

DATE: December 3, 2007

In re:)
)
)
 -----) ISCR Case No. 06-21247
 SSN: -----)
)
 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, a native of the Republic of China (Taiwan), acquired U.S. citizenship in October 1991 after living in the U.S. since September 1981. He left his spouse and child in the U.S. and moved to Taiwan to assist his father in obtaining medical care from April 1998 to July 2004. While in Taiwan, Applicant was employed with a nonprofit research institute and then a commercial computer company. Applicant renewed his Taiwanese passport in 2001 and used it for convenience when traveling between the U.S. and Taiwan. The foreign preference concerns are mitigated by his renunciation of Taiwanese citizenship and surrender of the foreign passport, but foreign influence concerns persist because of his close relationship with family members in Taiwan, including sisters employed by Taiwan's tax office. 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 Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan. 2, 1992), as amended, DOHA issued a statement of reasons (SOR) on July 31, 2007, detailing the basis for its decision—security concerns raised under Guideline B (foreign influence)¹ and Guideline C (foreign preference) 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 August 15, 2007, and elected to have a hearing before an administrative judge.

The case was assigned to me on October 2, 2007, and I convened a hearing on November 6, 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) were admitted and Applicant testified. A transcript (Tr.) of the hearing was received on November 16, 2007.

The record was held open until November 13, 2007, for Applicant to submit evidence of his U.S. income tax filings, his home ownership in the U.S., his father's illness, and his financial support for his spouse and son. By facsimile on November 9, 2007, Applicant timely submitted six proposed exhibits (A-F). On November 16, 2007, Department Counsel indicated the government did not object to their admission. The documents were marked and entered into evidence.

RULINGS ON PROCEDURE

On September 26, 2007, the government requested administrative notice be taken of several facts concerning Taiwan and the People's Republic of China (PRC). Applicant filed a response to the government's request on October 5, 2007, objecting to the government's referring to the PRC as China, to my taking administrative notice of "certain statements characterized as facts," including that Taiwan "has significant economic contacts with China," and to my considering certain publications (especially concerning the PRC) he submits are not relevant. Applicant also submitted alternative facts for administrative notice. The government relied on publications of the Department of State;² the Congressional Research Service;³ the Centre for Counterintelligence and Security Studies;⁴ the National Counterintelligence Center, now known as the Office of the National

¹SOR ¶ 1.a was amended at the hearing to correctly indicate that Taiwan is the Republic of China and not the People's Republic of China.

²See *Background Note: Taiwan*, dated April 2007 (I), *Background Note: China*, dated August 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).

³See *Taiwan: Recent Developments and U.S. Policy Choices*, dated October 9, 2006 (II).

⁴See *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.

Counterintelligence Executive;⁵ and the U.S.-China Economic and Security Review Commission;⁶ two press releases reportedly from the U.S. Department of Justice;⁷ and records of the U.S. District Court for the Eastern District of Virginia.⁸ Applicant relied on a report of the House Permanent Select Committee on Intelligence (104th Congress), dated June 23, 1997, and an article from U.S. News and World Report, posted on the web January 19, 2003, and in print edition January 27, 2003, to confirm the espionage activities of two U.S. citizens during their U.S. government employments.

After weighing the reliability of the source documentation and assessing the relevancy and materiality of the facts proposed by the parties, I notified the parties by Order of October 15, 2007, that I was taking administrative notice of the following facts.⁹

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. 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. As recently as 2004, a female Taiwanese intelligence officer cultivated a covert relationship with a U.S. State Department official.

⁵See *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).

⁶See *2006 Report to Congress of the U.S.-China Economic and Security Review Commission*, excerpts dated November 2006 (IX).

⁷The 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 of 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.

⁸See 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.

⁹The criminal wrongdoing of other U.S. citizens is relevant only to the extent it impacts the assessment of the likelihood of improper foreign influence to acquire U.S. classified or sensitive information. Historical and political realities justify treating Taiwan and the PRC as separate entities, despite the fact that the U.S. is committed diplomatically to a one-China policy. The PRC's internal situation (e.g., human rights abuses, visitor surveillance, travel restrictions) is of limited relevance in the absence of any allegation that Applicant has some personal connection to the PRC.

Evidence adduced at the hearing did not warrant administrative notice of additional facts. No information was developed that tied Applicant personally to the PRC.

