



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 19-02001
)	
Applicant for Security Clearance)	

Appearances

For Government: Rhett E. Petcher, Esq., Department Counsel
For Applicant: *Pro se*

04/14/2021

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant mitigated the risk of foreign influence raised by his spouse's family members and her close friends, who are resident citizens of the Republic of China (Taiwan). Clearance is granted.

Statement of the Case

On August 12, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline B, foreign influence. The SOR explained why the DOD CAF was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DOD CAF took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG) effective within the DOD on June 8, 2017.

On August 26, 2019, Applicant responded to the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). Referral of the case to the Hearing Office was delayed because of the COVID pandemic. On February 17, 2021, Department Counsel indicated that the Government was ready to proceed to a hearing. On February 26, 2021, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. I received the case assignment and file on March 4, 2021. On March 9, 2021, I informed Applicant of the possibility of an online hearing at his option. Applicant expressed his willingness to have an online video hearing. Following a successful test of the Defense Collaboration Services (DCS), on March 12, 2021, DOHA scheduled a DCS video teleconference hearing for March 24, 2021.

At the hearing, two Government exhibits (GEs 1-2) were admitted without objection. Applicant objected to a third proposed exhibit, a summary of a personal subject interview, for lack of authentication, and it was not accepted into the record on that basis. Three hearing exhibits (HEs) were marked for the record but not admitted as evidentiary exhibits: a Government request for administrative notice with extracts of the source documents concerning Taiwan as HE I; a Government request for administrative notice with extracts of the source documents concerning the People's Republic of China (China) as HE II; and an October 15, 2019 letter forwarding copies of the proposed GEs to Applicant and the Government's administrative notice requests as HE III. Two Applicant exhibits (AEs A-B) were admitted in evidence without objection. Applicant and one witness testified, as reflected in a transcript (Tr.) received on April 5, 2021.

Administrative Notice

At the hearing, the Government submitted for administrative notice several facts pertinent to Taiwan and China, as set forth in respective requests for administrative notice dated October 15, 2019. The administrative notice request for Taiwan was based on excerpts of U.S. government publications, including the U.S. State Department's Fact Sheet, *U.S. Relations with Taiwan*, dated August 21, 2018; a November 2018 report to Congress by the U.S.-China Economic and Security Review Commission; a report of the Office of National Counterintelligence Executive, *Report to Congress on Foreign Economic Collection and Industrial Espionage, 2009-2011*; a publication of the Defense Personnel and Security Research Center; and three summaries and one press release of the U.S. Department of Justice about economic espionage benefitting Taiwan. The administrative notice request for China was based on excerpts of U.S. government publications, including the U.S. State Department's 2018 Human Rights Report and its International Travel Information for China dated January 3, 2019; a Worldwide Threat Assessment of the U.S. Intelligence Community dated January 29, 2019; remarks by the then Director of National Intelligence on January 29, 2019; a report of the National Counterintelligence and Security Center, *Foreign Economic Espionage in Cyberspace 2018*; a report of the Office of National Counterintelligence Executive, *Report to Congress on Foreign Economic Collection and Industrial Espionage, 2009-2011*; DOD's annual report to Congress on military and security developments involving China for 2019; two

summaries and eight press releases from the U.S. Department of Justice reporting recent economic espionage activity targeting the United States and U.S commercial entities; and 2016 and 2018 reports to Congress by the U.S.-China Economic and Security Review Commission.

Applicant submitted for administrative notice Senate Bill 4813 of the 116th Congress 2nd Session proposing congressional enactment of the Taiwan Relations Enforcement Act of 2020. He posited that the Bill seeks to update U.S. policy toward Taiwan and strengthen the relationship between the two countries.

Applicant confirmed that he received the Government's requests for administrative notice with extracts of the source documents. Applicant objected to the Government's administrative notice request regarding China on the basis that the foreign influence concerns in his case all relate to Taiwan. The Government objected to taking administrative notice of Senate Bill 4813 in that it represents the opinion of the sponsoring senators and has not been enacted so it is not the official position of the U.S. government.

