



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 14-05208

**Appearances**

For Government: Alison O'Connell, Esquire, Department Counsel  
For Applicant: John V. Berry, Esquire

09/22/2015

**Decision**

HARVEY, Mark, Administrative Judge:

In 1954, Applicant was born in Taiwan. In 1980, he immigrated to the United States. In 1994, Applicant was naturalized as a U.S. citizen. His spouse, sister, and two sons are U.S. citizens. However, his mother lives in Taiwan, and his son and his son's spouse reside in the People's Republic of China (PRC). He is close to his mother and son. He has much stronger connections to the United States than to Taiwan or the PRC. Foreign influence concerns are mitigated. Access to classified information is granted.

**Statement of the Case**

On October 25, 2013, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) version of a security clearance application (SF 86). (Government Exhibit (GE) 1) On March 4, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant, pursuant to Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG), which became effective on September 1, 2006.

The SOR alleged security concerns under Guideline B (foreign influence). (Hearing Exhibit (HE) 2) The SOR detailed reasons why the DOD CAF was unable to find that it is clearly consistent with national interest to grant or continue Applicant's access to classified information and recommended referral to an administrative judge to determine whether Applicant's clearance should be granted, continued, denied, or revoked. (HE 2)

On April 10, 2015, Applicant responded to the SOR allegations and requested a hearing. (HE 3) On July 14, 2015, Department Counsel provided to Applicant copies of the documents she intended to offer into evidence at Applicant's hearing. (Transcript (Tr.) 5; HE 4) On July 30, 2015, the case was assigned to me. On August 14, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a hearing notice setting the hearing for September 10, 2015. Applicant's hearing was held as scheduled. Department Counsel offered three exhibits into evidence, and Applicant offered 17 exhibits into evidence. (Tr. 10-13; GE 1-3; Applicant Exhibit (AE) A-Q) All exhibits were admitted into evidence without objection. (Tr. 11, 13) On September 21, 2015, DOHA received the transcript of the hearing.

### **Procedural Rulings**

At the hearing, Department Counsel requested administrative notice of facts concerning Taiwan and the PRC, and Applicant requested administrative notice of facts concerning Taiwan. (Tr. 11, 13; GE 2, 3; AE P) The parties provided supporting documents to show detail and context for those facts. There were no objections, and I granted the administrative notice requests. (Tr. 26-27; GE 2, 3; AE P)

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). Usually administrative notice at ISCR proceedings is accorded to facts that are either well known or from government reports. See Stein, *ADMINISTRATIVE LAW*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

### **Findings of Fact<sup>1</sup>**

In his SOR response, Applicant admitted that his mother, two brothers, two brothers-in-law, and mother-in-law are or were citizens and residents of Taiwan. (HE 3) Applicant's son is a dual citizen of the United States and Taiwan, and his son and his son's spouse are employed in the PRC. His mother-in-law passed away in January 2014. (Tr. 31; HE 3) He also provided extenuating and mitigating information.

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<sup>1</sup>The facts in this decision do not specifically describe employment, names of witnesses or locations in order to protect Applicant and her family's privacy. The cited sources contain more specific information. Unless stated otherwise, the sources for the facts in this section are from Applicant's SF 86. (GE 1)

Applicant's admissions are accepted as findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is a 60-year-old field engineer who has worked for the same DOD contractor for five years. (Tr. 13-14; GE 1) His annual base salary is \$146,000. (Tr. 36) He is currently working for a DOD contractor in Europe. He has been employed by several large companies including DOD contractors since he left employment at a large U.S. university in 1996. (Tr. 14)

In 1954, Applicant was born in Taiwan, and he received his education through high school in Taiwan. (GE 1) He was raised by his grandparents, and he did not live near his parents. (Tr. 24) He served from 1978 to 1980, in the Taiwan Air Force in a non-combat support capacity as required under Taiwan law. (GE 1) In 1980, he immigrated to the United States. (Tr. 15, 44) He received his bachelor's and master's degrees in computer science at a U.S. university. (Tr. 16-17) In 1994, Applicant was naturalized as a U.S. citizen. (Tr. 33, 44; GE 1) He offered to renounce his Taiwan citizenship. (GE 1) He has never served in the U.S. military. (GE 1) His current U.S. assets, including a home and investments, are valued at about two million dollars. (Tr. 37) His credit bureau score is over 800. (Tr. 38; AE L) There is no derogatory information concerning Applicant's police or financial records. There is no evidence of record showing any U.S. arrests, illegal drug possession or use, or alcohol-related incidents.

