



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



In the matter of:

ISCR Case No. 15-08606

Applicant for Security Clearance

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel

For Applicant: *Pro se*

June 2, 2017

**Decision**

MOGUL, Martin H., Administrative Judge:

**Statement of the Case**

On June 14, 2016, the Department of Defense Consolidated Adjudication Facility (DoD CAF) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines C and B for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant replied to the SOR (RSOR) in writing on June 25, 2016, and he requested a hearing before an Administrative Judge. The case was assigned to this Administrative Judge on September 8, 2016. The Defense of Hearings and Appeals (DOHA) issued a notice of hearing on September 13, 2016, and I convened the hearing as scheduled on October 20, 2016. At the hearing, the Government offered Exhibits 1 through 4, which were received and admitted without objection. Applicant testified on his

own behalf and submitted Exhibits A through C, which were also admitted without objection. One additional witness also testified on behalf of Applicant. DOHA received the transcript of the hearing (Tr) on November 1, 2016. Based upon a review of the pleadings, exhibits, and the testimony of Applicant and his witness, eligibility for access to classified information is granted.

### **Request for Administrative Notice**

At the hearing, Department Counsel requested that I take administrative notice of certain facts relating to Taiwan and the People's Republic of China (the PRC). The request and the attached documents were admitted into evidence as Exhibits 3 and 4. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact, below.

### **Findings of Fact**

After a complete and thorough review of the evidence in the record, as described above, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 50 years old. He was born in Albania in 1966, and he moved to the United States in 1996, as a graduate student. He became a naturalized United States citizen in 2014. Applicant has been married to his wife, who was born in Taiwan, since 2005, and they have one daughter, age 9, who is a United States citizen. His wife, who has lived in the United States since 1992, became a U. S. citizen on the same day as Applicant. Applicant's parents were both born in Albania. His father is deceased, and his mother is 78. She still lives in Albania, and has been retired for 25 years. Applicant had one sibling, a sister, who died in 2009.

Applicant received a Ph.D. degree in 2000 in Physics, from an American university. He is employed by a defense contractor as an Aeronautical Engineer, and he seeks a DoD security clearance in connection with his employment in the defense sector. (Tr at 34-35, 39-46.)

### **Paragraph 1 (Guideline C - Foreign Preference)**

The SOR lists one allegation regarding Foreign Preference, under Adjudicative Guideline C.

1.a. It is alleged in the SOR that Applicant exercised his Albanian citizenship by possessing an Albanian passport issued on November 15, 2011, and not scheduled to expire until November 14, 2021.

Applicant testified that the day after he became a United States citizen, he pulled out all of the pages of his Albanian passport and put them in a plastic bag, as he had done when his previous Albanian passports had expired. He used the expired pages

whenever he needed to provide the dates that he had been out of the country. At the hearing, Applicant explained that he last used his Albanian passport in 2013, and he never used it after he became a United States citizen. When he travelled to Albania in 2014 and 2016, after he became a United States citizen, he used his United States passport. He has since given his current Albanian passport to his Facility Security Officer (FSO), and it has been destroyed. (Tr at 46-50.) Exhibit A confirms that the FSO of Applicant's employer did destroy Applicant's current Albanian passport.

## **Paragraph 2 (Guideline B - Foreign Influence)**

The SOR lists four allegations regarding Foreign Influence, under Adjudicative Guideline B:

2.a. It is alleged in the SOR that Applicant's father-in-law and mother-in-law are citizens and residents of Taiwan. Applicant testified that because his in-laws do not speak English and he does not speak Chinese his communication with the in-laws is very limited. His mother-in-law is retired, and his father-in-law owns a farm and produces medicinal herbs. (Tr at 55-58.)

2.b. It is alleged in the SOR that Applicant's brother-in-law is a citizen and resident of Taiwan, and he works as a professor at a Taiwanese university. Applicant testified that his brother-in-law was born in Taiwan, and he received a Ph.D. from a United States university. He now is employed as a professor in Taiwan. His wife, who was born in Taiwan, was also educated in the United States. She currently stays home to take care of their young child. (Tr at 58-60.)

2.c. It is alleged in the SOR that Applicant's sister-in-law is a citizen and resident of Taiwan. Applicant admitted this allegation.

2.d. It is alleged in the SOR that Applicant sends money to his mother in Albania on a monthly basis. Applicant testified that since 2000, when he graduated college and got a job, he initially sent his mother and father \$300 a month, and he continued to send the money to his mother after his father died in 2011. (Tr at 60-61.)

