



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



In the matter of: )  
 )  
 [NAME REDACTED] )  
 ) ISCR Case No. 15-07460  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Andrew H. Henderson, Esq., Department Counsel  
For Applicant: *Pro se*

12/14/2017

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**Decision**

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BORGSTROM, Eric H., Administrative Judge:

Applicant did not mitigate the foreign influence security concerns raised by his connections with the People's Republic of China (PRC) and Taiwan. Eligibility for access to classified information is denied.

**Statement of the Case**

On June 7, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B (foreign influence).<sup>1</sup> Applicant responded to the SOR on June 25, 2016, and he elected a decision on the written record in lieu of a hearing. On August 5, 2016, Department Counsel submitted his file of relevant material (FORM) and provided a complete copy to Applicant. Applicant received the FORM on September 16, 2016. He was afforded an opportunity to respond within 30 days of its receipt and to file objections and submit

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<sup>1</sup> 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 implemented by the DOD on September 1, 2006.

material to refute, extenuate, or mitigate the security concerns. Applicant initially did not submit a response. The case was assigned to me on June 2, 2017.

### **Procedural Issues**

On September 13, 2017, I issued an order informing both parties that although the SOR referenced the adjudicative guidelines implemented by the DOD on September 1, 2006, I would be applying the revised adjudicative guidelines (AG) effective as of June 8, 2017, pursuant to Security Executive Agent Directive 4 (SEAD 4). I also permitted the parties to supplement the record with additional evidence and argument. On September 25, 2017, Applicant submitted a compendium of performance reviews and awards, which is admitted as Applicant Exhibit (AE) A without objection. The Government submitted no additional materials.<sup>2</sup>

In the FORM, Department Counsel references FORM Items 1-6.<sup>3</sup> FORM Items 3 and 4 are unauthenticated summaries of interviews with a government investigator conducted in March 2006 and June 2015, respectively. In the FORM, Department Counsel advised Applicant that he could object to FORM Items 3 and 4 and they would not be admitted, or that he could make corrections, additions, deletions, and update the document to make it accurate. Applicant was informed that his failure to respond to the FORM or to raise any objections could constitute waiver, and the evidence would be considered by me. Applicant's September 2017 response to the FORM noted no objections. Given Department Counsel's advisement and Applicant's education, I find his waiver to be knowing and intelligent.<sup>4</sup> FORM Items 2-4 are admitted into evidence as Government Exhibits (GE) 2-4, without objection. FORM Items 5 and 6 are requests for administrative notice on the security concerns associated with the People's Republic of China and Taiwan, respectively, and they are admitted as Administrative Notice (AN) I and II without objection.

### **Findings of Fact**

The SOR alleges security concerns based on Applicant's contacts with relatives in the PRC and Taiwan and his spouse's financial interests in the PRC and Taiwan. Applicant admitted all of the allegations except SOR ¶ 1.e. and explained that his spouse's financial interests are in Taiwan and not the PRC. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact:

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<sup>2</sup> Hearing Exhibit I includes my order, the attachments, and the parties' emails acknowledging receipt.

<sup>3</sup> FORM Item 1 consists of the SOR and Applicant's answer, which are pleadings and are included in the administrative record.

<sup>4</sup> See ISCR Case No. 15-05252 at 3 (App. Bd. Apr. 13, 2016) (Applicant's waiver of the authentication element must be knowing and intelligent.). See ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016) ("Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive.")

Applicant is 65 years old. He was born in Hong Kong, and is a citizen of the United Kingdom by birth. He earned a bachelor's degree in Hong Kong in 1976. He moved to the United States in 1979. He earned a master's degree in 1981 in the United States. He became a naturalized U.S. citizen in 1990. He was previously employed by a U.S. government contractor from 2001 to 2012. Since June 2015, he has been employed as a software engineer for a DOD contractor. His wife is a naturalized U.S. citizen, and they were married in 1982 in the United States. They have two adult children, who are citizens of and reside in the United States.<sup>5</sup>

Applicant's parents are deceased. Applicant has one brother and one sister who are PRC citizens and reside in Hong Kong. His brother became an employee of the Hong Kong government while Hong Kong was under British rule, and he retired after Hong Kong was turned over to the PRC in 1997. His sister is a retired bank employee. Applicant has annual contact with his siblings in Hong Kong. Applicant has a second sister who is a naturalized U.S. citizen and resides in the United States. During his March 2006 security interview, Applicant admitted that he has close relationships with his siblings both in Hong Kong and in the United States.<sup>6</sup>

Applicant's parents-in-law are dual citizens of Taiwan and the United States, and they reside in Taiwan. Applicant's father-in-law is a retired general in the Taiwanese Army. Applicant's two brothers-in-law (his wife's brothers) are citizens of and reside in Taiwan. One of his brothers-in-law is a retired officer in the Taiwanese Army. Applicant has annual contact with his brothers-in-law. There is no evidence as to the nature and frequency of contact between Applicant's wife and her family in Taiwan.<sup>7</sup>

Applicant's wife maintains a bank account in Taiwan with an approximate balance of \$16,490. She maintains this account to receive income from her two Taiwanese investments – in a private electric utility and in a bank – totaling approximately \$187,000.<sup>8</sup>

Applicant's performance reviews, certificates, and awards demonstrate his exemplary work performance and accomplishments.<sup>9</sup>

### **Administrative Notice**

I have taken administrative notice of the following facts concerning the PRC:

The PRC is an authoritarian state in which the Chinese Communist Party is the paramount authority. Human rights concerns included extralegal measures to prevent

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<sup>5</sup> GE 2-4.

<sup>6</sup> GE 2-4; Response to SOR.