Pursuant to my obligation to take administrative notice of the most current political conditions in evaluating Guideline B concerns (see ISCR Case No. 05-11292 (App. Bd. Apr. 12, 2007)), I informed the parties of my intention to take administrative notice of the facts requested by the Government with respect to Taiwan and China, subject to the reliability of the source documentation and the relevance and materiality of the facts proposed. I sustained the Government's objection to accepting for administrative notice Senate Bill 4813 as it has only been proposed and not been enacted as an official position of the U.S. government. Both the Government and the Applicant declined the opportunity to propose additional facts for administrative notice, including updated facts to show the current U.S. administration's stance toward Taiwan. Accordingly, *sua sponte*, I note that the U.S. State Department issued a new China travel advisory on December 17, 2020, and a recent press release on January 23, 2021.

Concerning the reports and press releases of criminal activity and export violations on behalf of China or Taiwan, they were presented by the Government apparently to substantiate that China and Taiwan engage in espionage against the United States and actively pursue collection of U.S. economic and proprietary information. Neither Applicant nor his spouse's family members in Taiwan were implicated in that criminal activity, although the Government does not have to prove that they were so implicated. With those caveats, and considering the Government's request for administrative notice and the updated information from the U.S. State Department, the facts administratively noticed are set forth below.

Findings of Fact

The SOR alleges under Guideline B that Applicant's spouse is a citizen of Taiwan with U.S. permanent residency currently residing in the United States (SOR ¶ 1.a); that his mother-in-law (SOR ¶ 1.b), brother-in-law (SOR ¶ 1.c), sister-in-law (SOR ¶ 1.d), and three friends (SOR ¶ 1.e) are resident citizens of Taiwan; and that Applicant maintains

contact with two Taiwanese citizens currently serving in Taiwan's Air Force (SOR ¶ 1.f). Applicant admitted the allegations, but he also stated that he reported his initial relationship with his spouse as well as their engagement, and marriage to his employer's security office; that he has limited casual contact and correspondence with his brother-in-law in Taiwan and has no ability to communicate with his mother-in-law and sister-in-law in Taiwan because they do not speak English, and he does not speak Chinese. He explained that the three friends referenced in the SOR are his spouse's friends, whom he casually met in Taiwan. He denied any current contact with them. As for the two Taiwanese citizens currently serving in Taiwan's military, Applicant indicated that he communicates with them only on business for his defense-contractor employer.

After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 60-year-old electrical engineer. A lifelong resident citizen of the United States, he has worked for the same defense contractor since October 1984 and seeks to retain security clearance eligibility, which he has held throughout his employment. In approximately June 1995, he was granted a Top Secret clearance. He has held a Secret clearance since approximately March 2011. His uncontroverted testimony is that he has never committed a security violation. Applicant has a bachelor's degree earned in about July 1993 and a master's degree in business administration, which he earned in April 2004. He has two sons, ages 30 and 25, from his first marriage. His sons are serving in the National Guard and the U.S. Reserve forces, respectively. (GE 1; Tr. 43, 47-48.) Applicant's parents, who are deceased, were native-born citizens of the United States. Applicant's four siblings are U.S. resident citizens. (GE 1.)

Applicant has traveled frequently to Taiwan on business for his defense-contractor employer since at least April 2014. Some of those business trips between 2015 and 2017 required extended stays of over 30 days in Taiwan. (GE 1; Tr. 71.) More recent trips to Taiwan in April 2018, June 2018, January 2019, late February 2019, April 2019, and October 2019, were for less than 30 days each. (GE 2; Tr. 45, 73.) Applicant went to Taiwan for his work in September 2020 for what he thought would be a brief stay. He remained in Taiwan for his employer until December 2020. (Tr. 45, 72.)

