father came to the United States either in the summer or over the winter, usually just one week per year, for a family visit. (Tr. 58.)

⁵ Applicant testified at her hearing in May 2016 that after the reorganization, her father continued to be paid even though he was not working, and that it was not until late 2013 or early 2014 that he was offered a position in the new division. (Tr. 67.)

⁶ Applicant testified at her May 2016 security clearance hearing that she and her father got together when she was on assignment for her employer to a U.S. city where her father was posted from 2009 until 2012. (Tr. 71.)

currently cohabiting with Applicant's mother and brother, given Applicant has not provided another address for her father in the United States. Applicant co-owns with her mother the townhouse in which her parents live. (GE 8; Tr. 111-112.) Applicant denies vulnerability to undue foreign influence because of her father in part because the party in power when her father worked for Taiwan's government was voted out of office in presidential and legislative elections held in January 2016. (AEs C, D.) The current government won 68 seats in the legislature while the party that had been in power won 35 seats. (AE D.)

Applicant provided discrepant responses on her SF 86 forms about her investigations record. Applicant disclosed on her July 2012 SF 86 that the DOD had denied her security clearance eligibility in January 2007 [sic] because of her father's employment for Taiwan's government. (GE 2.) However, on her April 2013 SF 86, she responded negatively to the following inquiries under section 25: "Has the U.S. Government (or a foreign government) **EVER** investigated your background and/or granted you a security clearance eligibility/access?" (SOR ¶ 2.a) and "Have you **EVER** had a security clearance eligibility/access authorization denied, suspended, or revoked?" (SOR ¶ 2.b). (GE 1.) When the OPM investigator asked Applicant about her investigations record in June 2013, she indicated that she had been previously denied a security clearance by the DOD. About her negative responses to the clearance inquiries on her April 2013 SF 86, Applicant told the investigator that she did not understand the questions clearly. (GE 4.)

At her security clearance hearing in May 2016, Applicant explained that she was conducting field testing and had only 15 days to complete her SF 86 in April 2013. She did not expect to have to complete another SF 86 so soon, and surmised that she "probably just read it quickly and read it wrong." About what she termed as a "miscommunication," Applicant stated that she would have had no reason to conceal the denial of clearance eligibility, given it was a matter of record at the DOD. She did not receive a security clearance and so did not have a clearance revoked. (Tr. 42-43, 86.)

In September 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) granted Applicant a DOD secret clearance.⁷ (AE G.) Applicant's immediate family members know that she has a DOD security clearance. (Tr. 84.) Applicant's primary assignment in 2014 was to support an offsite verification team. She traveled extensively throughout the year and worked nights and weekends in support of the program goals. In her annual performance review, Applicant was described as "a critical asset" to the verification team. Applicant demonstrated an ability to adapt well and react quickly to changing priorities in a challenging environment. She also supported two other programs with overlapping deadlines at the request of chief engineers, who sought out her involvement because of her expertise on certain types of surveillance programs and her work ethic. Applicant was given a performance rating of "Exceeds Requirements" for 2014. (AE E.)

⁷ The grant of security clearance to Applicant was seemingly not known to Department Counsel before the hearing. (Tr. 45-46, 49.)

Applicant demonstrated flexibility, diligence, and an ability to work independently in three successive assignments in 2015. After a funding cut, she was re-assigned in March 2015 to a remote task where there was a mismatch in expectations and execution of Applicant's role, likely due to her not being fully integrated into the team. Her rating official concluded that she did a good job in a difficult environment. In June 2015, she joined a system engineering team tasked with writing initial system, software, and interface requirements. She proved to be a key contributor, able to complete her tasks on a tight schedule. She exceeded requirements of her position in 2015. (AE F.)

I take administrative notice that the United States no longer diplomatically recognizes Taiwan as a sovereign nation. In joint communiques with the PRC, the United States recognized the government of the PRC as the sole legal government of China; acknowledged the PRC's claim that there is but one China while not recognizing the PRC's claim over Taiwan; and refrained from taking its own stance on Taiwan's status. Taiwan continues to be of significant security, economic, and political interest to the United States. Taiwan has been described by the United States as a "beacon of democracy." The country is a major recipient of U.S. arms sales and is a significant trading partner of the United States. U.S. policy seeks to support security, political, and economic interests that foster peace and security in the region and human rights in Taiwan as cross-strait relations between the PRC and Taiwan continue to improve. In May 2008, Taiwan resumed dialogue with the PRC, which has resulted in closer economic engagement between the two countries. The United States and Taiwan have put more effort into their respective relations with the PRC, while pursuing a parallel, positive U.S.-Taiwan relationship.

