

KEYWORD: Foreign Influence: Foreign Preference: Personal Conduct

DIGEST: Applicant is a native of the Republic of China (Taiwan) who became a naturalized United States citizen in August 1991. He shares close bonds with his parents and two brothers, who are resident citizens of Taiwan, and he owns a residence that his parents rent out to supplement their income. While his service in the Taiwanese Army predated his U.S. citizenship, he is unwilling to surrender a valid Taiwanese passport that he acquired on renewal. Foreign influence and foreign preference concerns are not mitigated. Personal conduct concerns persist because of his knowing, false denial that he had an active foreign passport when he completed his clearance application. Clearance is denied.

CASENO: 06-11498.h1

DATE: 09/26/2007

DATE: September 26, 2007

In re:)	
)	
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SSN: -----)	ISCR Case No. 06-11498
)	
Applicant for Security Clearance)	

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

APPEARANCES

FOR GOVERNMENT

Fahryn Hoffman, Esq., Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

Applicant is a native of the Republic of China (Taiwan) who became a naturalized United States citizen in August 1991. He shares close bonds with his parents and two brothers, who are resident citizens of Taiwan, and he owns a residence that his parents rent out to supplement their income. While his service in the Taiwanese Army predated his U.S. citizenship, he is unwilling to surrender a valid Taiwanese passport that he acquired on renewal. Foreign influence and foreign preference concerns are not mitigated. Personal conduct concerns persist because of his knowing, false denial that he had an active foreign passport when he completed his clearance application. Clearance is denied.

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 April 27, 2007, detailing the basis for its decision—security concerns raised under Guideline B (Foreign Influence), Guideline C (Foreign Preference), and Guideline E (Personal Conduct) 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 answered the SOR on May 21, 2007, and elected to have a hearing before an administrative judge. The case was assigned to me on June 29, 2007.

I convened a hearing on August 21, 2007, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. At the hearing, two government exhibits (Ex. 1-2) and four Applicant exhibits (Ex. A-D) were admitted, and testimony was taken from Applicant. DOHA received the hearing transcript (Tr.) on September 4, 2007.

RULINGS ON PROCEDURE

On June 26, 2007, the government requested administrative notice be taken of several proposed facts concerning Taiwan and the People's Republic of China (PRC or China). 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 before him, and it was provided in advance to the applicant who had an opportunity to rebut its contents or to present alternative information for the judge to notice.

Applicant filed no objection to the proposed facts for administrative notice, but this does not relieve me of the responsibility to determine whether the proposed facts are proper for administrative notice, *i.e.*, easily verifiable by an authorized source and relevant and material to the case before me. 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

After weighing the reliability of the source documentation and assessing the relevancy and materiality of the facts proposed, I took administrative notice of certain facts as set forth below.⁸

FINDINGS OF FACT

DOHA alleged under Guideline B, foreign influence, that Applicant's mother (SOR ¶ 1.a), father (SOR ¶ 1.b), two brothers (SOR ¶ 1.c) and extended family members (SOR ¶ 1.e) are resident citizens of Taiwan; that another of Applicant's brothers is a Taiwanese citizen living in the U.S. (SOR ¶ 1.d); that Applicant owns a residence in Taiwan rented out by his parents as part of their income (SOR ¶ 1.f); and that Applicant traveled to Taiwan in February 2003 (SOR ¶ 1.g). Under Guideline C, foreign preference, Applicant was alleged to have renewed his Taiwanese passport in

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 Center 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 press releases (IV) and (V) were presented apparently to substantiate that Taiwan actively pursues collection of U.S. economic and propriety information. Neither case involves Applicant personally. The 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.

⁸While a Taiwanese intelligence official was implicated in cultivating a personal relationship with a U.S. State Department official (VI), there is no indication that Applicant has ever been targeted.

2003 for another ten years (SOR ¶ 2.a); to be unwilling as of August 2006 to surrender, destroy, or otherwise invalidate the Taiwanese passport (SOR ¶ 2.b); to have used his Taiwanese passport instead of his U.S. passport for travel to Taiwan (SOR ¶ 2.c); to have served in the Taiwanese Army for about 22 months starting in 1981 (SOR ¶ 2.d); and to be unwilling to renounce his dual citizenship (SOR ¶ 2.e). Under Guideline E, personal conduct, DOHA alleged Applicant falsified his November 2004 electronic personnel security questionnaire by not disclosing that he owned the residence in Taiwan (SOR ¶ 3.a), that he had contact with foreign government officials to renew his Taiwanese passport (SOR ¶ 3.c), and by denying that he held an active foreign passport (SOR ¶ 3.d). Applicant was also alleged to have falsified a February 2006 statement by denying he owned any property in Taiwan and that he was maintaining his dual citizenship to protect this foreign property interest (SOR ¶ 3.b).