Applicant met his current spouse through an online dating site. He joined the site in the United States but viewed her profile for the first time while he was in Taiwan on business in July 2015. They began dating shortly thereafter, and he eventually shared with her that he was in Taiwan for his employer. He testified that he held off telling his spouse what he does for a living for as long as he possibly could. (Tr. 75.) A native of Taiwan, his spouse was educated through college in Taiwan and worked as an accountant for a car manufacturer in Taiwan. Applicant and his spouse became engaged in March 2016 and cohabited from January 2017 to April 2017, when he was on business in Taiwan. (Tr. 49-51, 72-75.) After they were engaged, he informed his spouse that he holds a security clearance. (Tr. 77.) In February 2017, Applicant and his spouse had a dinner reception in Taiwan to celebrate their upcoming nuptials with her family and friends. (Tr. 36, 51, 80.) Applicant informed security personnel at work about his

relationship with his spouse on his return from his trip to Taiwan in 2015, and as it progressed from dating to engagement to marriage. (Tr. 75-76.)

Applicant's spouse entered the United States on a K-1 fiancée visa in April 2017 under Applicant's sponsorship, and they married in May 2017. (GE 1; Tr. 52.) Applicant's spouse acquired U.S. permanent-residency status on October 27, 2017. (GE 2; AE A.) Required to leave the United States to renew her U.S. permanent residency, Applicant's spouse joined Applicant on a business trip to Taiwan. She stayed with her family during their two weeks in Taiwan, and he went to the southern part of the country for his work. (Tr. 52.) Her U.S. permanent residency status was renewed and is now set to expire on February 18, 2031. (AE A.) She intends to become a U.S. citizen. She applied for U.S. naturalization in June 2020, and has her citizenship interview scheduled for April 20, 2021. (AE B; Tr. 54-55.) Applicant states that his spouse will relinquish her Taiwanese passport when she becomes a U.S. citizen. (Tr. 55.)

Applicant's spouse worked as an accountant in the United States before taking her present position as a full-time financial controller. (Tr. 52.) She and Applicant are in the process of jointly purchasing a condominium in the United States. They do not intend to move to Taiwan when Applicant retires. (Tr. 70.) Applicant owns their current home, which had been his residence during much of his first marriage. He retained the house in his divorce from his first wife. (GE 1.) Neither Applicant nor his spouse owns any financial or property interests in Taiwan. (Tr. 68-69.) Applicant testified that if his spouse were to inherit any asset in Taiwan, she would give it to her brother. (Tr. 84.)

Applicant's spouse has close relationships with her mother, her brother, and her brother's wife, who are resident citizens of Taiwan. Her father is deceased. Her mother works part time as a seamstress in Taiwan. She speaks no English. Applicant's spouse "misses" her mother, with whom she speaks via "a FaceTime type of thing" three or four times a week. (Tr. 55-56.) After immigrating to the United States, Applicant's spouse sent her mother financial support at \$500 monthly until early 2020, when her brother and his wife moved in with their mother, who owns her home in Taiwan. (Tr. 83.) Applicant's spouse has sent her mother \$500 every three months or so since early 2020. (Tr. 81-82.) Applicant's spouse also gives her mother small items that can fit in Applicant's suitcase when he travels to Taiwan on business. Applicant understands that it is culturally important to his spouse to provide for her mother, and he does not have an issue with the amount of financial support or the gifts his spouse sends her mother. (Tr. 56-57, 83.) To Applicant's knowledge, his mother-in-law has no connection to Taiwan's or China's government. (Tr. 57.) He does not think that his mother-in-law knows what he does for a living. (Tr. 61.)

Applicant's spouse's brother works for a cement company in Taiwan. He served two years of compulsory military service in Taiwan's Navy, but has no other military service. Applicant does not know the dates of his brother-in-law's service in Taiwan's Navy. (Tr. 58-59.) Applicant does not believe his brother-in-law has any current ties to Taiwan's government. His brother-in-law speaks a little English and his brother-in-law's wife speaks even less English. (Tr. 45, 74.) Applicant's facility with the Chinese language

