

DATE: December 11, 2007

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In re: )	
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----- )	ISCR Case No. 06-25728
SSN: ----- )	
)	
Applicant for Security Clearance )	
_____ )	

**DECISION OF ADMINISTRATIVE JUDGE  
ROBERT J. TUIDER**

**APPEARANCES**

**FOR GOVERNMENT**

John B. Glendon, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant emigrated from Taiwan to the United States in 1990. He was able to mitigate foreign preference concerns as a result of dual citizenship and holding a Taiwanese passport. However, he was unable to mitigate foreign influence concerns of a result of his close and frequent contacts with his parents and two brothers, who are resident citizens of Taiwan. Clearance is denied.

## **STATEMENT OF THE CASE**

On May 19, 2005, Applicant submitted a security clearance application (SF 86).<sup>1</sup> On December 21, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, modified and revised.<sup>2</sup>

The SOR alleges security concerns under Guidelines C (Foreign Preference), and B (Foreign Influence). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In an answer notarized on April 26, 2007, Applicant responded to the SOR allegations, and elected to have his case decided on the written record. On May 24, 2007, Department Counsel requested to have the case converted to a hearing pursuant to Paragraph E.3.1.7, Additional Procedural Guidance, of the Directive. The case was assigned to me on June 29, 2007. On August 3, 2007, DOHA issued a notice of hearing scheduling the case to be heard on September 18, 2007. The hearing was held as scheduled.

The Government offered one document, which was admitted without objection as Government Exhibit (GE) 1. The Applicant offered six documents, which were admitted without objections as Applicant Exhibits (AE) A through F. I held the record open to afford Applicant additional opportunity to submit additional material. Applicant timely submitted additional documents, which were admitted without objection as AE G. DOHA received the transcript (Tr.) on September 26, 2007.

## **PROCEDURAL RULINGS**

### **Administrative Notice**

Department Counsel requested administrative notice of the facts in Exhibits (Exs.) IA through X. Without objection from Applicant, I took administrative notice of the documents offered by Department Counsel, which primarily pertained to Taiwan. (Tr. 9-13).

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<sup>1</sup>GE 1.(Security Clearance Application is dated May 19, 2005, on the signature page). For convenience, the security clearance application in this decision will be called an SF 86.

<sup>2</sup>On Aug. 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised Adjudicative Guideline to all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated Jan. 1987, as amended, in which the SOR was issued on or after Sep. 1, 2006. The revised Adjudicative Guidelines are applicable to Applicant's case.

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)); *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). The most common basis for administrative notice at ISCR proceedings, is to notice 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). Various facts pertaining to Taiwan were derived from Exs. IA through X as indicated under subheading “Taiwan” of this decision.

### **FINDINGS OF FACT**

In his response to the SOR, Applicant admitted all of the allegations in the SOR except SOR ¶¶ 1.a. and 1.b. His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is 44 years old. He was born in the Taiwan in 1962, where he was raised. He attended college in Taiwan and was awarded a bachelor of science degree majoring in electrical engineering in May 1986. Tr. 53-54. Applicant served two years of mandatory military service in the Taiwanese Army from 1986 to 1987. He served as a member of the military police and achieved the rank of sergeant. Tr. 45-46, 67-68.

In May 1990, at age 27, Applicant emigrated to the U.S. He came to the U.S. on an H-1, work visa, and was later granted permanent resident alien status (green card). He attended graduate school in the U.S. from July 1990 to June 1992, and was awarded a master’s degree in computer science in June 1992. Tr. 36. He married his wife in July 1996. She like him was born in Taiwan. Applicant and his wife have to U.S. born children, a 14-year-old daughter and an eight-year-old son.

Applicant and his wife became naturalized U.S. citizens in May 2003. Applicant has held a U.S. passport since May 2005. Applicant’s wife attended the same U.S. graduate school as Applicant and was also awarded a master’s degree in computer science. Applicant’s wife works for a major search engine company as a senior database engineer. Tr. 37. Since February 2005, Applicant has worked for a defense contractor and is currently employed as a senior software engineer. He seeks a security clearance in conjunction with his employment.

