



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



In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 15-06039
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Erin P. Thompson, Esq., Department Counsel  
For Applicant: Leon J. Schachter, Esq.

07/02/2018

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**Decision**

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MENDEZ, Francisco, Administrative Judge:

Applicant presented sufficient evidence to mitigate alleged foreign influence security concerns. Clearance is granted.

**Statement of the Case**

On June 17, 2016, the Department of Defense (DoD) issued a Statement of Reasons (SOR) alleging security concerns under the foreign influence and foreign preference guidelines. Applicant answered the SOR and requested a hearing (Answer). By agreement of the parties, a hearing was scheduled for February 6, 2018.<sup>1</sup>

The hearing was convened as scheduled. Department Counsel's motion to withdraw the foreign preference allegation was granted without objection.<sup>2</sup> Applicant and his supervisor testified, and the exhibits offered by the parties were admitted into the

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<sup>1</sup> Appellate Exhibit I (pre-hearing correspondence).

<sup>2</sup> Transcript (Tr.) 6.

administrative record.<sup>3</sup> The transcript of the proceeding was received on February 13, 2018, and the record closed on March 7, 2018.<sup>4</sup>

### **Findings of Fact**

Applicant, 48, was born in Taiwan. He immigrated to the United States in 1994 to further his education, improve his job prospects, and to become part of a “free society.”<sup>5</sup> He received a scholarship from an Ivy League school from which he earned a master’s degree and a Ph.D. in 1996 and 2008, respectively. He married in 2001, and he and his wife purchased their home in the United States in 2002. Applicant and his wife became U.S. citizens in 2012. A year later, he and his wife celebrated the birth of their only child. Applicant’s U.S. assets and property total about \$1.5 million. He has been employed in the United States since 2001, including as a federal employee. He is involved in civic activities, and has received numerous awards and honors for his work.<sup>6</sup>

From 2001 to 2012, Applicant worked for Company A, which does a substantial amount of work for the U.S. Government (USG). During this period, Applicant worked on several sensitive USG projects, including one that was geared towards helping U.S. troops detect, defuse, and defeat improvised explosive devices (IEDs).<sup>7</sup> A former coworker writes that Applicant was a “critical player” in developing “revolutionary capability” to “fill a gap in U.S. capabilities” in defeating IEDs. The former coworker goes on to state: “During this time, [Applicant] was always reliable, consistent and in no way gave me or [Company A] concerns about his judgment or trustworthiness.”<sup>8</sup>

While working for Company A, Applicant was tasked with meeting with a U.K. company on a proposed business deal. He sought the approval of his USG client before agreeing to and taking the meeting.<sup>9</sup>

After being laid off by Company A in 2012, Applicant was hired by a USG agency. While employed by the agency, Applicant had direct access to and worked with sensitive and proprietary information.<sup>10</sup>

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<sup>3</sup> Government Exhibits 1 – 4; Applicant’s Exhibits A – O; and Attachments A – G to Applicant’s Answer.

<sup>4</sup> Post-hearing correspondence and the parties’ supplemental closing statements are attached to the record as Appellate Exhibits II – VI (Exhibits M – O are attached to Appellate Exhibit III).

<sup>5</sup> Tr. 21.

<sup>6</sup> Tr. 20-33, 54-58; Answer; Exhibit 1; Exhibit A; Exhibit C; Exhibit G.

<sup>7</sup> Tr. 28-29, 55; Exhibit A; Exhibit D.

<sup>8</sup> Exhibit D.

<sup>9</sup> Exhibit 1 at 42.

<sup>10</sup> Tr. 28, 56.

Applicant was hired by his current employer, Company B, in 2014. His current job duties include providing technical advice to government program managers on assessing technologies; research and development; and program planning and execution.<sup>11</sup>

Applicant's supervisor testified that Applicant is "indispensable" at his current USG project, as there are few persons who have the knowledge and expertise to handle the subject matter at issue.<sup>12</sup> The supervisor also states that in working with Applicant for the past four years he has found Applicant to be honest, sincere, reliable, and hard working. The supervisor also notes that Applicant has on his own initiative followed security protocols, including filling out post-travel security forms.<sup>13</sup>

Applicant's mother, siblings, father-in-law, and his wife's grandmother are residents and citizens of Taiwan. He has somewhat regular contact with his mother and less so with his siblings. His wife remains in contact with her father, but has no contact with her mother and Applicant has never met his mother-in-law. Applicant tries to visit Taiwan at least once a year so his daughter can get to know her family in Taiwan. He usually stays with his relatives while visiting Taiwan.

