

DATE: October 31, 2007

In re:)
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 -----) ISCR Case No. 06-26644
 SSN: -----)
)
 Applicant for Security Clearance)
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)

**DECISION OF ADMINISTRATIVE JUDGE
ELIZABETH M. MATCHINSKI**

APPEARANCES

FOR GOVERNMENT

Fahryn Hoffman, Esq., Department Counsel

FOR APPLICANT

Eric A. Eisen, Esq.

SYNOPSIS

Applicant, a native of Taiwan, acquired U.S. citizenship in January 1997 after living in the U.S. since early 1982. From 1995 to 2005, he operated his own consulting business in the U.S. While he provided translation services to a Taiwanese company maintaining a satellite ground station built by U.S. companies, he had several U.S. clients as well, and his work predated his U.S. defense contractor employment. Applicant obtained a Taiwanese passport in about 1998 for convenience when traveling between the U.S. and Taiwan to care for his ill mother. The foreign preference concerns are mitigated by the destruction of the Taiwanese passport with expressed renunciation of Taiwanese citizenship. Foreign influence concerns exist because of the Taiwanese residency and citizenship of his father and brother, but Applicant is likely to resolve any conflict in favor of the U.S. where he and his mother make their home. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. As required by ¶ E3.1.2 of Department of Defense Directive 5220.6 (Jan. 2, 1992), as amended, DOHA issued a Statement of Reasons (SOR) on March 30, 2007, detailing the basis for its decision—security concerns raised under Guideline C (foreign preference) and Guideline B (foreign influence) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006. The guidelines were provided to Applicant when the SOR was issued. Applicant, acting *pro se*, answered the SOR on May 2, 2007, and elected to have a hearing before an administrative judge. The case was assigned to me on June 14, 2007. Counsel for Applicant entered his appearance on June 26, 2007.

I convened a hearing on October 16, 2007, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Three government exhibits (Ex. 1-3) and ten Applicant exhibits (Ex. A-J) were admitted, and testimony was taken from Applicant. DOHA received the hearing transcript (Tr.) on October 25, 2007.

RULINGS ON PROCEDURE

On June 13, 2007, the government requested administrative notice be taken of several proposed facts concerning the Republic of China (Taiwan) and the People’s Republic of China (PRC). Authority to consider the government’s request is set forth in ¶ E3.1.10 of Department of Defense Directive 5220.6 (*The Administrative Judge may rule on questions of procedure, discovery, and evidence and shall conduct all proceedings in a fair, timely, and orderly manner*).

The DOHA Appeal Board has ruled that administrative or official notice in administrative proceedings is broader than judicial notice under the Federal Rules of Evidence. In ISCR Case No. 02-24875 (decided Oct. 12, 2006), the Appeal Board found no error by a DOHA administrative judge who took administrative notice of a U.S. State Department Country Report, as the document was an official U.S. government report relevant to the issues in the case, and it was provided in advance to that applicant who had an opportunity to rebut its contents or to present alternative information for the judge to notice. On August 20, 2007, I granted Applicant until September 21, 2007, to file any objections and/or submit alternative facts for administrative notice. No response was forthcoming by the due date. At his hearing, counsel for Applicant objected on the grounds of relevance to the consideration of the criminal activities of other individuals, to the government’s “blending” of Taiwan with the PRC given Taiwan is a multiparty democracy and the PRC a centrally-controlled totalitarian state, and of the relevance of the PRC to his case.

Facts are proper for administrative notice when they are easily verifiable by an authorized source and relevant and material to the case. For source documentation the government relied on

publications of the Department of State;¹ the Congressional Research Service;² the Centre for Counterintelligence and Security Studies;³ the National Counterintelligence Center, now known as the Office of the National Counterintelligence Executive;⁴ the U.S. China Economic and Security Review Commission;⁵ two press releases from the U.S. Department of Justice;⁶ and a record of the U.S. District Court for the Eastern District of Virginia.⁷

I agreed to take administrative notice, noting that Taiwan and the PRC are viewed as separate entities by the U.S. State Department, notwithstanding the “one-China” policy. After weighing the reliability of the source documentation⁸ and assessing the relevancy and materiality of the facts proposed, I took administrative notice of certain facts as set forth below.