Applicant exercises dual citizenship with Taiwan and the U.S. Applicant acquired his Taiwanese citizenship as a result of his birth in Taiwan to Taiwanese parents. Applicant has expressed a willingness to renounce his Taiwanese citizenship. Tr. 47-48. SOR ¶ 1.a.

Applicant had an active Taiwanese passport issued in February 2002 expiring in February 2012. Applicant submitted documentation that he surrendered and destroyed his Taiwanese passport in the presence of his Facility Security Officer on April 24, 2007. Tr. 47-52, Response to SOR. SOR ¶ 1.b.

Applicant's parents are resident citizens of Taiwan. His father is 75 years old and his mother is 73 years old. His parents are retired. His father owned a furniture factory and his mother helped his father in the business. Neither parent worked for the Taiwanese government. Neither parent receives a pension from the Taiwanese government. However, because of a leg injury, Applicant's father receives modest benefits such as transportation discounts. Applicant's parents are mobile, financially self-sufficient, and able to take care of themselves. Applicant describes his relationship with his parents as "close" and telephones them every weekend. Occasionally, he e-mails his parents with pictures of his children. Applicant regularly sends his parents gifts on holidays. Tr. 38, 40-41, 44-45, 59-65. SOR ¶ 2.a.

Applicant's two brothers, ages 43 and 41, are resident citizens of Taiwan. His older brother is a teacher in a private school and his younger brother is an engineer. Neither brother works for the Taiwanese government. Applicant's contact with his brothers is "event driven" versus the weekly contact he has with his parents. Applicant also describes his relationship with his brothers as "close." Both of Applicant's brothers received higher education in the U.S. His older brother completed most of the requirements for a Ph.D. in civil engineering. His younger brother completed a Ph.D. in chemistry. Tr. 38-41, 43, 59-63, 65. SOR ¶ 2.b.

Applicant's parents-in-law are resident citizens of Taiwan. His father-in-law is 73 years old and his mother-in-law is 72 years old. Both of his in-laws are retired. His father-in-law worked for a bank that was at one time affiliated with the Taiwanese government, but later went private. His mother-in-law was a housewife. Both his in-laws live off a private company pension and their savings. Applicant described his wife's relationship with her parents as "close." She telephones her parents every weekend. Tr. 40-42, 44, 63, 66-67. SOR ¶ 2.c.

Applicant traveled to Taiwan for family visits in June 2000, April 2001, August 2003, and June 2004. Tr. 42-44. SOR ¶ 2.d. Applicant's mother visited him in the U.S. in 2005. Tr. 43.

Applicant is heavily involved in his community and does volunteer work at nursing homes, a hospice, an abuse shelter, and helps the blind. He is also busy transporting his children to various extra-curricular activities, particularly his daughter who is an accomplished pianist and flutist, a competitive swimmer, and an accomplished linguist. Applicant and his family enjoy a comfortable middle class suburban life. He and his wife earn a joint annual income of \$230k. Applicant estimates his net worth which includes his home, life insurance savings account, mutual funds, 401Ks, checking and savings accounts to approximate \$1 million. He regularly votes and enjoys all rights and privileges of U.S. citizenship. He describes his home town as "one of the top ten places to live in the U.S." Tr. 17-31, 70-73. AE A through G.

### **Taiwan<sup>3</sup>**

In 1949, two million refugees fled from a civil war in mainland China to the island of Taiwan and established a separate, provisional capital for a government under Chiang Kai-shek. That same year, Communists in mainland China established the People's Republic of China (PRC or China). The PRC does not recognize Taiwan's independence, and insists that there is only "one China."

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<sup>3</sup> The contents of the Taiwan section are from Exs. I through XII.

Since in 1949, trade, human rights, and regional issues have dominated U.S.-Sino relations, with particular disagreement on the status of Taiwan. Although the United States long recognized Taiwan's independence, on January 1, 1979, the U.S. formally recognized the government of the PRC as the sole legal government of China. The U.S. does not support independence for Taiwan and is committed to a "one-China policy," under the Taiwan Relations Act, signed into law on April 10, 1979.