Taiwan has an extensive, pervasive history of engaging in economic and technological espionage against the United States. In September 2004, a U.S. State Department former Principal Deputy Assistant Secretary of State was arrested for trying to conceal a 2003 meeting with two Taiwanese intelligence agents in Taiwan. In December 2005, this former State Department official pleaded guilty to keeping numerous classified documents in his home and concealing an affair with one of the Taiwanese intelligence agents, with whom he had shared sensitive information. U.S. Justice Department releases show that U.S. and Taiwanese citizens and corporations have been involved in the illegal export or attempted export of U.S. restricted dual-use technology to Taiwan. In 2008, two persons were convicted for arms export control violations involving the attempted illegal export to Taiwan of infrared laser aiming devices, thermal weapons sights, and a fighter pilot cueing system. In August 2010, a Taiwan passport holder was sentenced to 3.5 years in prison for conspiring with a Taiwan corporation to illegally export dual-use commodities (missile components) to Iran. In April 2012, two Taiwanese nationals were charged with seeking to export sensitive U.S. military technology to China. In December 2012, a U.S. resident citizen was arrested for allegedly shipping military-grade protective-coating materials to customers in Taiwan and attempting to ship microwave amplifiers to China without the requisite export licenses. In January 2013, an employee of a U.S. manufacturer of microwave amplifiers was sentenced to 42 months in prison and fined \$1,000 for altering shipping invoices and shipping documents to conceal the correct classification

of national security sensitive amplifiers so they could be shipped without the required licenses to several destinations, including Taiwan and China, between June 2006 and June 2011. In March 2013, a Taiwanese citizen was sentenced in the United States to nine months in prison for attempting to export weapons-grade carbon fiber to Taiwan on the behalf of a Taiwanese company. In October 2014, a former resident of Taiwan pleaded guilty to defrauding the United States in its enforcement of regulations targeting proliferators of weapons of mass destruction. The defendant, his son, and an associate in Taiwan with ties to three companies based in Taiwan purchased and exported machinery used to fabricate metals.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overall 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. 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security 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 that 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 Executive Order 10865 provides that 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 *a/so* 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 articulated 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.

As of the issuance of the SOR in April 2014, Applicant’s father was a resident citizen of Taiwan, where he was employed as alleged in SOR ¶ 1.c. For most of his career, Applicant’s father worked for Taiwan’s government in an organization that had diplomatic responsibilities in fostering the interests of Taiwan abroad. His work took him overseas, including to the United States from 1980-1984, 1994-1997, and 2009-2012. Applicant reported that the information office where her father had spent his career was eliminated by reorganization in 2012. Her father returned to Taiwan for most of 2012 while awaiting reassignment, and he was kept on the government payroll even when he was not working. In late 2013 or early 2014, he accepted a public affairs position with a city’s cultural division tasked with promoting Taiwanese culture and exchange programs abroad. Applicant indicated that her father retired in 2015 from the “civil cultural office” (AE A), but there is no proof that it was a private entity.

AG ¶ 7(a) is implicated if contacts create a heightened risk of foreign influence:

(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.

The “heightened risk” denotes a risk greater than the normal risk inherent in having a family member living under a foreign government. The nature and strength of the family ties or other foreign interests and the country involved (*i.e.*, the nature of its government, its relationship with the United States, and its human rights record) are relevant in assessing whether there is a likelihood of vulnerability 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 on, the foreign government; or the country is known to conduct intelligence operations against the United States. In considering the nature of the foreign government, the administrative judge must take into account any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006). Despite the peaceful, democratic transition of power in recent years and positive relations with the United States, Taiwan has an extensive, pervasive history of engaging in economic and technological espionage against the United States. The fact that Applicant’s father spent most of his career in the service of Taiwan’s government also heightens the risk. AG ¶ 7(a) applies.

Furthermore, there is a rebuttable presumption that Applicant has bonds of affection or obligation to her father that create a potential conflict of interest under AG ¶ 7(b), which states:

(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.