In his Answer of May 21, 2007, Applicant admitted the foreign influence allegations without explanation. He also admitted the foreign preference allegations, explaining that he was unwilling to renounce his Taiwanese citizenship or surrender his passport because his parents would lose the house listed under his name but owned by them if he was no longer a Taiwanese citizen. He attributed his use of the Taiwanese passport to convenience (more customs lines for those with Taiwanese passports) rather than any preference for Taiwan. Concerning his past military service in Taiwan's Army, Applicant indicated it was mandatory. As for the personal conduct allegations, Applicant answered "I admit" to failing to disclose his property ownership, contacts with a foreign government, and possession of a valid passport when he completed his security clearance application, although he claimed to not have understood that applying for a passport constituted contact with a foreign government. Applicant averred that with respect to his property ownership, he had authorized his parents to deal with the house and he did not own it. He had no explanation for not disclosing that he had a Taiwanese passport. Applicant partially denied the falsification of his sworn statement, and indicated in explanation, "I believe I had said that I would have to talk to my parents about giving up my Taiwan citizenship."

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

Applicant is a 50-year-old senior software engineer. He earned his master of science degree in computer science from a public university in the U.S. in June 1986. He has been working for his present employer, a defense contractor, since November 2005 and seeks a security clearance so that he can work on classified projects.

Applicant's Background and Foreign Ties

Applicant was born in October 1956 in Taiwan. His mother is a native of the PRC, who had immigrated to Taiwan as a teenager in 1949. Applicant's father is a native of Taiwan. Applicant has three younger brothers, who were born in 1958, 1962, and 1968. After earning his bachelor's degree from a university in Taiwan, Applicant completed compulsory military service in Taiwan's Army. Applicant served for about 20 months beginning in January 1981. He was not an officer.

While Applicant was studying at the Taiwanese university, his parents bought real estate in Taiwan in August 1980. Applicant was recorded as the owner of the property, although the purchase was funded and handled by his parents. He has never seen the property.

Applicant came to the U.S. in about 1983 to further his education. After some time studying to pass an English proficiency examination, Applicant began masters' degree studies in computer science at a public university in January 1984. He was awarded his degree in June 1986, and that November, he married a U.S. native citizen. They had worked at the same restaurant while he was in graduate school. They honeymooned in Taiwan. Applicant and his spouse have three children, who were born in July 1989, July 1994, and November 1996. He began working in the software sector in the U.S., and in August 1991, he and his spouse purchased their current residence in the U.S.

In late August 1991, Applicant took the oath of U.S. naturalization, vowing 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 took no action to formally renounce his Taiwanese citizenship.

At his father's request, Applicant went to the Taipei Economic and Cultural Office in his local area and executed on January 14, 1995, a power of attorney. Applicant designated his father as his agent to deal with the property he owed in Taiwan. He authorized his father to "open a wire transfer account from [bank name omitted] on behalf of [Applicant] for entering the contract, withdrawal, mortgage setting, cancellation and applying seal certificate, household certificate transcript, and other related matters" with respect to the land and building. (Ex. A)

On November 2, 1995, Applicant was issued his U.S. passport. He continued to maintain his Taiwanese passport and to use that passport for convenience (to avoid customs delays) when traveling to Taiwan to see his relatives. In addition to their honeymoon, his spouse has been to Taiwan "once or twice." (Tr. 107) Their two oldest children have been to Taiwan. Applicant traveled alone to Taiwan to see his parents and siblings in either February 2002 or 2003.⁹ While in Taiwan, he renewed his Taiwanese passport at the Ministry of Foreign Affairs. He renewed it for convenience in traveling to Taiwan and because of his understanding that he has to maintain it to keep the property in Taiwan.

