



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-05986

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: *Pro Se*

06/30/2016

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant mitigated the security concerns regarding foreign influence. Eligibility for access to classified information is granted.

History of Case

On May 21, 2015, the Department of Defense (DOD) Consolidated Adjudication Facility (CAF), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant detailing why DOD adjudicators could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on June 19, 2015, and requested a hearing. The case was assigned to me on October 16, 2015, and was scheduled for hearing on February 2, 2016. A hearing was held on the scheduled date for the purpose of

considering whether it would be clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's security clearance. At hearing, the Government's case consisted of eight exhibits (GEs 1-8); Applicant relied on one witness (himself) and 15 exhibits (AEs A-O). The transcript (R.T.) was received on February 10, 2016.

Besides its eight exhibits, the Government requested administrative notice of facts covered by 13 source documents, which are identified as follows: *U.S.-Taiwan Relationship: Overview of Policy Issues*, Congressional Research Service (December 2014); *Joint U.S.-China Communiqué* (Shanghai February 1972); *Joint U.S.-China Communiqué on the Establishment of Diplomatic Relations Between the United States of America and the People's Republic of China* (January 1979); *U.S.-PRC Joint Communiqué* (August 1982); *U.S. Relations with Taiwan Fact Sheet: Foreign Representation* (February 2015); *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage-2000*, National Counterintelligence Center (2001); *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage-2005*, National Counterintelligence Center (2006); and *Espionage and Other Compromises of National Security*, Defense Personnel and Security Research Center (November 2009).

Other documents requested for official notice by the Government include the following: *Summary of Major U.S. Export Enforcement, Economic Espionage, Trade Secret and Embargo-Related Criminal Cases*, U.S. Department of Justice (October 2014); *Taiwan Exporter is Sentenced to Three and a Half Years for Conspiring to Export Missile Components from the United States to Iran*, U.S. Department of Commerce (August 2010); *Two Taiwanese Nationals Charged in New Jersey with Conspiring to Export Sensitive U.S. Military technology to China*, (D. N.J. April 2012); and *North Wales Man Sentenced for Illegally Exporting Goods*, U.S. Department of Commerce (January 2013);

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 (App. Bd. April 12, 2007); ISCR Case No. 02-24875 (App. Bd. October 12, 2006). Administrative notice is appropriate for noticing facts or government reports that are well known. See *Stein*, Administrative Law, Sec. 25.01 (Bender & Co. 2006). The Government's administrative notice request was admitted as HE 1.

For good cause shown, administrative notice was granted with respect to the above-named background reports (Administrative Notice I through XIII) addressing the geopolitical situation and security concerns extant in Taiwan. Administrative notice was extended to the source documents themselves, consistent with the provisions of Fed. R. Evid. 201. This notice did not foreclose Applicant from challenging the accuracy and reliability of the information contained in the reports addressing Taiwan's current status, or from relying on additional information in the documents not covered in the Government's Administrative Notice.

In addition to the above-described documents, I took administrative notice of a document covering the Department of Homeland Security's (DHS) announcement of

DHS Announces Taiwan's Designation into Visa Waiver Program, (October 2012) and of a document entitled *CBP Taiwan AEO agree to Cargo Security Program Standards* (November 2012). Applicant's submissions were assigned administrative notice numbers XIV and XV. I also took administrative notice of *Background Note: Taiwan*, U.S. Department of State (September 2008). After receiving no objections from the parties, I assigned this document an administrative notice designation of XVI. I took administrative notice also of post-hearing documents submitted by Applicant as follows: *Major U.S. Arms Sales Since 1990*, Congressional Research Service (August 2014); *Transfer of Excess United States Naval Vessels*, Public Law 113-276 (December 2014); *DHS Announces Taiwan's Designation into Visa Waiver Program*, Department of Homeland Security (October 2012); *CBP, Taiwan AEO, Agree to Cargo Security Program Standards*, Department of Homeland Security (November 2012); and *Summary of Major U.S. Export Enforcement, Economic Espionage, Trade Secret and Embargo-Related Cases*, U.S. Department of Justice (January 2015). I assigned these Applicant submissions Administrative Notice numbers of XVII-XX1.

