



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



In the matter of:

ISCR Case No. 16-03684

Applicant for Security Clearance

**Appearances**

For Government: Daniel F. Crowley, Esq., Department Counsel

For Applicant: Pro se

November 17, 2017

**Decision**

LOKEY ANDERSON Darlene D., Administrative Judge:

**Statement of the Case**

On December 28, 2016, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guidelines B and C.<sup>1</sup> The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant answered the SOR on February 28, 2017. He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) On May 24, 2017, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing 5 Items, was received by Applicant on June 1, 2017. The FORM notified Applicant that he had an

---

<sup>1</sup> I considered the previous Adjudicative Guidelines, effective September 1, 2006, as well as the new Adjudicative Guidelines, effective June 8, 2017. My decision would be the same if the case was considered under the previous Adjudicative Guidelines, effective September 1, 2006.

opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant failed to respond to the FORM. DOHA assigned the case to me on October 1, 2017. Items 1 through 5 are admitted into evidence, and going forward are referenced as Government Exhibits 1 through 5.

### **Procedural Rulings**

The Government requested I take administrative notice of certain facts relating to Taiwan, which formally calls itself the Republic of China (China). Department Counsel provided a six page summary of the facts, supported by six Government documents pertaining to China. (Government Exhibit 5.) The documents provide elaboration and context for the summary. Applicant had no objection. 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.

### **Findings of Fact**

Applicant admitted each of the allegations in the SOR. After a thorough and careful review of the pleadings, and exhibits, I make the following findings of fact.

Applicant is 46 years old and married. He has a Master's degree. He holds the position of Software Engineer with a defense contractor. He has been working for a variety of commercial and government contractors since 1998. He has never held a security clearance. (Government Exhibit 3.)

Applicant was born and grew up in Taiwan. From August 1993 to July 1995, Applicant served in the Taiwanese Coast Guard satisfying his mandatory military service. In June 1997, at the age of 26, he moved to the United States. In April 2014, he became a naturalized citizen of the United States and a dual citizen of both Taiwan and the U.S. Applicant has been working for his current employer since 1998. (Government Exhibit 3.)

Applicant's family that includes his father, mother, two brothers, a sister, as well as a mother and father-in-law are citizens and residents of Taiwan. Applicant's father is now 81 years old.

His father-in-law is 87 years old. He retired from the Taiwanese Army at the age of 40. He then worked as a member of the logistic staff for a food packaging company for 30 years.

Applicant maintains foreign contact with his relatives in Taiwan. None of them know that he is under consideration for a security clearance. Applicant traveled to Taiwan to visit family and friends in May 2010; January 2011; August 2013; and September 2013. Applicant has received as much as \$30,000 from his in-laws in Taiwan to purchase a house in the United States. (Government Exhibit 4.)

Applicant was issued a Taiwanese passport on December 10, 2002. This foreign passport expired on December 10, 2012. Applicant traveled to France on January 2003 and Taiwan in January 2011 using this passport. In his security clearance application dated 2015, Applicant indicated that he possessed a Taiwanese passport that was valid until 2023. In Applicant's answer to the SOR, he states that on November 29, 2016, he renounced his Taiwanese citizenship and provided photocopies showing that his Taiwanese passport has been cancelled. (Applicant's Answer to SOR.) Therefore, Applicant is no longer a Taiwanese citizen and no longer possesses a valid Taiwanese passport.

I have taken administrative notice of the following facts about Taiwan, officially known as the Republic of China. Its neighbor to the west is the People's Republic of China, recognized as the sole legal government of China, which considers Taiwan to be part of the One China policy. China is one of the world's most active and persistent perpetrators of economic espionage, and it is predicted that their attempts to collect U.S. intelligence will continue at a high level and will represent a persistent, if not growing threat to U.S. economic security. China's intelligence services, as well as private companies and other entities, frequently seek to exploit Chinese citizens, or person with family ties to China, who can use their insider access to corporate networks to steal secrets using removable media and devices or e-mail. China is using its cyber capabilities to support intelligence collection against the U.S. national diplomatic, economic, and defense industrial base sectors that support U.S. national defense program. China very likely uses its intelligence services and employees or other illicit approaches that violate U.S. laws and export controls to obtain key national security and export-restricted technologies, controlled equipment, and other materials unobtainable through other means. In 2015, numerous computer systems around the world, including those owned by the U.S. Government, continued to be targeted for intrusions, some of which appear to be attributable directly to China's Government and military. These and past intrusions were focused on accessing networks and exfiltrating information. China uses state-sponsored industrial and technical espionage to increase the level of technologies and expertise available to support military research, development, and acquisition.