Applicant worked in a succession of computer/communications companies until August 2002 when he was laid off. He was unemployed for more than two years. In mid-November 2004, Applicant began working as a software engineer for a contractor at a military installation. Applicant completed a security clearance application (SF 86) on November 28, 2004. He disclosed his dual citizenship with the U.S. and Taiwan, the Taiwanese citizenship and residency of his parents and two youngest brothers, and the dual citizenship (Taiwan and U.S.) and U.S. residency of the brother closest in age to him. Applicant also indicated that he had served in Taiwan's Army from January 1981 to January 1982,¹⁰ and that he had traveled to Taiwan for pleasure in February 2002. Applicant responded "NO" to question 12 concerning "any foreign property, business connections, or financial interests." Since his parents had purchased the property in Taiwan, his mother had told him that it

⁹There is conflicting evidence as to whether Applicant traveled to Taiwan in 2002, as indicated on his SF 86, or in February 2003 (SOR ¶ 2.a) (*see* Tr. 101-02). Whether the Taiwanese passport was issued to him in 2002 or 2003, Applicant does not dispute that he still has possession of a valid Taiwanese passport.

¹⁰DOHA alleged and Applicant admitted that his term of service was about one year and ten months, which is longer than the one year reported on his SF 86.

was not his despite being in his name, and he believed he had given his father the right to do what he wanted with the property, Applicant regarded the property as his parents' even though it was still in his name ("I should have said the whole thing, like there is a house under my name that I passed to my father, he has authorization to do anything he wants." Tr. 95). Applicant also responded negatively to question 14 ["Have you ever had any contact with a foreign government, its establishments (embassies or consulates), or its representatives, whether inside or outside the U.S., other than on official U.S. Government business? (Does not include routine visa applications and border crossing controls). He did not consider renewing his Taiwanese passport to constitute the type of government contact that had to be reported. Applicant did not disclose that he had an active Taiwanese passport, responding "NO" to question 15 ["In the last 7 years, have you had an active passport that was issued by a foreign government?"]. He claims to not know why he had responded negatively as he had renewed his Taiwanese passport in February 2002 or February 2003.

In November 2005, Applicant went to work for his current employer. The company sponsored his need for access to classified information, and Applicant was interviewed by a government investigator on or about February 1, 2006.¹¹ He showed the agent both his U.S. and Taiwanese passports. Applicant was asked whether he would be willing to renounce his Taiwanese citizenship. He indicated he would have to talk to his parents about giving up his Taiwanese citizenship.

On or about July 11, 2006, DOHA asked Applicant to verify that he had relinquished his Taiwanese passport and whether he was willing to renounce his Taiwanese citizenship. In his response of August 8, 2006, Applicant stated in part:

It is difficult for me to make the decision to relinquish my Taiwanese passport. Decades ago, my parents purchased a residence under my name in Taiwan and rent this property out as part of their income. If I were to relinquish my Taiwanese passport, the apartment would belong to the government and my parents would lose their rental income. Due to the age of my parents, my father is eighty two years old and my mother is seventy four, I would prefer not to put my parents under the distress of losing this property and income. (Ex. 2)

As of mid-August 2007, Applicant was not willing to relinquish his Taiwanese passport because of his belief that if he did so, the apartment in his name in Taiwan would revert to the Taiwanese government and he wanted his parents to continue to receive the rental income. Applicant has never checked with the Taiwanese authorities to see whether this was in fact the case ("I assume that's just houses [sic] under nobody's name, the government is going to take it. . . ." Tr. 104). Applicant has not seriously considered listing his parents as principal owners of the property because of the higher inheritance taxes on their estate if he did so. (Tr. 72) He does not want to lose the foreign asset. (Tr. 79) He has not looked into whether he would retain ownership if solely a citizen of the U.S. (Tr. 104) Applicant has no other foreign investments.

¹¹It may be inferred from the government's allegation and Applicant's partial admission that he was interviewed by an investigator for the government on February 1, 2006. No written transcript, summary, or sworn statement of that interview is in evidence, although Applicant affirmed at the hearing that he had made certain statements to the investigator. Some information was also gleaned from Applicant's answer to SOR ¶ 3.b.