FINDINGS OF FACT

DOHA alleged under Guideline C, foreign preference, that Applicant exercises dual citizenship with Taiwan and the United States (SOR ¶ 1.a);⁹ possessed an active Taiwanese passport from about 1998 through February 1, 2007 (SOR ¶ 1.b); resided in Taiwan from about 1998 through 2001 (SOR ¶ 1.c); from about 1998 through 2005 served as owner/president of a U.S. consulting

¹See *Background Note: Taiwan*, dated April 2007 (I), *Background Note: China*, dated January 2007 (VIII), *China: Country Reports on Human Rights Practices-2006*, dated March 6, 2007 (XI), and *Consular Information Sheet on China*, dated March 19, 2007 (XII).

²See *Taiwan: Recent Developments and U.S. Policy Choices*, dated October 9, 2006 (II).

³See *Intelligence Threat Handbook*, excerpts, dated June 2004 (VII). The document was prepared for the Interagency OPSEC Support Staff by the Centre for Counterintelligence and Security Studies, a private contractor.

⁴See *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage, 2000* (III) and *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage, 2005* (X).

⁵See *2006 Report to Congress*, November 2006 (IX).

⁶The April 18, 2006, press release (IV) concerns the sentencing of a U.S. citizen for conspiring to commit trade secret theft between December 1999 and December 2001 to the benefit of a corporation based in Taiwan. There is no evidence that Taiwan’s government was involved in, or sanctioned the criminal activity. The January 22, 2007 (V) press release concerns the sentencing of a former U.S. State Department official for, in part, making false statements to the government concerning his relationship with a female Taiwanese intelligence officer and by not reporting that he had traveled to Taiwan where he met with the foreign intelligence officer.

⁷See U.S. District Court Eastern District of Virginia, Statement of Facts, dated December 12, 2005 (VI). The court records do not pertain to any criminal charge against Applicant.

⁸The press releases (IV) and (V) are hearsay and entitled to little weight in this case. While presented apparently to substantiate that Taiwan actively pursues collection of U.S. economic and proprietary information, neither case involves Applicant personally. Similarly, the wrongdoing of a former U.S. State Department official as set forth in the Statement of Facts filed in the U.S. District Court (VI) is relevant only to the extent it implicates a Taiwanese intelligence officer in improper activity. There is no indication Applicant has ever been targeted.

⁹In SOR ¶¶ 1.a and 1.b, DOHA incorrectly identified Taiwan as the People’s Republic of China (PRC). The SOR was amended at the hearing to correctly designate Taiwan as the Republic of China (ROC). There is no evidence that Applicant is a citizen of the PRC, although his ex-spouse is a resident and citizen of the PRC.

firm with clients in Taiwan, including a space program office that paid him about \$5,000 in consultant fees in 2001 (SOR ¶ 1.d); and he served in Taiwan's army from about 1978 through 1980 (SOR ¶ 1.e). DOHA alleged under Guideline B, foreign influence, that Applicant's father and brother are resident citizens of Taiwan (SOR ¶ 2.a); his brother works as a research scientist for a forest research institute sponsored by the Taiwanese government (SOR ¶ 1.c); his mother is a Taiwanese citizen living with him in the U.S. (SOR ¶ 2.c); Applicant traveled to China in 1997, 1998, and twice in 1999 (SOR ¶ 2.d); and he resided in Taiwan from 1998 through 2001 (SOR ¶ 2.e).

In his Answer, Applicant admitted he held an active Taiwanese passport from approximately 1998 through February 1, 2007, that he served as owner/president of a U.S. sole proprietorship that did business in Taiwan as alleged, and that he served in Taiwan's army from about 1978 to 1980. He explained that he was hired as a consultant to provide translation services for technical documents needed to maintain and upgrade a ground station in Taiwan built by the U.S. He denied the exercise of dual citizenship as he did not claim Taiwanese citizenship, and that while he had an extended stay in Taiwan due to his parents' health problems, he considered himself a resident of the U.S. where he owned his home. He indicated that he returned permanently to the U.S. in 2001 and did not use his Taiwanese passport again before its destruction in 2007. Concerning the Guideline B allegations, Applicant admitted the Taiwanese citizenship and/or residency of his family members as alleged, his travels to China to see his spouse from whom he divorced 2001, and his brother's employment as a research scientist in Taiwan. He denied residency in Taiwan as well as the implications of foreign influence. Applicant indicated that his brother, who obtained his doctorate degree in the U.S., plans to immigrate to the U.S. with his family in the future.

