DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
[REDACTED]	)	ISCR Case No. 17-00592
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

02/27/2018

Decision

HESS, Stephanie C., Administrative Judge:

Applicant's spouse is a citizen of the Republic of China (Taiwan), her parents and sister are citizens and residents of Taiwan, and her father is a retired Taiwanese government employee. Foreign influence security concerns are not mitigated. Access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) on October 1, 2015. On March 28, 2017, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guideline B. The DOD acted under Executive Order (Ex. Or.) 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) implemented by DOD on September 1, 2006.

Applicant answered the SOR on April 22, 2017, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on May 20, 2017. A complete copy of the file of relevant material (FORM), which included Government Exhibits (GX) 1 through 3, was sent to Applicant on May 18, 2017. He was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on May 22, 2016, and his Response was received by the Defense Office of Hearings and Appeals (DOHA) within the allotted 30 days. The case was assigned to me on October 1, 2017.

The SOR was issued under the AG implemented on September 1, 2006. The DOD implemented the amended AG on June 8, 2017, while this decision was pending. This decision will be based on the amended AG effective June 8, 2017.

Department Counsel requested that I take administrative notice of facts concerning Taiwan. The relevant facts are discussed below.

Findings of Fact

The SOR alleges that Applicant's spouse is a citizen of Taiwan; that his parents-in-law and sister-in-law are citizens and residents of Taiwan; and that his father-in-law is employed by the Taiwanese consulate. Applicant admits each of the allegations, however, he states that his father-in-law is now retired. Applicant's admissions are incorporated in my findings of fact.

Applicant is a 43-year-old information firmware engineer, currently employed by federal contractor since June 2005. He received his bachelor's degree in May 2005. He is married, and he and his wife have a daughter born in 2016. He has held a security clearance since December 2005. (GX 1; Response.)

Applicant and his wife initially met through an online dating website in January 2011. They communicated every three days by email, met in person in February 2011 in Applicant's state of residence, and began cohabitating in June 2011. Applicant first reported his contact with a foreign national, in compliance with the security requirements of his employer, in February 2011. In January 2015, Applicant and his then-girlfriend traveled to Taiwan to meet her family. Applicant and his wife married in March 2016. Applicant loves and supports his wife. (GX 2.) Applicant properly reported his marriage to his employer.

Applicant's father-in-law worked for the Taiwanese consulate in customs until he retired in June 2015. Neither Applicant's mother-in-law nor sister-in-law have been employed by the Taiwanese government. Applicant believes that his wife came to the United States at some point in 2007, on an O-1A visa, specializing in music. She attended a school of music, and worked full time at a performance venue. While awaiting permanent residence status, she returned to Taiwan in 2012. While living in Taiwan, she worked as a translator, including working for the local city government. Applicant is uncertain whether his wife has any contacts with other Taiwanese government officials

besides her former employer. She maintained a bank account in Taiwan while living there, and Applicant is uncertain if she currently maintains that account. She returned to the United States in 2014 as a permanent resident. In August 2016, Applicant's wife was employed as a church musical director, and Applicant financially supported her. There is no record evidence pertaining to applicant's wife's current employment or income status.

Applicant's wife is aware that Applicant's employment has stringent security requirements, but does not believe his wife is aware of the level of his security clearance. She has not exhibited particular interest in learning about Applicant's job. (GX 2.) While visiting his in-laws in 2015, Applicant told them where he worked and what his position was. During his visit, Applicant did not experience any reportable contact with any government entity. On his e-QIP, Applicant reported monthly telephonic contact with his in-laws, with whom he has a personal relationship. He reported annual contact with his sister-in-law, also defining their relationship as personal. There is no record evidence concerning Applicant's wife's contacts with her family in Taiwan.

Applicant is a U.S. citizen by birth, and has long-standing ties to the United States. He has worked for his current employer for more than 12 years. He and his wife and young daughter live in the home he purchased in 2007. Applicant asserts that he would "unconditionally resolve any conflict of interest in favor of the US interest." He characterizes himself as someone who "adheres strictly to the rule of law," has sound judgment, and through his employment "has contributed to strengthening the defense of the U.S." (Response.)

Taiwan and the United States maintain a robust unofficial relationship, with the shared goal of maintaining Taiwan's defensive capability, primarily against the People's Republic of China (PRC). However, the United States does not support an independent Taiwan. In 1979, the United States switched recognition from Taiwan to the PRC, acknowledging the PRC's position that there is "one China," which includes Taiwan.

The United States is Taiwan's second largest trading partner, after the PRC. The PRC and Taiwan are "aggressive and capable" collectors of U.S. economic and proprietary information, for economic, military, and technological advantage. There have been multiple cases involving the illegal export, or attempted illegal export of U.S.-restricted, dual-use technology to Taiwan. The PRC seeks to acquire intelligence through exploitation of its citizens or persons with family ties to the PRC. The PRC maintains intelligence operations in Taiwan through a bureau utilizing PRC nationals with Taiwanese connections. Taiwan has a known history of being involved in criminal espionage and export control cases against the United States.