Applicant's submitted post-hearing decisions of administrative judges addressing foreign influence issues involving Taiwan cover non-precedential decisions and are admitted for guidance purposes only. I assigned a HE 2 designation to these decisions.

Procedural Issues

Before the commencement of the hearing, Applicant formally waived his procedural right to 15 days advance notice of the hearing. His waiver was accepted.

Prior to the close of the hearing, Department Counsel moved to amend subparagraph 1.b of the SOR to add a second brother-in-law who is a citizen and resident of Taiwan to conform to the evidence in the record. (Tr. 76-77) For good cause shown, Department Counsel's motion was granted. Applicant admitted the allegations as amended and was afforded the opportunity to address the amendment in his presented evidence.

Before the close of the hearing, Applicant requested leave to keep the record open to permit him the opportunity to supplement the record with documented evidence of the impact on the Government's foreign influence concerns from the recent Taiwan presidential elections, as well as provide documentary evidence of balancing security concerns surrounding Taiwan's use of commercial espionage to acquire dual use technology with dual use military applications. For good cause shown, Applicant was granted 14 days to supplement the record. Within the time permitted, Applicant provided a financial summary, a character reference, a snapshot of his wife's account balance in her Taiwan bank account, his wife's certificate of naturalization, and an email from Applicant. Applicant's submissions were admitted as AEs P-T. Additional submissions covering prior DOHA decisions and articles covering Taiwan sourced in non-Government publications were admitted as AEs U, Z, AA, HH, and KK-PP.

Applicant's submissions that were not objected to by Department Counsel for the taking of administrative notice were assigned administrative notice designations of XVII-

XIX. These administrative notice documents consist of the following: *Major U.S. Arm Sales Since 1990*, Congressional Research Service (August 2014); *Transfer of Excess U.S. Naval Vessels*, Public Law 113-276 (December 2014); *DHS Announces Taiwan's Designation into Visa Waiver Program*, (October 2012); Taiwan AEO Agree to Cargo security Program Standards, CBP (November 2012); and *Summary of Major U.S. Export Enforcement, Economic Espionage*, U.S. Department of Justice (January 2015)

Summary of Pleadings

Under Guideline B, Applicant allegedly has a mother-in-law and brother-in-law (since amended to include two brother-in-laws) who are citizens and residents of Taiwan. Allegedly, he has a spouse who has a bank account in Taiwan for the purpose of having access to money when he and his family travel to Taiwan.

In his response, Applicant admitted to having a mother-in-law and brother-in-law who are citizens and residents of Taiwan. He denied that either of his listed relatives could be placed in a position where Applicant would have to choose other than for supporting the interests of the United States. He claimed he has had a security clearance (either secret or top secret) since 1999. He claimed there is no conflict of interest, because of his deep and longstanding relationships and loyalties to the United States and the strong defense ties that exist between Taiwan and the United States. Applicant further claimed that his interactions with his family members residing in Taiwan are casual and infrequent. And, he claimed he has no foreign business, financial interest, or property interest in Taiwan.

Findings of Fact

Applicant is a 58-year-old research associate for a university-affiliated research center and defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Applicant's background

Applicant married his wife in Taiwan in September 1994 (Tr. 85), and has two children (ages 17 and 19) who were born and raised in the United States. (GEs 1-2) He met his wife at a dinner party in the Fall of 1991 while both were attending graduate school. (GEs 1-2 and 7-8; Tr. 74, 85) His wife earned her bachelor's degree in Taiwan and worked for two years as a physical education teacher before immigrating to the United States in 1991 on a student's visa to attend graduate school. (GEs 7-8; Tr. 70, 70-74) She became a naturalized U.S. citizen in May 2006, but maintains her dual citizenship with Taiwan. (GE 8; Tr. 88, 92) Currently, she teaches school and works intermittently in various part-time jobs. (Tr. 91)

