



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



In the matter of:)
)
) ISCR Case No. 23-01584
)
Applicant for Security Clearance)

Appearances

For Government: Andrew Henderson, Esq., Department Counsel
For Applicant: Sean Rogers, Esq.

02/06/2025

Decision

BENSON, Pamela C., Administrative Judge:

Based on a review of the pleadings, testimony, and exhibits, I conclude that Applicant has mitigated the concerns related to Guideline C (foreign preference), but at the current time, she has not mitigated the security concerns under Guideline B (foreign influence) raised by the presence of her parents and sister living in Taiwan, and their foreign financial interest in a significant business operating there. Her request for national security eligibility and a security clearance is denied.

Statement of the Case

On October 19, 2023, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudication Services (CAS) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B (foreign influence) and Guideline C (foreign preference). This action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines implemented by the DOD on June 8, 2017.

On November 28, 2023, Applicant responded to the SOR and admitted all of the SOR allegations under Guidelines B and C. She requested to have a decision issued by a Defense Office Hearings and Appeals (DOHA) administrative judge based upon the written record. On February 26, 2024, Applicant's counsel requested that Applicant would rather have a hearing before a DOHA administrative judge, and the request was granted.

The case was assigned to me on August 6, 2024. On September 5, 2024, DOHA issued a notice of hearing, scheduling the hearing for October 9, 2024. The hearing proceeded as scheduled. Department Counsel submitted two documents, Government Exhibits (GE) 1 and 2, and a disclosure letter dated February 28, 2024. I marked the disclosure letter as Hearing Exhibit (HE) I. Applicant testified, five witnesses testified on her behalf, and she submitted 15 documents labeled as Applicant's Exhibits (AE) A through O. All proffered documents were admitted into evidence without objection.

The Government requested I take administrative notice of certain facts relating to Taiwan and China. Department Counsel provided a six-page summary of the facts, supported by 10 Government references pertaining to Taiwan, identified as Administrative Notice (AN) I. The documents provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters not subject to reasonable dispute. They are set out in the Findings of Fact.

The Government also requested that I take administrative notice of certain facts relating to the People's Republic of China (China) due to its relationship to Taiwan. Department Counsel provided a 12-page summary of the facts, supported by 21 Government references pertaining to China, identified as AN II. The documents provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters not subject to reasonable dispute. They too are set out in the Findings of Fact.

Applicant objected to the administrative notices because "everything put together is basically an inflammatory compilation of just unending articles about sensational things that have happened with espionage." The basis of the objection also noted that most of the administrative documents pertained to Guideline B, but because there was also a Guideline C security concern, "there's just no established relevance in this case of what's been alleged in the SOR to [Applicant] because there's been no tie to Taiwan or China's government in the allegations demonstrated or even alleged. It's just simply that [Applicant], availed herself of citizenship in Taiwan, and what comes along with that is being able to use the healthcare. And then the other allegation that she has relatives that live in Taiwan, it's just a bad allegation. And so there's no tie to her parents in that, that her parents somehow are intertwined with the government of Taiwan or China in some way or that anybody is beholden to the Taiwanese government or the Chinese government." As noted above I accepted both administrative notice documents into the record. The administrative notice materials are included in the record to show the basis for concluding that the noticed facts are generally accepted within the U.S. government and are not subject to reasonable dispute. The Defense Office of Hearings and Appeals (DOHA) received the transcript (Tr.) on October 17, 2024.

Findings of Fact

The SOR alleges foreign influence security concerns based on Applicant's family members, a mother, father, and a sister, as residents in Taiwan. (SOR ¶¶ 1.a and 1.b) Applicant, a U.S. citizen, also acquired Taiwanese citizenship in April 2020 to benefit from long stays in Taiwan without the need for a visa, and for the health insurance provided by the Taiwanese government, alleged as a foreign preference security concern in the SOR. (SOR ¶¶ 2.a and 2.b) In her Answer, Applicant admitted all of the allegations. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact:

