



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 07-01474  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Department Counsel  
For Applicant: *Pro Se*

May 30, 2008

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**Decision**

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TESTAN, Joseph, Administrative Judge:

On October 9, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to applicant detailing the security concerns under Guidelines B and C. The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

On October 23, 2007, applicant answered the SOR in writing, and requested an Administrative Determination by an Administrative Judge (AJ). Department Counsel issued a File of Relevant Material (FORM) on November 26, 2007. Applicant submitted a response to the FORM on January 29, 2008. The case was assigned to me on March 4, 2008. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

## Findings of Fact

Applicant is a 48 year old employee of a defense contractor.

Applicant was born and raised in Taiwan. In the 1980s, after graduating from a Taiwanese university, he served a little less than two years in the Taiwanese military. This service was mandatory. At some point he moved to the United States to pursue an advanced degree. After receiving a Ph.D. degree from an American university in 1992, he returned to Taiwan. According to applicant, he returned to Taiwan because he could not find a job in the United States. After working for about four years for the Taiwanese government in a national defense related position, he returned to the United States. He went to work for his current employer in 1996. He became a United States citizen in May 2002, and was issued a United States passport in June 2002.

Applicant had a Taiwanese passport issued to him in 2001. When he traveled to Taiwan in December 2002, he used both his United States and Taiwanese passports. A January 22, 2008 letter from applicant's employer's Facility Security Officer (FSO) indicates applicant surrendered the Taiwanese passport to him and it will be destroyed.

Applicant's wife, to whom he has been married since 1991, is a native born American. Their two minor children were born in the United States.

Applicant's parents and two siblings<sup>1</sup> are citizens and residents of Taiwan. In addition to his above referenced 2002 trip to Taiwan, applicant visited Taiwan in 2000. Both trips were for the purpose of visiting his parents and siblings. Applicant described his relationships with these family members as "close," notwithstanding the large geographical distance between them. Applicant speaks with his parents about once a month. He last saw them when they visited him in the United States in 2005. He speaks with his siblings once every other month.

In his response to the SOR, applicant stated the following:

By law, the Taiwan government is not allowed to force a U.S. citizen to provide protected information. I don't have any properties or money in Taiwan. Taiwan's human rights conditions have improved greatly in the past years . . . . The Taiwan government will not and could not use financial or my relatives in Taiwan to force me to provide any protected information. If there is such a situation occurs, I will immediately report to the U.S. official or my company officer, even though I don't think this situation would ever happen.

The Government provided 12 official United States publications with the FORM that describe the political and intelligence activities of Taiwan. The Government requested that these documents be admitted into evidence. I have admitted the

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<sup>1</sup>Exhibits 4 and 5 indicate applicant has a third sibling who is a citizen of Taiwan. Since the SOR did not mention this sibling, she will not be discussed.

documents into evidence, and I take administrative notice of the following facts found therein:

Taiwan is a multi-party democracy with a population of about 23 million. It is one of the most active collectors of sensitive United States information and technology. Numerous individuals and companies have been subjected to civil penalties and or prosecuted for illegally exporting, or attempting to illegally export, sensitive United States technology to Taiwan. One United States official was recently convicted of crimes related to his improper relationship with a Taiwanese intelligence official.

### **Policies**

The President has “the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position that will give that person access to such information.” (*Department of the Navy v. Egan*, 484 U.S. 518,527 (1988).) In Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch. The President 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. Ord. 10865, Section 2.)

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. (Directive, Paragraph E3.1.14.) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. (Directive, Paragraph E3. 1.15.) 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).) “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.” (Directive, Paragraph E2.2.2.)

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information.

## Analysis

### Guideline B, Foreign Influence

The security concern relating to the Foreign Influence guideline is set forth in Paragraph 6 of the AG, and is as follows:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, 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.

Paragraph 7 describes conditions that could raise a security concern and may be disqualifying. Under Paragraph 7.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” may be disqualifying. Under Paragraph 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 sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information” may be disqualifying. Lastly, under Paragraph 7.i., “conduct, especially while traveling outside the U.S., which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country” may be disqualifying.

Applicant has monthly contact with his parents, and less frequent but regular contact with his siblings, all of whom are citizens and residents of Taiwan. In addition, since moving back to the United States in 1996, he has visited Taiwan twice. Applicant's presence in Taiwan during these trips made him and his family members potentially vulnerable to exploitation, pressure, or coercion by the Taiwanese government. These facts raise concerns under all three disqualifying conditions.

Paragraph 8 sets forth conditions that could mitigate security concerns. Under Paragraph 8.a., it is potentially mitigating if an applicant can demonstrate that “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.” Under Paragraph 8.b., it is potentially mitigating if an applicant can demonstrate “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.” Lastly, under Paragraph 8.c., it is potentially mitigating if an applicant can demonstrate that the “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.”