China has an authoritarian government, dominated by the Chinese Communist Party, and possesses a large and increasingly sophisticated military, including strategic nuclear weapons and missiles. The Intelligence Threat Handbook notes that "[t]he United States is a primary intelligence target of China because of the U.S. role as a global superpower; its substantial military, political, and economic presence in the Pacific Rim and Asia; its role as a developer of advanced technology that China requires for economic growth; and the large number of Americans of Chinese ancestry, who are considered prime intelligence targets by the PRC." The U.S.-China Economic and Security Review Commission made the following "Key Finding" in its 2006 report to Congress:

China makes a concerted effort to modernize its military by obtaining military-related systems and technologies from other countries, particularly Russia. China uses legal and illegal means, including espionage, to obtain such technologies from the United States.

The PRC's Military Intelligence Department, First Bureau, is responsible for collecting military information about the United States and Taiwan. The PRC's Ministry of State Security is the "preeminent civilian intelligence collection agency in China," and it maintains intelligence operations in Hong Kong, Macau, and Taiwan, through a bureau utilizing PRC nationals with Hong Kong, Macau, or Taiwan connections.

Taiwan is a multi-party democracy that has significant economic contacts with mainland China, and it has developed a strong economy since its separation from the PRC. However, Taiwan's own national security remains under constant threat from the PRC, prompting the development of Taiwan's large military establishment.

Taiwan, also, is an active collector of U.S. economic intelligence. The 2000 Annual Report to Congress on Foreign Economic Collection and Industrial Espionage, prepared by National Counterintelligence Center (NACIC), lists Taiwan – as well as China – as being among the most active collectors of U.S. economic and proprietary information. This report highlights specific incidents wherein Taiwan stole proprietary information and engaged in attempts to acquire export-restricted products.

These collection activities are ongoing, as evidenced by the January 2006 conviction and four-year prison sentence of Jonathan C. Sanders on charges related to the theft of sensitive and proprietary information by and for Taiwan companies. Additionally, in December 2005, Donald Keyser, the Principal Deputy Assistant Secretary of State for East Asian and Pacific Affairs, pled guilty to illegally removing classified materials and to providing false statements to the U.S.

Government. Mr. Keyser was engaged in a personal relationship with an intelligence officer employed by the National Intelligence Bureau, the foreign intelligence agency of the government of Taiwan, and he regularly communicated with her by telephone, by email, and in person.

## POLICIES

In an evaluation of an applicant's security or trustworthiness suitability, an administrative judge must consider the "Adjudicative Guidelines for Determining Eligibility For Access to Classified Information" (Guideline[s]), which sets forth adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into Disqualifying Conditions (DC) and Mitigating Conditions (MC), which are used to determine an applicant's eligibility for access to classified or sensitive information.

These Guidelines are not inflexible ironclad rules of law. Instead, recognizing the complexities of human behavior, an administrative judge should apply these guidelines in conjunction with the factors listed in the adjudicative process. Guideline ¶ 2. An administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," an administrative judge should consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. Guideline ¶ 2(c).

Specifically, an administrative judge should consider the nine adjudicative process factors listed at Guideline ¶ 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."

Since the protection of the national security is the paramount consideration, the final decision in each case is arrived at by applying the standard that "[a]ny doubt concerning personnel being considered for access to classified [or sensitive] information will be resolved in favor of national security." Guideline ¶ 2(b). 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.

In the decision-making process, the Government has the initial burden of establishing controverted facts by "substantial evidence,"<sup>4</sup> demonstrating, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. Once the Government has produced substantial evidence of a

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<sup>4</sup> "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge's] finding from being supported by substantial evidence." *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620 (1966). "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).

disqualifying condition, the burden shifts to Applicant to produce evidence “to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15. 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).<sup>5</sup>

A person seeking access to classified or 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. It is because of this special relationship the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to such information. Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified or sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of such information.

The scope of an administrative judge’s decision is limited. 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 as to Applicant’s allegiance, loyalty, or patriotism. Executive Order 10865, § 7.

## **CONCLUSIONS**

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to the allegations set forth in the SOR:

### **Guideline C (Foreign Preference)**

Guideline ¶ 9 explains the Government’s concern about “foreign preference” stated, “[w]hen 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.”