Applicant is 26 years old. She was born and raised in Taiwan as a U.S. citizen to parents who are U.S. citizens, but who had moved to Taiwan in December 1996. Beginning in sixth grade, her parents paid for her to attend a private "Taipei American school," which cost about \$25,000 in tuition per year. At the age of 18, she left Taiwan for the U.S. to attend college. In 2020, when the COVID-19 pandemic hit the U.S. and Applicant's college closed, she returned to live with her family in Taiwan. She did not feel comfortable living with family members in the U.S. due to their age, which placed them in a higher risk category. Her permanent residency status in Taiwan expired when she turned 19 years-old, and so in 2020, she entered Taiwan on a tourist visa. Applicant then obtained Taiwanese citizenship about a month later for the convenience of staying in Taiwan indefinitely during the pandemic and to avoid tourist visa restrictions. In addition, she was able to access the Taiwanese national healthcare. (GE 1; Tr. 24, 27-33, 35-40; AE B) Applicant stated,

"...the borders [in Taiwan] were closed-off to foreign nationals. So you either had to have a permanent residency card or be a citizen [of Taiwan to enter]. And that might have been the case in -- during winter break when I went back. So if I had not gotten [Taiwanese citizenship], I would've been stuck alone in, you know, my off-campus apartment." Tr. 50

Applicant also opened a foreign bank account. During the hearing, she assumed that this foreign bank account had closed after she renounced her Taiwanese citizenship in June 2024. She admitted that she renounced her foreign citizenship only after she received the SOR in October 2023. A Taiwanese passport was issued to her in April 2020. She surrendered her foreign passport in about April 2024 to the Taiwanese Consulate. She used this passport to enter and exit Taiwan only. In May 2021, she graduated from a U.S. college with a bachelor's degree in engineering. She also registered to vote in the U.S. Applicant is unmarried and does not have any children. (Tr. 41-45; GE 1; AE A, D)

Applicant is the oldest of three sisters. The middle sister also left Taiwan at the age of 18 to attend college in the U.S. She is currently in her fourth year of college. Applicant's youngest sister is in high school and lives with their parents in Taiwan. Applicant expects that in August 2025 her youngest sister will come to the U.S. to attend college as well. After Applicant graduated college, she returned to her home in Taiwan to

spend her last summer with her family before she returned to the U.S. in September 2021 to permanently reside and work. (Tr. 42; GE 1)

In December 1996, Applicant's father moved to Taiwan with his new wife to run a sandwich franchise business with his brother, who still resides in Taiwan. Applicant's father, a U.S. citizen, left the franchise business after about seven years, and he now works in Taiwan as a certified public accountant (CPA) doing certified work as a chief financial officer (CFO). He does do work for some foreign-owned small and medium-sized enterprises (SMEs). He also does U.S. tax returns for Americans, also referred to as expats, in Taiwan. He stated that he and his wife would like to move back to the United States, but because of his wife's company, they expect it will take three to four years before they can make the move. Approximately two years ago he was making between \$300,000 to \$400,000 annually. He has since cut back his work hours and currently makes about \$150,000 annually. (Tr. 87-90, 93-103)

Applicant's mother, a U.S. and Taiwanese dual citizen, started a granola company in Taiwan about 15 years ago. She now has a factory and employs about 13 workers. Her current business revenue is approximately five million dollars a year. She estimated that her business is now worth about 10 million dollars. This information was not alleged in the SOR. She follows all Taiwanese government laws and regulations in the operation of her business. She denied that she or her company was beholden to the Taiwanese government. She obtained her Taiwanese citizenship after she had lived in Taiwan for 15 years, and she only did so for practical reasons so she could operate her business without complications. She was able to obtain Taiwanese citizen because her father was Taiwanese when he immigrated to the United States at the age of 30. (Tr. 105-108)

Although Applicant has lived the majority of her life in Taiwan, her parents have always identified themselves as Americans. The family spoke only English in the home, and they lived in an expat community with other Americans. Every year they would travel to the United States and spend about two months visiting family members. Applicant intends to make the U.S. her permanent place of residence, and she has no intentions to return to Taiwan to reside or work there. Applicant stated, "... the U.S. is my home. This is, you know, where I've lived as an adult, and I plan on living here for the foreseeable future." She did admit that the only reason she would ever consider reapplying for her Taiwanese citizenship is if there were ever a health or medical crisis and she needed healthcare, she would be able to obtain that healthcare from Taiwan. (Tr. 47, 51)

Applicant's former supervisor at her current place of employment testified on her behalf. She found Applicant to be intelligent, honest, and trustworthy. She and Applicant also spent time together outside of work, and she got to see her character in a more personal environment. She stated that she had been working with a security clearance for the past ten years, and from what she knew of Applicant and realizing that she was a valuable asset to the company, she had no reservations for recommending that Applicant's security clearance be granted. (Tr. 65-68)

Any adverse information not alleged in the SOR will not be considered for disqualification purposes but may be considered in evaluating application of mitigating

conditions and in applying the whole-person concept. See, e.g., ISCR Case No. 15-07369 at 3 (App. Bd. Aug. 16, 2017).