After a thorough consideration of the pleadings, exhibits, and hearing transcript, and having agreed to take administrative notice, I make the following findings of fact.

Applicant is a 52-year-old testing engineer who was born in Taiwan. His father and mother immigrated separately from the PRC to Taiwan following the Communist takeover in 1949, and acquired Taiwanese citizenship. His father was an engineer for a private company in Taiwan before he retired. Applicant was raised in Taiwan with his older brother, who was born in 1953. Applicant pursued his undergraduate education in Taiwan, and was awarded a bachelor of science degree in 1978.

Granted a deferment until he completed his college studies, Applicant served compulsory military service in the Taiwanese army as an ordnance lieutenant from about September 1978 to August 1980. He spent the year 1981 learning English and taking examinations in preparation for graduate school in the U.S. From about January 1982 to March 1984, Applicant pursued master's degree studies in mechanical engineering at a public university in the U.S. His time in the U.S. only served to reaffirm a desire to live in the U.S. that he had held since before he came to the U.S. for graduate school. On earning his degree in March 1984, he began a job search in the U.S. In 1985, Applicant began employment as a research engineer for a company in Silicon Valley, and he began using an Anglicized first name. In January 1986 he began taking classes in controls and dynamics toward his doctorate while working full-time.

In about 1987, his employer sponsored him for U.S. permanent residency, and Applicant bought a home in California. He put his father on the deed and mortgage as well just in case something was to happen to him. In 1991, Applicant got his "green card."

In 1990, Applicant's mother traveled from Taiwan to the PRC to see if she could find her sister and other family members left behind when she emigrated. While she was in the PRC, her efforts were aided by a PRC female citizen, then about 22 (born in 1968) years old, whom she thought would make a good match for Applicant. With the help of his mother, Applicant traveled to the PRC to meet her in about 1993. They continued to correspond and in August 1995, they married in the PRC. Applicant returned to the U.S. without her and he applied for her to immigrate to the U.S.

.In 1994, Applicant's employer ceased operations. Applicant started his own consulting company from out of his home in the U.S., marketing his knowledge of Taiwanese culture and of mandarin Chinese to U.S. businesses. Over the 11 years of his company's existence, Applicant's clients were primarily U.S. firms needing assistance with their work with Taiwanese firms, although half of his business involved a private Taiwanese company engaged in contract work for the Taiwanese government.¹⁰ Around 1995, Applicant learned by way of a newspaper advertisement that this Taiwanese company was looking for help in its dealings with U.S. companies involving a ground satellite tracking station in Taiwan. Applicant was paid about \$5,000 by the Taiwanese company for his consulting services between 1996 and 2001, consisting largely of identifying U.S. firms with the products and/or expertise needed by the Taiwanese company in maintaining this satellite station, translating into Chinese technical documents provided by the American builder of the tracking station, and aiding employees of the Taiwanese firm on travel in the U.S. to work with their American counterparts.

In January 1997, Applicant became a naturalized U.S. citizen, taking an oath to renounce all foreign allegiances, to support and defend the U.S. Constitution and its laws, and to bear arms or perform noncombatant service or civilian service on behalf of the U.S. if required. Applicant thought of himself as a U.S. citizen thereafter, even though he subsequently acknowledged on his security clearance application that he was a dual citizen of Taiwan and the U.S. and obtained a Taiwanese passport. Applicant acquired his U.S. passport on January 31, 1997.

In October 1997, Applicant traveled to the PRC for two weeks to visit his spouse. She was involved in her real estate career, and he had been unable to convince her to join him in the U.S. Applicant stopped off in Taiwan for business and to see his parents and brother during that trip.

In 1998, Applicant's mother was diagnosed with hydrocephalus after she had lost the ability to walk. Applicant traveled on short notice to Taiwan because of his mother's illness and when told that she would not live for more than two years, he elected to spend extended periods in Taiwan. Over the next three years, he traveled to the U.S. seven to eight times, staying two to four weeks per occasion, to deal with his house in California, which is rented out, and for business. When in Taiwan, he rented an apartment to give him some private space while caring for his parents. Applicant traveled to the PRC in July 1998, and twice in 1999 (May and October) to see his spouse.

