



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



In the matter of:	)	
	)	
	)	ISCR Case No. 16-04086
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Erin Thompson, Esq., Department Counsel  
For Applicant: Jacob T. Ranish, Esq.

06/08/2018

**Decision**

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RIVERA, Juan J., Administrative Judge:

Applicant immigrated to the United States from Taiwan in 2008. He and his son became naturalized U.S. citizens in 2015; his wife in 2017. He has strong financial and property interests in the United States, and none in Taiwan. He renounced his Taiwanese citizenship and has strong relationships in the United States. Considering U.S. – Taiwanese relations, foreign influence security concerns are mitigated. Access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on September 19, 2015. He provided a statement to a government investigator in July 25, 2016. After reviewing the information gathered during the background investigation, the Department of Defense (DOD) was unable to grant Applicant a clearance. On January 30, 2017, the DOD Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline B (foreign influence).

Applicant answered the SOR on March 21, 2017, and requested a hearing before an administrative judge. The case was assigned to me on December 4, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on March 16, 2018, scheduling a hearing for April 4, 2018. Applicant requested a postponement,

and asked DOHA to assign him a translator for the hearing. After the translator assignment, DOHA issued a Notice of Hearing on April 6, 2018, scheduling a hearing for April 9, 2018.

At the hearing, the Government offered three exhibits (GE 1 through 3). Applicant testified, and submitted seven exhibits (AE) A through G. All exhibits were admitted into the record as evidence without objections, except for GE 3 and AE A (both admitted for the limited purpose of taking administrative notice). DOHA received the hearing transcript (Tr.) on April 17, 2018.

### **Procedural Rulings**

In March 2018, Applicant requested a translator to help him communicate during the hearing. Applicant was satisfied with the translator provided by DOHA. (Tr. 9)

Department Counsel and Applicant requested I take administrative notice of facts concerning Taiwan. (GE 3 and AE A) There were no objections, and I took administrative notice as requested. The noted facts are outlined in the decision, *infra*.

### **Findings of Fact**

In his response, Applicant admitted all of the SOR allegations with comments. Applicant's SOR admissions, and those at his hearing, are hereby incorporated into my findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact:

Applicant is a 47-year-old systems designer working for a federal contractor. He was born, raised, and educated in Taiwan to Taiwanese parents. He received his bachelor's degree in the early 1990s; obtained a master's degree in the late 1990s; and completed a doctorate degree in the mid-2000s. All of his degrees are from Taiwanese universities. Applicant testified that he paid for his own education, without the assistance of the Taiwanese government. In 1999, Applicant married a Taiwanese citizen-resident. They have a son, age 16, born in Taiwan.

In 2008, Applicant, his spouse and son entered the United States under a student visa issued to Applicant to pursue post-doctorate studies. Applicant and his son became naturalized U.S. citizens in 2015, at age 45. His wife became a naturalized U.S. citizen in April 2017. (AE E)

Applicant entered the United States in 2008 using a Taiwanese passport issued to him in 2001, which expired in 2011. Applicant surrendered his expired Taiwanese passport to his facility security officer. In his 2015 SCA, Applicant stated that he was willing to renounce his Taiwanese citizenship.

Applicant performed compulsory military service in the Taiwanese navy between 1992 and 1994. He was discharged as an electronics petty officer (E-5). Applicant worked during a period of over ten years in Taiwan before he immigrated to the United

States. While in Taiwan, Applicant borrowed money from his parents and purchased a condominium for \$134,000, in 2007. (AE B) When he immigrated, his parents took care of the property for him. He stated in his 2017 SOR answer that his parents were contemplating selling the condominium. He has not visited Taiwan since he immigrated to the United States in 2008. Applicant stated that he has no need for the condominium because he owns a home and rental property in the United States that have a higher value than the Taiwanese property.

Applicant sold and transferred the title of the Taiwanese property to his sister in August 2017. (AE B) His sister purchased the property for \$134,000, the same price he paid for it in 2007. Applicant testified that he does not have any financial or property interests in Taiwan. Applicant owns three real estate properties in the United States. His home of residence has a value of about \$340,000 and it is paid off. He has two investment properties in an adjoining state with estimated values of \$110,000 and \$130,000. Applicant has over \$40,000 in a 401k retirement account, and around \$15,000 in savings and personal assets in the United States. (AE F)

Applicant's 79-year-old mother and his 83-year-old father are citizens and residents of Taiwan. His father was born in Taiwan when Taiwan was considered a Japanese territory. Applicant's father suffers from Alzheimer's disease. Both parents are under the care of his sister, 52, a nurse. Under normal circumstances, Applicant communicates with his parents and sister on a monthly basis via electronic and telephonic means. He does not provide financial support to his parents, sister, or anyone else in Taiwan. His family in Taiwan consider themselves Taiwanese, and they do not want to be part of China.