Applicant earned a bachelor's, masters, and Ph.D degrees from respected universities. (GE 2) He has been employed by his current employer as a research associate for a major university since 2005. (GEs 1-2 and 7 AE A) Prior to accepting his

current position, he was employed in various research assignments at the same university since 1999. (AEs 1-2 and 7) Applicant claimed no military service. (GEs 1-2)

Applicant admitted to two security violations (one in May 2010 and the other in June 2010) while employed by his current employer. (GEs 6-7; Tr. 93-94, 96-97) One resulted in the denial of his application for secret compartmented information (SCI) access, while the other resulted in revocation of his then current collateral security clearance. Each of these clearance actions was taken in 2013. (GEs 6-7; Tr. 96-98, 112-118) Applicant's current application for a security clearance represents his first attempt to regain his security clearance following his loss of clearance in 2013. (Tr. 118)

Applicant has never failed to report any security infractions or contacts with foreign nationals and has never provided any false or misleading information concerning relevant matters to any investigator, security official, or medical authority, or other party, in connection with a personnel security determination. (GE 6 and AE In DSS's most recent inspection of Applicant's research facility in 2015, his facility reportedly received the agency's highest possible rating. (Tr. 108) Applicant's recitations about his facility's rating is credible and accepted.

Applicant has no affiliation with a foreign government (Taiwan included) and has never had any employment or contact with a foreign government or foreign nationals. (GEs 1-2 and 8) His children are native born citizens of the United States who attend U.S. schools and have no foreign contacts. (GEs 1-2 and 8) Applicant spends most of his spare time with his family and in volunteer charitable activities in his local community. (AEs C-I)

Applicant's father-in-law (a citizen and resident of Taiwan) passed away in 1991 before Applicant met his wife. (Tr. 80) During his life, Applicant's father-in-law owned and operated night clubs, stores, and restaurants, and once served on a local town council. (Tr. 80-81) Applicant's surviving mother-in-law and two brothers-in-law are citizens and residents of Taiwan. (GEs 1 and 2 and 7-8; Tr. 75-76) Applicant's mother-in-law has no ties or affiliations with any political party or military in Taiwan, and is a homemaker who assists occasionally in a minor supporting role in her family's retail car sales business. (GE 8; Tr. 81)

Applicant's wife has two brothers, both of whom are citizens and residents of Taiwan. (GEs 1-8; Tr. 75-76) Applicant's oldest brother-in-law never married, lives with his mother, and has no children. (Tr. 79) He served in the Taiwan military before Applicant and his wife met, and has worked as a car salesman for the past 25 years. (Tr. 71-72, 77-79) His youngest brother-in-law is married to a homemaker and has two daughters. (Tr. 86) His youngest brother-in-law once served in Taiwan's compulsory military service and currently is a self-employed paralegal. (Tr. 82-83) Applicant considers his mother-in-law and brother-in-laws to be persons of integrity. Each is financially stable and requires no financial support. (Tr. 89, 105)

Applicant himself has little contact with his mother-in-law and brother-in-laws in Taiwan. (Tr. 78-79) He last saw his mother-in-law and oldest brother-in-law in 2008 on

his last trip to Taiwan. (GEs 6-7; Tr. 78), and he has not seen his youngest brother-in-law since 2005. (GE 8; Tr. 83) His wife maintains bi-monthly contact with her mother and brothers in Taiwan (less frequent than in the past) and last visited them (along with her two sons) in 2013. (Tr. 83-84, 87)

Applicant's wife established and maintains a bank account in Taiwan that she set up for the purpose of having access to money when she and her family travel to Taiwan. While she never maintains more than a few thousand dollars in the account (currently \$3,500), she has continued to maintain the account in open status. (GEs 6-8) Applicant assured his wife is in the process of closing the account, but has since changed her mind. (AE U; Tr. 73)

