



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



In the matter of:)
)
) ISCR Case No. 15-02998
)
Applicant for Security Clearance)

Appearances

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

11/14/2017

Decision

WHITE, David M., Administrative Judge:

Applicant's mother is a citizen and resident of Taiwan, and Applicant maintains a bank account there. Resulting security concerns were not mitigated. Based upon a review of the pleadings and exhibits, national security eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP) on October 11, 2012. On December 16, 2015, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B: Foreign Influence, and Guideline C: Foreign Preference. The action was taken under Executive Order (EO) 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*, effective within the DoD after

September 1, 2006. On June 8, 2017, new adjudicative guidelines (AG) were implemented and are effective for decisions issued after that date.¹

Applicant answered the SOR on January 29, 2016. She admitted all of the SOR allegations except ¶ 2.b, concerning her father, and requested that her case be decided by an administrative judge on the written record without a hearing. (Item 2.) On September 1, 2016, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing 16 Items, was mailed to Applicant on September 2, 2016, and received by him on September 16, 2016.² The FORM notified Applicant that she had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of her receipt of the FORM. Applicant did not submit additional information in response to the FORM, did not file any objection to its contents, and did not request additional time to respond beyond the 30-day period she was afforded. On August 14, 2017, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. Items 1 through 4 are admitted into evidence.

Request for Administrative Notice

Department Counsel requested that I take administrative notice of certain facts about Taiwan, as set forth on pages 6 and 7 of the FORM. He submitted Items 5 through 16 as attachments to the FORM in support of this request. Applicant offered no objection to Department Counsel's request for administrative notice. Accordingly, I will take administrative notice of the facts contained in the Government's request, which are supported by source documents from official U.S. Government publications. Those facts are incorporated by reference and summarized in the Findings of Fact, below.

Findings of Fact

Applicant is 27 years old. She has worked as a data engineer for a major defense contractor since August 2012, and is seeking her first security clearance in connection with that employment. She has never married and has no children. She has no prior military or Federal civil service. (Item 3.)

Applicant was born in the United States to parents from Taiwan. Her parents were both citizens and residents of Taiwan in October 2012, when she submitted her e-QIP.³ By the time she answered the SOR in January 2016, her parents had divorced and her mother had remarried. Her father died in April 2014. (Item 2; Item 3.)

¹ I considered the previous AG, effective September 1, 2006, as well as the new AG, effective June 8, 2017. My decision would be the same if the case was considered under the previous AG.

² Items 5 through 16 are portions of U.S. Government documents attached to the FORM in support of Department Counsel's request for Administrative Notice pertinent to Taiwan.

³ Department Counsel's statement, "Applicant's mother and father are citizens of and reside in India," on page 8 of the FORM, is obviously a typographical error since it is unsupported by any record evidence, and all of his other comments properly reflect their Taiwanese heritage.

Applicant was raised and educated in Taiwan until age 14. She has no siblings, and her mother has never worked outside their home. In 2004 her father was assigned to move from Taiwan to Ho Chi Minh City, Vietnam, to organize and open a new branch for the commercial bank that employed him as a manager. Applicant and her mother moved with her father to Vietnam, and she attended an American international school there from 2004 until April 2007. She then moved to the United States, lived with a guardian, and completed high school in June 2008 at a private academy of science and technology. She then attended a U.S. university until August 2012, and earned a Bachelor of Science degree. (Item 3.)

In 2008, Applicant's parents applied for a Taiwanese passport for her without her knowledge. They told her that it would serve as a visa permitting her to return to Taiwan for visits, but she never used it. She said that she does not think that it means that she has dual citizenship, which she denies having. The passport is due to expire in June 2018, and she indicated her willingness to surrender or destroy it. (Item 2; Item 3.)

Applicant's parents also opened a bank account for her in Taiwan while she was a minor. She was unaware of the balance in the account when she reported it on her 2012 e-QIP, but estimated it might contain about \$500. After her father died in 2014, she opened two new bank accounts in Taiwan to enable the transfer of her inheritance. She also inherited her father's house in Taiwan. She still owns that house, and allows her mother and stepfather to live in it. She has no intention to live there, and now lives in a house she bought near her U.S. place of employment in August 2015. (Item 2; Item 3.)

Applicant freely disclosed all of the foregoing information about her Taiwanese property and family members. The information she provided did not include the value of her recently inherited financial and real estate assets in Taiwan, or information concerning her new stepfather's professional and employment history. No intention to conceal such information is suggested, but the record is devoid of evidence that would support findings about those matters. She reported that she maintains monthly contact with her mother in person, telephonically, or through other electronic media. She said that her stepfather is also a resident citizen of Taiwan, but did not indicate how much, if any, contact she has with him. (Item 2; Item 3; Item 4.)

Applicant offered no evidence concerning the level of responsibility her duties entail, the nature of her performance evaluations, or her track record with respect to handling sensitive information and observation of security procedures. I was unable to evaluate her credibility, demeanor, or character in person since she elected to have her case decided without a hearing.

I took administrative notice of the facts set forth in Department Counsel's request concerning Taiwan, which are incorporated herein by reference as noted above. Of particular significance are Taiwan's active, persistent, and illegal collection of restricted dual-use technologies, and U.S. classified information. There have been numerous cases involving actual or attempted espionage and the illegal export of information by targeted U.S. citizens and permanent residents with connections to Taiwan and China.