Applicant's parents and two of his three brothers are resident citizens of Taiwan as of August 2007. His 82-year-old father retired from the government-run telephone company in 1986 or 1987. His 74-year-old mother never worked outside of the home. They live on his father's pension and the income from the apartment in Applicant's name in Taiwan. Applicant offers his mother \$100 to \$200 for pocket money when he sees her, but she doesn't take it. He does not send his parents money. Applicant's parents have visited him in the U.S. about four or five times, including for three or four weeks in June 2007. They came for his son's high school graduation and stayed with him and his family. Applicant had not seen his parents since he traveled to Taiwan in February 2002 or 2003. Applicant has had about monthly contact with his parents by telephone, although lately the contact has increased to weekly. Their conversations revolve around their health and well-being and efforts on his part to convert them to Christianity.

Applicant's two brothers in Taiwan work as a computer engineer and as a stockbroker. Applicant believes his brothers are employed by private firms but he is not sure. Since Applicant came to the U.S. for graduate school, he has talked with his brothers in Taiwan by telephone about four or five times. He considers his relationships with his brothers in Taiwan to be "close." (Tr. 77) Applicant has several aunts and cousins living in Taiwan with whom he converses "once in a long, long while." (Tr. 78)

Applicant's other brother, who has become a naturalized citizen, lives in the U.S. He is a mechanical engineer. Applicant and this brother get together usually twice a year, although they had in-person contact "quite a few times" (Tr. 83) during his parents' visit in June 2007. Applicant and this brother have discussed going together to Taiwan to see their parents next Christmas. Now knowing of the government's concerns with travel on his Taiwanese passport, Applicant indicated he would probably travel on his U.S. passport to Taiwan. He would have to renew it as it had expired as of August 2007. He has a current Taiwanese passport.

Applicant estimates that his home in the U.S. is valued at between \$600,000 and \$700,000. He has about \$60,000 to \$70,000 in 401(k) assets in the U.S. and \$15,000 in savings. His son attends college in the U.S. His other children attend local public schools. Since neither his spouse nor children speak Chinese, English is spoken in their home.

During his first full year on the job for the defense contractor, Applicant's performance met his employer's requirements. He exhibited a good attitude, strong programming skills, and dedication.

Administrative notice was taken of the following adjudicative 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 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 feels close to his parents and brothers in Taiwan (SOR ¶¶ 1.a, 1.b, 1.c). He has traveled to Taiwan to visit them (SOR ¶ 1.g). His contact with his parents has been weekly of late, and they stayed with him on his son’s high school graduation in June 2007. Despite his limited correspondence (four to five times since 1984) with his two brothers in Taiwan, he admitted he has strong emotional ties to them. Disqualifying condition (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), applies.

Furthermore, Applicant is listed as the owner of real estate in Taiwan that his parents benefit from in the form of rental income. While Applicant has never seen the property and was unable to provide any information about its market value, it is considered a substantial foreign property interest. He expects some financial benefit from the property on his parents' deaths,¹² and as of August 2007 was unwilling to take any action, such as renouncing his Taiwanese citizenship or relinquishing his Taiwanese passport, that could jeopardize his stake in the property. Concerns are raised under ¶ 7(e) (*a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign operated business, which could subject the individual to heightened risk of foreign influence or exploitation*).

Applicant's travel to Taiwan (SOR ¶ 1.g) is relevant to the extent it is an objective indicator of the bond between him and his parents and siblings in Taiwan, but it is not disqualifying in and of itself unless he engaged in conduct while there that made him vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or coercion (¶ 7(i)). There is nothing to indicate that his renewal of his foreign passport was other than routine. Applicant's desire to retain the property, and foreign passport to protect that asset, heightens his vulnerability but that is separately alleged under SOR ¶ 1.f.

Concerns of a heightened risk because of the Taiwanese citizenship and residency of his aunts and cousins (SOR ¶ 1.e) are not persuasive in the absence of any close affinity or obligation to these extended family members (*see ¶ 8(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*). Applicant has a close bond with his brother in the U.S. (SOR ¶ 1.d), but this brother's U.S. naturalization and residency remove him from the physical reach of Taiwanese authorities, and there is nothing about his duties as a mechanical engineer in the U.S. that presents a heightened risk.

The familial bonds with his parents and brothers in Taiwan are too strong to satisfy the first prong of mitigating condition ¶ 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.*). While it is not clear what Applicant would do if his relatives were pressured, the risk of him being placed in a position where he would have to choose between them and the U.S. is diminished somewhat by the fact that Taiwan does not have a hostile relationship with the U.S., and is not known to sponsor terrorism. Taiwan has a defense pact with the U.S., and 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

¹²Although Applicant spoke in terms of inheritance, he is the owner of the property. It is his choice to give his father not only the authority to deal with the asset but also to enjoy the rental income.