As an information officer for Taiwan’s government for over 30 years, Applicant’s father derived the income to support himself and his family directly from the government. Moreover, given her father’s postings in several foreign countries over the years, including the United States when Applicant and her sister were born, he represented Taiwan abroad and promoted its interests. There is no information in the record about whether Applicant’s father currently receives a pension from Taiwan. Nevertheless, his retirement is too recent to rule out the potential for a conflict of interest, especially when there is no evidence that he has completely terminated such an important tie as citizenship with Taiwan. AG ¶ 7(b) applies.

Applicant’s brother is a citizen of Taiwan from birth, who has U.S. permanent residency status since 2011. The evidence does not substantiate that he ever resided in Taiwan. He traveled to Taiwan with Applicant in 2000, but has not otherwise been to Taiwan. It is difficult to see where Applicant’s relationship to her brother raises a security concern under AG ¶ 7(a) or ¶ 7(b) apart from the risk that exists through their bonds to their father.

AG ¶ 8(a) cannot reasonably apply in mitigation of the foreign influence concerns. Applicant is presumed to have a close relationship to her father, despite their distance over the years because of his employment with Taiwan’s government and then

the cultural organization. Although her father's duties involved the open dissemination of information rather than intelligence or security, he was required to promote the interests of Taiwan's government. Applicant has repeatedly described her contacts with her father as monthly, primarily by email, but when her father was assigned to a post in the United States from 2009 through 2011 and she was on temporary duty for her employer in her father's locale, they would meet. (Tr. 71.) Furthermore, her father has been living in the United States since August 2015, Applicant reported monthly in-person contact with her mother and brother. Applicant joins her mother for a show or dinner and her brother for a sporting event, dinner, or movies. It is reasonable to assume that she has contact with her father on some if not all of the occasions where Applicant has seen her mother or brother in their home since August 2015. Even with her father's U.S. legal residency, it is difficult to apply mitigating condition AG ¶ 8(a) in light of Taiwan's targeting of economic and technological information developed in the United States. AG ¶ 8(a) provides:

(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.

Applicant professes no allegiance or sense of loyalty to Taiwan. She has no assets in Taiwan. Applicant's Taiwanese passport was renewed in late 2002 by Applicant's mother, using a passport photo that Applicant had taken for her U.S. passport when she was in high school. A sample passport renewal form for Taiwan shows that parents or guardians are required to sign passport applications for their children under age 20. Applicant was 19 when her foreign passport was issued on renewal. Applicant was required to sign the application for renewal, unless she was unavailable. Assuming the dates Applicant provided for her foreign passport were reasonably accurate, she was in college when the passport was renewed. Under those circumstances, the renewal of Applicant's foreign passport does not undermine her case for establishing longstanding ties to the United States under AG ¶ 8(b), which provides:

(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.

However, Applicant's use of a Taiwanese passport in March 2012, when she held a valid U.S. passport, weighs against her when considering whether she can be expected to resolve any conflict of interest in favor of the U.S. interest. Applicant did not have a security clearance, and she may well have been considering leaving her defense-contractor job when she used her Taiwanese passport in 2012. Yet, Applicant should have realized that her use of a Taiwanese passport was inconsistent with her

U.S. citizenship. Her possession and use of a foreign passport had been identified as security concerns in 2007. Concerns of foreign preference were mitigated in 2007 because her Taiwanese passport had expired in November 2002, and she had no intention to renew it. There is no evidence to substantiate her assertion to the OPM investigator in June 2013 that her use of her foreign passport in 2012 had been approved by security authorities. Concerns arise about what Applicant would do if placed in the untenable position of having to choose between a family member and her security responsibilities, given she has shown a willingness to represent herself as a Taiwanese citizen for mere convenience. The DOHA Appeal Board has long acknowledged that “people may act in unpredictable ways when faced with choices that could be important to a loved-one, such as a family member.” See ISCR Case No. 08-10025 (App. Bd. Nov. 3, 2009.) Applicant denies that she could be coerced to act contrary to U.S. interests because of the change in government in Taiwan in 2016 and her father’s retirement to the United States. While I have considered her father’s move to the United States, he is still a citizen of Taiwan who spent most if not all of his professional career in public service for Taiwan’s government. Not enough is known about his present activities, income, or acquaintances to rule out the risk of undue foreign influence.