is limited to only basic pleasantries, so he converses with his brother-in-law in English. (Tr. 74.) As for his brother-in-law's wife, Applicant believes her work in Taiwan involves paperwork for vehicle imports. (Tr. 62-63.) Applicant's spouse has a close relationship with her brother, but she is not particularly close to his wife. She contacts her brother "maybe a couple times a week or less." (Tr. 63.) She speaks with her sister-in-law when she is on a call with her brother. Applicant does not believe his spouse contacts her sister-in-law directly. (Tr. 63.) Applicant first met his brother-in-law and sister-in-law in August 2015. (GE 1.) On almost every business trip that he has to Taiwan since his marriage in May 2017, Applicant has met with his brother-in-law and sister-in-law for lunch or dinner on his arrival in Taiwan to exchange personal items ("shoes, clothes, and stuff") between Applicant's spouse and her family. (Tr. 44-45, 73-74.) During his latest stay in Taiwan for work from September 2020 through December 2020, Applicant met with his brother-in-law and sister-in-law twice. The second time was so that they could give Applicant some items that they had purchased for Applicant's spouse at her request. (Tr. 45.) Applicant does not stay with his spouse's family when he is in Taiwan. (Tr. 60.) Applicant listed his brother-in-law as a foreign contact on his August 2017 SCA because of their in-person contact when Applicant is in Taiwan. (GE 1.) Applicant has limited contact with his brother-in-law otherwise. As for his contacts with his sister-in-law, Applicant stated on his SCA, "There is no regular frequency of contact for me or my wife. We would only see her with family during trips back to Taiwan." (GE 1.)

Applicant's brother-in-law is aware of Applicant's defense-contractor employment. Applicant does not believe his mother-in-law or sister-in-law know the identity of his employer. Applicant's mother-in-law, brother-in-law, and sister-in-law are aware that he travels to Taiwan to support a defense program, but Applicant does not discuss the technical aspects of his work with them. Applicant is "not sure" whether they know that he holds a security clearance. He has not told them. (Tr. 61.)

Applicant's spouse's mother, brother, and sister-in-law came to the United States for the first time in July 2019. They spent two weeks and stayed with Applicant and his spouse, who took them to restaurants, tourist sites, and a ball park. (Tr. 59.) Applicant considers his in-laws to be family. They have been "very kind" to him. Applicant states that his in-laws support the U.S.-Taiwan relationship and are not sympathetic to China. (Tr. 44-45.)

On his August 2017 SCA, Applicant included as foreign contacts three friends of his spouse who are resident citizens of Taiwan: a close female friend whom his spouse contacted weekly by text message and an occasional call; that friend's husband, with whom Applicant had occasional contact between August 2015 and April 2017 while on trips to Taiwan; and another female friend with whom his spouse had ongoing contact by text messages and calls. Applicant first met this friend of his spouse in May 2016. That friend visited Applicant and his spouse in the United States for two weeks in July 2017. (GE 1; Tr. 65-67.) It was this friend's first time in the United States. (Tr. 67.) During the three months that he and his spouse lived together in Taiwan in early 2017, they socialized with these friends a few times. Applicant does not have any contact with his spouse's friends on his own. He is aware that his spouse still has contact with her friends,

but he does not think it is very frequent. (Tr. 64.) His spouse's close female friend in Taiwan is unemployed. Her spouse works in sales for a U.S.-based personal-care products company in Taiwan. (Tr. 65.) The other female friend works in business development for a European car company in Taiwan. (Tr. 66.) To Applicant's knowledge, none of these Taiwanese nationals knows about his employment or that he has a security clearance. (Tr. 67.) Applicant regards these three friends of his spouse as casual acquaintances of his. (Tr. 45.)

On his August 2017 SCA, Applicant also reported that he had a business relationship with a member of Taiwan's Air Force because of his work for the U.S. government in Taiwan. (GE 1.) At his hearing, he testified that he had contact with two Taiwanese Air Force officers for his work in Taiwan, but one of them has since moved on from the contract. His relations with these Taiwanese resident citizens were purely professional. (Tr. 44, 67-68.)

