

DATE: January 8, 2004

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 02-11843

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Rita C. O'Brien, Esq., Department Counsel

FOR APPLICANT

Daniel C. Schwartz, Esq., Anna C. Ursano, Esq.

SYNOPSIS

Applicant, a native of the Republic of China (Taiwan), became a United States (U.S.) naturalized citizen in 1987. In 1996, she acquired a Taiwanese passport, primarily to prove her identity in Taiwan in connection with the sale of an apartment purchased by her parents in her name in 1977. She traveled to Taiwan in 1997 and 1999 on that foreign passport. Since learning the use of the foreign passport was inappropriate, she used her U.S. passport exclusively. Concerns of foreign preference are mitigated by her recent surrender of her expired foreign passport and her application to renounce Taiwanese citizenship. There is little risk of foreign influence presented by the Taiwanese citizenship and/or residency of close family members as they are neither agents of a foreign government nor in positions where they are likely to be exploited. Clearance is granted.

STATEMENT OF THE CASE

On November 14, 2002, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant which detailed reasons why DOHA 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 the Applicant. (1) DOHA recommended referral to an administrative judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked. The SOR was based on Foreign Influence (Guideline B) concerns related to the Taiwanese citizenship and residency of family members and ownership of property in her name in Taiwan, and on Foreign Preference (Guideline C) concerns regarding her acquisition and use of a Taiwanese passport.

On December 27, 2002, Applicant executed an Answer to the SOR and requested a hearing before a DOHA administrative judge. The case was assigned to me on March 14, 2003. Pursuant to formal notice dated April 18, 2003, a hearing was scheduled for May 15, 2003. At the hearing held as scheduled, the Government submitted two documentary exhibits, which were admitted without any objections. Testimony was taken from the Applicant and three coworkers, as reflected in a transcript received on May 29, 2003. Corrections to the transcript subsequently proposed by the parties are accepted, including the change to page 106 proposed by Applicant. (2) At the hearing on May 15, 2003, Applicant also

submitted documentation--16 of the 18 exhibits proffered were admitted. Rulings as to the admissibility of exhibits F and Q were withheld pending Government review of proposed exhibit F (extracts of the security manual of Applicant's employer) and Applicant's submission of financial records corroborating proposed exhibit Q (summary of US assets). Exhibit R, an Applicant corrected copy of her sworn statement of August 11, 2000, was admitted over the Government's objection, with the record held open until May 27, 2003, to allow the Government to submit the Defense Security Service (DSS) agent's account of the interview and preparation of the August 11, 2000, statement.

On May 16, 2003, Applicant submitted financial records for incorporation into Exhibit Q (summary of US assets) and moved for the admission of the exhibit as supplemented. On May 27, 2003, Department Counsel submitted for identification and admission as Exhibit 3 a signed statement, dated May 20, 2003, from the DSS special agent who had interviewed Applicant on August 11, 2000. By Order dated May 29, 2003, Exhibit F was admitted into the record, no objections having been filed to its admission. The parties were also given until June 9, 2003, to file respective responses to proffered Applicant Exhibit Q (as supplemented) and Government Exhibit 3. Exhibit Q was subsequently admitted, the Government having no objection thereto.

On June 3, 2003, Applicant objected to the admission of Exhibit 3 unless and until permitted discovery, specifically the opportunity to depose the agent or call her to testify in person. Applicant also moved for production of detailed notes of the agent's interviews with her in July and August 2000, as well as of the agent's calendar for the dates in question, contending an inability to prepare for cross examination without the documentation. Department Counsel was granted until June 13, 2003, to show good cause why Applicant should not be granted the opportunity to question the agent, through hearing testimony or deposition, as to the basis for the agent's representations in her May 20, 2003, statement.