FINDINGS OF FACT

DOHA alleged foreign influence concerns because of the Taiwanese residency and citizenship of Applicant's mother, father, two brothers, three sisters, parents-in-law (SOR ¶ 1.a), the dual citizenship (Taiwan and U.S.) of his spouse (¶1.b), the employment of two of his sisters for Taiwan's tax agency (¶1.c), his father-in-law being a retired career military officer (¶ 1.d), and his travels to Taiwan in 1998 and yearly from 2002 to 2006 (¶ 1.e). Under foreign preference, Applicant was alleged to have used his Taiwanese passport in preference to his U.S. passport on travel to Taiwan from 2002 to 2005 (¶ 2.a), and to have resided and worked in Taiwan for a research institute from about April 1998 to June 2001 (¶ 2.b) and for a computer company from July 2001 to July 2004 (¶ 2.c).

In his answer to the SOR, Applicant admitted the citizenship and residency of his family members as alleged (¶¶ 1.a, 1.b), the employment of his sisters for the functional equivalent of the Internal Revenue Service in Taiwan (¶ 1.c), and that his father-in-law retired from Taiwan's army in about 1961 (¶ 1.d). He admitted he had traveled to Taiwan in 1998, but while he traveled back and forth between the U.S. and Taiwan every year between 1998 and 2004, he spent most of his time in Taiwan. He indicated that business trips to Taiwan in 2004 and 2005 were for his U.S. employer, and added that he had taken a personal trip in 2006 to visit family in Taiwan (¶ 1.e). Applicant denied any use of his Taiwanese passport in preference to his U.S. passport and averred that he traveled with both passports in his possession (¶ 2.a). Applicant admitted his employment in Taiwan as he needed to support himself and his family in the U.S. while caring for his ill father in Taiwan (¶¶ 2.b, 2.c).

Applicant's admissions are incorporated as findings of fact. After a thorough review of the pleadings, exhibits, and transcript, and having taken administrative notice of certain facts (*see infra*), I make the following relevant and material additional findings.

Applicant is a 53-year-old principal electrical engineer. He earned his master of science degree in mechanical engineering in December 1982, his master's in electrical engineering in May 1987, and his doctorate in electrical engineering in May 1994, all from the same public university in the U.S. He has been working for his present employer, a defense contractor, since October 2005 and seeks a security clearance so that he can work on classified radar projects.

Applicant was born in September 1954 in Taiwan. He is the oldest of six children (three male, three female) born to Taiwanese resident citizens. His father, who was born in the PRC, was a barber in Taiwan until he retired. His mother, a native of Taiwan, did not work outside of the home. In about May 1975, Applicant earned his bachelor's degree from a university in Taiwan.

In about August 1981, Applicant came to the U.S. on a student visa to pursue graduate study. He wanted to see what life was like on the other side of the world. Applicant came to appreciate the respect afforded him in the academic process ("[professors] are willing to help you, not you ask a stupid question and then don't answer you. But in Taiwan, no, you don't do that because nobody is

going to answer you, nobody is going to appreciate your question or your curiosity. . . .” Tr. 54). He became a lawful permanent resident in 1984.

In 1985, Applicant went to Taiwan to persuade his parents to purchase a home there. He gave them \$5,000 toward a down payment. In October 1991, while pursuing his doctorate degree in the U.S., Applicant became a 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 took no action to formally renounce his Taiwanese citizenship.

In May 1994, Applicant was awarded his doctorate degree in electrical engineering. In May 1995, he married a Taiwanese citizen in the U.S. He met her at a Buddhist temple in the U.S. In mid-May 1996, Applicant was issued a U.S. passport. Applicant continued to maintain a Taiwanese passport so that he would not have to obtain a visa to enter Taiwan. Applicant’s parents came to the U.S. and stayed for about six months, sometime between 1996 and 1998.

In January 1998, Applicant and his spouse had their only child, a son. In about April 1998, Applicant returned to Taiwan to help his father who had suffered a stroke. His assistance consisted primarily of speaking with medical professionals, accompanying him to doctors’ appointments and the hospital for surgery, and conducting research into treatment for his father’s condition.¹⁰ Otherwise, he saw his parents on weekends. Applicant’s spouse and infant child stayed in the U.S. Her mother came from Taiwan for several months to help her in about 1999. In April 2000, Applicant’s spouse became a naturalized U.S. citizen.

