



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



In the matter of:

[NAME REDACTED]

Applicant for Security Clearance

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ISCR Case No. 16-04041

**Appearances**

For Government: Aubrey M. De Angelis, Esq., Department Counsel  
For Applicant: *Pro se*

03/29/2018

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**Decision**

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MALONE, Matthew E., Administrative Judge:

Applicant mitigated the security concerns raised by associations with citizens of Taiwan who reside there. Available information also mitigated the security concerns about Applicant's ongoing possession of Taiwanese citizenship. Applicant's request for a security clearance is granted.

**Statement of the Case**

Applicant first received a security clearance in July 2009. On September 10, 2015, she submitted an Electronic Questionnaire for Investigations Processing (EQIP) to renew her eligibility for a security clearance required for her job with a defense contractor. After reviewing the results of the ensuing background investigation, adjudicators for the Department of Defense (DOD) could not determine that it is clearly consistent with the interests of national security to continue Applicant's access to classified information.<sup>1</sup>

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<sup>1</sup> Required by Executive Order 10865, as amended. See *a/so* Directive, Section E3.1.1.

On February 5, 2017, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed at Guideline B (Foreign Influence) and Guideline C (Foreign Preference).<sup>2</sup> Applicant timely responded to the SOR and requested a decision without a hearing. On September 5, 2017, Department Counsel issued a File of Relevant Material (FORM)<sup>3</sup> in support of the SOR. Applicant received the FORM on September 13, 2017 and had 30 days to file a response to the FORM. Applicant timely responded to the FORM and the record closed on October 12, 2017. I received this case for decision on January 10, 2018.

### **Findings of Fact**

Under Guideline B, the SOR alleged that Applicant's grandmother (SOR 1.a) and a friend (SOR 1.b) are citizens of Taiwan and reside in Taiwan. Under Guideline C, it was alleged that Applicant maintains Taiwanese citizenship because she plans to retire in Taiwan. (SOR 2.a) Applicant admitted these allegations, and provided additional information as part of her response. In addition to her admissions, I make the following findings of fact.

Applicant is 36 years old. She was born and raised in Taiwan until immigrating to the United States with her mother in 1998, at age 16. Applicant completed high school in the United States and attended a well-known U.S. college, earning a bachelor's degree in electrical engineering in June 2006, a month after becoming a naturalized U.S. citizen. Applicant has a valid U.S. passport, first issued in May 2006, and renewed for ten years in October 2015. She travels extensively to Taiwan and other countries as part of her work. Applicant has never married and lives in the United States with her mother, who also is a naturalized U.S. citizen, and who retired in about 2007. (FORM, Items 4 and 6)

Applicant has worked for her current employer since 2006 and received a security clearance in July 2009. In her previous clearance application, and during the ensuing background investigation, she disclosed the same contacts that are at issue here. Applicant's grandmother is 90 years old and has no ties to any foreign government. Applicant's friend is a longtime association from school, currently employed in Taiwan as a teacher. As Applicant discussed in a personal subject interview (PSI) in 2008, she has frequent contact with her grandmother and her friend. Neither has expressed any interest in Applicant's work. (FORM, Items 3 – 5)

Applicant still has Taiwanese citizenship. The last time she exercised that citizenship was when she possessed a Taiwanese passport, which she has relinquished to her facility security officer (FSO). Applicant never used her Taiwanese passport instead of her U.S. passport, even when traveling to Taiwan. (FORM, Items 3, 5 and 6)

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<sup>2</sup> See Directive, Enclosure 2. At the time they issued the SOR, DOD adjudicators applied the adjudicative guidelines implemented by the Department of Defense on September 1, 2006. On December 10, 2016, the Director of National Intelligence issued a new version of the adjudicative guidelines, to be effective for all adjudications on or after June 8, 2017. In this decision, I have considered and applied the new adjudicative guidelines. My decision in this case would have been the same under either version.

<sup>3</sup> See Directive, Enclosure 3, Section E3.1.7. The FORM included seven documents (Items 1 - 7) proffered in support of the Government's case. Item 7 is an administrative notice request supported by four documents (Enclosures I - IV)

During Applicant's 2008 PSI, she stated she did not want to relinquish her Taiwanese citizenship because her mother might wish to return to Taiwan after retiring and Applicant might want to go with her. During Applicant's 2016 PSI, Applicant stated she wants to maintain the option of retiring to Taiwan and wants to retain her Taiwanese citizenship for that purpose. The record does not show that Applicant has any financial assets or property outside the United States, or that she has taken any tangible actions in preparation for retirement to Taiwan or anywhere else. (FORM, Items 3, 5, and 6)

Based on the information presented about Taiwan, I take administrative notice of the following facts:

Taiwan is an island nation governed through a multi-part democracy. Since its separation from the mainland Chinese government of the Peoples Republic of China (PRC) nearly 70 years ago,<sup>4</sup> Taiwan has become an industrialized economic entity and a leading producer of high-technology goods. In 1979, the U.S. formally recognized the PRC as the sole legal government of China. However, the United States has maintained cultural, commercial, and military relations with Taiwan. Maintaining strong relations with Taiwan is a major U.S. goal. The United States does not officially support Taiwanese independence, but it does support Taiwan's membership in international organizations such as the World Trade Organization (WTO), the Asia-Pacific Economic Cooperation (APEC) forum, and the Asian Development Bank. The United States also is committed to helping Taiwan maintain its defensive capabilities, and has sold the Taiwanese defensive military equipment and weapons, including destroyers, anti-submarine aircraft, and diesel submarines.

Notwithstanding the close ties between our two countries, Taiwan continues to target the United States, among others, as part of its long-standing use of aggressive economic and information espionage activities. As such, even though Taiwan is an open society, its aggressive activities in this regard create a heightened risk that Applicant might be coerced or manipulated through ties to her grandmother and friend.

### **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,<sup>5</sup> and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(d) of the new guidelines. Commonly referred to as the "whole-person" concept, those factors are:

- (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

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<sup>4</sup> The PRC does not recognize Taiwan, and insists there is only "one China." In 1949, Taiwan was populated by refugees fleeing a civil war in China. That same year, Communists in mainland China established the People's Republic of China (PRC), and a separate, independent government was established in Taiwan.

<sup>5</sup> See Directive, 6.3.

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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest<sup>6</sup> for an applicant to either receive or continue to have access to classified information. Department Counsel must produce sufficient reliable information on which DOHA based its preliminary decision to deny or revoke a security clearance for an applicant. Additionally, Department Counsel must prove controverted facts alleged in the SOR.<sup>7</sup> If the Department Counsel meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.<sup>8</sup>

Because no one is entitled to a security clearance, an applicant bears a heavy burden of persuasion to establish that it is clearly consistent with the national interest for the applicant to have access to protected information.<sup>9</sup> A person who has access to such information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, there is a compelling need to ensure each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the nation's interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of the Government.<sup>10</sup>

## **Analysis**

### **Foreign Influence**

Applicant's ties of affection to her grandmother and childhood friend reasonably raised a security concern because of Taiwan's aggressive pursuit of economic and technology information from the United States. That concern is broadly articulated at 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

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<sup>6</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>7</sup> Directive, E3.1.14.

<sup>8</sup> Directive, E3.1.15.

<sup>9</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>10</sup> See *Egan*; Adjudicative Guidelines, ¶ 2(b).

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.

More specifically, the record requires application of the following disqualifying condition at 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.

By contrast, the record also requires application of the following AG ¶ 8 mitigating conditions:

(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; and

(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.

Applicant's contacts in Taiwan have no ties to the government or any other official organization there. Her affection for them is greatly outweighed by the fact she has lived in the U.S. more than half her life. Further, these same facts were examined during her previous background investigation and were not deemed disqualifying. Applicant has held a security clearance as a U.S. citizen for almost ten years without any apparent problems. On balance, available information supports a conclusion that the security concerns under this guideline are mitigated.

## **Foreign Preference**

The security concern under this guideline is stated at 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 Government bases its intent to revoke Applicant's security clearance on her stated reluctance to relinquish her foreign citizenship because she might want to retire to Taiwan. There is no indication she might retire soon (she is still in her 30s) or that she has begun making financial preparations in Taiwan so she could execute such a plan. At best, these circumstances comprise a future interest in Taiwan that may or may not come to fruition. Additionally, there is no current bar to retaining foreign citizenship absent some motive to do so that might pose a security risk. That is not present here. I conclude the record evidence as a whole does not establish a prima facie case for disqualification under Guideline C in its current form, because simply maintaining dual citizenship is not a disqualifying circumstance.

In addition to my evaluation of the facts and application of the appropriate adjudicative factors under Guidelines B and C, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(d). A fair and commonsense assessment of all available information bearing on Applicant's continued suitability for access to classified information supports a conclusion in favor of the Applicant.

### **Formal Findings**

Formal findings 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: FOR APPLICANT

Subparagraphs 1.a - 1.b: For Applicant

Paragraph 2, Guideline C: FOR APPLICANT

Subparagraphs 2.a: For Applicant

## **Conclusion**

In light of all available information, it is clearly consistent with the interests of security for Applicant to have access to classified information. Applicant's request for a security clearance is granted.

MATTHEW E. MALONE  
Administrative Judge