Pending receipt of Department Counsel's response to Applicant's motion for discovery, Applicant on June 9, 2003, requested consideration of two events (the death of her father and her applying to renounce her Taiwanese citizenship) that occurred on or about June 4, 2003, and she submitted a signed declaration attesting to the events (proposed Applicant exhibit S). On June 10, 2003, the Government was granted ten days to file any objection to the admission of the declaration.

On June 13, 2003, Department Counsel objected to Applicant's June 3, 2003, motion for discovery, as it "goes far beyond the scope of discovery" contemplated in paragraph E3.1.11. of the Directive. Citing Applicant's failure to notify the Government sufficiently in advance of the hearing that she intended to challenge her signed, sworn statement, the Government objected to the Applicant claiming deprivation of due process and submitted no remedy should be available to Applicant who abused her opportunity for due process. Given the credibility issues presented by the inconsistent accounts of Applicant and the agent regarding the subject interview, the Government objected to any deposition, indicating that the testimony of the DSS agent about the interview and preparation of Applicant's sworn statement must be at a reconvened hearing in my presence.

On June 20, 2003, I ordered the hearing be reconvened for the sole purpose of taking the testimony of the DSS agent, and accepted into the record Applicant exhibit S, the Government having no objection thereto.⁽³⁾ Pursuant to notice dated July 14, 2003, the hearing was reconvened on July 22, 2003. Testimony was taken from the DSS agent, as reflected in a transcript received on July 30, 2003, and two additional exhibits were accepted (Government exhibit 3 and Applicant exhibit T).

In assessing Applicant's current suitability, administrative notice was taken of two publications at the Government's request: *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage, 2000* and *Operations Security Intelligence Threat Handbook*, Section 1, and five publications at Applicant's request: United States Department of State's *Background Note: Taiwan*, dated November 2002; texts of the introduction to and the executive summary of the *Pentagon Report on Implementation of Taiwan Relations Act*, dated December 19, 2000, as reported on the website of the United States Embassy in Tokyo; Public Law 96-8 *Taiwan Relations Act*; February 14, 2003 remarks of Randall Schriver, Deputy Assistant Secretary of State for East Asian and Pacific Affairs on US-Taiwan relations; and text of the November 11, 2001 Statement by U.S. President George W. Bush welcoming China and Taiwan into the World Trade Organization.

FINDINGS OF FACT

DOHA alleged Foreign Influence concerns related to Applicant's ties to Taiwan, specifically the Taiwanese citizenship of her parents, siblings (four sisters), parents-in-law, and ownership of property in Taiwan purchased in Applicant's name. Foreign Preference concerns were also alleged concerning Applicant's acquisition of a Taiwanese passport in 1996 to facilitate the settlement of her parents' estate on their deaths, and her travel to Taiwan on this passport in 1997 and 1999. In her Answer, Applicant admitted the Taiwanese citizenship of her parents and three sisters, one sister having died in March 2001, and her in-laws, but indicated that her mother and in-laws were permanent residents of the U.S. living in the U.S. She added she was sponsoring her youngest sister's emigration from Taiwan to the U.S. Applicant also admitted she had owned property in Taiwan that had been purchased in her name in 1977 by her parents as an investment resource for them, but the apartment had been sold in May 2002. Applicant acknowledged she had obtained a Taiwanese passport in 1996 that expired in September 2002, but maintained it was to facilitate the sale of the apartment purchased in her name rather than to settle her parents' estate. The passport, then expired, had been surrendered in December 2002. Applicant admitted she had traveled to Taiwan on this passport as alleged. She denied any other foreign travel on that Taiwanese passport. Applicant's admissions are accepted, and incorporated as findings of fact. After a complete and thorough review of the evidence of record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is a 50-year-old senior software systems engineer employed by a federally-funded research and development corporation since December 1987. She has possessed a secret security clearance without adverse incident since March 1988.

