



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



In the matter of: )  
)  
) ISCR Case No. 14-05229  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O’Connell, Esq., Department Counsel  
For Applicant: *Pro se*

10/27/2015

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline B, foreign influence. Applicant’s eligibility for a security clearance is granted.

**Statement of the Case**

On December 15, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, foreign influence. The action was taken 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 effective within the DOD for SORs issued after September 1, 2006.

On February 12, 2015, Applicant answered the SOR, and she elected to have her case decided on the written record in lieu of a hearing.<sup>1</sup> On July 15, 2015, Department Counsel submitted the Government's file of relevant material (FORM). The FORM was mailed to Applicant, and it was received on July 30, 2015. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the Government's evidence and it is admitted.

As part of the FORM, Department Counsel requested that I take administrative notice of certain facts about Taiwan and the People's Republic of China (PRC). (Items 9 and 10) Applicant did not object, and I have taken administrative notice of facts contained in the administrative notices that are supported by source documents from official U.S. Government publications. Some of those facts are summarized in the Findings of Fact, below. In response to the FORM, Applicant provided an additional document that was admitted into evidence as Item 11. The case was assigned to me on October 10, 2015.

### **Findings of Fact**

Applicant admitted all of the SOR allegations except ¶ 1.e. I have incorporated her admissions into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 44 years old. She was born in Taiwan. She moved to the United States in 1996 and became a naturalized citizen in 2007. She is married and has a 21-year-old daughter. Both her husband and daughter were also born in Taiwan. They became naturalized citizens of the United States in 2006. Applicant earned a bachelor's degree in Taiwan and a master's degree in the United States. She has held a secret clearance since 2011. She has worked in federal contracting since 1998.<sup>2</sup>

Applicant's father is deceased. Her mother, brother, and sister are citizens and residents of Taiwan. Her mother retired from her job as a nanny in 2005. Her brother owns a furniture store. Her sister works for a small company as a bookkeeper/accountant. After moving to the United States in 1996, Applicant returned to Taiwan about once a year to visit her family. In 2010, her father was diagnosed with cancer, and she traveled more frequently, approximately two to three times a year to see him until his death in 2013. She has visited her mother more frequently since her father's death, continuing to travel to Taiwan about three times a year. She speaks on the phone a few times a year with her mother and sister, usually on Taiwanese holidays. She speaks to her brother about once a year. None of these family members have an association with the Taiwanese government or any political organizations. They are unaware of the nature of Applicant's business. Applicant began providing some financial support to her parents sometime between 1998 and 2000. There is a cultural expectation that children help their parents if they are financially able. Applicant

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<sup>1</sup> Applicant's answer is dated February 12, 2014, which is an obvious error as it predates the SOR.

<sup>2</sup> Items 4 and 5.

provided additional support to her parents when her father was undergoing cancer treatment to help with their medical expenses. She continued to provide support to her mother after her father passed away, but has discontinued it recently because her mother is financially stable. None of her family in Taiwan has visited her in the United States.<sup>3</sup>

Applicant's father-in-law and mother-in-law are citizens and residents of Taiwan. Her father-in-law is a businessman working in the same textile industry for five decades. He intends to retire in the next couple of years. Her mother-in-law is a housewife and has not been employed since Applicant has known her. They do not have an association with the Taiwanese government or political organizations. Applicant and her husband visit his parents about once a year and also speak to them on the phone about once a year. His parents are unaware of the nature of Applicant's business. Neither Applicant nor her husband provides financial assistance to his parents. They have never visited Applicant or her family in the United States.<sup>4</sup>

Applicant has no financial interests in Taiwan. She has substantial financial interests in the United States. In 2004, she started her own business that has been very successful. It has an annual revenue of approximately \$10 million. It employs about 70 people. Applicant is proud of the services it provides to the federal government. She has been nominated and been the recipient of numerous awards and recognitions, as has her business.<sup>5</sup> Applicant has substantial personal financial interests in the United States. She and her husband have personal assets over \$2.7 million. They have lived in the same state since 1996. They have lived in the same house that they own since 1999.<sup>6</sup> Their daughter is pursuing higher education in another state. The United States is the only home her daughter has ever really known. Applicant, her husband, and her daughter intend on remaining in the United States for the rest of their lives. Applicant has no other ties to Taiwan. Applicant has voted in local, state, and federal elections. She is keenly aware of the opportunities she has had as a woman in the United States, and she has a desire to give back. She makes charitable contributions, sponsors charitable events, and volunteers her time with numerous medical facilities and fundraising campaigns as well as scholarship funds.<sup>7</sup>

From 2013 to 2014, Applicant served as head of an organization. After her term ended she remained as an inactive member. She is no longer a member. She indicated that this organization seeks to help Taiwanese-American-owned businesses develop in the United States, primarily through networking and information sharing between business professionals and local area merchants. Its membership is comprised of

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<sup>3</sup> Item 4 and 7.