Applicant married in 1978. (GE 1) His spouse was born in Taiwan, and she attended school through high school in Taiwan. (Tr. 87-90) In 1994, she was naturalized as a U.S. citizen. (Tr. 33) Before retiring, she worked for a U.S. university in the area of agriculture. (Tr. 33) She receives a university-funded annual pension of \$18,000. (Tr. 34; Ex. N) Applicant's youngest son was born in the United States, and he is a resident of the United States. (Tr. 30-31) Applicant's sister lives in the United States. (GE 1) Applicant considers the United States to be his home.

Applicant's two brothers are citizens and residents of Taiwan; Applicant did not live with his brothers when he was growing up; and he does not communicate with them. (Tr. 26, 54) Applicant's brothers-in-law are citizens and residents of Taiwan. (Tr. 31) Applicant does not communicate with his brothers-in-law, except when he visits Taiwan. (Tr. 32) Applicant does not have any property or financial investments in Taiwan. (Tr. 33) He does not believe any of his relatives living in Taiwan have employment with the Taiwan government. (Tr. 25) In 2007 and 2012, he visited Taiwan, and in 2008, 2012, and 2013, he visited the PRC. (Tr. 50, 55-56; GE 1) In 2013, Applicant destroyed his Taiwan passport. (Tr. 15-16; AE C)

Applicant's oldest son was born in Taiwan, and he came to the United States from Taiwan when he was three years old. (Tr. 26-27) His son was raised in the United States and attended school through the university level in the United States. (Tr. 28; AE F) His son has never had a Taiwan passport, and his son travels using his U.S. passport. (Tr. 26) His son considers himself to be solely a U.S. citizen, and he does not consider himself to be a citizen of the Taiwan. (Tr. 27) Applicant's daughter-in-law is a

Canadian citizen. (Tr. 30) She was educated through the Ph.D. level in the United States and Canada. (AE G) Applicant's son and daughter-in-law have been employed in the PRC for the previous 10 years. (Tr. 28-29, 49) Their PRC employment is not in an area of science, engineering, or technology. They do not have any children. (Tr. 50) His son does not have any contact with the PRC government. (Tr. 29, 49-50; AE F) His son and his son's spouse frequently travel internationally, and they often return to the United States for employment and family reasons. (Tr. 29-30) They are likely to return to the United States and live there permanently. (Tr. 30) Applicant visits or sees his son annually, either by Applicant going to the PRC or his son coming to the United States. (Tr. 30)

Applicant's mother is about 82 years old, and she suffers from an age-related loss of mental capacity. (Tr. 21-22) He communicates with his mother about once a month primarily to check on her medical condition. (Tr. 22, 52) Applicant provides about \$2,000 annually to his mother for financial support. (Tr. 24)

Applicant has received security-related training. (Tr. 35; AE Q) If Applicant is contacted by a foreign entity seeking information, he promised to immediately report the contact, and as much information about that contact as possible, to his security officer. (Tr. 35-36)

## **Character Evidence**

Applicant's supervisor has known Applicant for five years and was responsible for hiring Applicant in his current position and promoting him. (Tr. 60-61) He described Applicant as honest, conscientious about following the rules, reliable, responsible, and responsive to requirements. (Tr. 64-67) He made substantial contributions to mission accomplishment. (Tr. 65) He recommended approval of Applicant's security clearance. (Tr. 64-67)

Nine coworkers, including his employer's program manager, security officer, and two government contracting officer representatives, provided statements supporting Applicant's access to classified information. (AE A-E, H-K) They attested to his honesty, integrity, patriotism, and contributions to mission accomplishment. (AE A-E, H-I)

In 2014, Applicant received a \$2,500 performance award. (AE M) In March 2014, he received a promotion and pay raise from his employer. (AE M) He has previously received exceptional evaluations and performance bonuses. (AE M) Applicant and his spouse have volunteered in and contributed to their community. (AE M)

## **China**

China or the PRC has powerful military forces, including strategic nuclear missiles. China is geographically vast, and has a population of over a billion people. It has significant resources and an economy that in recent years has rapidly expanded. China aggressively competes with the United States in many areas. China's competitive

relationship with the United States exacerbates the risk posed by an applicant's connections to family members living in the China.