Applicant was born in Taiwan in June 1953 to Taiwanese resident citizens. Her father was a plant manager for an agricultural and forestry corporation; her mother was an elementary school teacher. The fourth of five daughters, Applicant earned nursing and pharmacy degrees at a medical college in Taiwan in 1975 and 1979, respectively. While Applicant was a pharmacy student, Applicant's parents purchased an apartment in Taiwan in Applicant's name in 1977. The one-bedroom apartment, intended as an investment resource for Applicant's parents, was managed by Applicant's sister with her parents paying the taxes on the property. Applicant worked as a pharmacist in Taiwan until 1983.

In January 1983, Applicant married, in Taiwan, a Taiwanese native who had acquired U.S. citizenship in December 1981 and was working for a U.S. defense contractor in the U.S. On her marriage, Applicant became stepmother to a son born to her spouse in the U.S. in 1979. Applicant left Taiwan permanently for the U.S. that May.

Shortly after the birth of their daughter in the U.S. in September 1984, Applicant and her spouse moved into their current residence. Having chosen to pursue a new career in the U.S., Applicant earned her master of science degree in computer science in October 1986. She secured a position with a defense contractor, and in January 1987 became a U.S. naturalized citizen. With her name removed from her family's census record in Taiwan, Applicant no longer considered herself a Taiwanese citizen, although she made no effort to ascertain whether her acquisition of U.S. citizenship automatically revoked her Taiwanese citizenship.

In December 1987, Applicant commenced employment with her current employer. Circa March 1988, Applicant was granted a secret security clearance for her duties as a software engineer with the company. Within months of her hire, Applicant was making significant contributions to her employer.

In December 1988, Applicant and her spouse had a son. In 1989, Applicant's parents were granted U.S. permanent residence status. They spent the next six years living in the U.S. and vacationing in Taiwan.

In March 1992, Applicant acquired a U.S. passport, valid for ten years. That July, she obtained a visa, good until 1997 for repeated stays in Taiwan of up to sixty days duration. Within a week of receiving the visa, Applicant traveled to Taiwan on her U.S. passport for a three-week stay with her relatives.

When in Taiwan in about 1996 Applicant's father was diagnosed with Parkinson's and Alzheimer's diseases. He remained in Taiwan due to his medical problems, while Applicant's mother split her time between the U.S. and Taiwan. Applicant traveled to Taiwan on her U.S. passport to see her father in August 1996. Unable to speak and bedridden, Applicant's father required full-time personal care. The family decided to sell the apartment in Taiwan held in Applicant's name to pay for his medical care. At the suggestion of a sister, Applicant applied for a Taiwanese passport

which was needed to prove her identity in connection with any sale of the apartment. In late September 1996, Applicant was issued by Taiwanese authorities in the U.S. a Taiwanese passport valid for six years (to September 2002). Applicant traveled to Taiwan on this passport in November 1997 to celebrate her mother's 80th birthday. Applicant viewed this foreign travel document as a visitor's permit and did not perceive her use of the foreign passport to be an exercise of Taiwanese citizenship.

Following shunt surgery in April 1998, Applicant's father became more alert but he remained unable to speak. That June, Applicant went to Taiwan with her spouse and children to see her father before he lost all ability to recognize them. She traveled on her U.S. passport.

In late March 1999, the second eldest of Applicant's sisters (who had been managing the apartment purchased in Applicant's name) was diagnosed with lung cancer. Applicant traveled to Taiwan to see her ill sister in mid-April 1999, using her Taiwanese passport. Although it had taken only about a week in the past to obtain a visa for a stay of up to sixty days in Taiwan, Applicant was busy at work and did not take the time to apply for a visa to travel on her U.S. passport. Applicant stayed in Taiwan for about five weeks to help her sister who was undergoing phase I chemotherapy treatment.

From late March 2000 to mid-April 2000, Applicant's father was hospitalized in Taiwan in very critical condition. Applicant did not travel to Taiwan during this exacerbation of his condition.