## **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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and

commonsense decision. According to AG ¶ 2(a), 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 national security eligibility 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 applies for access to classified information 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 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 Executive Order (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 relating to the guideline for Foreign Influence is set out in AG ¶ 6:

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 guideline notes several conditions that could raise security concerns under AG ¶ 7. Three are potentially applicable in this case:

- (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;
- (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
- (e) shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

Applicant's family members are citizens and residents of Taiwan, part of China. 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 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, 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; 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.

Having considered the fact that Taiwan and China present a heightened risk to the national security of the U.S., the nature of the relationships with Applicant's family in China may pose a security risk. There is insufficient evidence in the record to show one way or the other if he has a strong connection with his family in China, or the country of China for that matter. The record does not address the frequency of his contact with his family in Taiwan. Other than his father-in-law, the record does not show whether any of his family in Taiwan is associated with the Taiwanese or Chinese government. Applicant may have only limited and casual contact with his extended family in Taiwan/China, but the record is not clear. There may be something that could potentially create a conflict of interest. Applicant resides with his spouse, who is also from Taiwan. Applicant came to the U.S. in 1997, and states that he has loyalty to the U.S. He has established his life here, but it is not clear that all of his assets are here. Information developed during the investigation revealed that a large currency transaction occurred on May 23, 2002, which was placed in an American bank from Taiwan that resulted in \$30,000 in cash. Applicant states that these monies were received from his mother and father-in-law in Taiwan. Applicant stated that he used this money to help buy his house in the United States. Based upon this history, there are many questions left unanswered. Full mitigation under AG ¶ 8(a), 8(b), and 8(c), has not been established.

### **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 provide information or make decisions that are harmful to the interests of the United States. Foreign involvement raises concerns about an individual's judgment, reliability, and trustworthiness when it is in conflict with U.S. national interests or when the individual acts to conceal it. By itself: the fact that a U.S. citizen is also a citizen of another country is not disqualifying without an objective showing of such conflict or attempt at concealment. The same is true for a U.S. citizen's exercise of any right or privilege of foreign citizenship and any action to acquire or obtain recognition of a foreign citizenship.

The guideline notes several conditions that could raise security concerns under AG ¶ 10. None are applicable in this case. Under the new directive, possession of a foreign passport is not sufficient to meet the Guideline C criteria.

AG ¶ 11 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 including:

(c) the individual has expressed a willingness to renounce the foreign citizenship that is in conflict with the U.S. national security interests.

Applicant has renounced his Taiwanese citizenship and has cancelled his Taiwanese passport. Accordingly, Guideline C – the Foreign Preference security concern is found in Applicant's favor.

### **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 facts and circumstances surrounding this case. I have incorporated my comments under Guidelines B and C in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

There is no compelling evidence showing that Applicant's ties to his immediate family and parents in-law, permanent citizens and residents of Taiwan, do not pose a heightened risk of foreign influence. It is noted that Taiwan, as part of China, continues to act as one of the most active, aggressive and capable collectors of intelligence targeting the U.S. There is insufficient information in this record to prove that Applicant's connections in Taiwan do not pose a risk. He has strong family ties, evidenced by the large number of family members who remain citizens and residents of Taiwan, with whom he continues to travel to visit and maintain a relationship. There is no evidence in the record that he has any family besides his spouse who resides in the U.S. Without sufficient evidence to prove otherwise, Applicant may be subject to foreign influence that could cause him to make decisions that are against the national interests.

Overall, the record evidence leaves me with many questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the Foreign Influence security concern. The Foreign Preference security concern has been mitigated.

## **Formal Findings**

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

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant

Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraph 2.a:	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 national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson  
Administrative Judge