Applicant's relatives in Taiwan do not have any present connection to the Taiwanese government or military, except for one of his sisters who works as a county tax collector. His brothers and father-in-law served in the Taiwanese military. Applicant disclosed this information, as well as his other past connections and travel to Taiwan, when he submitted his security clearance application in 2014. He has never shared information about what he does for a living with his foreign relatives, and would immediately report to the proper U.S. authorities any suspicious request for information from his relatives or others. Applicant does not have any property or assets in Taiwan. He surrendered his Taiwanese passport to his facility security officer in 2016.<sup>14</sup>

#### Administrative Notice - Taiwan.<sup>15</sup>

The U.S. position on Taiwan is set forth in the current State Department bilateral fact sheet, which states:

The United States and Taiwan enjoy a robust unofficial relationship. The 1979 U.S.-P.R.C. Joint Communiqué switched diplomatic recognition from Taipei to Beijing. In the Joint Communiqué, the United States recognized the Government of the People's Republic of China (PRC) as the sole legal government of China, acknowledging the Chinese position that there is but

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<sup>11</sup> Exhibit A.

<sup>12</sup> Tr. 65-66.

<sup>13</sup> Exhibit H.

<sup>14</sup> Tr. 33-45, 58-60.

<sup>15</sup> See Exhibit 2, Exhibit K, and Exhibit L, as well as Appellate Exhibit VII (extracts of pertinent portions of the current U.S. State Department human rights report on Taiwan).

one China and Taiwan is part of China. The Joint Communiqué also stated that the people of the United States will maintain cultural, commercial, and other unofficial relations with the people of Taiwan. The American Institute in Taiwan is responsible for implementing U.S. policy toward Taiwan.

The United States does not support Taiwan independence. Maintaining strong, unofficial relations with Taiwan is a major U.S. goal, in line with the U.S. desire to further peace and stability in Asia. The 1979 Taiwan Relations Act provides the legal basis for the unofficial relationship between the United States and Taiwan, and enshrines the U.S. commitment to assist Taiwan in maintaining its defensive capability. The United States insists on the peaceful resolution of cross-Straits differences, opposes unilateral changes to the status quo by either side, and encourages both sides to continue their constructive dialogue on the basis of dignity and respect.<sup>16</sup>

Notwithstanding the friendly, unofficial relationship that the United States and Taiwan share, publically available U.S. Government reports submitted by Department Counsel and accepted for administrative notice reflect a number of cases over the years of suspect transfers or attempted transfer of sensitive U.S. information and material involving Taiwan. Additionally, these same reports note the serious threat of espionage posed to the United States by the PRC.<sup>17</sup>

The State Department's current human rights report states that "Taiwan is a democracy governed by a president and a parliament selected in multiparty elections. . . [with] an independent and impartial judiciary for civil matters."<sup>18</sup> It also states that "[a]uthorities enforced laws prohibiting human rights abuses and prosecuted officials who committed them." Taiwan has an independent and active media that expresses a wide variety of views without restriction and authorities did not restrict or disrupt access to the internet nor censored online content.<sup>19</sup> The human rights report goes on to note that there were no reports of political prisoners or detainees, and Taiwan's constitution:

- Prohibits arbitrary arrest and detention, and authorities generally observed these prohibitions;
- Prohibits arbitrary or unlawful interference with privacy, family, home, or correspondence, and there were no reports that the government failed to respect these prohibitions;
- Guarantees civil liberties, including freedom of expression and the press, and the government generally respected this right;

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<sup>16</sup> Exhibit 2, Item I at 1.

<sup>17</sup> Exhibit 2.

<sup>18</sup> U.S. State Department, *2017 Taiwan Human Rights Report*, at 1, 6.

<sup>19</sup> *Id.* at 1, 6-7.

- Guarantees freedom of movement;
- Guarantees freedom of peaceful assembly and association; and
- Provides citizens the ability to choose their elected officials in free and fair periodic elections held by secret ballot and based on universal and equal suffrage.<sup>20</sup>

### **Law, Policies, and Regulations**

This case is decided under Executive Order (E.O.) 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 National Security Adjudicative Guidelines (AG), which became effective on June 8, 2017.

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Instead, persons are only eligible for access to classified information “upon a finding that it is clearly consistent with the national interest” to authorize such access. E.O. 10865 § 2.

When evaluating an applicant’s eligibility for a security clearance, an administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision. AG ¶ 2.

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

Administrative Judges must remain fair and impartial, and carefully balance the needs for the expedient resolution of a case with the demands of due process. Therefore, an administrative judge will ensure that an applicant: (a) receives fair notice of the issues, (b) has a reasonable opportunity to address those issues, and (c) is not subjected to unfair surprise. Directive, ¶ E3.1.10; ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014).