In conjunction with a periodic reinvestigation into her background for her secret clearance, Applicant executed a security clearance application (SF 86) on May 26, 2000. Applicant reported her and her spouse's births in Taiwan and their U.S. naturalization, but denied dual citizenship. She disclosed the Taiwanese residency and citizenship of her parents (mother born in 1918 and father in 1912), sisters (born in 1946, 1947, 1950 and 1956), and father-in-law, but indicated that her mother-in-law, a Taiwanese citizen, was living with her and her spouse in the U.S. Applicant also reported she possessed a valid Taiwanese passport, issued in September 1996, for visiting and to sell the property held under her name in Taiwan, and she disclosed annual travel to Taiwan from 1996 to 1999. Under general remarks, Applicant added that she had no intent to inherit any property from her parents since she had not contributed much to her parents' welfare after her marriage while her sisters had been caring for her parents' needs. Applicant explained that despite her possession of a Taiwanese passport, she was not a citizen of Taiwan as she had been removed from the family's census record in Taiwan.

On July 12, 2000, Applicant was interviewed by a DSS special agent about her foreign connections, foreign travel, and acquisition of a foreign passport. Applicant acknowledged her parents' and siblings' Taiwanese residency and citizenship, and described twice monthly contact with her parents by telephone and no direct contact with her sisters. Applicant related that all of her spouse's siblings are U.S. resident citizens, and her in-laws, who are retired and spend four to five months each year in the U.S., were currently staying in her home. Applicant explained her possession of a Taiwanese passport was for visiting purposes only and she needed it to establish her name in Taiwan as she had been removed from the census rolls. She used the Taiwanese passport twice, to travel to Taiwan in 1997 and 1999. She claimed to have had no time to obtain a visa for her extended stay in 1999. Applicant denied any loyalty to Taiwan or any immediate plans of future travel. Applicant was advised that her use of the foreign passport was inappropriate.

On July 14, 2000, Applicant was issued a visa for a stay in Taiwan of up to sixty days on her U.S. passport. Four days later, Applicant went to Taiwan to see her sister who had become critically ill. Applicant traveled on her U.S. passport. She stayed in Taiwan about two and a half weeks attending to her sister's medical needs.

One week after her return to the U.S., Applicant met with the special agent to execute a statement prepared by the agent for Applicant from notes taken during their interview of July 12, 2000. When they met on August 11, 2000, Applicant informed the agent about her recent trip to Taiwan on her U.S. passport to care for her terminally ill sister. She denied any intent to use the Taiwanese passport in the future and volunteered to have the foreign passport cancelled if necessary.

The information was added to the statement before Applicant had an opportunity to review and sign it. Apprised by the agent that the agent had another interview scheduled, Applicant made little change to the statement before signing it

apart from clarifying that her marriage had taken place in Taiwan and she made the decision to remain in the U.S. with her husband. At Applicant's request, she was provided a copy of the statement by the agent. (4)

Applicant returned to Taiwan for a three-week stay in October 2000. On the death of her sister in March 2001, Applicant went to Taiwan for her memorial service. She traveled exclusively on her U.S. passport on both occasions. In March 2002, Applicant was issued a new U.S. passport, valid to March 2012. With a visa granted to her in late May 2002, Applicant traveled to Taiwan on her U.S. passport to see her critically ill father in the June/July 2002 time frame. In late ay 2002, the apartment in Taiwan held in Applicant's name was sold, her mother representing her in the sale. Applicant realized no financial gain from the sale as the proceeds went to pay for her father's medical care.

Applicant's Taiwanese passport expired in late September 2002. She made no effort to renew it, and in late December 26, 2002, surrendered it to the Taiwanese economic and cultural office in the U.S. Applicant directed the Taiwanese authorities not to return the passport to her as she had no need for it.

