



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



In the matter of: )  
)  
) ISCR Case No. 16-04056  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Daniel Crowley, Esquire, Department Counsel  
For Applicant: *Pro se*

05/25/2018

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**Decision**

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LYNCH, Noreen A., Administrative Judge:

Based on the record in this case,<sup>1</sup> I grant Applicant's clearance.

On 10 February 2017, the Department of Defense (DoD) issued an SOR to Applicant detailing security concerns under Guideline B, Foreign Influence.<sup>2</sup> Applicant timely answered the SOR, requesting a hearing before the Defense Office of Hearings and Appeals (DOHA). DOHA assigned the case to me 9 November 2017, and I

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<sup>1</sup>Consisting of the transcript (Tr.), Government exhibits (GE) 1-2, hearing exhibits (HE) I-II, and Applicant exhibits A-E.

<sup>2</sup>DoD acted under Executive Order 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 (AG) effective within the DoD on 1 September 2006. However, on 10 December 2016, the Director of National Intelligence (DNI) signed Security Executive Agent Directive 4, implementing new AG, effective with any decision issued on or after 8 June 2017. My decision is the same under both guidelines.

convened a hearing 23 February 2018. DOHA received the transcript 5 March 2018, and the record closed.

### **Findings of Fact**

Applicant admitted the allegations of the SOR. His parents and his sister are citizens and residents of Taiwan. His wife's mother and her siblings are citizens and residents of Taiwan. Applicant is a 50-year-old systems engineer employed by a defense contractor since 2009. He has not previously held a clearance.

Applicant was born in the Republic of China (Taiwan) in February 1968. He grew up there and was educated in Taiwan until he obtained his undergraduate degree. In 1995, Applicant came to the United States on a work-study program. (Tr. 14) He attended graduate school and obtained two graduate degrees, one in 1997 and the other in 1999. (GE 1) He married in 2001 in the United States. His wife was born in Taiwan, but is a naturalized U.S. citizen. His two sons are native-born U.S. citizens. (AE A) Applicant and his wife became naturalized U.S. citizens in June 2012. He surrendered his Taiwanese passport to his security officer. (GE 1)

Applicant's 76-year old mother and 81-year-old father are citizens and residents of Taiwan. They are both retired. His sister is a tutor and her husband is a tutor as well. (Tr. 21) Applicant's mother-in-law is a retired teacher. His sister-in-law works for a non profit organization. Applicant has many relatives who live in Canada. (GE 1) None of his relatives know about his work or the fact that he is in the process of obtaining a security clearance. He maintains regular contact with them by phone.

Applicant traveled to Taiwan once a year in the past and more recently once every other year to visit family. (Tr. 23) He has no financial interests in Taiwan. He and his wife own a home in the United States, which is valued at about \$530,000. Applicant's oldest son is heavily involved in youth sports, such as hockey and baseball. His youngest son is involved in the arts.

Applicant submitted letters of recommendation. They attest to his traits as an excellent family man and a man of service to his community. He is well liked and respected in the neighborhood, and no one has ever seen any suspicious behavior. (AE B and C) The youth director of his church wrote that Applicant is professional, skilled, and extremely competent. He supports the community and volunteers in many areas of the church. He is widely respected by students and senior members of the church. (AE D)

Applicant's 2017 performance evaluation reveals an employee who has done an excellent job in various areas, and has provided invaluable input and ideas. He fulfills his role well. He learns quickly and is always professional, helpful, punctual, and available on stand-by when needed. (AE E)

Applicant acknowledged that his family is in Taiwan and he realizes the security concern. However, he was adamant when he stated that his two sons and his wife are here in the United States. He believes they are a bigger influence than the relatives in Taiwan. (Tr. 17) He further noted that he took an oath when he became a U.S. citizen, that he would obey all laws of the United States. When questioned, he stated that he would not be pressured into divulging any information and that he would talk to his facility officer. He also stated that his authority is the U.S. Government. And since he is a baptized Christian, the Lord is his authority above that.