In evaluating the evidence, a judge applies a “substantial evidence” standard, which is something less than a preponderance of the evidence. Specifically, substantial evidence is defined as “such relevant evidence as a reasonable mind might accept as

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<sup>20</sup> *Id.* at 1, 3, 6-9.

adequate to support a conclusion in light of all the contrary evidence in the same record.” Directive, ¶ E3.1.32.1.<sup>21</sup>

Any doubt raised by the evidence must be resolved in favor of the national security. AG ¶ 2(b). See *also* Security Executive Agent Directive 4 (SEAD 4), ¶ E.4. Additionally, the Supreme Court has held that responsible officials making “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

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. 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 an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

## Analysis

### Guideline B, Foreign Influence

Foreign contacts and interests are a national security concern if they result in divided allegiance. Likewise, a concern arises if a person’s connections, contacts, or interests in a foreign country leave them vulnerable to pressure or coercion by any foreign interest. However, a person is not *per se* disqualified from holding a security clearance because they have familial, financial, or other ties to a foreign country. Instead, in assessing a person’s potential vulnerability to foreign influence, a judge considers the foreign country involved, the country’s human rights record, and other pertinent factors.<sup>22</sup>

In assessing the security concerns at issue, I considered the disqualifying and mitigating conditions listed under Guideline B, including the following:

AG ¶ 7(a): contact, regardless of method, with a foreign family member . . . if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

AG ¶ 7(b): connections to a foreign person . . . that create a potential conflict of interest between the individual’s obligation to protect classified or

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<sup>21</sup> However, a judge’s mere disbelief of an applicant’s testimony or statements, without actual evidence of disqualifying conduct or admission by an applicant to the disqualifying conduct, is not enough to sustain an unfavorable finding. ISCR Case No. 15-05565 (App. Bd. Aug. 2, 2017); ISCR Case No. 02-24452 (App. Bd. Aug. 4, 2004). Furthermore, an unfavorable decision cannot be based on matters not alleged in an SOR, unless an applicant is provided adequate notice an issue raises a security concern. ISCR Case No. 14-05986 (App. Bd. May 26, 2017). Non-alleged issues can only be used for specific limited purposes, such as assessing mitigation and credibility. ISCR Case No. 16-02877 at 3 (App. Bd. Oct. 2, 2017).

<sup>22</sup> See *generally* AG ¶ 6. See *also* ISCR Case No. 05-03250 at 4 (App. Bd. Apr. 6, 2007) (setting forth factors an administrative judge must consider in foreign influence cases).

sensitive information or technology and the individual's desire to help a foreign . . . country by providing that information or technology;

AG ¶ 8(a): the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual . . . and the interests of the United States;

AG ¶ 8(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;

AG ¶ 8(c): contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation; and

AG ¶ 8(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.

Here, Applicant's close and continuing connection to and contact with his relatives in Taiwan, coupled with the matters accepted for administrative notice, raise a heightened security risk. However, these familial ties are relatively weak when compared to the professional, financial, and personal bonds that Applicant has formed to and in the United States over the past twenty plus years. Of note, Applicant came to the United States in 1994 and since then: (1) earned advanced academic degrees from a top U.S. college; (2) entered the workforce; (3) married, purchased a home, and had a child; (4) became a U.S. citizen; and (5) is an active member of his community. Additionally, his sizeable financial assets and property are all held in the United States.

Further mitigating security concerns raised by Applicant's familial ties to Taiwan is his track record dating back to 2001 of properly handling and safeguarding sensitive U.S. information. In light of this evidence, as well as the candor Applicant exhibited throughout the security clearance process,<sup>23</sup> I find that he met his burden of proof and persuasion in mitigating the security concern at issue. He can be counted upon to resolve any potential conflict of interest in favor of the United States.<sup>24</sup> All of the listed mitigating conditions

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<sup>23</sup> See AG ¶ 2 (whole-person concept). See *also* SEAD-4, ¶ E.4 (relevant factors to consider in determining whether granting a person a clearance is clearly consistent with the interests of the United States).

<sup>24</sup> See ISCR Case No. 14-05986 (App. Bd. May 26, 2017) (notwithstanding Applicant's less-than-stellar security record, Board affirmed judge's decision finding that Applicant's weak familial ties to Taiwan were outweighed by his strong ties to the United States); ISCR Case No. 14-05013 (App. Bd. Sep. 27, 2016) (Board affirms favorable decision in a Guideline B case involving Taiwan, because Applicant's contact with

apply in full or in part. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility for access to classified information.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by Directive, ¶ E3.1.25, are:

Paragraph 1, Guideline C (Foreign Preference):	WITHDRAWN
Subparagraph 1.a:	Withdrawn
Paragraph 2, Guideline B (Foreign Influence):	FOR APPLICANT
Subparagraph 2.a:	For Applicant

### **Conclusion**

In light of the record evidence, it is clearly consistent with the interests of national security to grant Applicant initial or continued eligibility for access to classified information. Applicant's request for a security clearance is granted.

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Francisco Mendez  
Administrative Judge

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Taiwanese associate who held high-level post in Taiwanese government did not outweigh his strong ties to the United States).