Administrative Notice

I have taken administrative notice of the following facts concerning **Taiwan**:

Taiwan is a multiparty democracy; whose authorities generally respect the human rights of its citizens. Taiwan is an active collector of industrial information and engages in industrial espionage, as shown by the administrative notice documents in the record. However, the record does not demonstrate that the Taiwanese government seeks to exert pressure on U.S. citizens to collect information from family members residing in country or abroad. Finally, it is worth noting that the U.S. Government, and the Defense Department in particular, have a close and continuing relationship with Taiwan and its military, in accordance with the Taiwan Relations Act of 1979, which has governed policy in the absence of diplomatic relations or a defense treaty with Taiwan. In 2018 the Secretary of Defense stated, “The Department of Defense remains steadfastly committed to working with Taiwan to provide the defense articles and services necessary to maintain sufficient self-defense consistent with our obligation set out in our Taiwan Relations Act. We oppose all unilateral efforts to alter the status quo and will continue to insist any resolution of differences accord with the will of the people on both sides of the Taiwan Strait.”

China

I take administrative notice of the facts set forth in the Administrative Notice documents concerning China, which are incorporated herein by reference. China is a large and economically powerful country, with a population of more than a billion people and an economy growing at about 10% per year. China has an authoritarian government, dominated by the Chinese Communist Party. It has a poor record with respect to human rights, suppresses political dissent, and engages in arbitrary arrests and detentions, forced confessions, torture, and mistreatment of prisoners. China is one of the most aggressive countries in seeking sensitive and protected U.S. technology and economic intelligence. It targets the United States with active intelligence gathering programs, both legal and illegal. As a result, it is a growing threat to U.S. national security. In addition, China views Taiwan as part of China. China has engaged in many different coercive diplomatic and military activities, seeking to isolate and intimidate Taiwan into unification on China's terms.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be 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, administrative judges apply the guidelines 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 national security eligibility will be resolved in favor of the national security."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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

The security concern under this guideline is set out in AG ¶ 6 as follows:

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.

Two disqualifying conditions under this guideline are relevant to this case:

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; and

AG ¶ 7(f): substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest.

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). 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 the government, an administrative judge must also consider any terrorist activity in the country at issue. See ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006).

AG ¶ 7(a) requires 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. See, e.g., ISCR Case No. 12-05839 at 4 (App. Bd. Jul. 11, 2013). “Heightened risk” is not a high standard. See, e.g., ISCR Case No. 1703026 at 5 (App. Bd. Jan. 16, 2019).

Taiwan is an active collector of industrial espionage. Accordingly, Applicant’s family connections in that country have the potential to generate a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion under AG ¶ 7(a).

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contact with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. In addition, though not specifically alleged, I have considered China's activities and attitude with regard to Taiwan and the United States. (See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).)

Applicant has family members residing in Taiwan, and she maintains close and frequent contact with them. Her parents are unable to leave Taiwan and relocate to the United States for approximately the next four years because they must get their company and substantial financial asset in order and ready for sale. AG ¶¶ 7(a) and 7(f) are applicable.

The following mitigating conditions under this guideline are potentially relevant:

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;

AG ¶ 8(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;

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

AG ¶ 8(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

I have carefully considered the fact that Applicant's parents and sister live in Taiwan, and her mother owns a successful company with an estimated value of about ten million dollars, which merits consideration under the mitigating factors. Common sense suggests that the stronger the ties of affection or obligation, the more vulnerable a person is to being manipulated if the relative, cohabitant, or close associate is brought under control or used as a hostage by a foreign intelligence or security service. Concerning family ties, the language of Guideline B does not require a conclusion that an unacceptable security concern exists based solely on an applicant's family ties in a foreign

country. An administrative judge must consider the record evidence as a whole in deciding if the facts and circumstances of an applicant's family ties pose an unacceptable security concern under Guideline B.

The DOHA Appeal Board has held that it is a mitigating condition if (1) the immediate family members or associates are not agents of a foreign power and (2) are not in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to his family members and loyalty to the United States. (See ISCR Case No. 99-0424) I find the first prong of this analysis to be satisfied, but given the facts and circumstances in this case, I unable to find that the second prong is satisfied. Applicant's mother's business is significant, and the Taiwanese government could potentially use this valuable asset as a means to obtain classified information. As such, her mother's business in Taiwan could be used as a means to effectively pressure or coerce Applicant.

