



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



In the matter of:)
)
) ISCR Case No. 15-01716
)
Applicant for Security Clearance)

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: Catie A. Young, Esq.

07/25/2016

Decision

RIVERA, Juan J., Administrative Judge:

Applicant's foreign family contacts create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion, and an unacceptable security risk. Moreover, Applicant, a U.S. citizen, exercised her Taiwanese citizenship by requesting and using a Taiwanese passport in preference of her U.S. passport. The mitigating information is insufficient to fully overcome the foreign influence and foreign preference security concerns. Clearance denied.

Statement of the Case

On July 29, 2014, Applicant submitted a security clearance application. After reviewing it and the information gathered during a background investigation the Department of Defense (DOD) was unable to make an affirmative decision to grant Applicant eligibility for a security clearance. On September 14, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline C (foreign preference) and Guideline B (foreign influence).¹

¹ The DOD acted under Exec. Or. 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the Adjudicative Guidelines

Applicant answered the SOR on September 30, 2015, and elected to have her case decided on the written record. On December 4, 2015, the Government requested a hearing pursuant to Directive, Enclosure 3 (Additional Procedural Guidance), Paragraph E3.1.7. (Hearing Exhibit (HE) 1)

The case was assigned to me on March 3, 2016. The DOHA issued a notice of hearing on March 4, 2016, scheduling a hearing for March 30, 2016. At the hearing, Department Counsel offered four exhibits (Government Exhibit (GE) 1 through 4), and Applicant offered one exhibit (Applicant Exhibit (AE) 1 (comprised of Tabs A through O)). All exhibits were admitted into the record without objection. GE 3 (Request for Administrative Notice of facts concerning The Republic of China (ROC or Taiwan), and GE 4 (Discovery Letter)) were made part of the record but they are not evidence. DOHA received the transcript of the hearing on April 7, 2016.

Procedural and Evidentiary Rulings

The Government requested that I take administrative notice of facts concerning the government of Taiwan based on documents published by the federal government. Applicant did not object, and I took administrative notice as requested.

Findings of Fact

Applicant admitted all the SOR allegations, with comments. Her SOR admissions and at the hearing are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact:

Applicant is a 30-year-old advisory information technology specialist employed by a government contractor. She and her brother were born in the United States to Taiwanese parents. Applicant's mother was living in the United States when they were born. About three months after her birth, Applicant's mother returned to Taiwan to live with her husband. Her parents continue to be citizens and residents of Taiwan.

Applicant visited the United States during holidays and stayed with her mother's relatives living in the United States. Applicant returned to the United States, at age 22, in 2008. She had completed her bachelor's degree in Taiwan, and returned to the United States seeking a master's degree from a U.S. university and better working and living opportunities. She has never been married and has no children.

Applicant's brother returned to the United States at age 16 seeking a U.S. education. According to Applicant, he does not intend to return to Taiwan. Applicant testified that she also does not intend to return to live in Taiwan. She believes her life and career are in the United States, and she intends to stay here. Applicant and her brother have a close relationship and they talk and visit each other frequently.

Applicant has been working for a government contractor since 2010, and was granted eligibility for a position of trust in 2010. She is considered to be a top performer and was lauded for her professionalism, effectiveness, knowledge, and technical abilities. She has received multiple awards documenting her valuable contributions to her employer. Her references recommend her eligibility for a security clearance without reservation. (AE K, M, and N)

Applicant is a dual citizen of the United States (born in the United States), and Taiwan (because her parents are Taiwanese citizens). She possesses a U.S. passport that was issued to her in 2006, which expires in 2016. She has possessed a Taiwanese passport since birth. Applicant requested the renewal of her Taiwanese passport both in 2008 and 2013. She explained that she needs a valid Taiwanese passport to be the emergency contact with her aging parents. To be eligible, she must be a Taiwanese citizen in the census. To maintain her eligibility, Applicant is required to travel to Taiwan using her Taiwanese passport at least once every two years. Applicant has been complying with this requirement. At her hearing, Applicant expressed her willingness to surrender her Taiwanese passport, if necessary, for her to be eligible for a clearance. As of her hearing, Applicant had not surrendered her Taiwanese passport because she wanted to continue to be her parents' emergency contact. (Tr. 27)

Applicant traveled to Taiwan at least once a year since 2010 to visit family and friends. Although she possessed a U.S. passport, Applicant used her Taiwanese passport to travel to Taiwan in 2010, 2011, 2012, 2013, 2014, and 2016. She claimed she used her U.S. passport to travel to Taiwan in 2015. Applicant was made aware of the Government's trustworthiness and security concerns raised by her possession and use of a Taiwanese passport when she applied for a position of trust in 2010. (Tr. 48) Notwithstanding, she continued to travel using her Taiwanese passport.

