



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



In the matter of:	)	
	)	
	)	ADP Case No. 07-08419
SSN:	)	
	)	
Applicant for Public Trust Position	)	

**Appearances**

For Government: Jennifer I. Goldstein, Esquire, Department Counsel  
For Applicant: *Pro Se*

October 28, 2008

**Decision**

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Questionnaire for Public Trust Position (SF 85P), on September 27, 2006. On March 6, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the trustworthiness concerns under Guideline F regarding Applicant. 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); Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program*, dated Jan. 1987, as amended (Regulation), 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.

Applicant acknowledged receipt of the SOR on April 14, 2008. He answered the SOR on April 30, 2008, and requested a hearing before an Administrative Judge. This case was assigned to another Administrative Judge on June 16, 2008. It was reassigned to the undersigned on August 25, 2008. DOHA had already issued a notice of hearing on July 22, 2008, and I convened the hearing as scheduled on September 9,

2008. The Government offered Exhibits (GXs) 1 through 3, which were received without objection. Applicant testified on his own behalf and submitted Exhibit (AppX) A, which was also received without objection. DOHA received the transcript of the hearing (TR) on September 18, 2008. I granted Applicant's several requests to keep the record open until September 30, 2008, to submit additional matters. On September 30, 2008, he submitted Exhibits B and C, which were received without objection. The record closed on September 30, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to sensitive information is denied.

## **Procedural and Evidentiary Rulings**

### **Request for Administrative Notice**

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Taiwan. The request was granted. The request, and the attached documents, were not admitted into evidence but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

### **Findings of Fact**

In his Answer to the SOR, dated April 30, 2008, Applicant admitted the factual allegations in ¶¶ 1.c, 1.d, 2.b., 2.c. and 2.d of the SOR, without explanations. He denied the factual allegations in ¶¶ 1.a, 1.b., 2.a. and 2.e of the SOR.

### **Guideline B - Foreign Influence**

1.a. and 1.b. The Applicant's parents are dual nationals of the U.S. and Taiwan (TR at page 39 line 12 to page 41 line 21, at page 45 lines 9~24, and GX 1 at page 5). His mother, who is in "her late fifties or early sixties," is a teacher (TR at page 43 line 21 to page 44 line 21). As a public school teacher, her pay and benefits come from the Taiwanese government (*Id*). The Applicant is very close to his mother, but avers he would not be subject to coercion vis-a-vis her, by the Taiwanese government (TR at page 51 line 6 to page 52 line 14). The Applicant's father, who is in his "[e]arly sixties," is an engineer (TR at page 42 line 1 to page 43 line 20). He has no connection with the Taiwanese government (*Id*).

1.c. The Applicant was employed by a "government affiliated . . . think tank" from November of 2003 to May of 2004, while living in Taiwan on a Taiwanese passport (TR at page 30 line 24 to page 33 line 2, and GX 3).

1.d. and 2.e. The Applicant traveled to Hong Kong in December of 2005, using his U.S. passport (TR at page 34 line 24 to page 35 line 2).

### **Guideline C - Foreign Preference**

The Applicant is a native born American, who lived with his dual national parents in Taiwan for eight years before attending high school in the U.S. (TR at page 19 line

16 to page 20 line 15). He continued his stay in the U.S. while attending college (TR at page 23 lines 14~22). After college, he moved back to Taiwan “to be closer to . . . [his] family” (TR at page 23 line 23 to page 24 line 8).

2.a.~2.d. From about October of 2003 to about February of 2006, the Applicant lived in Taiwan (TR at page 23 line 24 to page 24 line 10, and at page 28 line 25 to page 29 line 15). He lived in Taiwan on his Taiwanese passport (TR at page 20 line 19 to page 21 line 23). He also entered and exited Taiwan using his Taiwanese passport (TR at page 29 line 25 to page 30 line 23, and at page 33 line 14 to page 34 line 1). This passport does not expire until October of 2013, but he has surrendered it to his employer’s Facility Security Officer (AppX C).