<sup>4</sup> Item 4.

<sup>5</sup> Item 4, Exhibit 3, 4.

<sup>6</sup> Item 4, Exhibit 6.

<sup>7</sup> Item 4, Exhibits 5.

Taiwanese-Americans, but does not include foreign Taiwanese citizens or officials. It does not assist business development in Taiwan, and it does not assist in the development of non-Taiwanese-American-owned businesses in the United States. The organization does not advocate for U.S. policies to help Taiwan businesses, but rather seeks to provide assistance to Taiwanese-American-owned businesses in the United States through member sharing, guidance, and experience.<sup>8</sup>

The organization's website, states the group's purpose is to promote cooperation between Taiwanese businesses in the metropolitan area where it is located, in order to develop and to expand to international markets. Applicant indicated that every member of the organization is an American citizen or an American company.<sup>9</sup>

When Applicant was elected to head the organization in 2013, she immediately reported the matter to the Defense Security Service (DSS). She discussed with a representative whether her role impacted her holding a secret security clearance. She was advised it did not. Applicant stated in her answer to the SOR that if she had been advised differently, she would have resigned. Since her tenure as the head of the organization ended in 2014, she has disassociated herself from any position of leadership within the organization as well as any business, programs, and directives of the organization. She has not attended any of the organizations events since 2014 and does not have a relationship with its current leaders.<sup>10</sup>

During Applicant's tenure as head of the organization, she had contact with the administrative staff associated with the Taiwan Consulate. The Consulate would reach out to the organization with information about upcoming charity and cultural events with the intent to have the organization publicize the event to the local membership. As head of the organization, Applicant was the public point of contact. She would receive information from the Consulate and relay it to the organization's membership through emails, flyers, and other communication. In 2013, Applicant attended a Consulate function in her role as head of the organization. It was attended by over 300 guests. Overall, Applicant has had limited contact with the Consulate and the contact was only in relation to her past position with the organization.<sup>11</sup>

On two occasions, between 2011 and 2013, Applicant attended Chinese New Year celebrations at the PRC Embassy. Embassies extend invitations to local area communities as a gesture of goodwill in celebrating mutually shared cultural holidays. The invitation was extended to the head of the organization at the time, who in turn extended the invitation to Applicant, and the organization's Board of Directors. There

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<sup>8</sup> Items 4, 11.

<sup>9</sup> Item 6.

<sup>10</sup> Items 4 and 11.

<sup>11</sup> Items 4, 7 and 11.

was no fundraising involved or any other type of monetary contribution associated with the event.<sup>12</sup>

The Chinese New Year events were hosted and attended by the Minister of the PRC and his counselors, but Applicant did not have one-to-one contact with any of them on the two occasions she attended the event. There were never any follow-up communications from the Minister of the PRC or any of his counselors as a result of attending this event on two occasions.<sup>13</sup>

Applicant also had limited contact with the administrative staff from the PRC Embassy on two other occasions. These contacts were based solely on her position with the organization, and involved the logistics of picking up Chinese New Year annual calendars and desserts to be shared with her organization's members. On the first occasion, she picked them up from the embassy without making any contact with the Minister of the PRC or any of his counselors. On the second occasion, Applicant made arrangements with the administrative staff over the telephone for two of her employees to pick up the desserts. Other than this contact, Applicant has had no contact, correspondence, or communication with representatives, foreign or domestic, related to the Minister of the PRC or his counselors.<sup>14</sup>

Applicant provided a character letter from a former government attorney and current practitioner in government contracting. He is aware of the importance of handling classified information and its impact on the interests of the United States. He has worked with Applicant for three years and advised her on legal and regulatory requirements. He stated without reservation that she is committed to following the rules, rather than finding a loophole. She is dedicated to upholding the intent of the law and its purpose to the benefit of the government, rather than for individual gain. She seeks advice on matters that may conflict with regulations. She does not rely on her own interpretations. He believes Applicant's respect for the law in her professional and personal life is rooted in her loyalties and dedication to the United States. He believes if ever a situation arose between the United States' interest and that of a foreign interest, Applicant would, without hesitation, side with the United States.<sup>15</sup>

Applicant provided a character letter from the deputy chief of a government agency, who has worked with her for the past four years. He witnessed first-hand, her dedicated efforts to support his agency's mission objectives. He considers her the consummate professional who follows through on her commitments and faithfully complies with the contractual requirements. She has handled sensitive information in the past and clearly demonstrated her adherence to safeguarding it. She is a proactive

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<sup>12</sup> Items 4 and 7.