Applicant denied having any loyalty towards Taiwan. She denied holding, possessing, or exercising any other Taiwanese rights or privileges. She denied having any property or financial interests in Taiwan. Applicant purchased a \$460,000 real estate property in the United States in 2012. Her father helped her with the down payment to purchase the property. She claimed the balance owed on the property is \$200,000. She also indicated having a U.S. savings account with \$60,000, a \$10,000 checking account, and an investment account and a retirement account (both with unrecalled totals). Applicant is involved in her community.

Applicant's mother immigrated to the United States at age 20 in 1970, with the rest of her immediate and extended family. In 1986, she returned to Taiwan with Applicant and her brother to live with her husband. Applicant's mother is not currently working. She traveled to the United States at least once every year since 2010 to visit with Applicant, her brother, and her other relatives living in the United States. Applicant's father works for a chemical company in Taiwan. He travels to the United States approximately once every two years. Applicant's parents paid for her education in Taiwan, assisted her with her post-graduate education, and helped her with the down payment of her home.

Applicant believes her father served one year in the Taiwanese military. She claimed to not know whether he is affiliated with the Taiwanese government. She believes her parents are in contact with their extended family members at least once a year. Applicant's father and other immediate and extended family members (uncles, aunts, and cousins) are residents and citizens of Taiwan.

Concerning her father's relatives (one brother, four sisters, and other extended family) who are residents and citizens of Taiwan, Applicant provided some information. She claimed that they are all retired and have no affiliation with the Taiwanese military or the government. Applicant also has friends in Taiwan with whom she remains in contact with via social media and has personal contact with when she travels to Taiwan.

Applicant noted that she has been living in the United States since 2008. She considers the United States her home and she considers herself an American. She believes that her contact with her relatives in Taiwan is infrequent because she does not visit them often, and if she does, it is only for short periods.

I take administrative notice of the following facts concerning Taiwan. Taiwan has a multi-party democracy with universal suffrage. It is the 21st-largest economy in the world, and its high-tech industry plays a key role in the global economy. Taiwan is ranked highly in terms of freedom of the press, health care, public education, economic freedom, and human development.

Taiwan is one of the most active collectors of U.S. economic and proprietary information. Since 2000, Taiwan's citizens have been repeatedly involved in criminal espionage and export control violations of U.S. restricted, dual-use technology with military applications. Illegal technology transfers, even to private Taiwanese entities, are a significant concern because foreign government entities, including intelligence organizations and security services, have capitalized on private-sector acquisitions of U.S. technology which in turn flows to foreign governments.

Policies

Eligibility for access to classified information may be granted "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch 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).

The AG list disqualifying and mitigating conditions for evaluating a person's suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available,

reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Guideline C, Foreign Preference

AG ¶ 9 explains the concerns about foreign preference stating:

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.

AG ¶ 10 indicates four conditions that could raise security concerns and may be disqualifying in this case:

(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to:

- (1) possession of a current foreign passport;
- (2) military service or a willingness to bear arms for a foreign country;
- (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;

- (4) residence in a foreign country to meet citizenship requirements;
- (5) using foreign citizenship to protect financial or business interests in another country;
- (6) seeking or holding political office in a foreign country;
- (7) voting in a foreign election;
- (b) action to acquire or obtain recognition of a foreign citizenship by an American citizen;
- (c) performing or attempting to perform duties, or otherwise acting, so as to serve the interests of a foreign person, group, organization, or government in conflict with the national security interest; and
- (d) any statement or action that shows allegiance to a country other than the United States: for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship.

Applicant is a dual citizen of the United States and Taiwan. She was born in the United States, but her mother took her back to live in Taiwan three months later. She was raised and educated in Taiwan by her Taiwanese parents and relatives. She returned to the United States seeking a post-graduate degree, at age 22, in 2008. Applicant was issued a U.S. passport in 2006, which will not expire until 2016. She has possessed a Taiwanese passport since birth. She has continuously renewed her Taiwanese passport, most recently in 2008 and 2013. The passport will not expire until 2023.

Applicant used her Taiwanese passport to travel to Taiwan in 2010, 2011, 2012, 2013, 2014, and 2016. She used her U.S. passport to travel to Taiwan in 2015. She explained that she needs to maintain a valid Taiwanese passport to be the emergency contact for her aging parents. To be eligible, she is required to travel to Taiwan using her Taiwanese passport at least once every two years. Applicant has been complying with this requirement. At her hearing, Applicant expressed her willingness to surrender her Taiwanese passport, if necessary, for her to be eligible for a clearance. As of her hearing date, Applicant had not surrendered her Taiwanese passport. She is still in possession of a valid Taiwanese passport that will not expire until 2013.

Foreign preference disqualifying condition AG ¶¶ 10(a) and (b) are supported by the evidence. If these conditions are not mitigated it would disqualify Applicant from eligibility to hold a security clearance.

AG ¶ 11 provides conditions that could mitigate the security concerns for foreign preference:

- (a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;
- (b) the individual has expressed a willingness to renounce dual citizenship;
- (c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;
- (d) use of a foreign passport is approved by the cognizant security authority;
- (e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated; and
- (f) the vote in a foreign election was encouraged by the United States Government.