Character Reference

A friend of Applicant's since 1974 considers Applicant "a true American patriot." This friend retired from the U.S. military at the rank of lieutenant colonel and held high-level security clearances during his military career. He considers Applicant to be honest and trustworthy, and recommends him for the highest level of clearance eligibility. He has not known Applicant to talk about his work with the defense contractor. This friend attended the dinner in Taiwan to celebrate Applicant's and his spouse's upcoming wedding in 2017. He met Applicant's in-laws at the dinner, but he did not have much communication with them because of the language barrier. He is aware that Applicant's brother-in-law had served in Taiwan's Navy. (Tr. 34-39.)

Administrative Notice

After reviewing U.S. government publications concerning Taiwan and China and their foreign relations and mindful of my obligation to consider updated information, I take administrative notice of the facts requested by the Government as supplemented by the following facts:

Taiwan is a multi-party democracy established as a separate, independent government by refugees from mainland China in 1949. The United States recognized Taiwan as an independent government until January 1979, when a Joint Communiqué switched formal diplomatic recognition from Taipei to Beijing. In the Joint Communiqué, the United States acknowledged China's position that there is but one China and Taiwan is part of China, while asserting that the United States would maintain cultural, commercial, and other unofficial relations with the people of Taiwan. While the United States does not support Taiwan's independence, the United States remains committed to assisting Taiwan in maintaining its defensive capabilities, and the two countries share a robust unofficial relationship. Taiwan has historically been an active collector of U.S. economic intelligence and technology, but recent cases involving the illegal export or attempted export of U.S. restricted, dual-use or military technology by Taiwanese

nationals have been for the benefit of China or Chinese entities. In November 2018, a Chinese government-owned integrated-circuits company established in July 2016 for the sole purpose of designing, developing, and manufacturing a dynamic random-access memory device; a semiconductor foundry headquartered in Taiwan with offices worldwide; and three Taiwanese nationals; were indicted for conspiring to steal for China and the Taiwanese foundry the trade secrets of a U.S.-based leader in the global semiconductor industry.

Since the election of President Tsai Ing-wen of the Democratic Progressive Party in 2016, China has taken significant coercive measures against Taiwan, despite Taiwan wanting to maintain the status quo. China has suspended cross-strait communications and meetings; pressured countries with whom Taiwan has unofficial relations to terminate their relations with Taiwan; collaborated with individuals and organizations in Taiwan that support cross-Strait unification; spread disinformation through social media and other online tools; and expanded and intensified Chinese military training activities near Taiwan. China's ongoing military, diplomatic, and economic pressure against Taiwan led the United States to urge Beijing in January 2021 to cease its efforts at intimidation against Taiwan and other countries in the Indo-Pacific region. To counter China's efforts, Taiwan is looking to strengthen its partnership with the United States. Because China is Taiwan's largest trading partner, China continues to have an outsized influence on Taiwan's economy.

China's overall strategy toward Taiwan continues to incorporate elements of both persuasion and coercion to hinder the development of political attitudes in Taiwan that favor independence. China has not renounced the use of military force against Taiwan, and its aggressive intelligence activities against Taiwan include employing intelligence operatives based in Taiwan. Among U.S. allies and partners, Taiwan is a prominent target of Chinese espionage. Its economic espionage poses a threat to Taiwan's security and to the security of U.S. military information and equipment to which Taiwan has access.

China is an authoritarian state with paramount authority vested in the Chinese Communist Party (CCP). In all important government, economic, and cultural institutions in China, the CCP ensures that party and state policy guidance is followed. President Xi has very few checks on his power as Beijing continues to restrict the personal freedoms of its citizens. China presents a persistent espionage and cyber-attack threat to the United States as China seeks to support its strategic development goals in science and technology advancement, military modernization, and economic policy. To support its military modernization, China fills the gaps in its defense and commercial research by engaging in large-scale, state-sponsored theft of intellectual property and proprietary information. In accord with its national security objective to leverage legally and illegally acquired dual-use and military-related technologies to its advantage, China uses its intelligence services, computer intrusions, and other illicit approaches to obtain national security and export-controlled technologies, controlled equipment, and other materials. China leverages foreign investments, commercial joint ventures, academic exchanges, the experience of Chinese students and researchers, and state-sponsored industrial and technical espionage to increase the level of technologies and expertise available to

support its military research, development, and acquisition. China blends intelligence and non-intelligence assets and frequently seeks to exploit Chinese citizens or persons with family ties to China who can use their insider access to steal trade secrets from U.S. companies. Reports of Chinese espionage have increased significantly in recent years.