<sup>13</sup> Items 4, 7, and 11.

<sup>14</sup> Items 4, 7, and 11.

<sup>15</sup> Item 4, Exhibit 2.

member of the community. Her demeanor, attitude, and actions reflect a professional and personal respect and devotion as an American citizen. She can be trusted to handle classified information.<sup>16</sup>

Applicant provided a character letter from the director of a company, who also served for 30 years in the U.S. military and retired as a colonel. He held numerous leadership positions while on active duty and is fully aware of the responsibility of holding a security clearance. He has worked closely with Applicant for the past two years on several different projects. He described her as a loyal, dedicated, and trustworthy professional who is committed to furthering the mission of the agency, which she supports. He has personally witnessed her rigorous adherence to providing the highest quality of support for her clients, despite more financially advantageous options. He described Applicant as one of the most trustworthy, principled, loyal, and ethical people he knows. She takes her responsibilities seriously, and he believed she would never compromise the interests of the United States.<sup>17</sup>

### **Taiwan**<sup>18</sup>

In a 2008 report to Congress, Taiwan is listed among the top eight countries involved in criminal espionage and export control enforcement cases. The 2000 version of the report lists Taiwan as being among the most active collectors of U.S. economic and proprietary information and highlights specific incidents where it engaged in attempts to acquire export-restricted products. There are numerous cases that involve the illegal export, or attempted illegal export of U.S. restricted, dual use technology to Taiwan. Illegal technology transfers are a significant concern because foreign government entities, including intelligence organizations and security services, have capitalized on private-sector acquisitions of U.S. technology.

The Ministry of State Security for the PRC is the preeminent civilian intelligence collection agency in the PRC. It maintains intelligence operations in Taiwan through a bureau utilizing PRC nationals with Taiwan connections. This raises a concern that some Taiwan-based intelligence collection activities may actually be for the benefit of the PRC.

### **PRC**<sup>19</sup>

The PRC is an authoritarian government, dominated by the Chinese Communist Party (CCP). CCP members hold almost all top government, police, and military positions. DOD reports assess the PRC's expanding military capacity and interest in

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<sup>16</sup> Item 4, Exhibit 2.

<sup>17</sup> Item 4, Exhibit 2.

<sup>18</sup> Item 9.

<sup>19</sup> Item 10.

global power, as well as pursuit of advanced technology to advance its strategic military and commercial interests.

The PRC uses state sponsored industrial/technical and economic espionage to increase its level of technologies and expertise to support military research, development, acquisition, and to supplement their military modernization efforts.

In 2012, the DOD noted that the PRC is the world's most active and persistent perpetrator of economic espionage and will continue to be a threat to U.S. economic security. In 2013, the DOD noted that the PRC's Army is pursuing a long-term, comprehensive modernization of its military forces and has articulated a wide range of missions beyond its immediate territorial concerns that go beyond its coastal borders. In 2014, the DOD noted that the PRC relies on foreign technology, acquisition of dual-use components, and focused internal research and development to further military modernizations. It uses intelligence services and other illicit approaches to collect sensitive U.S. information and export controlled technology in violation of U.S. laws.

There are specific cases cited by the U.S. Department of Justice that are illustrative of actual or attempted espionage and illegal export of sensitive technology to the PRC by naturalized U.S. citizens from the PRC employed in the U.S. defense industry.

According to the U.S. State Department, repression and coercion, particularly against organizations and individuals involved in rights advocacy and public interest issues, were routine in the PRC. There is repression of fundamental rights to freedom of speech, religion, association, and harsh restriction on the movement of certain ethnic groups. There are numerous serious human rights issues in the PRC.

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security decision.”

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline B, Foreign Influence**

AG ¶ 6 expresses the security concern regarding foreign influence:

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.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. I have considered all of them. The following conditions potentially apply:

- (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;
- (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; and
- (d) sharing 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(d) require substantial evidence of a "heightened risk." The "heightened risk" required to raise one of these disqualifying conditions 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.