Applicant stayed in Taiwan for six years, renting a succession of apartments located about two hours from his parents’ home. Applicant traveled to the U.S. to see his spouse and son once a year, usually at the New Year or Chinese New Year. Applicant stayed in the U.S. for two to three weeks each time. On his trips he took both his U.S. and Taiwanese passports, and on at least a couple occasions, presented both of them on entry and exit. On May 1, 2001, he renewed his Taiwanese passport for another ten years, and this passport shows travel from Taiwan from February 1, 2002 to February 19, 2002, January 29, 2003 to February 16, 2003, and February 3, 2004 to February 15, 2004. While he was living in Taiwan, Applicant continued to file joint income tax returns with his spouse. She had the returns prepared by a professional and sent them to him. Applicant’s foreign earned income was \$19,002 in 1998, \$29,401 in 1999 and 2000, \$32,000 in 2001, \$43,682 in 2002, and \$51,180 in 2003. (Ex. A)

To support himself in Taiwan and his immediate family back in the U.S., Applicant was employed from April 1998 to June 2001 as an engineer for a Taiwanese nonprofit research institute that did work for commercial clients as well as the government. Applicant worked on cellular phone projects. He gave his parents about \$140 per month in repayment of \$2,000 borrowed for a motorcycle. He also supported his son and spouse, wiring funds to their financial institution in the U.S. In November 1999, he sent her \$13,000 for a down payment on a home in the U.S. (Ex. D) His

¹⁰Applicant presented as Exhibit B a hospital appointment notice for his father at a medical clinic in the U.S. The appointment was scheduled for August 24, 1998. This is inconsistent with his testimony that he returned to Taiwan to care for his father in April 1998 and that his parents were in the U.S. in 1996 or 1997, unless his father traveled to the U.S. specifically for treatment in August.

spouse held the mortgage in her name only. (Ex. C) He wired \$7,000 to her in February 2000, \$8,000 in June 2000, \$9,000 in June 2001, and \$9,500 in November 2001. (Ex. D) He sent an additional \$14,700 in March 2003. (Ex. E)

From July 2001 to July 2004, Applicant was employed as a wireless local area network/antenna manager by a commercial computer company in Taiwan that manufactured original equipment for several U.S. computer companies. He received company stock as a bonus. As of June 2006, the company stock was worth about \$85,000 US. Applicant maintained three accounts in Taiwan: one solely to pay for cellular telephone charges; another in which his job earnings were directly deposited; and an account with the computer company through which he held the stock. Applicant voted in an election in Taiwan held in 2004.

In mid-August 2004, Applicant returned to the U.S. permanently (“Transition from a job in Taiwan to a job in America because of the kid, a boy.” Ex. 1). He stayed with his spouse and son until November 2004, he began working as an electrical engineer in antenna design for a technology company located in another state. Applicant traveled to Taiwan on business for this employer from December 15, 2004 to December 23, 2004, and from January 5, 2005 to January 14, 2005. Applicant spent one evening during these trips with his mother. Applicant had no contact with government officials other than routine border processing. He maintains he presented both his U.S. and Taiwanese passports on entry to and exit from Taiwan, although only his Taiwanese passport was stamped.¹¹ In June 2005, Applicant was laid off.

Applicant did not return home to live with his spouse and son while he was unemployed and looking for a job. In October 2005, he started working for his present employer about 1,700 miles away from his spouse and child. On November 1, 2005, he applied for a security clearance. On his electronic questionnaire for investigations processing (e-QIP), Applicant disclosed his and his spouse’s dual citizenship with Taiwan and the U.S. and the Taiwanese residency and citizenship of his parents, two brothers, three sisters, and parents-in-law. Concerning any foreign activities, Applicant reported his possession of an active Taiwanese passport from July 1981 to present “used mainly for the business traveling. Avoid IN/OUT to Taiwan every year while help for my parent health.” (Ex.1) He also listed his employment in Taiwan from April 1998 to July 2004, and his financial assets (salary and stock) in Taiwan.

Told by a coworker that he would have to give up his foreign citizenship to stay with the U.S. defense contractor, Applicant went to the Taipei Economic and Cultural Office (TECO) on March 31, 2006, to renounce his Taiwanese citizenship. Applicant did not have the documents required. He returned on April 28, 2006, with the necessary documentation and submitted his application to renounce. On May 17, 2006, his Taiwanese citizenship was revoked, and his Taiwanese passport issued in May 2001 was invalidated.