By contrast to his wife's bank balance in her Taiwan account, Applicant and his wife have considerable assets in the United States. He documented his tax return for 2014 that reported adjusted gross income of \$111,000 and his W-2 for 2015 that reflects gross wages of \$96,089. (AEs A-B) Their U.S. assets include two home mortgages that are close to being paid off, checking accounts, a money market account, retirement accounts, education savings accounts, and a debit card statement covering an account in current status. (AEs C-J)

Applicant also documented excellent credit scores within an 814 to 819 range. (AE K) Applicant's evidence is probative of significant U.S. assets owned and controlled by Applicant and his wife, more than enough to avert any risks of financial pressures on Applicant's mother-in-law and brother-in-law by Taiwan government officials.

Endorsements

Managers, supervisors, and former Government officials who have known and worked with Applicant praised his contributions and trustworthiness. A former program director for a DOD technology demonstration platform credited Applicant with major contributions to the platform's development and execution. (AE Q) She stressed her daily interaction with Applicant and demonstrated professionalism and good judgment.

Applicant's deputy director of Applicant's research and his direct supervisor characterized Applicant as a self-starter who consistently inspires trust and confidence. (AE N) A prior supervisor who is equally familiar with the background of Applicant's case described him as a responsible and conscientious co-worker. (AE N) And, his employer's facility security officer (FSO) and coworker credited Applicant with good moral character and trustworthiness. (AE N)

Taiwan's Country Status

Taiwan has a rich history that dates back 12 to 15 thousand years. Dutch and Spanish colonists claimed the island in the 16th and 17th centuries. *See Background Note: Taiwan, supra*, at 1-2. Migration from the Chinese mainland over time supplanted the aborigine peoples of Taiwan. Japan exerted considerable influence over Taiwan following China's ceding of Taiwan to Japan in 1895. (*Id.*)

Following the end of World War II in 1945, Taiwan reverted to Chinese rule. Civil war erupted soon after the reversion between Chiang Kai-Shek's Kuomintang (KMT) party and the increasingly influential Chinese Communist Party guided by Mao Zedong. When the civil war ended in 1949, two million refugees (predominantly nationalists) fled to Taiwan, where Chiang Kai-Shek established a separate provisional KMT capital in Taipei. See *Background Note: Taiwan, supra*, at 2. Mao's victorious Communist party, in turn, established the People's Republic of China (PRC).

For the past half century, Taiwan has demonstrated steady economic development and today is a major international trading power. Its accession to the world Trade Organization (WTO) in 2002 represented a significant achievement and strengthened its standing in the expanding global economy. See *Background Note: Taiwan, supra*, at 3.

Taiwan has exhibited steady political development as well since its establishment as an island government. Changes reflect a continuing liberalizing process that culminated in the tightly contested election of Chen Shui-bian in 2000. See *Background Note: Taiwan, supra*, at 4-5. Chen's Democratic Progressive Party (DPP) won major parliamentary victories in 2000 and again in 2004, enabling Chen to become the first opposition party candidate to win the presidency. Chen was re-elected in 2004 on a platform that included a "defensive referendum." (*Id.*, at 6) Such referenda have been historically perceived to be closely linked to the question of Taiwan's independence.

Legislative elections in January 2008 produced a decisive majority for the KMT party over Chen's DPP. (*Background Note: Taiwan, supra*, at 2-3) In the presidential election that was held one month later, Ma Ying-jeou prevailed, securing a united government under KMT control for the first time. (*Id.*) The January 2012 presidential and legislative elections were held concurrently (as the result of a constitutional amendment) and resulted in the reelection of Ma Ying-jeou and renewed KMT legislative control by the victorious KMT party.

Today's Taiwan political system can appropriately be described as a multi-party democracy under a constitutional umbrella comprising five branches: executive, legislative, judicial, control and examination. By all accounts, Taiwan has a good human rights record and has demonstrated respect for the rule of contract in its commercial relations.