Guideline E—Personal Conduct

The security concerns about personal conduct are articulated in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Under Guideline E, Applicant is alleged to have deliberately falsified her April 2013 SF 86 by responding negatively to the following inquiries under section 25: “Has the U.S. Government (or a foreign government) **EVER** investigated your background and/or granted you a security clearance eligibility/access?” (SOR ¶ 2.a) and “Have you **EVER** had a security clearance eligibility/access authorization denied, suspended, or revoked?” (SOR ¶ 2.b). The evidence establishes that Applicant applied for a security clearance on February 13, 2006. Following an OPM investigation into Applicant’s background that revealed issues of foreign influence and foreign preference, I conducted a hearing on August 22, 2007. After considering the evidence presented, I issued a decision on September 27, 2007, denying Applicant security clearance eligibility because of unmitigated foreign influence security concerns. That decision was upheld by the DOHA Appeal Board on February 8, 2008. The evidence also shows that when Applicant reapplied for a security clearance on July 6, 2012, she disclosed her previous background investigation and the denial of security clearance eligibility for her in 2007. However, she discrepantly provided negative responses to the relevant clearance inquiries on her April 2013 SF 86.

Applicant denies any intent to falsify the SF 86 background investigation and clearance denial inquiries, citing her disclosure of her previous investigation and clearance denial during her OPM interview. She also explained that when she completed her SF 86, she was working in the field, filled it out in a hurry, and did not have her records. She acknowledged in hindsight that she should have checked her records, but she also stated "in my mind, I would have never claimed to have gotten a clearance when I never received one." (Tr. 88.) Applicant's disclosure of her clearance denial to the OPM investigator in June 2013 is evidence in reform, but it does not explain her negative responses on the SF 86 five weeks earlier. Applicant's claim of being hurried is controverted by her admission that she had 15 days to complete the form. (Tr. 42-43.) She took the time to list the dates and countries of her foreign travel in the preceding seven years. She needed no records to know that she had a clearance denied in 2007. Her claim that she read the SF 86 clearance record inquiries as pertaining only to revocation of a security clearance cannot be reconciled with her July 2012 SF 86 affirmative responses to the same questions and her disclosure that her clearance had been denied in 2007 because of her father's employment with Taiwan's government. She offered no explanation for her discrepant responses to the same questions on two SF 86 forms completed less than a year apart. Her disclosure of her previous background investigation and clearance denial on the July 2012 SF 86 did not relieve her of the obligation to report the information again in April 2013. Similarly, the fact that the DOD has record of the clearance denial did not relieve her of her obligation to report it on her SF 86. Even if she had read the clearance denial question as pertaining only to clearance revocation, it would not explain her negative response to whether her background had ever been investigated for security clearance or access eligibility. Disqualifying condition AG ¶ 16(a) applies:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

The SOR also alleges that Applicant testified falsely during her August 2007 hearing when she indicated that she had not renewed her Taiwanese passport that expired in November 2002 and had no intention to renew it (SOR ¶ 2.c). The evidence shows that when Applicant first applied for security clearance eligibility in February 2006, she indicated that she had a Taiwanese passport "by default" from her birth to present. She explained at her August 2007 hearing that she did not have the passport in her possession when she completed her SF 86 and decided to indicate that she held the passport for her entire life since she did not know when it expired. (GE 8.) Applicant presented in evidence at her August 2007 hearing a Taiwanese passport that was valid from November 26, 1996, to November 26, 2002, which had been renewed by her parents. She denied any intention to renew it. However, Applicant indicated on her July 2012 and April 2013 SF 86 forms that she had held a Taiwanese passport from the estimated dates of December 1, 2002, through December 1, 2012. That foreign passport was not submitted in evidence at her May 2016 hearing, so the date of its

issuance cannot be confirmed. Applicant testified that she does not have a habit of keeping expired passports, although she was able in August 2007 to produce her Taiwanese passport that expired in 2002. She indicated in response to DOHA interrogatories in December 2013 that her foreign passports were destroyed.

Assuming that the December 2002 date for renewal is reasonably accurate, prompt steps were taken in 2002 to ensure that Applicant maintained a valid Taiwanese passport. However, Applicant testified that she did not renew the passport herself, and that in August 2007 she believed her Taiwanese passport had expired. She did not know until 2011, when she and her mother were planning their March 2012 trip to the PRC and Taiwan, that she held a valid Taiwanese passport. Among her post-hearing submissions, Applicant presented a sample passport renewal form for Taiwan that shows that the signature of the applicant is required for renewal unless unable to sign, but also that a parent's signature is required for minors under age 20. Applicant was 19 at the time and in college, so it is certainly possible that her mother applied to renew her Taiwanese passport for her. There is no evidence that Applicant has taken any steps to renew her Taiwanese passport after her latest one expired in 2012. Based on the evidence provided, the Government's case falls short with respect to establishing that Applicant testified falsely in August 2007 about the renewal of her foreign passport and her intentions in that regard.