China has an authoritarian, Communist government. China has a poor human rights record, suppresses political dissent, and practices arbitrary arrest and detention, forced confessions, torture, and other prisoner mistreatment. China also monitors communications devices, such as telephones, telefaxes, and internet servers.

China actively collects military, economic, and proprietary, industrial information about the United States for the following reasons: (1) its position as a global power; (2) its military, political, and economic investments in the Pacific Rim and Asia; and (3) its leading role in the development of advanced technology that China desires for economic growth and military enhancement. China's active intelligence gathering programs focus on sensitive and protected U.S. technologies.

The 2009 Report of the U.S.-China Economic and Security Review Commission noted the following about China's enterprise-directed industrial espionage:

Enterprise-directed espionage may also be growing in importance and taking on less random and more targeted form. The 2008 unclassified report of the Defense Security Service cited a rise in efforts undertaken by commercial entities to target restricted technologies, speculating that this likely represents "a purposeful attempt to make contacts seem more innocuous by using non-governmental entities as surrogate collectors for interested government or government-affiliated entities. . .

Chinese intelligence personnel are more inclined [than Russian intelligence personnel] to make use of sympathetic people willing to act as a "friend of China." While this most clearly has been seen in PRC-targeted recruitment of Chinese-Americans, PRC agents also have used as sources U.S. citizens of other ethnic backgrounds.

In cases resulting in federal prosecutions during fiscal years 2007 and 2008, China was ranked second only to Iran as the leading destination for illegal exports of restricted U.S. technology.

In 2014, the DOD reported that the PRC "relies on foreign technology, acquisition of dual use components, and focused internal research and development to further military modernization. . . . China has used its intelligence services and other illicit approaches to collect sensitive U.S. information and export controlled technology in violation of U.S. laws and export controls."

China's espionage and industrial theft activities are a threat to the security of U.S. technology. Department Counsel's summary provides additional details of China's aggressive intelligence efforts directed towards acquiring U.S. secrets and proprietary

technologies as well as examples of criminal cases from 2010 to 2014 involving people and organizations connected to the PRC.

## **Taiwan**

Taiwan is a multi-party democracy. The United States does not support Taiwan independence, in keeping with the “one China” policy, which was established in 1979. However, maintenance of unofficial relations with Taiwan is also a U.S. goal, and this relationship is consistent with furthering peace and stability in Asia. The United States supports Taiwan’s membership in appropriate international organizations where statehood is not a requirement for membership and encourages its meaningful participation in appropriate international organizations. Taiwan’s commercial ties with the United States have expanded since 1979. Taiwan is the United States’ tenth largest trading partner, and the United States is Taiwan’s largest foreign trading partner.

There are significant economic ties between Taiwan and the PRC, which are attributable to their physical proximity and history. Because of its location and proximity to the PRC, Taiwan has a particular interest in information from the United States that could aid it in its own defense.

The record references various cases involving the illegal export or attempted illegal export of U.S. restricted, dual-use technology to and/or through Taiwan. One report to the U.S. Congress concerns foreign economic collection and industrial espionage. That report notes that Taiwan was then known to be an active collector of U.S. economic intelligence. The report ranked Taiwan after China, Japan, Israel, France, and Korea as an active collector of such information. Although some of the record information about Taiwan’s intelligence activities targeting U.S. classified or sensitive information is more than 10 years old, several exhibits address more recent espionage by Taiwan’s National Intelligence Bureau (NSB). There is some evidence that Taiwan has specifically targeted U.S. citizens in the last decade to obtain protected and classified information.

The United States is committed to assisting Taiwan with maintenance of Taiwan’s defensive capabilities. The United States has continued the sale of appropriate defensive military equipment to Taiwan in accordance with the Taiwan Relations Act, which provides for such sales and notes that peace and stability in the area are in U.S. interests.

Taiwan is a modern democracy with vibrant public participation during which demonstrations may become confrontational. The U.S. State Department urges caution within the vicinity of any political demonstrations. Overall crime is noted as low.

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” *Department of the Navy v.*

*Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

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

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the 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). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No.

02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

### **Foreign Influence**

AG ¶ 6 explains the security concern about “foreign contacts and interests” stating:

[I]f the individual has divided loyalties or foreign financial interests, [he or she] 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 indicates three conditions that could raise a security concern and may be disqualifying in this case:

- (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.