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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 national security eligibility will be resolved in favor of the 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "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 applying for national security eligibility seeks to enter 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 national security eligibility. 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 or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline B: Foreign Influence

AG ¶ 6 expresses the security concerns regarding foreign influence:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

AG ¶ 7 sets out conditions that could raise a security concern and may be disqualifying. Three of them are potentially applicable:

- (a) contact, regardless of method, 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;⁴
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology; and
- (f) substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest.

The nature of a nation's government; its relationship with the United States; and its human rights record are relevant in assessing the likelihood that an applicant is vulnerable to foreign government coercion or inducement. Although Taiwan has a democratic

⁴The 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. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

government and is a U.S. ally, the risk of coercion, persuasion, or duress is heightened in this case because Taiwan is known to conduct intelligence collection operations and industrial espionage against the United States. These facts place a significant burden of persuasion on Applicant to demonstrate that her connections and relationships with her mother, who is a resident citizen of Taiwan, and her bank account there do not create a heightened risk of foreign influence or pose a security risk. Applicant should not be placed in a position where she might be forced to choose between loyalty to the United States and to her family or property in Taiwan. Applicant's immediate-family relationships are presumed to be close and loving, and Applicant offered no evidence to the contrary about her family. The evidence is sufficient to raise security concerns under AG ¶¶ 7(a), 7(b), and 7(f).

The Government met its burden of production by raising the above disqualifying conditions and shifted the burden to Applicant to prove mitigation. AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns. Those with potential application in mitigating the security concerns in this case are:

- (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 United States;
- (b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, 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; and
- (f) the value or routine nature of the foreign business, financial, or property interest 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 did not demonstrate that it is unlikely that she could be placed in a position of having to choose between the interests of a foreign individual or government and those of the United States as a consequence of her ongoing family ties and property interests in Taiwan. She is her mother's only child, and her mother is her only close relative. They maintain monthly contact, and her mother lives with her stepfather in the home that Applicant inherited after her father died in 2014. The record does not establish the value of Applicant's inherited real estate and financial assets in Taiwan, but she did not demonstrate that they are insignificant in terms of security risks. She opened two new

bank accounts to enable the transfer of her inherited funds. Her father was a manager in an international commercial bank and the house she inherited is her mother's only place of residence. A conclusion that those assets are not substantial and important to her is not supported by the record. Accordingly, she failed to establish the mitigating conditions set forth in AG ¶¶ 8(a), (c), or (f).

Applicant provided some evidence of her relationships to the United States, which established partial mitigation under AG ¶ 8(b). She was born in the United States and chose to return here to complete her last year of high school and attend college. She has only used her U.S. passport during her many years of living and traveling abroad. After graduating from college in 2012, she accepted employment from a U.S. defense contractor and purchased a home here. However, she demonstrated no significant personal connections other than to her family members in Taiwan, and her U.S. assets were not shown to be more substantial than those she holds in Taiwan.

Guideline C: Foreign Preference

The Foreign Preference guideline in effect at the time the SOR was issued included potentially disqualifying conditions relating to dual-citizenship and possession of an active foreign passport. The new Guideline C criteria, which came into effect on June 8, 2017, and control this national security eligibility determination, explicitly state that dual citizenship or the exercise of any right or privilege thereof (including holding a foreign passport) is not disqualifying without an objective showing that they are in conflict with U.S. national interests or the individual attempts to conceal such facts. No Guideline C foreign preference security concerns are raised or supported by substantial evidence in this case.

Whole-Person Concept

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

- (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 national security eligibility 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 the pertinent facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

There is some evidence tending to mitigate the established foreign influence security concerns under the whole-person concept. Applicant is an educated and mature individual. She is a natural-born U.S. citizen who chose to return to the United States at age 17 to complete her education and begin her professional career. She purchased a home here. There is no evidence that she has ever taken any action that could cause potential harm to the United States, and she has worked for a major defense contractor since 2012.

Other circumstances outweigh those favorable factors for Applicant in the whole-person analysis. Taiwan's government, and private companies there, actively engage in industrial and military espionage against United States interests, and have historically used U.S. citizens and legal residents with ties to Taiwan for this purpose. Applicant was raised and educated in Taiwan during her childhood. Her parents are and were resident citizens of Taiwan. She maintains regular contact with her mother in person, through phone calls, and by other electronic means. Her mother and stepfather live in the house in Taiwan that she inherited from her father in 2014, and she maintains the financial portion of her inheritance in two bank accounts there.

After weighing the disqualifying and mitigating conditions in the context of the whole-person, and considering the facts and circumstances established by the evidence in this record, I conclude Applicant did not sufficiently mitigate the security concerns pertaining to foreign influence. Overall, the record evidence leaves me with questions as to Applicant's present eligibility and suitability for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ 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:	AGAINST APPLICANT
Subparagraphs 2.a and 2.c:	Against Applicant
Subparagraph 2.b:	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 Applicant a security clearance. National security eligibility for access to classified information is denied.

DAVID M. WHITE
Administrative Judge