Guideline ¶ 10 indicates conditions that could raise a security concern and may be disqualifying in this case, including:

- (a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member; and
- (a)(1) possession of a current foreign passport.

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<sup>5</sup>The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant’s past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15.” ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

The Government produced substantial evidence of these two disqualifying conditions as it pertains to Applicant's dual citizenship with Taiwan and possession of a current Taiwanese passport, and the burden shift to Applicant to produce evidence and prove a mitigating condition. As previously indicated, the burden of disproving a mitigating condition never shifts to the Government.

Three Foreign Preference Mitigating Conditions under Guideline ¶ 11 are potentially applicable to these disqualifying conditions:

- (a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;
- (b) the individual has expressed a willingness to renounce dual citizenship; and
- (e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

Guideline ¶¶ 11(a), (b), and (e) apply in this case. Applicant's Taiwanese citizenship is based solely on his birth to Taiwanese parents in Taiwan and he has expressed a willingness to renounce his Taiwanese citizenship. Applicant also took affirmative steps to comply with Guideline ¶ 11(e). He destroyed his Taiwanese passport in the presence of his Facility Security Officer.

### **Guideline B (Foreign Influence)**

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to the allegations set forth in the SOR:

Guideline ¶ 6 explains the Government's concern about "foreign contacts and interests" stating, "if 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."

Guideline ¶ 7 indicates conditions that could raise a security concern and may be disqualifying in this case, including:

- (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;

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 contacts 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. *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 frequent contacts with his parents and two brothers, who are resident citizens of Taiwan. Applicant visited his family four times in Taiwan since 2000 and his mother visited him in the U.S. one time in 2005. His wife also has frequent contacts with her parents in Taiwan. Applicant's close relationship with his immediate family creates a heightened risk of foreign pressure or attempted exploitation because Taiwan has an active collection program.

The Government produced substantial evidence of these two disqualifying conditions as it pertains to Applicant's family, and the burden shifted to Applicant to produce evidence and prove a mitigating condition. As previously indicated, the burden of disproving a mitigating condition never shifts to the Government.

Three Foreign Influence Mitigating Conditions under Guideline ¶ 8 are potentially applicable to these disqualifying conditions:

(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;

(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;

Guidelines ¶¶ 8(a) and 8(c) do not apply to his relationships with his parents and two brothers. Applicant maintains frequent contact with these immediate relatives and describes his relationship with them as close. He has also visited his family four times since 2000 and his mother visited him one time in 2005. These facts are indicia of the nature of his relationship with these family members and such contact is not casual and infrequent.

Applicant did not establish “it is unlikely [he] will be placed in a position of having to choose between the interests of [his immediate family members] and the interests of the U.S.” His frequent contacts with them could potentially force him to choose between the United States and Taiwan. He did not meet his burden of showing there is “little likelihood that [his relationship with his immediate family members] could create a risk for foreign influence or exploitation.”

Guideline ¶ 8(b) partially applies because Appellant has developed a significant relationship and loyalty to the U.S. He has continuously lived in the United States since 1990. He and his wife became a U.S. citizen in 1990. His two children are U.S. born citizens. He received a graduate degree in the U.S. He is heavily vested in the U.S., financially and emotionally.

### **“Whole Person” Analysis**

In addition to the enumerated disqualifying and mitigating conditions as discussed previously, I have considered the general adjudicative guidelines related to the whole person concept under Directive ¶ E2.2.1. “Under the whole person concept, the Administrative Judge must not consider and weigh incidents in an applicant’s life separately, in a piecemeal manner. Rather, the Judge must evaluate an applicant’s security eligibility by considering the totality of an applicant’s conduct and circumstances.”<sup>6</sup> The directive lists nine adjudicative process factors (APF) which are used for “whole person” analysis. Because foreign influence does not involve misconduct, voluntariness of participation, rehabilitation and behavior changes, etc., the eighth APF, “the potential for pressure, coercion, exploitation, or duress,” Directive ¶ E2.2.1.8, is the most relevant of the nine APFs to this adjudication.<sup>7</sup> In addition to the eighth APF, other “[a]vailable, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.” Directive ¶ E2.2.1. Ultimately, the clearance decision is “an overall common sense determination.” Directive ¶ E2.2.3.