On all of her seven trips to Taiwan taken since 1993, Applicant saw her parents and younger sister (born November 1956), who lives with her parents. Under Applicant's sponsorship, this sister became a U.S. permanent resident in January 2003. As of May 2003, this unmarried sister was teaching in the arts at a public university in Taiwan. She intends to leave Taiwan permanently for the U.S. when her teaching contract is finished. As of May 2003, Applicant had telephone contact with her parents twice monthly. On half of those occasions, she also spoke with her sister.

Applicant's oldest sister, who was born in May 1946, is a widow who has leukemia and lives in a nursing home in Taiwan. Applicant has seen this sister once since 1996. Applicant has another sister living in Taiwan who is unmarried and employed part-time as a saleswoman in the clothing industry there. Applicant characterized her contact with this sister as "rare." The spouse of the sister who died in March 2001 is a reporter/editor for a magazine in Taiwan. Applicant does not have regular contact with him, seeing him less than once a year.

In early June 2003, Applicant received word that her father had died in Taiwan. Applicant expects that her mother and youngest sister--both U.S. permanent residents--will be returning to the U.S. to stay. On the same day that she learned of her father's death, Applicant submitted the necessary papers to renounce her Taiwanese citizenship. She was informed by the local Taiwanese authorities renunciation would take three to four weeks to process. As of July 22, 2003, there was no indication that Taiwan had officially renounced her Taiwanese citizenship.

As of May 2003, Applicant's in-laws were living with Applicant and her spouse in the U.S. Applicant's mother-in-law, a homemaker all her life, has been a U.S. permanent resident since 1983. Applicant's father-in-law retired in 1996 from his position as deputy coordinator at a maritime transportation association in Taiwan. He acquired permanent residency in the U.S. in 2001. Her in-laws' five children are all resident citizens of the U.S. From 1983 to 2000, Applicant's in-laws split their time between Taiwan, where they own an apartment, and the U.S., spending about half the year in the U.S.

Since moving to the U.S. permanently in 1983, Applicant has focused on her life in the U.S., raising her children (including her stepson) as U.S. citizens, pursuing her career as a software engineer, acquiring substantial financial assets in the U.S. As of May 2003, Applicant's stepson was a medical intern in the U.S., her daughter a college freshman at a U.S. university, and her son an eighth grader in the local public school. Applicant is involved in her Christian church in the U.S. With her spouse, she owns her home in the U.S., which had an assessed value for local real estate tax purposes of \$535,000 as of January 2002. She has retirement assets of almost \$295,000 with her current employer, as well as other financial investments and funds on deposit in financial institutions in the U.S. Applicant has no financial assets in Taiwan. Applicant has voted in every U.S. election where national offices were at stake. She has not voted in any election in Taiwan.

Applicant requires a secret security clearance for her present position as a technical lead in the systems design for future information technology components of a military weather program. An outstanding performer, Applicant is considered by her supervisors in both the resource and project report areas to be a very valuable team member. Meticulous and thorough in her work, Applicant has demonstrated a high degree of integrity, respect of rules and regulations (including those involving the handling of sensitive information), and the ability to work well with others. She has been recognized

by both her employer and military customer for her outstanding performance and teamwork.

POLICIES

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, favorable and unfavorable, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines which must be carefully considered according to the pertinent criterion in making the overall common sense determination required. Each adjudicative decision must also include an assessment of the nature, extent, and seriousness of the conduct and surrounding circumstances; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the motivation of the individual applicant and extent to which the conduct was negligent, willful, voluntary or undertaken with knowledge of the consequences involved; the absence or presence of rehabilitation and other pertinent behavioral changes; the potential for coercion, exploitation and duress; and the probability that the circumstances or conduct will continue or recur in the future. *See* Directive 5220.6, Section 6.3 and Enclosure 2, Section E2.2. Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility or emotionally unstable behavior. *See* Directive 5220.6, Enclosure 2, Section E2.2.4.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

Foreign Influence

E2.A2.1.1. The Concern: A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation or pressure.