In June 2019, a Chinese electrical engineer with part-time residency in the United States was found guilty of multiple federal charges, including engaging in a scheme to illegally obtain integrated semiconductor chips with military applications that were exported to China without the required export license. China also targets U.S. security-clearance holders. In May 2019, a former U.S. intelligence officer, who held a Top Secret clearance until he left government service in October 2012, was sentenced to 20 years in prison for conspiring with a Chinese intelligence officer to transmit national defense information to China. In July 2019, a former employee of the U.S. State Department with a Top Secret clearance received a 40-month prison sentence for conspiring with two Chinese intelligence agents to defraud the United States. She failed to report her repeated contacts with the foreign intelligence agents who provided her with tens of thousands of dollars in gifts and benefits over five years in return for her providing internal State Department documents on topics ranging from economics to visits by dignitaries between the two countries. In December 2020, the U.S. State Department issued a level 3 travel advisory for China due to China's arbitrary enforcement of local laws, including carrying out unlawful detentions and using bans on U.S. citizens and those of other countries without due process of law.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant's eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Under Directive ¶ E3.1.14, the Government must present

evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that 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. Section 7 of EO 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B: Foreign Influence

The security concern relating to the guideline for foreign influence is articulated in AG ¶ 6:

Foreign contacts and interests, including but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way that is inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

Applicant’s spouse’s mother, brother and his wife, and three close friends are resident citizens of Taiwan. Applicant has had contact with two officers of Taiwan’s Air Force over the years because of his work for his employer. Review of Applicant’s contacts and connections to these foreign citizens is warranted to determine whether they present a heightened risk under AG ¶ 7(a) or AG ¶ 7(e) or create a potential conflict of interest under AG ¶ 7(b). Those disqualifying conditions provide:

(a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or

resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology; and

(e) shared 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.

Not every foreign contact or tie presents the heightened risk under AG ¶ 7(a). The "heightened risk" denotes a risk greater than the normal risk inherent in having a family member or a spouse's family member living under a foreign government. The nature and strength of the family ties or other foreign interests and the country involved (*i.e.*, the nature of its government, its relationship with the United States, and its human rights record) are relevant in assessing whether there is a likelihood of vulnerability to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government; a family member is associated with, or dependent on, the foreign government; or the country is known to conduct intelligence operations against the United States. In considering the nature of the foreign government, the administrative judge must take into account any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006).

Taiwan and the United States have a positive and robust unofficial relationship. Yet, Guideline B concerns are not limited to countries hostile to the United States. The Appeal Board has long held that "[t]he 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." See ISCR Case No. 02-11570 (App. Bd. May 19, 2004). Taiwan has historically engaged in economic espionage to acquire U.S. military and dual-use technologies that could strengthen its defensive posture against China. China has an overall strategy toward Taiwan that incorporates elements of both persuasion and coercion to hinder the development of political attitudes in Taiwan that favor independence. China's increasingly aggressive intelligence activities against Taiwan include employing intelligence operatives based in Taiwan. Among U.S. allies and partners, Taiwan is a prominent target of Chinese espionage. Its economic espionage poses a threat to Taiwan's security and to the security of U.S. military information and equipment to which Taiwan has access, such as the program which regularly takes Applicant to Taiwan. Given those geopolitical realities, Applicant has a high burden of persuasion to demonstrate that his and his spouse's relationships with her family and friends in Taiwan and his contacts with members of Taiwan's military do not pose an unacceptable security risk.