The Appeal Board requires the whole person analysis address “evidence of an applicant’s personal loyalties; the nature and extent of an applicant’s family’s ties to the U.S. relative to his [or her] ties to a foreign country; his or her ties social ties within the U.S.; and many others raised by the facts of a given case.” ISCR Case No. 04-00540 at 7 (App. Bd. Jan. 5, 2007).

Substantial mitigating evidence weighs towards grant of Applicant’s security clearance. Applicant has lived in the United States for 17 years, and he has been a naturalized citizen for four years. When he became a U.S. citizen, he swore allegiance to the United States. His wife is also a naturalized U.S citizen and his two children are U.S. born citizens. He has stated he would be willing to willing to renounce his Taiwanese citizenship and has destroyed his Taiwanese

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<sup>6</sup> ISCR Case No. 03-04147 at 3 (App. Bd. Nov. 4, 2005) (quoting ISCR Case No. 02-01093 at 4 (App. Bd. Dec. 11, 2003)); ISCR Case No. 05-02833 at 2 (App. Bd. Mar. 19, 2007) (citing *Raffone v. Adams*, 468 F.2d 860 (2nd Cir. 1972) (taken together, separate events may have a significance that is missing when each event is viewed in isolation).

<sup>7</sup> See ISCR Case No. 02-24566 at 3 (App. Bd. July 17, 2006) (stating that an analysis under the eighth APF apparently without discussion of the other APFs was sustainable); ISCR Case No. 03-10954 at 5 (App. Bd. Mar. 8, 2006) (sole APF mentioned is eighth APF); ISCR Case No. 03-17620 at 4 (App. Bd. Apr. 17, 2006) (remanding grant of clearance because Judge did not assess “the realistic potential for exploitation”), *but see* ISCR Case No. 04-00540 at 6 (App. Bd. Jan. 5, 2007) (rejecting contention that eighth APF is exclusive circumstance in whole person analysis in foreign influence cases).

passport. There is no evidence he has ever taken any action which could cause potential harm to the U.S. He takes his loyalty to the U.S. very seriously, and he has worked diligently for a defense contractor for two years. All his financial ties are in the U.S. No derogatory evidence was developed against him.

Four circumstances weigh against Applicant in the whole person analysis. First, Taiwan's government is a rival of the U.S. *See* discussion under "Taiwan." More importantly for security purposes, Taiwan actively seeks classified and industrial/economic information. Taiwan may attempt to use his immediate relatives who live in Taiwan to obtain such information. Second, Applicant had significant connections to Taiwan before he emigrated to the U.S. in 1990 at age 27. He was born there and spent his formative years there. Third, he has immediate family members consisting of his parents and two brothers and in-laws, who are resident citizens of Taiwan. Fourth, Applicant has frequent and non-casual contact with his immediate relatives as evidenced by his frequent telephone and e-mail contact as well as his four visits to Taiwan since 2000. His mother also visited his family in 2005. These contacts are manifestations of his strong affection and regard for his immediate family members, especially his parents.

"Because of the extreme sensitivity of security matters, there is a strong presumption against granting a security clearance. Whenever any doubt is raised . . . it is deemed best to err on the side of the government's compelling interest in security by denying or revoking [a] clearance." *Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9<sup>th</sup> Cir. 1990). After weighing the disqualifying and mitigating conditions, all the facts and circumstances, in the context of the whole person, I conclude Applicant has not mitigated the security concerns pertaining to foreign influence. This is a close case, but ultimately the evidence leaves me with doubts as to Applicant's security eligibility and suitability.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my "careful consideration of the whole person factors"<sup>8</sup> and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has mitigated or overcome the government's case. For the reasons stated, I conclude he is not eligible for access to classified information.

### **FORMAL FINDINGS**

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

Paragraph 1, Guideline C:	FOR APPLICANT
Subparagraphs 1.a. – b.:	FOR APPLICANT
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraphs 2.a. – d.:	Against Applicant

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<sup>8</sup>*See* ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).

**DECISION**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Robert J. Tuidier  
Administrative Judge