Applicant's mother-in-law is 66 years old. She is a widower and lives alone. She inherited her husband's estate and needs no financial support. Applicant's wife calls her mother "once in a while." Applicant testified he only says hello to his mother-in-law, but that they do not have much personal contact. Applicant stated that none of his relatives living in Taiwan worked for the Taiwanese government or its military, except for complying with the mandatory service. Applicant last voted in Taiwanese elections in 2008.

Applicant renounced his Taiwanese citizenship in January 2018. (AE C) He has no intent to return to live in Taiwan. His family, his job, and his life are in the United States.

Applicant's reference has known Applicant for over eight years because both attend the same church. Applicant was described as loyal, reliable, and a friendly person. He and his family have dedicated and devoted their heart and time to help people and serve the church. His reference believes Applicant and his family are good U.S. citizens and he supports approval of his clearance. (AE G)

I take administrative notice of the following facts concerning the Republic of China (Taiwan). The 1979 United States – People's Republic of China Joint

Communique switched diplomatic recognition from Taipei to Beijing. In the Joint Communique, the United States recognized the government of the People's Republic of China as the sole legal government of China, acknowledging the Chinese position that there is but one China and Taiwan is part of China. The Joint Communique also stated that the people of the United States will maintain cultural, commercial, and other unofficial relations with the people of Taiwan. The United States and Taiwan enjoy a robust unofficial relationship; however, the United States does not support Taiwan's independence.

The Director of National Intelligence has determined that, in 2017, the leading state intelligence threats to U.S. interests will continue to be Russia and China, based on their services' capabilities, intent, and broad operational scope.

According to the National Counterintelligence Executive, "Chinese actors are the world's most active and persistent perpetrators of economic espionage," and are considered "aggressive and capable collectors of sensitive U.S. economic information and technology." Importantly, "China's intelligence services, as well as private companies and other entities, frequently seek to exploit Chinese citizens or persons with family ties to China who can use their insider access to corporate networks to steal trade secrets using removable media devices or e-mail."

Computer system intrusions, "some of which appear to be attributable directly to China's government and military," are ongoing. "China is using its cyber capabilities to support intelligence collection against the U.S. diplomatic, economic, and defense industrial base sectors that support U.S. national defense programs. The information targeted could potentially be used to benefit China's defense industry, high-technology industries, and provide the [Chinese Communist Party] insights into U.S. leadership perspectives on key China issues."

There have been multiple cases involving the illegal export, or attempted illegal export, of U.S. restricted, dual-use technology to Taiwan. The dual-use technologies that have been targeted include: classified materials; Bryant center hole grinder, LED road lights, and an oil pump (in support of North Korea's weapons of mass destruction and advanced weapons programs); drones, surveillance airplanes, and stealth technology relating to fighter planes exported to China; circuit boards; weapons-grade carbon fiber; U.S. missile components (circular hermetic connectors and glass to metal seals) exported to Iran by way of Taiwan.

### **Policies**

The SOR was issued 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* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented by the DOD on September 1, 2006.

While the case was pending a decision, the Director of National Intelligence published Security Executive Agent Directive (SEAD) 4, implementing revised *National Security Adjudicative Guidelines* (AG), which are applicable to all adjudicative decisions issued on or after June 8, 2017. I decided this case under the AGs implemented by SEAD 4.

Eligibility for access to classified information may be granted “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

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 the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. 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. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

## Analysis

### Foreign Influence

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

[I]f the individual has divided loyalties or foreign financial interests, [he or she] may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline 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, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 indicates two conditions that could raise a security concern and may be disqualifying in this case:

- (a) contact 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
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information.

Applicant was born, raised, and educated in Taiwan. His parents and sister are citizens and residents of Taiwan. He is close to his parents and sister and has frequent contact with them; however, he does not have frequent contact with other extended family members living in Taiwan.<sup>1</sup> He does not provide financial support for any relatives living in Taiwan. He does not have any financial accounts in Taiwan, and he sold a condominium in Taiwan to his sister to avoid any possible security issues. He has not travelled to Taiwan since he immigrated to the United States in 2008.

There is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members. See *generally* ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at \*8 (App. Bd. Feb. 20, 2002). Applicant has ties of affection for his parents, sister, and by marriage to his in-laws, as indicated by his frequent contact with them.

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<sup>1</sup> See ISCR Case No. 09-03114 at 2-3 (App. Bd. Oct. 22, 2010) (contact once a month is considered to be “frequent” under AG ¶¶ 7 and 8).