On June 8, 2006, Applicant was interviewed by an Office of Personnel Management (OPM) investigator in conjunction with his background investigation for a security clearance. Applicant

¹¹Applicant’s U.S. passport that was issued in May 1996 and expired in May 2006 was not available for review. The only U.S. passport of record (*see* Ex. 2) is the passport issued July 24, 2006. Applicant testified that he presented both passports to the officer (Tr. 36), but in his answer indicated that he presented both passports on a couple of occasions. The Taiwanese passport included in Exhibit 2 bears stamps showing his entry and exit from Taiwan as noted.

indicated that he had renounced his Taiwanese citizenship. Asked about his family in Taiwan and his contacts with them, Applicant described his relationship as typical of Taiwan, “they care much for one another but have little contact, and rarely speak of their own personal lives.” Applicant averred that he spoke with his mother about once a year, and with his father and siblings less than that. (Ex. 3) Applicant disclosed that none of his relatives have any government connection except for two sisters, who work for Taiwan’s tax office.

Applicant was re-interviewed on November 20, 2006, concerning his use of his Taiwanese passport and financial interests (money and stocks) in banks in Taiwan. He estimated he had only \$100 in the account out of which he paid his cellular phone costs, and \$4,000 in the account into which his salary had been deposited and out of which he paid his expenses. Applicant indicated that he had about \$5,000 US on deposit and about \$85,000 worth of computer company stock. Applicant expressed his intent to close the accounts in the near future.

Applicant traveled to Taiwan from December 15, 2006 to January 3, 2007. He traveled on his U.S. passport that was recently issued to him in July 2006 for another ten years. While in Taiwan, Applicant closed all his financial accounts, cashed in his stocks, and transferred about \$61,500 US to his credit union account in the U.S. He paid his mother \$20,000 he owed her for monies borrowed to purchase a car for his spouse back in 1998.

As of November 2007, Applicant was renting an apartment near his employment. His spouse and son were living in the family’s residence. Applicant’s son is in fourth grade in his local public elementary school. Applicant travels to see his son every couple of months depending on holidays, staying ten days each time. For the most part, he does chores when he is there and his son is sad when he leaves. Applicant calls his spouse weekly. Applicant and his spouse share a banking account. Applicant also has accounts (share, money market, and performance checking) in his name only with a credit union. He has a 401(k) account. The mortgage is paid off on the home he owns with his spouse. Applicant plans to continue working for a few more years and then retire.

Applicant’s parents and siblings (two brothers and three sisters) are resident citizens of Taiwan. The older of Applicant’s two brothers sells safety shoes; the other is a mechanical engineer in Taiwan. Applicant claims to not know by whom this brother is employed. The eldest of Applicant’s three sisters is a computer engineer for a cellular telephone company that had been owned by the Taiwanese government but is now publicly traded. She earned a degree in the U.S. in about 1984. The other two sisters are employed by Taiwan’s tax authority (equivalent to the IRS), with the older focusing on business taxes. Applicant speaks with his mother by telephone two or three times per year. She last called him in October 2007 to ask for assistance. Applicant, who is feeling guilty about time away from his son, is not interested in doing anything more for his parents. Applicant has a hard time conversing with his father, but his spouse talks to his father. Applicant has talked to his middle sister once in 2007 about their father’s health. Otherwise, he has spoken to her by telephone from the U.S. about three times in the last 27 years. He does not have any ongoing contact with his brothers or other sisters. Applicant testified that when he calls his mother, he does not discuss what his siblings are doing (“It doesn’t make sense to talk about it because, like I said, we are more conservative family so we don’t talk too much about it.” Tr. 93). Applicant has not discussed his work with his family members in Taiwan or with his spouse in the U.S.

His spouse's parents, brother and one sister live in Taiwan as well. His spouse's other sister, who is married with two children, resides in New Zealand. Applicant's father-in-law (age 86) was a career officer in Taiwan's army before he retired in about 1969. Applicant's mother-in-law (age 68) did not work outside the home. Applicant had once monthly telephone contact with his father-in-law when he was living in Taiwan from April 1998 to August 2004. For about six months in 2005/06, Applicant tried to assist his father-in-law who was having medical issues. Applicant has contacted him once since January 2007 to encourage him to see a medical professional. Applicant's sister-in-law in Taiwan works as a nurse at a hospital. His spouse's brother is an electrical engineer.

Applicant does not have any ongoing contact with any of his former coworkers from the computer company in Taiwan. In the first year after he returned to the U.S. (2004/05), Applicant had email and telephone contact once monthly with a former coworker from the nonprofit research institute in Taiwan. In the last six months, Applicant had contact with him by email or telephone once or twice.