Election results from Taiwan's recent presidential and legislative elections in January 2016 add further uncertainty to national espionage threats. Tsai Ing-wen, opposition leader of the DPP prevailed over the KMT. Dr. Tsai acknowledged Taiwan's tenuous relationship with the PRC and pledged her utmost efforts to find mutually acceptable ways to minimize provocations and surprises. (AE U) Explanations abound for the rise of women in Taiwan politics. (*Id.*) Most scholars attribute the rise of women in government to evolving global trends in female involvement in politics. Dr. Tsai's impressive victory in Taiwan's 2016 presidential election promises to have significant affects on future U.S.-Taiwan relations, as well as Taiwan-PRC relations. (AE U)

Taiwan's PRC Relations

The PRC does not recognize Taiwan's independence, and insists that there is only "one China" See Administrative Notice, *supra*, at 3; *Background Note: Taiwan, supra*, at 7, and *U.S.-Taiwan Relationship: Overview of Policy Issues, supra*. Despite differences over the PRC's one China policy, Taiwan and the PRC have enjoyed increased contacts over the past decade. (*Id.*) Over the past several years, Taiwan has relaxed restrictions on unofficial contacts with the PRC. With Taiwan's continued relaxation of its PRC policy regarding unofficial contacts, cross-strait interactions have grown significantly.

With increasing contacts between Taiwan and the PRC, cross-strait trade has grown rapidly over the past 10 years. (*Background Note: Taiwan, supra*, at 7-8) China is Taiwan's largest trading partner, and Taiwan is China's seventh largest. (*Id.*) In June 2010, following prolonged negotiations, the two sides signed an Economic Cooperation Framework Agreement (ECFA), which was designed to liberalize cross-strait trade in products and services, with the long-term goal of eventually creating an essentially free-trade regime. The development of semi-official cross-strait relations between Taiwan and the PRC hopefully will contribute to tension reductions and to an environment conducive to an eventually peaceful resolution of outstanding differences between the two sides. (*Id.*, at 8)

In the current political environment in the aftermath of Taiwan's recent elections, and ongoing disputes between the parties in the South China Sea, it is still too early to predict the direction of cross-strait negotiations between Taiwan and the PRC, and between the United States, Taiwan, and the PRC. (AE U) Because of the PRC's long insistence on Taiwan's acceptance of the "one China" principle as a requisite to any jump-starting of negotiations over practical agreements in trade, cultural exchanges, and other areas of mutual interest, future relations between the two sides remain cloudy at best.

U.S.-Taiwan Relations

In the joint US-PRC communiques of 1972, 1979, and 1982, the United States announced its recognition of the government of the PRC as the sole government of China and that there is but one China, of which Taiwan is a part. (*Background Note: Taiwan, supra*, at 7) The Joint Communiques confirmed that within this context the people of the United States will maintain cultural, commercial, and other unofficial relations with the people of Taiwan.

To implement the joint communique, Congress passed the Taiwan Relations Act (TRA) in April 1979. See Pub. L. No. 96-8, § 2, 93 Stat. 4 (1979)(codified at 22 U.S.C. §§ 3301-3316. President Carter, in turn, signed the legislation into law on April 10, 1979. Besides providing the legal basis for maintaining the U.S. unofficial relationship with Taiwan, the TRA reinforced the U.S. commitment to providing defense assistance to Taiwan. The TRA expressly provides for the continued sale of appropriate defensive

military equipment to Taiwan and declares that peace and stability in the area are in U.S. interests. See *Background Note, Taiwan*, supra, at 9-10.