Applicant's relationships with residents of Taiwan create a concern about Applicant's "obligation to protect sensitive information or technology" and his desire to help his relatives who live in Taiwan. For example, if foreign intelligence agents or government officials wanted to expose Applicant to coercion, they could exert pressure on his relatives residing in Taiwan. Applicant would then be subject to coercion through his relatives and classified information could potentially be compromised.

An applicant's possession of close family ties with their family living in a foreign country are not, as a matter of law, disqualifying under Guideline B. However, if an applicant has a close relationship with even one relative, living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See *generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

The nature of a nation's government, its relationship with the United States, its history of intelligence gathering, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government or the country is known to conduct intelligence collection operations against the United States. The relationship of Taiwan with the United States, and China's "history of conducting espionage against the United States, puts a heavy burden of proof on Applicant" to demonstrate that his relationships with family members living in Taiwan do not pose a security risk. See ISCR Case No. 12-04780 at 3 (App. Bd. Nov. 13, 2013). Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist relatives living in Taiwan.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified 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." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at \*\*15-16 (App. Bd. Mar. 29, 2002).

There is no evidence that intelligence operatives from any foreign country seek or have sought classified or economic information from or through Applicant or his relatives living in Taiwan. Nevertheless, it is not possible to rule out such a possibility in the future. Applicant's relationships with family members living in Taiwan create a potential conflict of interest because these relationships are sufficiently close to raise a security concern about his desire to assist relatives in Taiwan by providing sensitive or classified information. Department Counsel produced substantial evidence of Applicant's contacts or relationships with family living in Taiwan, raising the issue of

potential foreign pressure or attempted exploitation. AG ¶¶ 7(a) and 7(b) are established and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists three conditions that could mitigate foreign influence security concerns 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 U.S.;

(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; 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.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

AG ¶¶ 8(a) and 8(c) are applicable. Applicant has frequent contact with his parents and sister, who are citizens and residents of Taiwan. He has telephonic or computer communication with his mother, sister, and mother-in-law once a month. However, he has not visited Taiwan since 2008, when he immigrated. Applicant has limited and infrequent contacts with extended family members living in Taiwan. He has no financial or property interests in Taiwan, having sold his condominium to his sister in 2017.



Applicant surrendered his Taiwanese passport to his facility security officer. Moreover, he renounced his Taiwanese citizenship in early 2018. Considering the record as a whole, Applicant met his burden of showing there is “little likelihood that [his relationships with family living in Taiwan] could create a risk for foreign influence or exploitation.”

AG ¶ 8(b) partially applies. A key factor in the AG ¶ 8(b) analysis is Applicant’s “deep and longstanding relationships and loyalties in the U.S.” Applicant’s relationship with the United States must be weighed against the potential conflict of interest created by his relationships with family living in Taiwan.

There is no evidence that the Taiwanese government or those conducting espionage have approached or threatened Applicant or his family to coerce Applicant for classified or sensitive information. However, there would be little reason for U.S. competitors or enemies to seek classified or sensitive information from an applicant before that applicant has access to such information or before they learn of such access.

I considered the positive economic and long-standing security partnership between the United States and Taiwan based on shared values. The United States has a vested interest in maintaining its strong, unofficial relations with Taiwan and assisting Taiwan in maintaining its defensive capability.

Applicant has strong connections to the United States and more limited connections to Taiwan. He owns a home and two investment properties in the United States. He has a job, savings accounts, and a retirement account in the United States. He has strong connections to his fellow church members and to his coworkers. Notwithstanding his connections to his family members living in Taiwan and their potential vulnerability to potential coercion, Applicant’s connections to the United States outweigh his connections to Taiwan in the security analysis. Foreign influence security concerns under Guideline B are mitigated.

### **Whole-Person Concept**

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. (AG ¶¶ 2(a) and 2(c)) I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG were addressed under that guideline, but some warrant additional comment.

Applicant entered the United States in 2008, and was naturalized as a U.S. citizen in 2015 along with his son. His wife was naturalized in 2017. He has no investments in Taiwan. He surrendered his expired Taiwanese passport, and he renounced his Taiwanese citizenship in 2018. He has worked for a government contractor for several years.

A Guideline B decision concerning a foreign country must take into consideration the geopolitical situation and dangers in that country including from intelligence agents.<sup>2</sup> The danger of coercion from the Taiwanese government or intelligence agents is less likely because of the U.S. – Taiwanese long-standing positive relations. The United States and Taiwan have a strong trade relationship and a security partnership based on shared values. The United States is committed to assisting Taiwan in maintaining its defensive capability.

The weight of the evidence supports granting Applicant's clearance. I conclude Applicant has mitigated the foreign influence security concern.

### **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:	FOR APPLICANT
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Subparagraphs 1.a – 1.e:	For Applicant
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### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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JUAN J. RIVERA  
Administrative Judge

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<sup>2</sup> See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole person discussion).