Applicant's spouse has close ties of affection to her mother and her brother in Taiwan, and to a lesser extent to her sister-in-law. She contacts them multiple times weekly and provides financial support for her mother on a regular basis. Applicant's contacts with his spouse's family members are limited to when he is in Taiwan for his employer. Yet, on almost every one of his business trips to Taiwan since May 2017, Applicant has met his brother-in-law and his brother-in-law's wife for lunch or dinner, primarily to exchange items between his spouse and her family. He has had in-person contact with his mother-in-law on occasion when in Taiwan. Communication with his spouse's family members is limited because of the language barrier. Even so, there is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of his or her spouse. See *e.g.*, ISCR Case No. 11-12659 (App. Bd. May 30, 2013). Furthermore, Applicant testified that his spouse's family members have been very kind to him, and he considers them family. Applicant and his spouse hosted her family for two weeks in their home in the United States in July 2019. The close family bonds are sufficient to create "a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion." Additionally, these relationships create a potential conflict of interest for Applicant between his obligation to protect sensitive information and his desire to help his wife or her family members. AGs ¶¶ 7(a) and 7(b) apply. Regarding AG ¶ 7(e), Applicant's spouse is close to her family living in Taiwan, and Applicant is close to his spouse. There is a theoretical risk of pressure or coercion that could be exercised against Applicant through his spouse. AG ¶ 7(e) is also established.

As for Applicant's spouse's friends in Taiwan, Applicant has no independent ongoing contact with them. However, his spouse contacts her close friends on a regular basis. Moreover, Applicant and his spouse hosted one of these friends for two weeks at their home in the United States in 2017. Applicant also has had contact with at least two officers in Taiwan's military. To the extent that a heightened risk exists under AG ¶ 7(a) because of his spouse's close friendships with these Taiwan resident citizens and his ongoing contacts with an officer in Taiwan's Air Force (the other officer is no longer on the contract), there is no indication that these connections present a conflict of interest under AG ¶ 7(b). It is difficult to see where Applicant could be exploited, induced, manipulated, pressured or coerced because of these friends. He makes no effort to contact them when he is in Taiwan without his spouse. As for Applicant's military contacts, Applicant testified credibly that his contacts are solely professional in the context of his defense-contract work for the U.S. government.

Application of the aforesaid disqualifying conditions AG ¶¶ 7(a), 7(b), and 7(e) triggers review of possibly mitigating conditions under AG ¶ 8. The following could have some application based on the facts in this case:

- (a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, 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;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the agency head or designee; and

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country.

Regarding AG ¶ 8(a), there is nothing about the positions or activities of Applicant's spouse's Taiwanese family members or friends that makes it likely Applicant will be placed in the untenable position of having to choose between their interests and the interests of the United States. There is no evidence that the Taiwanese family members and friends have any recent connection with, obligations to, or receive benefits from Taiwan's government. Applicant's mother-in-law works as a seamstress. His brother-in-law and sister-in-law are respectively employed by cement and motor car companies in the commercial sector. His spouse's close friend does not work outside the home, and this friend's spouse is employed by a U.S.-based personal-care products company. The other friend works in business development for a European car company in Taiwan.

As for the country involved, the special relationship that has existed between the United States and Taiwan over the past half-century has been one marked by mutually reconcilable political and economic interests. The United States is committed to assisting Taiwan in maintaining its defensive capabilities, and Applicant is directly involved in that effort by traveling frequently to Taiwan to support a program on contract for the U.S. government. Taiwan's democratic institutions are compatible with our own traditions and respect for human rights and the rule of law. While Taiwan has historically targeted the United States and its companies for economic and proprietary information, there is no known recent history of hostage taking or of undue pressure being placed on its citizens to obtain classified or sensitive data. However, given the increasingly aggressive posture of China towards Taiwan, which includes using intelligence assets in Taiwan to foment anti-democratic and pro-China sentiment in Taiwan and obtain sensitive U.S. economic and military information to which Taiwan has access, it is difficult to apply AG ¶ 8(a) in mitigation, especially considering the closeness of the family bond in this case.