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.<sup>20</sup>

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."<sup>21</sup> Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, 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. 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 operations against the United States. In considering the nature of

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<sup>20</sup> ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

<sup>21</sup> ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at \*\*16-16 (App. Bd. Mar. 29, 2002).

the government, an administrative judge must also consider any terrorist activity in the country at issue.<sup>22</sup>

Applicant has family ties to her mother, sister, brother, and her husband's parents living in Taiwan. She visits these family members about once a year and has telephone contact with them. Taiwan has a significant history of conducting economic espionage against the United States. This creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. It also creates a potential conflict of interest. AG ¶¶ 7(a), 7(b), and 7(d) apply to SOR ¶¶ 1.a and 1.b.

I have considered the evidence regarding Applicant's membership in an organization that promotes Taiwanese-American businesses. She is no longer actively involved in it. I find her past involvement does not raise a heightened risk or a security concern, as its members are Taiwanese-American citizens, and its purpose is to promote American businesses. Although the Government disputed its purpose based on its website, I found Applicant's information and description compelling. I find none of the above disqualifying conditions apply to SOR ¶ 1.e.

Applicant had limited contact with the Taiwanese Consulate based on her position as head of the organization. As the public point of contact at the time, she would send emails or flyers received from the Consulate to advertise or promote cultural and charitable events. I find these minimal contacts do not rise to the level of creating a heighten risk or a security concern. She no longer is a member of the organization. These types of contacts are typical of social interactions between embassies and the local community. I find none of the above disqualifying conditions apply to SOR ¶ 1.d.

I find Applicant's contact with the Minister of the PRC and his counselors who work in the embassy was consistent with any other guest invited to its embassy for a cultural event. Applicant provided detailed information as to the extent of the contact, which consisted of twice being a guest at a Chinese New Year event. She also coordinated with the administrative staff at the embassy to retrieve Chinese calendars and desserts. Applicant was contacted because of her position as head of the organization. There is no evidence to remotely suggest that her contact in this context created a heightened risk or security concern. Applicant is no longer involved with the organization, and therefore, future contact is unlikely. I find none of the disqualifying conditions apply to SOR ¶ 1.c.

I have analyzed all of the facts and considered all of the mitigating conditions for this security determination under AG ¶ 8. The following are potentially applicable:

- (a) the nature of the relationship 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

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<sup>22</sup> See *generally*; ISCR Case. No. 02-26130 at 3 (App. Bd. Dec. 7, 2006) reversing decision to grant clearance where administrative judge did not consider terrorist activities in area where family members resided.

position of having to choose between the interests of a foreign individual, group, organization and 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 interests in favor of the U.S. interests; 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.

Security concerns are reduced where contact and correspondence with foreign citizens are casual and infrequent because the risk of foreign exploitation or pressure is less. Applicant's contact with her mother, sister, brother, and husband's parents is not casual. She and her husband travel to see their family once a year and maintain some telephone communication. AG ¶ 8(c) does not apply.

The foreign influence concerns are increased because Taiwan aggressively and actively engages in foreign economic collection and industrial espionage against the United States. Applicant's and her husband's family are not affiliated with or dependent upon the Taiwanese government. They either are retired or work in the private sector. Although Taiwan is actively engaged in economic espionage, there is no evidence that they target, coerce, pressure or attempt to manipulate or exploit their citizens to obtain information. Therefore, it is unlikely Applicant would be placed in a position of having to choose between her family interests and the interests of the United States. AG ¶ 8(a) applies.

Applicant has made her life in the United States since 1996. She owns a successful business that employs 70 people and has worked in federal contracting since 1998. She has been a citizen since 2007 and her husband and daughter since 2006. Her daughter is pursuing higher education, and the United States is the only home she has known. Applicant and her family intend on remaining in the United States. They have substantial personal assets and have lived in the same house and community since 1999. She has deep roots in the community and is actively engaged both personally and professionally in charitable endeavors. Applicant has held a secret clearance since 2011, and there is no evidence of security problems. Applicant has the strong support from people who have worked with her and can attest to her trustworthiness, loyalty to her country, and her commitment to complying with the rules and regulations required of her to accomplish the mission. Applicant's deep and longstanding relationship and loyalty to the United States is such that she can be expected to resolve any conflict of interest in favor of the United States. I find AG ¶ 8(b) applies.



## **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's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Carol G. Ricciardello  
Administrative Judge