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

Under Guideline B, *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 parents and siblings are resident citizens of his native Taiwan. Applicant has telephone contact with his mother only two to three times yearly, and she initiates the calls for the most part. He has difficulty communicating with his father, who speaks primarily to Applicant's spouse who is living apart from Applicant. However, Applicant and his parents share enough of a bond of affection and/or obligation for Applicant to leave behind his spouse and infant son and move back to Taiwan for six years after his father suffered a stroke. Applicant also went to Taiwan in 1985 to persuade his parents to purchase a home and he gave them \$5,000 for a down payment. His mother lent him \$2,000 for a motorcycle, and apparently \$20,000 for a car for his spouse in 1998. This financial support is indicative of close ties.

The record contains little detail about Applicant's contacts with his siblings. What is known is that Applicant has limited telephone contact (a few calls in 27 years) with the sister who works on business tax issues for Taiwan's tax authority. He has no ongoing contact with his other sisters or with his brothers. He testified that his younger brother seldom talked to him of his job and only came to him when he was getting married and said hello, to which Applicant claims he had no comment. (*See* Tr. 94). They have not traveled from Taiwan to visit him in the U.S. Despite these limited contacts, his relationships with his siblings in Taiwan cannot be considered as casual. When he was interviewed in June 2006, Applicant told a government investigator that despite the little contact, they care much for one another. (*See* Ex. 3) 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*) is implicated because of the heightened risk presented by his bonds to his parents and siblings who are resident citizens of Taiwan, two of whom work for Taiwan's government.

Applicant's spouse is a dual citizen of Taiwan and the U.S. Applicant has lived apart from his spouse since April 1998, with the exception of a brief period from August 2004 to December 2004 when he returned from Taiwan. Given the distance between them and the fact that he largely spends his time doing chores when he visits, it is not clear that they have developed the strong affections ordinarily characteristic of a marital relationship. However, Applicant undisputably has a strong sense of obligation to his spouse and son. He provided for them financially when he was living in Taiwan. He also maintains joint financial ties (bank account, house) with his spouse and he telephones her weekly. Her foreign citizenship presents little concern because of her U.S. citizenship and residency and the absence of any evidence that she actively exercises her Taiwanese citizenship. But heightened concerns are raised because of her family relations in Taiwan. She is sufficiently close to her parents to where her mother came to the U.S. to help her on the birth of her and Applicant's son. Applicant had telephone contact with his father-in-law when he was living in Taiwan on about a monthly basis and his father-in-law continues to seek his advice on health issues. While DC ¶ 7(a) also applies because of his and his spouse's ties to her relatives in Taiwan, her father's status as a retired career military officer is not of current security concern since he retired in about 1969 and there is no indication of any current association with military personnel or involvement in military activities.

In SOR ¶ 1.e, the government alleged that Applicant traveled to Taiwan in 1998 and yearly from approximately 2002 through 2006. Foreign travel even to one's native land is not security disqualifying in their own right absent evidence of any incidents during that travel that raises

vulnerability to exploitation, pressure or coercion (*see* ¶ 7(i) (*conduct, especially while traveling outside the U.S., which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country*)). Routine checks and registration with authorities are not sufficient to apply DC ¶ 7(i). However, in this case it is more accurate that Applicant traveled to the U.S. annually from Taiwan, where he stayed for some six years to assist his ill father. While in Taiwan, Applicant was employed for a research institute and then a computer manufacturer. Applicant reported this employment on his e-QIP, and reported the income from these jobs on his U.S. income tax returns filed when he resided in Taiwan. The only source of potential vulnerability is the relationship that he has since maintained with a former coworker from the research institute, which would further implicate ¶ 7(a) but for the significant reduction in contact with this Taiwanese citizen in the past year.

The familial bonds of affection and/or obligation with Applicant's family members and his spouse's family members living 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 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.

However, even nations with a history of friendly relations do not always have the same interests. 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.

As of October 2007, family members in Taiwan were calling him for help in dealing with his father's eye problem. He testified he had no interest in assisting them:

My wife asked me did you call home. I said no. To me, I'm not interested to do anything more. I'm getting older, I'm working full-time, I have to take care of my kid, the kid is growing so quick, I can't spend too much time. I feel sometimes guilty, that's how I feel right now. He has fun with me. Every time when I try to come back

here he starts crying, so I kind of feel guilty at this moment and I want to spend time with my kid. (Tr. 125)

At the same time, he has not ruled out providing assistance if they came to the U.S. (“And if they came here, I would probably give them like enough money for survival here, buy the insurance, maybe pay their way and some money for the traveling around here, I guess that’s it.” Tr. 111) Under the circumstances presented, I am unable to apply MC ¶ 8(a).