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.

Even nations with a history of friendly relations do not always have the same interests, however. 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 that bears troubling implications, although no proof of, active collection efforts by or on behalf of the Taiwanese government. There is nothing about his father's present status as a retiree, or his former employment with the government-owned telephone company that suggests military, intelligence, or security implications. Not enough is known about the associates, activities, or with respect to his brothers their employments, to conclude that Applicant is not at heightened risk, however. Security concerns could be overcome by deep and longstanding relationships and loyalties in the U.S. (*see* ¶ 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*). Applicant has significant ties to the U.S., most notably his citizenship, marriage to a U.S. native citizen, financial assets, and his career, but they are not enough to guarantee that Applicant will act in favor of the U.S. given his demonstrated desire that his parents retain the income from his property in Taiwan, that he enjoyed the financial benefit on their deaths, and that he not incur higher inheritance taxes. When asked by the government investigator in February 2006 about his willingness to renounce his Taiwanese citizenship, Applicant recalls he told the agent that he would have to ask his parents. Clearly, he remains concerned about them and their opinions. Under the circumstances, neither MC ¶ 8(b) nor ¶ 8(f) (*the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual*) apply.

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). Applicant came to the U.S. in 1983 for graduate school after completing his compulsory military service for his native Taiwan. He met and later married a U.S. native citizen, and eventually became a U.S. citizen in August 1991. He continued to maintain his Taiwanese passport for convenience in traveling to Taiwan and out of concern that he would lose his property in Taiwan if he did not retain his Taiwanese passport and citizenship. He used his Taiwanese passport in preference to his U.S. passport when traveling to Taiwan (SOR ¶ 2.c), and renewed the Taiwanese passport during his last visit to Taiwan in February 2002 or February 2003 (SOR ¶ 2.a). It was still valid for foreign travel as of August 2007. Applicant's mandatory military service for Taiwan (SOR ¶ 2.d) does not raise foreign preference concerns because it occurred when he was solely a citizen of Taiwan, before he came to the U.S. DC ¶ 10(a) is implicated where the exercise of rights, privileges, or obligations of foreign citizenship occurs after one becomes a U.S. citizen or through the foreign citizenship of a family member. Guideline C concerns are raised, however, by Applicant's possession of a current Taiwanese

passport. DC ¶ 10(a)(1) (*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. This includes but is not limited to: (1) possession of a current foreign passport*) applies. Furthermore, his retention of his foreign passport is not solely for convenience, but is also to ensure that he not jeopardize his property interest and future financial benefits from that interest, ¶ 10(a)(5) (*using foreign citizenship to protect financial or business interest in another country*) also must be considered.

As of August 2007, Applicant had not expressed a willingness to renounce his Taiwanese citizenship (SOR ¶ 2.e). A willingness to renounce dual citizenship is potentially mitigating under ¶ 11(b), but there is no requirement that foreign citizenship be renounced. Retention of foreign citizenship out of respect for one's heritage, for example, is not disqualifying absent the exercise of a right, privilege, or obligation of that citizenship. But the security concerns raised by his use of foreign citizenship to protect his property asset in Taiwan are not mitigated where he is unwilling to renounce his Taiwanese citizenship because of the potential negative impact on this foreign financial interest.

Applicant has also not mitigated the foreign preference concerns raised by his retention of a current Taiwanese passport. He has not obtained the approval for its use that is required under MC ¶ 11(d) (*use of a foreign passport is approved by the cognizant security authority*). Nor has he rendered it invalid for foreign travel (*see MC ¶ 11(e), the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated*). It is not clear that Applicant was apprised during his February 2006 interview, or with the August 2006 interrogatory, of the specific concerns underlying foreign travel. In the interrogatory, Applicant was directed to "Provide documentation from the Taiwanese embassy or consulate verifying you have relinquished your Taiwanese passport. See enclosure re: Foreign Passports," but the enclosure was not included in the hearing record. (See Ex. 2) On receipt of the SOR, Applicant was apprised of the two potential mitigating conditions under ¶¶ 11(d) and 11(e). His failure to take any action thereafter raises considerable doubts as to his willingness to comply with Department of Defense requirements. As of August 2007, he and his brother had spoken about traveling to Taiwan together next Christmas. Since Applicant's U.S. passport had expired, travel on his Taiwanese passport cannot be ruled out, even though he has been made aware of the security concerns ("I probably will use the U.S. passport." Tr. 88).