Applicant has a credible case for substantial mitigation under AG ¶ 8(b). His relationships and loyalties in the United States are so deep and longstanding that he can

be counted on to resolve any conflict of interest in favor of the United States. A lifelong resident citizen of the United States, Applicant was raised to place U.S. interests over those of any other country or person. A longtime friend of Applicant's, a retired lieutenant colonel who held high-level clearances for his military duties in the past, described Applicant as "a true American patriot." Applicant was educated in the United States and has pursued his career here. Of considerable weight in mitigation, Applicant has worked for his defense-contractor employer since October 1984 and has held a security clearance throughout his employment with apparently no security violations. His two sons are U.S. native-born citizens currently serving in the National Guard and military Reserve forces. All of Applicant's travel to Taiwan has been to support a program of benefit to Taiwan and at the behest of the U.S. government in support of a stable democracy in Taiwan. Applicant's spouse immigrated to the United States within the last five years, but she is a U.S. permanent resident and has an upcoming citizenship interview in April 2021. Her application for U.S. citizenship shows that she intends to remain in the United States. She has worked as an accountant in the United States and is currently employed as a financial controller. She and Applicant are in the process of jointly purchasing a condominium in the United States. Neither she nor Applicant owns any property or have any financial assets in Taiwan that could be used as leverage against Applicant.

AG ¶ 8(c) is partially established. Applicant has no ongoing communication on his own with his spouse's friends in Taiwan. However, it cannot reasonably apply in mitigation of his ties to his spouse's family members. While his contacts with them are limited because of the language barrier, he considers them family, and his spouse understandably has strong feelings of affection for her family members and a sense of obligation toward her mother, as evidenced by her regular financial support.

AG ¶ 8(d) applies in mitigation of his contacts to the officers in Taiwan's military, which may be considered sanctioned by the United States in that they have been on official business in the performance of U.S. government contract. AG ¶ 8(e) warrants some consideration as well, given that Applicant notified his employer of his relationship with his spouse on his return from his stay in Taiwan in 2015 and then reported the changes in their status from dating to engagement to marriage. Applicant listed his spouse, her relatives, and her friends on his SF 86 completed in August 2017.

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 his conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(d). Those factors are as follows:

- (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.

In foreign influence cases, it must be acknowledged that people act in unpredictable ways when faced with choices that could be important to a family member. As stated by the DOHA Appeal Board in ISCR Case No. 08-10025 (App. Bd. Nov. 3, 2009), "Application of the guidelines is not a comment on an applicant's patriotism but merely an acknowledgment that people may act in unpredictable ways when faced with choices that could be important to a loved-one, such as a family member." Moreover, in evaluating Guideline B concerns, the Appeal Board has held that:

Evidence of good character and personal integrity is relevant and material under the whole person concept. However, a finding that an applicant possesses good character and integrity does not preclude the government from considering whether the applicant's facts and circumstances still pose a security risk. Stated otherwise, the government need not prove that an applicant is a bad person before it can deny or revoke access to classified information. Even good people can pose a security risk because of facts and circumstances not under their control. See ISCR Case No. 01-26893 (App. Bd. Oct. 16, 2002).

Applicant cannot control the actions of the Chinese or Taiwanese government, intelligence, or security services, but he can control his response if placed in the untenable position of having to choose between the interests of the United States and the interests of his spouse's family members in Taiwan. He shows that he understands his obligations as a longtime clearance holder by not discussing the technical aspects of his work with anyone without a need-to-know, including his spouse, who could relay them in Chinese to her family members without his knowledge. His un rebutted testimony is that he has complied with his reporting obligations with regard to his relationship with a foreign national as it progressed from dating to engagement to marriage. There is no indication whatsoever that he has betrayed the confidence placed in him. While Applicant's ties to Taiwan through his spouse and because of his work raise security concerns, they have to be weighed against his unblemished record with regard to security compliance. There is nothing untoward about his spouse's relationship with her family members or friends in Taiwan. I find that it is clearly consistent with the national interest to continue security clearance eligibility for Applicant.

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-1.f: For Applicant

Conclusion

In light of all of the circumstances, it is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Elizabeth M. Matchinski
Administrative Judge