At his hearing, the Applicant also indicated that he was willing to renounce his Taiwanese citizenship, but he has failed to do so (TR at page 26 line 11 to page 27 line 5, at page 28 lines 1~7, and at page 27 line 6 to page 28 line 11). Were he to do so, he would be unable to handle his parents affairs when they pass away; and as their sole heir, he would give up any property rights he might inherit in Taiwan (TR at page 47 line 3 to page 48 line 8).

2.e. The Applicant traveled to Singapore in March of 2004, using his U.S. passport (TR at page 34 line 24 to page 35 line 2, and at page 36 line 23 to page 38 line 3).

I take administrative notice of the following facts: Taiwan has an elected democratic government. It has the 17<sup>th</sup> largest economy in the world that is a leading producer of high-technology goods. It engages in industrial and economic espionage. Proprietary information technology is high on the Taiwanese list of targeted information to be acquired by their agents from foreign governments and businesses. Although the U.S. now recognizes Taiwan as part of China as “one-China,” it continues to maintain strong unofficial relations with Taiwan.

## **Policies**

Positions designated as ADP I and ADP II are classified as “sensitive positions” (See Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.). “The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person’s loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security” (See Regulation ¶ C6.1.1.1.). The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004, indicates trustworthiness adjudications will apply to cases forwarded to DOHA by the Defense Security Service and Office of Personnel Management. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made (See Regulation ¶ C8.2.1.).

When evaluating an Applicant’s suitability for a public trust position, the Administrative Judge must consider the disqualifying and mitigating conditions in the

AG. 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 over-arching adjudicative goal is a fair, impartial and common sense 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 [sensitive] 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, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable trustworthiness decision.

A person who seeks access to sensitive 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 sensitive information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

Section 7 of Executive Order (EO) 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**

Paragraph 6 of the new adjudicative guidelines sets out the security concern relating to Foreign Influence: "Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign 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 a foreign interest."

Here, Paragraph 7(a) is applicable: “*contacts with a foreign family member . . . 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.*” The Applicant’s parent’s are dual nationals, but reside in Taiwan. This is countered, however, by the first mitigating condition, as “*the nature of the relationships with foreign persons, the country in which these persons are located . . . 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 . . . and the interests of the U.S.*” The Applicant averred credibly at his hearing that, although he is very close to his mother, he could not be coerced by her presence in Taiwan by the Taiwanese government. Furthermore, in the unlikely event that were to occur; as they are U.S. citizens, they could easily return to the U.S.

### **Guideline C - Foreign Preference**

Paragraph 9 of the new adjudicative guidelines sets out the security concern relating to Foreign Preference: “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.”

Here, Paragraphs 10(a)(1) and (5) are applicable. “*exercise of any right, privilege or obligation of a foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to: (1) possession of a current foreign passport; . . . (5) using foreign citizenship to protect financial or business interests in another country.*” Although mitigating condition under Paragraph 11(e) is clearly applicable, as Applicant’s “*passport has been . . . surrendered to the cognizant security authority,*” I can not find that Paragraph 11(b) is also applicable. At his hearing, although the Applicant “*expressed a willingness to renounce dual citizenship,*” he was hesitant in this regard, at best. It is clear that he wishes to retain his Taiwanese citizenship to protect his financial interests as his parent’s sole heir.

### **Whole Person Concept**

Under the whole person concept, the Administrative Judge must evaluate an Applicant’s eligibility for a public trust position by considering the totality of the Applicant’s conduct and all the circumstances. The 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) 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 public trust position must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

He has the support of both his Branch Chief and his Team Leader, both of whom have known the Applicant for two years.

I considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant has not mitigated the trustworthiness concerns arising from his Foreign Preference.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Paragraph 2, Guideline C:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant
Subparagraph 2.d:	Against Applicant
Subparagraph 2.e:	For 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 public trust position. Eligibility for access to sensitive information is denied.

Richard A. Cefola  
Administrative Judge