The record evidence demonstrates Applicant has all the indicators of an industrious, mature, responsible, and trustworthy individual. After weighing the record evidence as a whole, it is my commonsense determination that the facts and circumstances show Applicant's ties to Taiwan and her parents' financial asset in a business operating in Taiwan currently poses an unacceptable risk or concern of foreign influence. AG ¶¶ 8(a), 8(c), and 8(f) do not apply. Foreign influence security concerns are not mitigated.

Guideline C, Foreign Preference

The security concern under this guideline is set out in AG ¶ 9:

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 provide information or make decisions that are harmful to the interests of the United States. Foreign involvement raises concerns about an individual's judgment, reliability, and trustworthiness when it is in conflict with U.S. national interests or when the individual acts to conceal it. By itself; the fact that a U.S. citizen is also a citizen of another country is not disqualifying without an objective showing of such conflict or attempt at concealment. The same is true for a U.S. citizen's exercise of any right or privilege of foreign citizenship and any action to acquire or obtain recognition of a foreign citizenship.

The security concern under this guideline is not limited to countries hostile to the U.S. "Under the facts of a given case, an applicant's preference, explicit or implied, even for a nation with which the U.S. has enjoyed long and peaceful relations, might pose a challenge to U.S. interests." ADP Case No. 07-14939 at 4 (App. Bd. Mar. 11, 2009).

Dual citizenship standing alone is not sufficient to warrant an adverse security clearance decision. ISCR Case No. 99-0454 at 5 (App. Bd. Oct. 17, 2000). Under

Guideline C, “the issue is not whether an applicant is a dual national, but rather whether an applicant shows a preference for a foreign country through actions.” ISCR Case No. 98-0252 at 5 (App. Bd. Sep. 15, 1999). The following disqualifying conditions under this guideline are potentially relevant:

AG ¶ 10(a): apply for and/or acquiring citizenship in any other country; and

AG ¶ 10(e): using foreign citizenship to protect financial interests ... in another country in violation of U.S. law.

Applicant, a U.S. citizen, also acquired Taiwanese citizenship in April 2020 to benefit from long stays in Taiwan without the need for a visa, and for the health insurance provided by the Taiwanese government, alleged as a foreign preference security concern in the SOR.

The following mitigating conditions under this guideline are potentially relevant:

AG ¶ 11(a): the foreign citizenship is not in conflict with U.S. national security interests;

AG ¶ 11(c): the individual has expressed a willingness to renounce the foreign citizenship that is in conflict with U.S. national security interests; and

AG ¶ 11(e): the exercise of the entitlements or benefits of foreign citizenship do not present a national security concern.

Applicant was born in Taiwan, but her parents registered her as a U.S. citizen born abroad. She did obtain Taiwanese citizenship in 2020, but she needed to do so due to the outbreak of the COVID-19 pandemic, the closure of her college, and travel restrictions. She did not want to be required to leave the country once her 90-day tourist visa expired. Although she once held a foreign passport, also obtained during the pandemic, she used her U.S. passport when entering and leaving the United States. She has since renounced her foreign citizenship and no longer has a foreign passport. Foreign preference security concerns are mitigated.

Whole-Person Concept

Under the whole-person concept, the 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. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (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.

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. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines B and C and the factors in AG ¶ 2(d) in this whole-person analysis.

Applicant has shown herself to be a patriotic American citizen and a valuable asset to her employer. At the current time, her parents and sister reside in Taiwan. She has frequent and regular contact with these family members because she has affection and cares for them deeply. Her parents do not believe they will be able to move to the U.S. within the next four years due to their efforts of getting their valuable business ready for sale. Overall, the record evidence leaves me with questions and doubts as to Applicant's suitability for national security eligibility and a security clearance. For all these reasons, Although I conclude Applicant mitigated the Foreign Preference security concerns, she has not overcome the government's Foreign Influence security concerns.

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: AGAINST APPLICANT

Subparagraphs 1.a. and 1.b: **Against Applicant**

Paragraph 2, Guideline C: **FOR APPLICANT**

Subparagraphs 2.a. and 2.b: For Applicant

Conclusion

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

Pamela C. Benson
Administrative Judge