¹⁰The government alleged, and the name of the foreign firm suggests, that this was an official office of the Taiwanese government. However, Applicant testified with no evidence to the contrary from the government that he understood from employees of the Taiwanese firm that they do not receive the benefits of the Taiwanese government employees. Applicant took this to mean that the company was a contractor to the government tasked with maintaining a satellite station built by a U.S. firm for the Taiwanese government. (Tr. 45, 86)

Out of concern that as a foreign visitor he would be at a disadvantage when obtaining timely health care for his elderly parents, and that his visa might expire when he needed to remain in Taiwan to care for his parents, Applicant relied on his Taiwanese birth and presumptive Taiwanese citizenship to obtain a Taiwanese passport.¹¹ Applicant used this Taiwanese passport as recently as September 2001 when re-entering Taiwan following his travel to the U.S. to deal with his house and business.

In late Spring 2001, his mother had successful surgery to remove a brain tumor. Applicant returned to the U.S. permanently in about September 2001, bringing his mother with him. He sponsored his mother for permanent residency in the U.S., which was granted to her in August 2003. His father remained in Taiwan near Applicant's brother for health reasons. Once back in the U.S., Applicant did not use his Taiwanese passport.

In early January 2002, Applicant's spouse came to the U.S. for the first time to ask him for a divorce. Heavily involved in her real estate career, she had no intention of living in the U.S. To Applicant's understanding, his divorce, which was handled in the PRC, was final six months later. Applicant has had no contact with his ex-wife since her three-day visit in early 2002.

Seeking employment stability and financial security so that he could care for his mother, Applicant accepted a position with his current employer in 2005. Applicant formally closed his consulting business in June 2005, and he relocated across the country for the job. He initially resided in a residence inn until he found an apartment for him and his mother.¹²

On starting his job in July 2005, Applicant applied for a security clearance for his duties as a systems engineer. On an Electronic Questionnaire for Investigations Processing (e-QIP) executed on July 29, 2005, Applicant disclosed his dual citizenship with Taiwan and the U.S., his addresses in Taiwan when he was there from about January 1998 to September 2001, his former military service for Taiwan before he came to the U.S., his self-employment, his travel to the PRC for pleasure and to Taiwan for business and pleasure, his marriage to and divorce from a PRC resident citizen, his mother's Taiwanese citizenship and U.S. residency as a "green card holder," and the Taiwanese citizenship and residency of his father and his brother.

On February 1, 2007, Applicant turned in his Taiwanese passport to his facility security officer (FSO) for destruction. By letter dated February 1, 2007, but not sent by Applicant until August 2007, Applicant informed the Taipei Economic and Cultural Office (TECO) of the destruction of his Taiwanese passport and of his renunciation of his Taiwanese citizenship.

In response to foreign preference interrogatories from DOHA, Applicant disclosed on February 26, 2007, that he had received \$5,000 in consultation fees from the Taiwanese firm likely

¹¹Applicant could not recall when he renewed his Taiwanese passport. (Tr. 105)

¹²As of his e-QIP in late July 2005, Applicant was in the process of relocating from California to his current state of residence. He provided his home in California as his mother's current residence, and indicated he was living in a hotel. He also added that a friend in California was helping him care for his mother, so she likely stayed behind at his house in California while he made more permanent living arrangements in his present locale. It is not clear when she joined him.

around 2001. He denied any current financial interests, benefits, or payments from a foreign country, business, person, or organization, and estimated the value of his U.S. financial interests at \$600,000.

Applicant has not been back to Taiwan since he returned to the U.S. with his mother in September 2001. He does not intend any future travel to Taiwan, except to attend his father's funeral. His father is 88 years old and in poor health. He lives close to Applicant's brother and brother's family. Applicant is the primary caregiver for his mother, and his brother looks after their father in Taiwan. Applicant does not provide his father any financial assistance.