Guideline E—Personal Conduct

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. (AG ¶ 15) When he completed his SF 86 in November 2004, Applicant did not disclose that he had an active foreign passport issued to him in the last seven years (SOR ¶ 3.d), that he had any foreign property interests (SOR ¶ 3.a), or that he had any contact with a foreign government (SOR ¶ 3.c). Applicant thought the inquiry into contacts with a foreign government was limited to security matters and did not include routine contacts regarding passports (*see* Tr. 115). Given question 14 specifically excludes routine visa applications, his claim of misunderstanding is accepted. As for his failure to list his ownership of the foreign property, Applicant knew he was the named owner, but did not consider the property to be his since it was

purchased by his parents, he had never seen it, they enjoyed the rental income, he had been told by his mother that it was not his, and he had executed a power of attorney back in 1995 and not again seen until about June 2007 which he thought gave his father control over the property. Applicant's testimony as to possibly inheriting the property shows he still does not regard himself as the owner ("I said that I don't want them to lose the land either and also it's a, when it's time to pass that house to me, I also don't want to lose that." Tr. 79).

Yet Applicant has not provided a credible explanation for his clearly false response to whether he had an active foreign passport within the last 7 years. He had listed a trip to Taiwan in 2002, knowing that he had renewed his foreign passport when he was in Taiwan. He also testified that he had the passport with him when he completed his SF 86 (Tr. 103). Disqualifying condition ¶ 16(a) (*deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*) applies.

All indications are that the government first learned Applicant had an active foreign passport when he was interviewed by a government investigator in about February 2006. Applicant testified that he brought the passport with him and that the agent reviewed it (Tr. 101). This disclosure comes too late to satisfy MC ¶ 17(a) (*the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts*). With so little information available as to what Applicant told the agent (no record of interview, no signed statement), I am unable to conclude that Applicant intentionally lied to the investigator. Any knowingly false statement would implicate ¶ 16(b) (*deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative*). The following exchange between Applicant and Department Counsel suggests again that Applicant was under the impression that he did not own the financial interests outside of the U.S.:

Q And it's your belief that they bought property in your name as a sort of an inheritance from you?

A I took it this way. When they retired, I told them to sell the property so that they would have money to enjoy the rest of their life. My mother made a comment that that's not your property, it's just your names by it, so don't make any suggestions.

(Tr. 64) In light of Applicant's expressed desire to retain what he considers to be an inheritance interest in the property in his name in Taiwan, any denial that he was maintaining dual citizenship to protect that property interest or inheritance rights would raise doubts about his veracity, but there is also indication that Applicant had another motive (*see* Tr. 79, "You indicated that you would prefer to maintain your Taiwanese citizenship out of respect for your heritage and your parents, is that accurate?"). While the evidence is insufficient to prove that Applicant acted to mislead the investigator, it is also insufficient to find that Applicant is rehabilitated from his SF 86 false statement about his possession of a foreign passport. He has not shown any meaningful appreciation of the obligation to be completely candid at all times where he refuses to acknowledge the knowing falsity of his negative response to the passport question ("I guess I didn't understand the question, Obviously I renewed my passport, I didn't, I don't know why, I mean there is no reason for me to say no, I didn't renew my passport, obviously I did." Tr. 99).

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 ties to the U.S. are relevant in determining whether he can be counted on to fulfill the fiduciary responsibilities of a clearance. Despite his continuous residency in the U.S. since about 1983, his marriage to a U.S. citizen, his acquisition of U.S. citizenship and a U.S. passport, he continued to act out of concern for his parents and his own stake in property in Taiwan. He has not yet shown that he can be counted on to put U.S. interests ahead of personal or familial interests.

FORMAL FINDINGS

Paragraph 1. Guideline B:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Paragraph 2. Guideline C:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant
Subparagraph 2.d:	For Applicant
Subparagraph 2.e:	Against Applicant
Paragraph 3. Guideline E:	AGAINST APPLICANT
Subparagraph 3.a:	For Applicant
Subparagraph 3.b:	For Applicant
Subparagraph 3.c:	For Applicant
Subparagraph 3.d:	Against Applicant

DECISION

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

Elizabeth M. Matchinski
Administrative Judge