The TRA also established the American Institute of Taiwan (AIT), a non-profit corporation designed to provide citizen and consular services similar to those at diplomatic posts. (Id.) And, even though the United States terminated its Mutual Defense Treaty with Taiwan following its de-recognition of the latter, it has continued its sale of appropriate defensive military equipment to Taiwan. (Id.) While ambiguously written, the U.S. commitment to Taiwan's security against cross-strait aggression by the PRC's military forces is implicit in the TRA's coverage of U.S. responsibilities towards Taiwan. This implicit construction is oft-used to support proponents of a "two China" policy.

To be sure, initial actions of the Bush Administration in 2001 provided cause to conclude that President Bush abandoned longstanding U.S. policy of "strategic ambiguity" in favor of a policy that placed a clearer emphasis on Taiwan's interests at the expense of the PRC. See *Background Note: Taiwan*, supra, at 8-9; *U.S. Relations with Taiwan Fact Sheet: Foreign Representation*, supra. More recent developments, though, reflect the smoothing of U.S.-PRC relations as a part of the broader war on terrorism.

Currently, the United States does not support Taiwan independence and opposes unilateral steps by either side to alter the status quo. (*Background Note: Taiwan*, supra, at 9-10) For so long as Taiwan's national security remains under threat (both veiled and unveiled) from the PRC, Taiwan can be expected to pursue the development of its military amidst expectations of military assistance from the United States.

Stressing self-reliance, Taiwan maintains a large military establishment (accounting for 2.9 per cent of its gross domestic product). (*Background Note: Taiwan*, supra, at 6). Its principal mission is to defend itself against the PRC, which has not renounced the use of force against Taiwan (Id.) With its unchanged public policy of maintaining "strategic ambiguity" in its official relations with Taiwan, the United States can be expected to continue its support of Taiwan's island security with the sale of defensive military equipment.

Recently, Congress passed legislation enhancing its oversight of U.S. transfers of excess Navy vessels to Taiwan. See *Major U.S. Arms Sales since 1990*, supra; *Transfer of Excess United States Naval Vessels*, Public Law 113-276, supra. Examples of increased U.S. ties to Taiwan include the designation of its visa waiver program and the cargo security program between CBT and Taiwan AEO. See *DHS Announces Taiwan's Designation into Visa Waiver Program*, and *Taiwan AEO, Agree to Cargo Security Program Standards*, supra.

Taiwan's Economic Collection Practices

Based on past reports to Congress, Taiwan is considered one of the most active collectors of U.S. economic and proprietary information. In its 2005 Annual Report to Congress on Foreign Economic Collection and Industrial Espionage, the

Counterintelligence Executive (CE) listed Taiwan as well as the PRC among the most active collectors based on cited surveys. See *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage-2005*, *supra*, at 12. Specific incidents are cited in the CE's report that identify offenders of proprietary information thefts and attempts to acquire export-restricted products. (*Id.*, at 11) Care must be taken, though, in relying too heavily on the unverified information supplied by reporting U.S. firms in the CE surveys.

Recent espionage convictions document ongoing collection activities covering theft of sensitive and proprietary information by and for Taiwan companies. See Administrative Notice, *supra*, at 5-6, and press releases covering specific cases involving criminal and civil charges brought against Taiwan exporters of controlled items and components and sensitive technology, *supra*. Summaries of U.S. arms sales over the past 40 years are covered subject to strengthened security measure put in place. See *Summary of Major U.S. Export Enforcement, Economic Espionage, Trade Secret and Embargo-Related Cases*, *supra*. Multilateral export control regimes in place are voluntary and not universally adhered to by member nations.

Stress Points Between Taiwan, the PRC, and the United States

In its Annual Reports to Congress in 2000 and 2005, the National Counterintelligence Executive described the PRC as a country intent on acquiring and exploiting the knowledge developed by multiples of collection agents: legally, if possible, and otherwise illegally by espionage. See Administrative Notice, *supra*, at 5; *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage*, *supra*. Recent indictments of Chinese citizens for espionage have served to highlight the PRC's spying activities in the U.S. (*Id.*) Violating its own 2004 U.S.-China agreement, the PRC oft-fails to schedule timely end-use inspection visits of dual-use items licensed for export to the PRC. Better export controls can be effective only if they are multilateral in scope. Multilateral export controls and arms embargoes, however, do provide additional insurance against altering the cross-strait military balance that has been long maintained. (*Id.*, at 7)

Without effective dual use export controls in place, the PRC can be expected to acquire dual use technologies with military potential from the United States and Taiwan through the United States and other source countries. Reported intelligence, though, is lacking on any Taiwan use of its collection resources in the United States to supply the PRC with needed military technology (alone or through technology with known dual use capabilities).