As of 2013, companies in Taiwan employed more than 12,000 workers in the United States. The United States and Taiwan now have approximately 150 sister cities, and travel for business and pleasure from Taiwan to the United States has increased dramatically since 2012. In June 2015, U.S. and Taiwanese organizations established a platform for expanding cooperation on global and regional issues such as public health, economic development, energy, women's rights and disaster relief. The United States

and Taiwan both sponsor study abroad programs, and encourage opportunities for young professionals and scholars to collaborate on research and exchange best practices on a broad range of topics.

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "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.

Eligibility for a security clearance is predicated upon the applicant's meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." *See* Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. *See Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. *See* ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* AG ¶ 2(b).

Analysis

Guideline B, Foreign Influence

The concern is set forth 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 following disqualifying conditions are potentially applicable: AG ¶ 7

> 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;
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> AG ¶ 7(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
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> AG ¶ 7(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.

AG ¶¶ 7(a) and 7(e) require evidence of a "heightened risk." The "heightened risk" required to raise this disqualifying condition is a relatively low standard. "Heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or owning property in a foreign country. The mere possession of ties with family in Taiwan is not, as a matter of law, disqualifying under Guideline B. However, if an applicant or his spouse has such a relationship, 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 totality of Applicant's family ties to a foreign country as well as each individual family tie must be considered.

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, "even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security." ISCR Case No. 00-0317, (App. Bd. Mar. 29, 2002).

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 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 places a high burden of persuasion on Applicant to demonstrate that his and his spouse's relationships with her family in Taiwan, as well as her father's position as a retired government employee, do not pose a security risk.

Applicant and his wife have a close relationship and they are recent parents. Applicant's wife is a citizen of Taiwan and a permanent resident of the United States. Applicant has monthly contact with his in-laws who are citizens and residents of Taiwan, and considers his relationships with them to be personal. He has annual contact and a personal relationship with his sister-in-law, also a citizen and resident of Taiwan. Applicant's father-in-law is a retired Taiwanese government employee. The record evidence is silent as to what, if any, benefits Applicant's father-in-law receives from the Taiwanese government, what level his position was while employed by the government, and whether he has ongoing contact and relationships with government employees or entities. Applicant's wife's contacts with her family are also unknown, but the record evidence indicates that she has ties of affection for her family members. 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's and his spouse's relationships with her family in Taiwan and Applicant's father-in-law's status as a retired Taiwanese government employee are sufficient to create "a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion." Further, these relationships create a potential conflict of interest for Applicant between his obligation to protect sensitive information and his desire to help his wife or her family members. AG ¶¶ 7(a), 7(b), and 7(e) apply.

The following mitigating conditions are potentially applicable:

> 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 individual, group, organization, or government and the interests of the United States;
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> AG ¶ 8(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;
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> 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
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> AG ¶ 8(d): the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country.

Given Applicant's close relationship with his wife and her family members in Taiwan, as well as Applicant's father-in-law's status as a retired Taiwanese government employee, and the nature of the Taiwanese government, it is possible that Applicant could be placed in a position of having to choose between the interests of his wife and his wife's family members and the interests of the United States. While Applicant asserts that he would resolve any conflict of interest in favor of the United States, this assertion, while undoubtedly sincere, is also hypothetical. To his credit, Applicant properly reported to his employer his actual meeting of his wife in February 2011, his travel to Taiwan, and his marriage to his wife in March 2016. He also listed his contacts with his parents-in-law and sister-in-law, as well as his father-in-law's employment with the Taiwanese government, on his 2015 e-QIP. However, there is no evidence that Applicant has been subjected to any attempted exploitation or coercion by, or as a result of his affection for, his wife or her Taiwanese family members. Application of Guideline B is not a comment on an applicant's patriotism but merely an acknowledgment that people may act in unpredictable ways when faced with choices that could be important to a loved one, such as a family member.

ISCR Case No. 08-10025 at 4 (App. Bd. Nov. 3, 2009). Although Applicant has significant and long-standing relationships and loyalties in the United States, the foreign influence security concerns remain.

Whole-Person Concept

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. In applying the whole-person concept, an 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. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

> (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.

I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but I have also considered the following:

Applicant has worked for a defense contractor for over 12 years, and has held a security clearance since December 2005. He has owned his home since 2007, and he and his wife have started a family. He is a dedicated employee, who properly complied with security requirements by reporting his foreign contacts and foreign travel. However, Applicant's foreign contacts, combined with the lack of information about his father-in-law's ongoing government contacts, create security concerns.

After weighing the disqualifying and mitigating conditions under Guideline B, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his and his wife's contacts with her family in Taiwan. Accordingly, I conclude he has failed to carry his burden of showing that it is clearly consistent with the national interest to grant his eligibility for access to classified information.

Formal Findings

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline B (Foreign Influence):	AGAINST APPLICANT
Subparagraphs 1.a – 1.d:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Stephanie C. Hess
Administrative Judge