Applicant was born and educated through high school in Taiwan. Applicant’s two brothers, two brothers-in-law, and mother are citizens and residents of Taiwan. His son is a dual citizen of the United States and Taiwan, and his son and his son’s spouse are employed in the PRC. Applicant has frequent<sup>2</sup> contacts with his mother; however, he does not have frequent contacts with his other relatives living in Taiwan and the PRC. He provides financial support to his mother. Applicant does not have frequent contact

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<sup>2</sup>See ISCR Case No. 09-03114 at 2-3 (App. Bd. Oct. 22, 2010) (contact once a month is considered to be “frequent” under AG ¶¶ 7 and 8).



with his son and his son's spouse living in the PRC; however, he does see or visit his son approximately on an annual basis.

Applicant lives with his spouse. Applicant did not provide evidence of his spouse's relationships with her brothers and mother, who are residents and citizens of Taiwan. There is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members. See *generally* ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at \*8 (App. Bd. Feb. 20, 2002). Applicant has ties of affection and obligation to his spouse, and she is close to her parents. "[A]s a matter of common sense and human experience, there is [also] a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse." ISCR Case No. 07-17673 at 3 (App. Bd. Apr. 2, 2009) (citing ISCR Case No. 01-03120 at 4 (App. Bd. Feb. 20, 2002)). This concept is the basis of AG ¶ 7(d). Thus, an indirect, but important tie remains between Applicant and his in-laws living in Taiwan. Indirect influence from Applicant's in-laws living in Taiwan, through Applicant's spouse to Applicant, could result in a security concern. In addition, Applicant has ties of affection to his mother as shown by his frequent communications with her.

Applicant's relationships with residents of a foreign country create a concern about Applicant's "obligation to protect sensitive information or technology" and his desire to help his relatives, who live in those countries. For example, if intelligence agents or government officials in those countries wanted to expose Applicant to coercion, they could exert pressure on his relatives residing in those locations. Applicant would then be subject to coercion through his relatives and classified information could potentially be compromised.

Applicant's and his spouse's possessions of close family ties with their families living in a foreign country, are not, as a matter of law, disqualifying under Guideline B. However, if an applicant or their spouse has a close relationship with even one relative, living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See *Generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

The nature of a nation's government, its relationship with the United States, its history of intelligence gathering, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence collection operations against the United States. The relationship of the PRC and Taiwan with the United States places the burden of persuasion on Applicant to demonstrate that his and his spouse's relationships with family members living in those countries do not pose a security risk. Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist relatives living in foreign countries.

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, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at \*\*15-16 (App. Bd. Mar. 29, 2002).

While there is no evidence that intelligence operatives from any foreign country seek or have sought classified or economic information from or through Applicant or his relatives living a foreign country, nevertheless, it is not possible to rule out such a possibility in the future. Applicant’s and his spouse’s relationships with family members living in foreign countries create a potential conflict of interest because these relationships are sufficiently close to raise a security concern about his desire to assist relatives in foreign countries by providing sensitive or classified information. Department Counsel produced substantial evidence of Applicant’s and his spouse’s contacts and relationships with family living in the PRC and Taiwan. Department Counsel has raised the issue of potential foreign pressure or attempted exploitation; AG ¶¶ 7(a), 7(b), and 7(d) are established; and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists three conditions that could mitigate foreign influence security concerns including:

- (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 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 interest in favor of the U.S. interest; 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.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

AG ¶¶ 8(a) and 8(c) have limited applicability. Applicant has frequent contacts with his mother, who is living in Taiwan, and he provides financial support to her. Although his contacts with his son living in the PRC are infrequent, they usually meet once a year. His loyalty and connections to family are positive character traits. However, for security clearance purposes, those same connections with relatives living in foreign countries negate the possibility of mitigation under AG ¶¶ 8(a) and 8(c), and Applicant failed to fully meet his burden of showing there is "little likelihood that [his relationships with his relatives who are living in foreign countries] could create a risk for foreign influence or exploitation."

AG ¶ 8(b) fully applies. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationships with family living in foreign countries.