Other stress points between the PRC and Taiwan are reflected in periodic PRC military exercises in the Taiwan Straits. See *Background Note: Taiwan*, *supra*, at 6-7. More frequent U.S.-Taiwan and U.S.-PRC high-level exchanges have the potential to reduce cross-strait military tensions. See *id.*, at 7 and *U.S.-Taiwan Relationship: Overview of Policy Issues*, *supra*.

Policies

The AGs for Determining Eligibility for Access to Classified Information (effective September 2006) list Guidelines to be considered by administrative judges in the decision making process covering DOHA cases. These Guidelines require the administrative judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied.

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person.

The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk. The following AG ¶ 2(a) factors are pertinent: (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.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Foreign Influence

The Concern: "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 in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under the this Guideline can and should considered the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism."

Burden of Proof

By virtue of the precepts framed by the Directive, a decision to grant or continue an Applicant's request for security clearance may be made only upon a threshold finding that

to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove any controverted fact[s] alleged in the Statement of Reasons, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of proof shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

Analysis

Applicant is a U.S. citizen whose wife immigrated to the United States from Taiwan in 1991 on a student visa to pursue her graduate studies in education and became a naturalized U.S. citizen in May 2006. Security concerns arise over the status of Applicant's mother-in-law and brother-in-laws, who are citizens and residents of Taiwan, a country historically friendly to the United States, albeit, one with a reported history of economic collection activities in the United States.

Department Counsel urges security concerns over risks that Applicant's mother-in-law and brother-in-laws residing in Taiwan, might be subject to undue foreign influence by Taiwanese government authorities to access classified information in Applicant's possession or control. Because Applicant's in-laws reside in Taiwan where Applicant still has an open bank account, they present potential heightened security risks covered by disqualifying condition (DC) ¶ 7(a) of the AGs for foreign influence: "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." The citizenship/residence status of these extended family members in Taiwan and retention of a Taiwan bank account by his wife pose some potential concerns for Applicant because of the risks of undue foreign influence that could compromise sensitive or classified information under Applicant's possession and/or control.

Little is known about the backgrounds of Applicant's mother-in-law and brothers-in-law. All that is known about Applicant's mother-in-law is that she is a homemaker who occasionally assists with her family's retail car sales business and does not rely on any financial support from Applicant and his wife. Even less is known about his brothers-in-law who each served in Taiwan's military service.

Because Applicant's mother-in-law participates in her family's car sales business, and his brother-in-laws have prior military service (although aged for the most part), some consideration of DC ¶ 7(b), "connection to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information," is warranted as well. Applicant's infrequent contacts with his mother-in-law and brother-in-laws residing in Taiwan afford him some potential for accessing Taiwan officials who might be interested in proprietary, sensitive, or even classified information, that Applicant is privy to.

Still, none of Applicant's extended family members have any identified affiliations or contacts with Taiwan officials currently known to be associated with intelligence or military organizations interested in collecting proprietary or sensitive information in the United States. Past reported collection activities by Taiwan government officials have no verifiable application to Applicant's in-laws, or by implication to Applicant himself.