Applicant's brother is a research agronomist who earned his doctorate degree from a university in the U.S. in December 1990. He has been employed for about the last 30 years by a government-funded forestry research institute in Taiwan whose mission is the preservation of forest resources. His job involves the routine survey of timber sites, measurement of tree growth and assessment of tree health, and research into timber planning and management. Applicant's brother is married to a teacher at a local private college in Taiwan. They have two children. Their 23-year-old son has a bachelor's degree in accounting. He just started his compulsory military service for Taiwan, and intends to pursue graduate study in the U.S. on his discharge. Their 17-year-old daughter, a high school student, has U.S. citizenship because she was born in the U.S. in April 1990. She held a U.S. passport from April 2000 to April 2005, and hopes to attend college in the U.S. Applicant's brother and his wife plan on retiring in about two to three years and immigrating to the U.S. It is Applicant's brother's belief that his father will accompany them to the U.S. at that time if he is still alive. Applicant's relatives (brother and his immediate family and father) visit him in the U.S. about once every other year. During their visits, designed in part to acclimate their father to the U.S., they explore different areas of the U.S. with a view to identifying where they would like to live on their immigration.

Initially on his return to the U.S. in 2001, and again when he relocated for his current job in 2005, Applicant contacted his brother weekly by e-mail to reassure him that he could continue to care for their mother. As of October 2007, the extent of Applicant's contact with his father and/or brother was a telephone call and/or e-mail message a couple of times per year, usually on special occasions such as birthdays. His most recent contact was by telephone with his father in mid-Summer 2007.

Applicant has no financial assets in Taiwan. He rents an apartment near his work, and continues to pay on a mortgage for his home in the U.S. The net equity in the home is about \$500,000. Applicant hopes to retire someday to his home in California, so he rents out the property. As of September 11, 2007, Applicant had \$30,578.21 on deposit in a checking account in the U.S. Applicant put his brother's name on the account in case something should happen to him. Applicant renewed his U.S. passport on April 27, 2007.

At work Applicant coordinates and supports integration and test efforts associated with an advanced radar system that has high visibility within the company and its customers. A conscientious and attentive employee, Applicant is solid technically and produces quality work. He held an interim secret clearance for his duties in 2006 and 2007 on a classified program that required frequent access to classified equipment and information. Applicant complied with the security classification guide for the program. He has completed security training offered by his employer, including in protecting company trade secrets, information security awareness, and closed area security requirements.

Outside of work, Applicant has been a Special Olympics volunteer. He also mentors eighth grade students on a weekly basis as part of his employer's initiative promoting education. Applicant plays tennis on weekends when he is not caring for his mother and he is active in his church. He employs a woman to help him care for his mother.

Administrative notice was taken of the following facts. The government of Taiwan is a multiparty democracy. The United States recognizes that there is only one China, that the government of the PRC is the sole legal government of China, and that Taiwan is part of China. Nonetheless, under the Taiwan Relations Act of 1979, the U.S. conducts unofficial relations with Taiwan. Although the U.S. terminated its Mutual Defense Treaty, it has continued to sell appropriate military defensive material to Taiwan. The PRC has surpassed the U.S. as Taiwan's most important trading partner, but Taiwan maintains a large military establishment whose primary mission is the defense of Taiwan against the PRC, which is seen as the predominant threat and has not renounced the use of force against Taiwan. It is U.S. policy that the resolutions of disputes between Taiwan and China be peaceful. Taiwan is a major international trading power and a member of the World Trade Organization. It enjoys normal trade relations with the U.S., and ready access to U.S. markets. The U.S. State Department reports that Taiwan has taken dramatic steps to improve respect for human rights and create a democratic political system since ending martial law. In the past, organizations in Taiwan employed unlawful methods to obtain U.S. economic and intelligence information. Taiwan was listed as an active collector of U.S. economic intelligence as of 2000. As recently as 2004, a female Taiwanese intelligence officer cultivated a covert relationship with a U.S. State Department official.

POLICIES

“[N]o 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 occupy a position . . . that will give that person access to such information.” *Id.* at 527. The President authorized the Secretary of Defense or his designee to grant applicants 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). 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 revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. 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.