None of the foregoing mitigating conditions is applicable. Applicant’s contacts with his parents and siblings in Taiwan are frequent and ongoing. His relationship with them is “close,” raising the concern that these relationships create a risk for foreign influence or exploitation. Applicant failed to provide sufficient credible evidence that it is unlikely he would be placed in a position of having to choose between the interests of Taiwan, one of the most active collectors of United States information and technology, and the interests of the United States, or that he is not vulnerable to a conflict of interest.

### **Guideline C, Foreign Preference**

The security concern relating to the Foreign Preference guideline is set forth in Paragraph 9 of the AG, and is as follows:

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 be prone to provide information or make decisions that are harmful to the interests of the United States.

Paragraph 10 describes conditions that could raise a security concern and may be disqualifying. Under Paragraph 10 a.1., exercising any right or privilege of foreign citizenship after becoming a United States citizen or through the foreign citizenship of a family member, such as possession of a current foreign passport, may be disqualifying. Applicant possessed and used a Taiwanese passport after becoming a United States citizen. Accordingly, this disqualifying condition applies. Under Paragraph 10.c., “performing or attempting to perform duties, or otherwise acting, so as to serve the interests of a foreign person, group, organization, or government in conflict with the national security interest” may be disqualifying. And, under Paragraph 10.d, “any statement or action that shows allegiance to a country other than the United States” may be disqualifying. Applicant’s service in the Taiwanese military, and his return to Taiwan to work for the Taiwanese government after completing his graduate studies in the United States, requires application of these two disqualifying conditions.

Paragraph 11 describes potentially mitigating conditions. Under Paragraph 11.c., it may be mitigating if the “exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor.” Applicant’s military service and his employment with the Taiwanese government occurred before he became a United States citizen. On the other hand, he possessed and used a Taiwanese passport after he became a United States citizen. This mitigating condition applies in part. Under Paragraph 11.e., it may be mitigating if

the “[foreign] passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.” Applicant surrendered his Taiwanese passport to his employer’s FSO, who indicated it will be destroyed. Accordingly, this mitigating condition is applicable.

### **“Whole Person” Analysis**

Under the whole person concept, the AJ must evaluate an applicant’s security eligibility by considering the totality of the applicant’s conduct and all the circumstances. An AJ should consider the nine adjudicative process factors listed at AG Paragraph 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) 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 Paragraph 2.c., the ultimate determination of whether to grant a security clearance must be an overall common sense 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 the facts and circumstances surrounding this case.

Applicant was born and raised in Taiwan. After performing his mandatory service in the Taiwanese military, he moved to the United States to continue his education, eventually receiving a Ph.D. degree in 1992. He then moved back to Taiwan, presumably with his wife, to work for the Taiwanese government in a defense-related field. He moved back to the United States in 1996 and has worked for his current employer since then. Applicant’s conduct since 1996 has, for the most part, indicated a preference for the United States over Taiwan. Although there is some evidence that indicates this preference is permanent (e.g., he obtained United States citizenship, his wife and two children are United States citizens), he has made no definitive statement concerning his plans for the future, and has offered little to no evidence indicating he has any significant ties to his community or to any United States citizens other than his wife and children. Given these facts, and the fact he has previously moved back to Taiwan, it is reasonable to believe he may again move back to Taiwan. This is particularly so in light of the fact his parents and siblings reside in Taiwan. Applicant’s strong ties with these immediate family members, as evidenced by his voluntary monthly contacts with his parents and his less frequent but regular contact with his siblings, and his voluntary trips to Taiwan to visit them, are not only relevant to the issue of the permanency of his preference for the United States, but also raise concerns about his vulnerability. In view of Taiwan’s status as one of the most active collectors of sensitive United States information and technology, these voluntary actions could leave him vulnerable to coercion, exploitation, or pressure and could cause the future compromise of classified information.

I have carefully reviewed the administrative record, applicant's submissions, and the allegations in the SOR. I have weighed the disqualifying and mitigating conditions of Guidelines B and C, and I have evaluated applicant's conduct in light of the whole person concept identified at Paragraph E2.2. of Enclosure 2 of the Directive. After doing so, I conclude that applicant failed to rebut the Government's case under Guidelines B and C.

There is nothing in the record that suggests applicant is anything but a loyal American citizen. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance 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." Therefore, nothing in this decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied concern as to applicant's allegiance, loyalty, or patriotism.

### **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 C:	AGAINST APPLICANT
Subparagraphs 1.a through 1.c:	Against Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraphs 2.a through 2.d:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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JOSEPH TESTAN  
Administrative Judge