The AGs governing collateral clearances do not dictate *per se* results or mandate particular outcomes for applicants with relatives who are citizens/residents of foreign countries in general. What is considered to be an acceptable risk in one foreign country may not be in another. The geopolitical aims and policies of the particular foreign regime involved do matter. And the AGs do take into account the country's demonstrated relations with the United States as an important consideration in gauging whether the particular relatives with citizenship and residency elsewhere create a heightened security risk. Taiwan, while reported to target the United States and its companies in the past for economic and proprietary information, is still a country with no known recent history of hostage taking or disposition for exerting undue influence against family members to obtain either classified information, or unclassified economic and proprietary data.

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. Reports of Taiwan intelligence gathering against U.S. companies are counterbalanced by Taiwan's history of friendship and partnership in a defense pact formalized in 1979. The mutually supportive bonds that have linked Taiwan's special relationship with the United States have not been weakened by either the TRA, or the geopolitical forces that have shaped the U.S.'s evolving relationship with the PRC. Whatever geopolitical uncertainties exist as the result of the recent presidential and legislative elections in Taiwan are not likely to change any risk assessments at this time.

Taiwan remains a friend of the United States and is a country whose democratic institutions are not incompatible with our own traditions and respect for human rights and

the rule of law. Whatever potential heightened security risks arise as the result of Applicant's having family members with citizenship and residency in Taiwan are by every reasonable measure mitigated.

As for security concerns associated with the presence of Applicant's mother-in-law and brothers-in-law in Taiwan, any potential heightened risk of a hostage situation or undue foreign influence brought in the hopes of eliciting either classified information or economic or proprietary data out of Applicant through his extended family members residing in Taiwan is a manageable one. Not only does Applicant have infrequent contact with his extended family members residing in Taiwan, and neither he nor his wife have any major property or financial interests in Taiwan.

Moreover, Applicant's wife's bank account in Taiwan is quite small compared to the assets they maintain in the United States and are not likely to create any conflicts of interest. These bank funds in the account are more than counterbalanced by the considerable property interests and close family and community relationships he and his wife have forged in the United States. Applicant, accordingly, may take advantage of one important mitigating condition:

MC ¶ 8(a), the nature of the relationships with foreign persons, the country in which these persons are located, or the persons or activities of these persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.

Whole-person assessment also serves to minimize Applicant's exposure to conflict of interests with his Taiwan in-laws. Not only has Applicant's wife become a naturalized U.S. citizen (in 2006) and received an advanced degree in the United States, but Applicant himself has devoted his entire professional career to the valued work he provides to his defense contractor of many years. He is considered highly reliable and trustworthy by his managers, supervisor, co-workers, and a former DOD official who regularly interacted with Applicant. None of his managers, supervisor, or coworkers who are familiar with his clearance issues expressed awareness of any risks of coercion, pressure, or influence that Applicant's mother-in-law and brother-in-laws might be exposed to in Taiwan.

In Applicant's case, any likelihood of coercion, pressure, or influence being brought to bear on any of his extended family members would appear to be minimal. By all reasonable accounts of the presented record, Applicant has few visible conflicts of interest with Taiwan citizens and residents or property interests in Taiwan that could be at risk to exploitation or compromise by Taiwan authorities. The only potential exceptions are the still open Taiwan bank account of his wife and the residency of his mother-in-law and brother-in-laws in Taiwan, and neither the Taiwan residency of his extended family members nor his wife's small bank account in Taiwan present any security risks that cannot be managed effectively.

Overall, any potential security concerns attributable to Applicant's extended family members in Taiwan and his wife's Taiwan bank account are sufficiently mitigated to permit safe predictive judgments about Applicant's ability to withstand risks of undue influence attributable to his familial relationships and spousal property interests in Taiwan. Favorable conclusions are warranted with respect to the allegations covered by Guideline B.

Formal Findings

In reviewing the allegations of the SOR in the context of the findings of fact, conclusions, and the factors and conditions listed above, I make the following separate formal findings with respect to Applicant's eligibility for a security clearance.

GUIDELINE B: (FOREIGN INFLUENCE): FOR APPLICANT

Subparas. 1.a-1.c:

For APPLICANT

Roger C. Wesley
Administrative Judge