E2.A2.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A2.1.2.1. An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country;

E2.A2.1.2.2. Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists.

E2.A2.1.3. Conditions that could mitigate security concerns include:

E2.A2.1.3.1. A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States;

E2.A2.1.3.3. Contact and correspondence with foreign citizens are casual and infrequent;

E2.A2.1.3.5. Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.

Foreign Preference

E2.A3.1.1. The Concern: 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.

E2.A3.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A3.1.2.1. The exercise of dual citizenship;

E2.A3.1.2.2. Possession and/or use of a foreign passport.

E2.A3.1.3. Conditions that could mitigate security concerns include:

E2.A3.1.3.1. Dual citizenship is based solely on parents' citizenship or birth in a foreign country;

E2.A3.1.3.4. Individual has expressed a willingness to renounce dual citizenship.

Under Executive Order 10865 as amended and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses. Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

Burden of Proof

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets its burden and establishes conduct cognizable as a security concern under the Directive, the burden of persuasion then shifts to the applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of criterion conduct, it is clearly consistent with the national interest to grant or continue her security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. *See* Directive, Section E2.2.2.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of those who testified, I conclude the following with respect to Guidelines B and C:

Under Guideline B, an unacceptable security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom she is bound by affection, influence, or obligation are not citizens of the U.S. or may be subject to duress. With the deaths of a sister in March 2001 and her father in June 2003, Applicant still has family members (mother and three sisters) who are resident citizens of Taiwan. Although Applicant's mother and her younger sister have permanent resident status in the U.S., they are within physical reach of Taiwanese authorities as well as subject to that nation's laws by virtue of their Taiwanese citizenship and presence in Taiwan. There is no evidence that Applicant's spouse, a U.S. naturalized citizen since December 1981, has taken any steps to formally renounce the Taiwanese citizenship of his birth. In addition, Applicant's in-laws, Taiwanese citizens but U.S. permanent residents, were living with her and her spouse as of May 2003. Applicant's situation clearly falls within disqualifying condition E2.A2.1.2.1. (an immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country) and E2.A2.1.2.2. (sharing living quarters with a person if the potential for adverse foreign influence exists).

The security concerns engendered by the foreign citizenship and/or residency of close family members may be mitigated where it can be determined that they are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the Applicant to choose between loyalty to the person(s) involved and the United States (*see* E2.A2.1.3.1.). Applicant's younger sister is currently an educator at a public university in Taiwan, but there is nothing to indicate she has ever been in a position of influence or authority in the Taiwanese government, its security or intelligence services. Before her retirement, Applicant's mother taught in a public school for some 20 to 30 years. There is nothing about her occupation that indicates she was an agent of the Taiwanese government. Applicant's father-in-law worked until 1996 as a deputy coordinator for a maritime association in Taiwan. He may well have had contact with Taiwanese government employees in the course of his duties, but he was not himself a government employee.

Unacceptable risks to security may exist even where family members are not agents of a foreign government. Immediate family members must not be in a position to be exploited by a foreign power. The risk of undue foreign influence must be evaluated in terms of the possible vulnerability to coercive and noncoercive means of influence being brought to bear on, or through, family members subject to the laws of a foreign nation. The likelihood of pressure or coercion being placed on the foreign relatives depends, in large part, on the nature of the country involved (whether it respects democratic principals and human rights, has friendly relations with the U.S., etc.). Countries that have good relations with the U.S. and respect the rule of law are generally regarded as presenting less of a risk than totalitarian regimes with a record of human rights abuses and hostility to the U.S., although the particular circumstances of each case must be taken into account.