Considering the totality of the evidence, none of the mitigating conditions are fully raised by the evidence and do not mitigate the security concerns. Applicant exercised her Taiwanese citizenship when she requested the renewal of her Taiwanese passport and by requesting to continue to serve as her parents' emergency contact. She has used her Taiwanese passport to travel to Taiwan in preference of her U.S. passport. She received privileges and benefits reserved for Taiwanese citizens, including that of serving as emergency contact for her parents. Although Applicant expressed her willingness to surrender her Taiwanese passport, I have closely scrutinized her offer and afforded it less weight as it is clear that she would like to continue to serve as her parents' emergency contact and needs her Taiwanese passport to do so.

I note that Applicant applied for and was granted eligibility for a position of trust in 2010. At the time, she was made aware of the Government's concerns raised by her possession and use of a Taiwanese passport. Applicant failed to heed the warning and continued to possess and use her Taiwanese passport in preference to her U.S. passport. She failed to mitigate the security concerns alleged under Guideline C.

Guideline B, Foreign Influence

AG ¶ 6 explains the security concern about "foreign contacts and interests" stating:

[I]f the individual has divided loyalties or foreign financial interests, [he or she] 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 guideline indicates two conditions that could raise a security concern and may be disqualifying under AG ¶ 7 in this case:

(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; and

(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.

Applicant's parents are citizens and residents of Taiwan. The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.²

Applicant, directly or through her parents, has frequent contacts and a close relationship of affection and obligation with her parents' and their family living in Taiwan. These contacts create a risk of foreign pressure or attempted exploitation because there is always the possibility that Taiwanese agents or individuals operating in Taiwan may exploit the opportunity to obtain sensitive or classified information about the United States. Applicant's relatives in Taiwan create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion, both directly or through her family members in Taiwan.

The Government produced substantial evidence raising these three disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove a mitigating condition. The burden of disproving a mitigating condition never shifts to the Government. AG ¶¶ 7(a) and 7(b) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

(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

² See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

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;

(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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

Applicant is a dual citizen of the United States and Taiwan. She was born in the United States, but lived in Taiwan until age 22, when she returned to live in the United States. She was raised and educated in Taiwan by her Taiwanese parents and relatives. She returned to the United States seeking a post-graduate degree, at age 22, in 2008.

Applicant has been working for a government contractor since 2010, and was granted eligibility for a position of trust in 2010. She is considered to be a top performer and was lauded for her professionalism, effectiveness, knowledge, and technical abilities. She has received multiple awards documenting her valuable contributions to her employer. Her references recommend her eligibility for a security clearance without reservation.

Applicant testified that all of her financial and property interests are in the United States, including a home she purchased in 2012, bank accounts, and her retirement and investment accounts. Applicant denied having any financial or property interest in any other foreign country including Taiwan.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by her relationships with family members living in Taiwan. Although there is no evidence that Taiwanese government agents, or other entities, have approached or threatened Applicant or her family living in Taiwan, she is

nevertheless potentially vulnerable to threats, coercion, inducement, and manipulation made against her when she visits Taiwan, or through her family members living in Taiwan.

Considering Taiwan's government, its relationship with the United States, and its ongoing pervasive espionage practices against the United States, Applicant is not able to fully meet her burden of showing there is "little likelihood that [her relationships with her relatives who are Taiwanese citizens and living in Taiwan] could create a risk for foreign influence or exploitation." AG ¶¶ 8(a) and (b) have limited applicability and do not mitigate the foreign influence concerns.

Applicant has been living in the United States for about eight years. She was born in the United States, considers herself an American, and considers the United States her home. This is where her career and opportunities are. She believes that her contact with her relatives in Taiwan is infrequent because she does not visit them often, and if she does, it is only for short periods. Notwithstanding, the risk of coercion, persuasion, or duress are significant because Taiwan has an extensive, pervasive history of engaging in economic and technological espionage against the United States.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c).

I have incorporated my comments under Guidelines C and B in my whole-person analysis. I considered that Applicant has lived in Taiwan most of her life and in the United States during the last eight years. She has worked for a government contractor since 2010. Applicant considers the United States her home and she considers herself an American. She has an outstanding reputation as a good American and a valuable employee.

Notwithstanding, Applicant's foreign family contacts create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion, and an unacceptable security risk. Moreover, Applicant exercised her Taiwanese citizenship by requesting and using her Taiwanese passport in preference of her U.S. passport. The mitigating information taken together is insufficient to fully overcome the foreign preference and foreign influence security concerns.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude Applicant has not carried his burden of persuasion and the foreign influence and foreign preference security concerns are not mitigated. Eligibility for access to classified information is denied.

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 C:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraphs 2.a and 2.b:	Against Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

JUAN J. RIVERA
Administrative Judge