Taiwan is a multiparty democracy, whose authorities generally respect the human rights of its citizens. While Taiwan is an active collector of industrial information and engages in industrial espionage, the record does not demonstrate that the government of Taiwan targets U.S. intelligence information. Further, the record does not demonstrate that it seeks to exert pressure on U.S. citizens to collect information from family members residing in country or abroad. The U.S. does not have formal diplomatic relations with Taiwan, but maintains a substantial informal relationship. The Government acknowledges that the People's Republic of China (PRC) has not yet successfully integrated what it considers to be a renegade province (GX 2I)<sup>3</sup>

## **Policies**

The adjudicative guidelines (AG) list factors for evaluating a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also reflect a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). Any one disqualifying or mitigating condition is not, by itself, conclusive. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline B (Foreign Influence).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own.

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<sup>3</sup>The Government presented through this exhibit facts for Administrative Notice and they were incorporated.

The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the government.<sup>4</sup>

### Analysis

Under Guideline B (Foreign Influence), an applicant’s foreign contacts and interests may raise security concerns if the individual 1) has divided loyalties or foreign financial interests, 2) may be manipulated or induced to help a foreign person, group, organization, or government in a way contrary to U.S. interests, or 3) is vulnerable to pressure or coercion by any foreign interest. Foreign influence adjudications can and should consider the identity of the foreign country in which the foreign contact or financial interest is located—including, but not limited to, whether the country is known to target U.S. citizens to obtain protected information and/or is associated with a risk of terrorism.<sup>5</sup> Evaluation of an individual’s qualifications for access to protected information requires careful assessment of both the foreign entity’s willingness and ability to target protected information, and to target ex-patriots who are U.S. citizens to obtain that information, and the individual’s susceptibility to influence, whether negative or positive. More specifically, an individual’s contacts with foreign family members (or other foreign entities or persons) raise security concerns only if those contacts create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.<sup>6</sup> In addition, security concerns may be raised by a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation.<sup>7</sup>

In this case, the government did not establish that Applicant’s contacts with his family in Taiwan created a heightened risk of exploitation, inducement, manipulation, pressure, or coercion. Taiwan and the U.S. enjoy excellent foreign relations. Although Taiwan is an active collector of commercial information, it has not been demonstrated to target protected U.S. information, nor has it been demonstrated to target U.S. citizens to obtain protected information. Given that Taiwan generally respects the human rights of its citizens, the risk that it might seek protected information—or succeed in obtaining such information—from Applicant is low, if not non-existent.

Examining Applicant’s circumstances, the government produced no evidence that there was a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion because of Applicant’s contacts with family in Taiwan. Applicant has resided in the U.S. since 1995, including all of his professional life. He has no

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<sup>4</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>5</sup>AG, ¶ 6.

<sup>6</sup>A G, ¶ 7(a).

<sup>7</sup>AG, ¶ 7(e).

financial interests in Taiwan. His contacts with his parents are routine. There is nothing in the circumstances of their being in Taiwan, or in Applicant's contacts with them, to heighten the risk that he could be impelled or compelled to provide protected information to Taiwan. The Government's argument about theoretical or possible military conflicts between China and Taiwan do not support a heightened risk in this case.

Even if I were to assume that the Government had established security concerns based on his contacts with his parents, I conclude that he has mitigated the security concerns.<sup>8</sup> His contacts in Taiwan are routine, Taiwan generally respects the rights of its citizens, and his parents are not, and have not been, involved in activities that would make it likely that Applicant would have to choose between their interests or those of the U.S.<sup>9</sup> I resolve Guideline B for Applicant.

### **Formal Findings**

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraphs a-f: For Applicant

### **Conclusion**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance granted.

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NOREEN A. LYNCH  
Administrative Judge

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<sup>8</sup>Indeed, the Government's administrative notice documents (HE I) focused as much on perceived risks posed by the fact that Taiwan is infiltrated with agents from the People's Republic of China (PRC) as on Applicant's contacts in Taiwan vis-a-vis the Taiwanese government. Presumably, Applicant would not be able to distinguish these agents from any other ethnic Chinese on Taiwan. Assuming this is so, the government has still failed to establish how Applicant might be influenced to provide protected information to the Taiwanese government—or to the PRC acting under cover.

<sup>9</sup> Adjudicative Guidelines, ¶8(a).