There is no evidence that the PRC or Taiwan governments, or those conducting espionage have approached or threatened Applicant, his spouse, or their family to coerce Applicant for classified or sensitive information.<sup>3</sup> As such, there is a reduced possibility that Applicant or his family living in a foreign country would be specifically selected as targets for improper coercion or exploitation.

While the U.S. Government does not have any burden to prove the presence of such evidence, if such record evidence were present, Applicant would have a heavier evidentiary burden to mitigate foreign influence security concerns. It is important to be mindful of the United States' sizable financial and diplomatic investment in the PRC and Taiwan. Applicant and his spouse's family living in foreign countries could become potential targets of intelligence agents because of Applicant's support for the United

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<sup>3</sup>There would be little reason for U.S. enemies to seek classified information from an applicant before that applicant has access to such information or before they learn of such access.

States, and Applicant's potential access to classified information could theoretically add some risk to Applicant's family living in foreign countries.

Applicant has significant connections to the United States and much more limited connections to Taiwan and the PRC. In 1980, he immigrated to the United States. In 1994, Applicant was naturalized as a U.S. citizen. He took an oath and swore allegiance to the United States. His spouse, sister, and two sons are U.S. citizens. He offered to renounce his Taiwan citizenship, and he surrendered his Taiwan passport. He supports the U.S. Government as a contractor. He is serving the United States overseas. Over the past 35 years, he has been a resident of the United States, and he has manifested his patriotism, loyalty, and fidelity to the United States over all other countries.

In sum, Applicant and his spouse's connections to family living in the PRC and Taiwan are significant. Applicant frequently communicates with mother in Taiwan about her health; he provides financial support to his mother; and he is close enough to his son living in the PRC to raise a security concern. In 2007 and 2012, he visited Taiwan, and in 2008, 2012 and 2013, he visited the PRC. Security concerns are not analyzed in a piecemeal assessment. Instead, the overall situation must be considered. Applicant's 35 years of U.S. residence, his U.S. financial investments, and his family living in the United States constitute much stronger connections to the United States than to Taiwan or the PRC. I am confident that if foreign elements seek information from Applicant, he will immediately report that contact and request to security officials. Foreign influence security concerns under Guideline B are mitigated. Even if they were not mitigated under Guideline B, they would be mitigated under the whole-person concept, *infra*.

### **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 the relevant 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) 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 have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

There are some facts supporting denial or revocation of Applicant's access to classified information. Applicant's mother, two brothers, and two brothers-in-law are citizens and residents of Taiwan. Applicant is not close to anyone living in Taiwan, except for his mother. He frequently communicates with his mother, and he provides financial support to her. Applicant is also close to his son, who is a dual citizen of the United States and Taiwan, and his son and his son's spouse are employed in the PRC. In 2007 and 2012, Applicant visited Taiwan, and in 2008, 2012 and 2013, he visited the PRC. Applicant's son visits Applicant every year or so in the United States.

A Guideline B decision concerning a foreign country must take into consideration the geopolitical situation and dangers in that country including from intelligence agents.<sup>4</sup> The danger of coercion from the PRC government is more likely than in many other countries. The PRC competes with the United States militarily, diplomatically, and through trade. China and Taiwan have a history of espionage targeting U.S. military and industrial secrets.

The weight of the evidence supporting grant or continuation of Applicant's access to classified information is greater than the evidence against grant of continuation of his security clearance. Applicant immigrated to the United States 35 years ago, and in 1994, Applicant was naturalized as a U.S. citizen. His spouse, sister, and two sons are U.S. citizens. Nine written statements and one witness lauded his reliability, trustworthiness, and loyalty, and their statement support approval of his security clearance. He earned his bachelor's and master's degrees in the United States. He owns a home in the United States; his employment is with a DOD contractor; he has a U.S. passport; and his net worth in the United States is two million dollars. He offered to renounce his Taiwan citizenship.

There is no derogatory information concerning Applicant's police or financial records. There is no evidence of record showing any U.S. arrests, illegal drug possession or use, or alcohol-related incidents. He considers the United States to be his home. Applicant's demeanor, sincerity, honesty, and statements about his connections to the United States and limited connections to the PRC and Taiwan at his hearing are important factors militating towards approval or continuation of his access to classified information.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude Applicant has mitigated the foreign influence security concerns.

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<sup>4</sup> See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole person discussion).

### **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

Subparagraphs 1.a through 1.d: For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Mark Harvey  
Administrative Judge