Even strong ties to foreign nationals can be mitigated under 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 person can be expected to resolve any conflict of interest in favor of the U.S. interest*). Applicant developed significant ties to the U.S. since he came as a student in 1981, most notably the acquisition of U.S. citizenship. Yet marriage and the recent birth of his son were not enough to keep him from returning to Taiwan less than ten years ago. During that time, he continued to pay U.S. income taxes but also paid taxes on his income in Taiwan. He bought a home with his spouse, but even that house is in his spouse’s name. He stayed in Taiwan for six years, apparently because his research showed a favorable prognosis for stroke victims if no recurrence for five years. (See Tr. 126) While he decided to move back to the U.S. when his son was six, he stayed with his spouse and son only for a few months until he found a job in a distant state. After he was laid off, he did not return to the marital home, but instead took a position with a defense contractor located no closer to them. Applicant expressed his appreciation for life in the U.S. and a sincere desire to stay here, but the depth of his relationships and loyalties in the U.S. must be questioned given the six years spent in Taiwan and his inexplicable separation from his spouse and son once he returned. Applicant has not met his burden of overcoming the significant foreign influence concerns that exist because of his and his spouse’s close ties to immediate family members who are resident citizens of Taiwan, a country with a history of targeting U.S. sensitive information.

Guideline C—Foreign Preference

Under guideline C, *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, who came to the U.S. on a student visa in about August 1981, became a U.S. citizen ten years later. Applicant knowingly exercised a privilege of his native Taiwanese citizenship by continuing to maintain a Taiwanese passport, renewing it in 2001 for another ten years. He used the passport to avoid having to obtain a visa to travel to, and from 1998 to 2004, reside in Taiwan. While for convenience and to fulfill legal requirements in Taiwan rather than intended as a deliberate preference for Taiwan over the U.S., this voluntary renewal and use of his Taiwanese passport after his U.S. naturalization raises serious foreign preference concerns under 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*).

Foreign preference concerns are also raised by voting in a foreign election (*see DC ¶ 10 (7) (voting in a foreign election)*), and Applicant admitted he had voted in Taiwan in 2004. Since it was not alleged, it cannot be a ground of disqualification, but it is relevant to the extent it shows the extent to which Applicant was integrated into Taiwanese society while he lived there from 1998 to

2004. Applicant's employment for the Taiwanese nonprofit research institute and then the commercial computer company does not fall within any of the specific foreign preference disqualifiers in the absence of any indication that Applicant was acting to serve the interests of the foreign entities in conflict with the national security interest. (*See* ¶ 10(c)). Applicant's motivation was purely financial. He needed to support himself and his family that he left behind in the U.S. and there is no evidence that his duties were inconsistent with U.S. interests. Applicant testified with no rebuttal from the government that he worked on cellular telephone technology and that the computer company was an original equipment manufacturer for U.S. computer firms. While he had significant financial interests in Taiwan (salary until July 2004 and bank deposits and stock until December 2006), the evidence does not show that he had to maintain his foreign citizenship to protect those interests, and he brought all those assets to the U.S.

In mitigation of the foreign preference concerns, Applicant not only surrendered his foreign passport to the TECO in late April 2006, but he also renounced his Taiwanese citizenship. His application to renounce was accepted in May 2006. MC ¶ 11(b) (*the individual has expressed a willingness to renounce dual citizenship*) and ¶ 11(e) (*the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated*) apply.

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 is credited for taking his family obligations seriously. His responsible behavior in this regard suggests that he is someone who will not take lightly the fiduciary obligations of a security clearance. Applicant went to the extent of renouncing his Taiwanese citizenship as he believed it was required to retain his defense contractor job. On the other hand, it is his strong sense of obligation to foreign family members in Taiwan that presents a significant security risk. He sacrificed his career in the U.S. and his relationships with his spouse and child for more than six years. His Taiwanese relatives have again asked him for assistance, and while he indicates that he is not interested in doing more for them, his history raises considerable doubts that he will ignore their entreaties. It is not clear what Applicant would do if placed in a position of having to choose between his relatives in Taiwan and U.S. interests. Accordingly, I am unable to conclude with a sufficient degree of certainty that it is clearly consistent with the national interest to grant Applicant a security clearance.

FORMAL FINDINGS

Paragraph 1. Guideline B:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Paragraph 2. Guideline C:	FOR APPLICANT

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