Applicant testified credibly that it took him 25 years to become a United States citizen, which he considers one of the luckiest days of his life, so there is nothing he would do to hurt his adopted country. (Tr at 68-69.)

The additional witness, who testified on behalf of Applicant, has known him since they were both graduate students together, and they each earned their Ph.D. around the same time. The witness spoke about Applicant's longstanding dream to move to the United States and his love of the United States. (Tr at 27-32.)

## **Current Status of Taiwan**

I take administrative notice of the following facts regarding Taiwan. Taiwan has an elected democratic government. It has the 17<sup>th</sup> largest economy and is a leading

producer of high-technology goods. It engages in industrial and economic espionage. Proprietary information technology is high on the Taiwanese list of targeted information to be acquired by their agents from foreign governments and businesses.

There are 23 million Taiwanese citizens. Their per capita income in 2005 was \$15,000, cited by their president in a speech that he presented as economic progress under his administration. Although the United States now recognizes Taiwan as part of the People's Republic of China (PRC) as "one-China," it continues to maintain strong unofficial relations with Taiwan. (Exhibit 3.)

## **Current Status of the PRC**

I take administrative notice of the following facts regarding the PRC. The PRC, the most populous country in the world, is economically powerful, and is an important trading partner of the United States. It is run by the Communist Party, which controls all aspects of the PRC government. It has strong military forces, and has its own foreign-policy. Although there has been some cooperation, there has been much more conflict with the United States in the past. The PRC has an extremely large army, a sophisticated defense establishment, and space capability. The PRC has launched satellites, has ballistic missiles, has nuclear weapons. Its diplomatic and military dispute with the Republic of China (Taiwan), foreshadows a possible military conflict, which the United States opposes as a resolution of the conflict. The PRC has an abysmal human rights record, which includes arbitrary killings; detention or incarceration without notice in mental facilities; torture; arbitrary arrest, detention or exile; no right to a public, fair trial; a politically controlled judiciary; lack of due process; restrictions on free speech, on religious freedom, on freedom of travel, on freedom of assembly; and no rights of privacy - family, home or correspondence.

The PRC engages in espionage against the United States through an extensive network of businesses, personnel, and specific programs designed to acquire advanced U.S. military technology. One approach is to covertly conduct espionage by personnel from government ministries, commissions, institutes, and military industries, independently of the PRC intelligence services. This is believed to be the major method of PRC intelligence activity in the United States. It also tries to identify ethnic Chinese in the United States who have access to sensitive information, and sometimes is able to enlist their cooperation in illegal technology information transfer. (Exhibit 4.)

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in

conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the whole-person concept. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

The security concern relating to the guideline for Foreign Preference 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 10. The following is potentially applicable 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.

Applicant did initially possess his Albanian passport after he became a United States citizen. The evidence is sufficient to consider the above disqualifying condition.

Conditions that could mitigate foreign preference security concerns are described under AG ¶ 11. One is potentially applicable:

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

Applicant never used his Albanian passport to travel after becoming a United States citizen. Additionally, he surrendered his Albanian passport to his facility security officer, after he became a United States citizen, and it has since been destroyed. AG ¶ 11(e) provides mitigation with respect to this guideline.

## **Guideline B, Foreign Influence**

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Two are potentially applicable 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;

(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

Applicant's mother-in-law, father-in-law, brother-in-law, and sister-in-law, who are citizens and residents of Taiwan, and his mother, who is a citizen and resident of Albania, and to whom Applicant sends \$300 a month, are all of potential concern. The evidence is sufficient to raise these disqualifying conditions.

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

(a) the nature of the relationship 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.;

(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 interests in favor of the U.S. interests; and

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

AG ¶¶ 8(a), 8(b), and 8(c) apply and are mitigating in this case. As reviewed above, Applicant's contact with his in-laws is extremely limited, and none of them are in a position within the Taiwanese or PRC Governments. His mother, who is 78 years of age has long been retired. The amount of \$300 a month that he sends to her does not create a hardship for Applicant and his family. Finally, Applicant testified extremely credibly and powerfully of his loyalty and feelings for his adopted country of the United States and that he would never do anything to hurt this country.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the

individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under Guidelines C and B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

While Applicant was born Albania, he is an American by choice. He has been residing in the United States for the past 21 years. His closest familial ties are with his wife and daughter, both of whom are American citizens. His familial contacts in Taiwan are limited and infrequent. He can be expected to resolve any conflict of interest in favor of the United States due to his longstanding ties here.

Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the Foreign Preference and Foreign Influence security concerns under the whole-person concept.

### **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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	For Applicant



### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Martin H. Mogul  
Administrative Judge