CONCLUSIONS

Guideline C—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. (AG ¶ 9). A native of Taiwan, Applicant came to the United States in about early 1982 for graduate study after completing compulsory military service for Taiwan. Sponsored by his then employer, he acquired U.S. permanent residency in 1991. In January 1997, he became a U.S. citizen. Even though he thought of himself solely as a U.S. citizen, he knowingly exercised a privilege of his native Taiwanese citizenship by applying for and obtaining a Taiwanese passport in about 1998 so that he could stay in Taiwan for extended periods if necessary to care for his parents and to avoid any possible bureaucratic difficulties in obtaining needed health care for his parents. While not intended as an act in preference for Taiwan, this voluntary acquisition and use of his Taiwanese passport after his U.S. naturalization raises serious foreign preference concerns under disqualifying condition (DC) ¶ 10(a)(1), *exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the citizenship of a family member. This includes but is not limited to: (1) possession of a current foreign passport.*

However, Applicant's mandatory military service for Taiwan (SOR ¶ 1.e), his residency in Taiwan (SOR ¶ 1.c), and his consultant activities for a Taiwanese defense firm (SOR ¶ 1.d) do not raise current concerns of foreign preference. His foreign military service occurred when he was solely a citizen of Taiwan, before he came to the U.S. for graduate school. DC ¶ (10)(a) (2), *military service or a willingness to bear arms for a foreign country*, is implicated only if the military service was after he became a U.S. citizen. Applicant's home ownership in the U.S. notwithstanding, he spent most of his time in Taiwan from mid-1998 to September 2001, splitting his time between his parents' home and a rented apartment. Yet his motivation was to care for his parents, especially his mother who had been given two years to live, and it was not to meet citizenship requirements. DC ¶ 10(a)(4), *residence in a foreign country to meet citizenship requirements*, does not apply. Applicant was paid \$5,000 in consulting fees by a private Taiwanese firm that contracted with the Taiwanese government in the maintenance of a ground satellite station built for Taiwan by U.S. companies, but there is nothing to suggest that the business relationship was in conflict with the U.S. national security interest. He learned about the Taiwanese company's need for translation services from a newspaper, a source open to the public, was hired based on his merit and not on personal contacts, and ceased operations once he began working for his current employer. Accordingly, DC ¶ 10(c), *performing or attempting to perform duties, or otherwise acting, so as to serve the interests of a foreign person, group, or organization, or government in conflict with the national security interest*, is not pertinent.

In mitigation of the foreign preference concerns generated by his possession and use of a current foreign passport, Applicant provided his foreign passport to his FSO and it was destroyed in February 2007. Mitigating condition (MC) ¶ 11(e), *the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated*, applies. Any concerns that the DoD may have had of Applicant reapplying for the foreign passport have been amply addressed by Applicant's notification to the TECO that he had renounced his Taiwanese citizenship and destroyed his Taiwanese passport. Willingness to renounce dual citizenship is mitigating under ¶ 11(b), *the individual has expressed a willingness to renounce dual citizenship*. There is no evidence as of October 2007 that his unilateral actions are sufficient to revoke his Taiwanese citizenship, but

Applicant has done what he can to comply with DoD requirements and demonstrate a preference for the U.S.

Guideline B—Foreign Influence

Under Guideline B, foreign influence, foreign contacts and interests may be a security concern if the individual has divided loyalties, or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government 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 to 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 ¶ 6). Applicant's father and only sibling are resident citizens of Taiwan, a country with a history of favorable relations with the U.S., but also one that has targeted U.S. sensitive information. Applicant's mother, who lives with him in the U.S., is a citizen of Taiwan. She is unlikely to acquire U.S. citizenship because of the language barrier (she speaks little English) and her age and ill-health that make mastering English improbable. Her ties to her spouse and son in Taiwan must also be considered when assessing whether there is a heightened risk. DC ¶ 7(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*, and DC ¶ 7(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*, are implicated.

Applicant's travels to the PRC in the late 1990s (SOR ¶ 2.d) are not of current security concern since the trips were solely to see his former spouse from whom he has been divorced and with whom he has had no contact since 2002.

The heightened risk that exists because of Applicant's family ties to Taiwan may be mitigated under ¶ 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 interest of a foreign individual, group, organization, or government and the interests of the U.S.* Applicant was not deterred from moving back to the U.S. without his father in September 2001, even though it meant the physical separation of his parents. Applicant's and his mother's contacts with his father and brother in Taiwan are limited to a couple of telephone calls and e-mail messages yearly and to visits from them every other year. Bonds are not likely strengthened by such infrequent contact, but Applicant is sufficiently close to his family members to be concerned about their welfare and to be willing to sponsor them for immigration to the U.S. There is nothing about Applicant's 88-year-old father's activities in Taiwan that heightens a risk of foreign influence. He is retired, in ill health, and was employed as an engineer for a private company before he retired. However, Applicant's brother has worked for a Taiwanese government-sponsored research institute for about 30 years. Although nothing about his particular field of forestry or professional duties (routine survey of timber sites, measurement of tree growth and assessment of tree health, research into timber planning and management) suggests military, security, or intelligence responsibilities, his long government service and expertise as a researcher with a doctorate degree heighten the risk.