Applicant's affirmative responses to the clearance investigation and access denial questions when she was interviewed in June 2013 is evidence of reform implicating AG ¶ 17(a), "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts." Yet, Applicant undermines her case for mitigation to the extent that she justifies her false responses, such as claiming that the OPM investigator "kind of understood how [she] could have a different interpretation of some of these [SF 86] questions." (Tr. 42.) In assessing her reform generally, I also note that Applicant has not been fully forthright at times about her father's residency and his time spent in Taiwan in recent years. For example, Applicant responded "No" on her July 2012 SF 86 to whether she or any member of her immediate family in the last seven years had any contact with a foreign government, its establishment, or its representatives. On her April 2013 SF 86, she responded "Yes" to that same question, but indicated only that her father had contact with his former employer between January 2012 and April 2012 for "job transition." The evidence shows that her father worked for Taiwan's government for over 30 years as a press secretary and that on the reorganization of his division, he resided in Taiwan for most of 2012 while awaiting reassignment. He visited his family in the United States for one or two weeks twice in 2012: in the summer and again over the holidays at the end of the year.⁸ Applicant listed her father as having the same U.S. address as her mother

⁸ The DOHA Appeal Board has long held that the administrative judge may consider non-alleged conduct to assess an applicant's credibility; to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; to decide whether a particular provision of the Adjudicative Guidelines is applicable; or to provide evidence for a whole-person analysis under Section 6.3 of the Directive. See, e.g., ISCR Case No. 03-20327 (App. Bd. Oct. 26, 2006); ISCR Case No. 09-07219 (App. Bd. Sep. 27, 2012). Applicant was less than fully forthcoming about her father's foreign government ties and his residency in Taiwan, but conduct not

on both her June 2012 and April 2013 security clearance applications, giving no indication that her father was renting living quarters and spending most of his time in Taiwan. Whether Applicant acted to conceal her father's activities or she failed to understand the importance of providing accurate and complete information, it makes it difficult to apply AG ¶ 17(d), which provides:

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

Under AG ¶ 15, “any failure to provide truthful and candid answers during the security clearance process” is of special interest and can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. Applicant has not yet demonstrated that her representations can be fully relied on. The personal conduct security concerns are not fully mitigated.

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 her conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(a).⁹ Furthermore, in weighing these whole-person factors in a foreign influence case, the Appeal Board has held that:

Evidence of good character and personal integrity is relevant and material under the whole person concept. However, a finding that an applicant possesses good character and integrity does not preclude the government from considering whether the applicant's facts and circumstances still pose a security risk. Stated otherwise, the government need not prove that an applicant is a bad person before it can deny or revoke access to classified information. Even good people can pose a security risk because

alleged in the SOR cannot provide a basis for disqualification. It is considered for the purpose of assessing Applicant's evidence in mitigation on the issue of whether she possesses the judgment, reliability, and trustworthiness required of persons with security clearance.

⁹ The factors under AG ¶ 2(a) are as follows:

(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.

of facts and circumstances not under their control. See ISCR Case No. 01-26893 (App. Bd. Oct. 16, 2002).

Applicant had no say in her father's choice to pursue a career as an information officer for Taiwan's government. Her performance reviews for 2014 and 2015 show that she is a hard worker who regularly exceeds her employer's expectations. Her work accomplishments weigh in her favor, but they are not enough to overcome the foreign influence and personal conduct concerns. It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). For the reasons discussed, I am unable to grant or continue security clearance eligibility for Applicant at this time

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:

Paragraph 1, Guideline B: AGAINST APPLICANT

 Subparagraph 1.a: Against Applicant

 Subparagraph 1.b: For Applicant

 Subparagraph 1.c: Against Applicant

Paragraph 2, Guideline E: AGAINST APPLICANT

 Subparagraph 2.a: Against Applicant

 Subparagraph 2.b: Against Applicant

 Subparagraph 2.c: 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.

Elizabeth M. Matchinski
Administrative Judge