<sup>7</sup> GE 2-4; Response to SOR.

<sup>8</sup> GE 2; GE 4; Response to SOR.

<sup>9</sup> AE A.

public expression of critical opinions; repression of speech, religion, association, assembly and movement for certain minorities; extrajudicial killings; enforced disappearance and incommunicado detention, including prolonged detentions at unofficial holding facilities; torture and coerced confession of prisoners; and monitoring of communications. Citizens lacked the right to change their government and had limited forms of redress against the government.<sup>10</sup>

The PRC is among the most aggressive collectors of U.S. economic information and technology. The PRC's intelligence services, as well as private companies, seek to exploit Chinese citizens or persons with family ties to China who can use their insider access to steal secrets. Since the mid-2000's, the PRC government has conducted large-scale cyber espionage against the United States, compromising a range of U.S. computer networks, including those of the DOD and DOD contractors.<sup>11</sup>

I have taken administrative notice of the following facts concerning Taiwan:

The PRC seeks to unify Taiwan and mainland China as "one China" and does not recognize Taiwan's independence. Tensions persist between the PRC and Taiwan over Taiwan's sovereignty. The United States does not diplomatically recognize Taiwan.<sup>12</sup>

There have been multiple cases involving the illegal export or attempted illegal export of U.S. classified, restricted, and dual-use technology to Taiwan. Illegal technology transfers are a significant concern because foreign government entities – including intelligence organizations and security services – have learned to capitalize on private-sector technology acquisitions.<sup>13</sup>

## **Policies**

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 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

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<sup>10</sup> AN I.

<sup>11</sup> AN I.

<sup>12</sup> AN II.

<sup>13</sup> AN II.

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.”

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.” 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 the 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.

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 B, Foreign Influence**

The security concern under this guideline is set out in AG ¶ 6 as follows:

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.

“The United States has a compelling interest in protecting and safeguarding [sensitive] information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States.”<sup>14</sup> 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’s family members are vulnerable to government coercion. “An applicant with family members living in a country hostile to the U.S. has a very heavy burden to show that they are not a means through which the applicant can be subjected to coercion or exploitation.”<sup>15</sup>

Two disqualifying conditions under this guideline are relevant to this case:

AG ¶ 7(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; and

AG ¶ 7(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.

To establish AG ¶ 7(a) and 7(f), the Government must demonstrate a “heightened risk” due to Applicant’s contacts with his siblings in Hong Kong and in-laws in Taiwan. The intelligence-gathering activities of the PRC and Taiwan, coupled with Applicant’s brother’s previous government employment, and his in-laws’ Taiwanese military service, establish a “heightened risk” under AG ¶ 7(a). Moreover, the PRC’s aggressive targeting of U.S. classified and economic information demonstrates its interests are inimical to the United States and requires Applicant to overcome a “very heavy burden” in mitigation.

Applicant’s spouse maintains a Taiwanese bank account (SOR ¶ 1.d.) and investments in Taiwanese companies totaling approximately \$187,000 USD (SOR ¶¶ 1.e. and 1.f.). AG ¶ 7(f) applies.

The following mitigating conditions under this guideline are potentially relevant:

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

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<sup>14</sup> ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

<sup>15</sup> ISCR Case No. 11-12659 at 3 (May 30, 2013). See, e.g., ISCR Case No. 10-09986 at 3 (App. Bd. Dec. 15, 2011).

individual, group, organization, or government 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, 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;

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

Applicant's brother is a retired PRC government employee, and his father-in-law and brother-in-law are retired Taiwanese military officers. Additionally, the intelligence-gathering activities of Taiwan and the PRC present an unacceptable risk that Applicant will be placed in a position of having to choose between the interests of a foreign individual, group, or government and the interests of the United States. AG ¶ 8(a) does not apply.

Applicant has resided, attended graduate school, and worked in the United States since 1979. He married a U.S. naturalized citizen, and their two children are U.S. citizens. Notwithstanding these relationships, by Applicant's own admission, he maintains close relationships with his siblings in Hong Kong – to whom he has been bound by affection or obligation his entire life. AG ¶ 8(b) does not apply.

Applicant admitted that he maintains close relationships with his brother and sister in Hong Kong. He has not overcome the presumption of non-casual relationships with these immediate family members and the immediate family members of his wife.<sup>16</sup> AG ¶ 8(c) does not apply.

Applicant's wife's Taiwanese investments are in a private electric utility company and in a bank. Notably, while Applicant states that the utility company is a private entity, he makes no such representations as to his wife's investments in the Taiwanese bank. Moreover, Applicant has not provided any documentary evidence as to his and his wife's total assets to conclude that the value of these foreign investments (\$187,000 USD) is unlikely to result in a conflict of interest. AG ¶ 8(f) does not apply. Applicant did not mitigate the foreign influence security concerns triggered by his close and ongoing foreign contacts and his wife's foreign financial interests.

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<sup>16</sup> See ISCR Case No. 02-11570 at 7 (App. Bd. May 19, 2004)(rebuttable presumption of obligation to one's immediate family members). See *also* ISCR Case No. 14-03112 at 3 n. 1 (App. Bd. Nov. 3, 2015)(rebuttable presumption that a person has obligations to the immediate family members of his or her spouse).

## **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(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 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline B and the factors in AG ¶ 2(c) in this whole-person analysis.

Applicant's character and work performance are well-regarded by his co-workers. Nonetheless, he has not presented evidence sufficient to mitigate his close ties with his foreign family members and his wife's foreign financial interests create significant security risks.

## **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
Subparagraphs 1.a.-1.f.:	Against 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

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Eric H. Borgstrom  
Administrative Judge