The country in which the foreign persons are located is a relevant consideration. Taiwan does not have a hostile relationship with the U.S., and is not known to sponsor terrorism. Taiwan has made considerable progress in achieving democratic elections, civil liberties, and stable, viable governmental institutions. As reported by the U.S. State Department, Taiwan has taken dramatic steps to improve respect for human rights and create a democratic political system since ending martial law in 1987. Almost all restrictions on the press have ended, restrictions on personal freedoms have been relaxed, and the prohibition against organizing new political parties has been lifted. While 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, the U.S. is obligated to help Taiwan defend itself, including making available defensive arms and defensive services to Taiwan. U.S. commercial ties with Taiwan have been maintained and expanded since 1979, and Taiwan is not likely to jeopardize its relationship with the U.S. by overly pressuring its citizens. Yet even nations with a history of friendly relations do not always have the same interests. As recently as 2004, a female Taiwanese intelligence officer cultivated a covert personal relationship with a U.S. State Department official that bears troubling implications, although no proof of, active collection efforts by or on behalf of the Taiwanese government.

However, should any foreign influence be brought to bear on Applicant's relatives, Applicant can be expected to resolve any conflict of interest in favor of the U.S. interest. His decision to remain in the U.S. after graduate study was borne of an admiration for U.S. culture from his days as a student in Taiwan. His voluntary decision to acquire U.S. citizenship took an affirmative act on his part, and the delay in acquiring that citizenship (some 15 years after he came to the U.S. on a student visa) was credibly explained by his need for a sponsor and the five-year waiting period after acquiring permanent residency. Applicant's recent destruction of his foreign passport and notification to the TECO that he renounced his Taiwanese citizenship shows his allegiance is to the U.S. where he has owned a home since 1987, pursues his career, and has all of his financial assets. He serves as a mentor to eighth grade students in an educational initiative sponsored by his employer, is an active member of his church, and has volunteered for the Special Olympics organization in his area. In contrast to these established ties to the U.S., he has not traveled to Taiwan since September 2001, and has no ongoing business contacts in Taiwan. Applicant's return to Taiwan in 1998 was solely because of his mother's serious illness and limited life expectancy, and as soon as she was well enough, he brought her to the U.S. to live and sponsored her for permanent residency. Applicant's marriage even took a back seat to his desire to live and work in the U.S. Although Applicant does not have longstanding family ties in the U.S., his strong personal/emotional affinity for the U.S. and his financial ties to the U.S. are sufficient to apply MC ¶ 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.*

Whole Person Analysis

Under the whole person evaluation required under the Directive (*The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance* (AG ¶ 2(a)), Applicant's record of dedicated contributions to his defense contractor employer weighs in his favor. Those who work with him have found him to be an ethical person, and he was candid about his Taiwanese connections when he

completed his security clearance application. When notified his possession of a Taiwanese passport was an issue for his clearance, he demonstrated an unequivocal preference for the U.S. in turning his Taiwanese passport in to his employer's security office for destruction, and recently in notifying Taiwan of his intent to renounce his Taiwanese citizenship. It is also relevant in assessing Applicant's security suitability that he accessed classified information without adverse incident after being granted an interim clearance, and there is no new information of potential security concern that raises questions as to his ability to comply with security requirements.

FORMAL FINDINGS

Paragraph 1. Guideline C: FOR APPLICANT

Subparagraph 1.a: For Applicant
Subparagraph 1.b: For Applicant
Subparagraph 1.c: For Applicant
Subparagraph 1.d: For Applicant
Subparagraph 1.e: For Applicant

Paragraph 2. Guideline B: FOR APPLICANT

Subparagraph 2.a: For Applicant
Subparagraph 2.b: For Applicant
Subparagraph 2.c: For Applicant
Subparagraph 2.d: For Applicant
Subparagraph 2.e: For Applicant

DECISION

In light of all of the circumstances in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Elizabeth M. Matchinski
Administrative Judge