Taiwan is known to have significant intelligence operations targeting the U.S.,⁽⁵⁾ but it is also a stable democracy with significant commercial trade with the U.S.⁽⁶⁾ Since ending martial law in 1987, Taiwan has taken dramatic steps to improve respect for human rights with restrictions on personal freedoms relaxed and on the press ended. Applicant's mother has a history of unimpeded travel between Taiwan and the U.S. since 1989 with no evidence of improper contact or adverse incident. With her spouse having died, and her youngest daughter (who resides with her in Taiwan) having acquired U.S. permanent resident status, Applicant's mother is likely to make her home in the U.S. in the near future. If she stays in Taiwan, the risk of undue influence is lessened considerably by her retirement and elderly age (85). As an instructor in music at a public university in Taiwan, Applicant's sister is potentially more vulnerable through her contacts with school administration and students. Yet her expertise is not in an area of interest to a foreign entity attempting to gain sensitive technology or an economic competitive edge. She intends to emigrate from Taiwan to the United States at the end of her current teaching contract. While Applicant's two older sisters intend to remain in Taiwan, Applicant is not especially close to these siblings. She has seen her sister who is in the nursing home only one time since 1996 and has "rare" contact with the sister who works in a clothing industry.

The U.S. residency (and respect to her spouse, citizenship) of Applicant's spouse and in-laws reduces the risk of them falling subject to undue foreign influence. Applicant's spouse is clearly invested in the U.S., financially, occupationally, and emotionally. He came to the U.S. sometime before the birth of his son in 1979, and acquired U.S. naturalized citizenship in December 1981. Applicant's mother-in-law, who has never worked outside the home, has spent a substantial amount of time in the U.S. each year since 1983. Although Applicant's father-in-law dates his U.S. permanent residence only from 2001, he has a significant interest in ensuring the safety and security of his children and grandchildren, all U.S. resident citizens.

The risk of undue foreign influence is regarded as minimal, although it can never be completely discounted as long as close family members remain within reach of, and subject to the jurisdiction of, foreign authorities. Applicant submits that if she were to be improperly approached, she would immediately contact appropriate security officials at her place of employment. Applicant's respective ties and attitudes toward the U.S. are relevant in assessing whether she can be counted on to fulfill her obligations to the U.S. in the event of any pressure brought against family members. A U.S. permanent resident since 1983 and citizen since January 1987, Applicant has assimilated herself in the local community in the U.S. where she owns her home, is active in her church, and her son attends public school. She takes her responsibilities as an American citizen seriously, voting in every election with national offices (President and Congress) at stake. She has substantial retirement and investment assets in the U.S. and has no financial interests in Taiwan. While her name was on the deed of an apartment in Taiwan from 1977 to May 2002, she was an owner in name only, having

neither put up the funds for purchase nor realized any income from the property. With respect to her career, Applicant has chosen to devote her skills and energies to the defense of the U.S. Her supervisors confirm her valuable contributions as a technical lead on a weather project for the U.S. military.

Having developed strong ties to the U.S., Applicant still acquired a Taiwanese passport in September 1996, and used it in preference to her U.S. passport to travel to Taiwan in 1997 and 1999.⁽⁷⁾ Applicant's acquisition and use of a foreign passport after she became a U.S. naturalized citizen constitute the active exercise of foreign citizenship, raising independent security concerns under Guideline C,⁽⁸⁾ as well as some doubt as to whether she might be vulnerable to undue foreign influence. Disqualifying conditions E2.A3.1.2.1. (the exercise of dual citizenship) and E2.A3.1.2.2. (possession and/or use of a foreign passport) are clearly pertinent to an evaluation of Applicant's security suitability.

In mitigation, Applicant was unaware the possession and use of a foreign passport was inappropriate until her interview with the DSS agent on July 12, 2000.⁽⁹⁾

Since learning from the DSS agent that her use of the Taiwanese passport was considered an act of preference for Taiwan, Applicant has traveled exclusively on her U.S. passport, acquiring the appropriate visas. When interviewed on August 11, 2000, Applicant expressed a willingness to have her Taiwanese passport canceled before its expiration if necessary. Even though she retained possession of her Taiwanese passport until December 2002 when she forwarded the then expired passport to the Taiwanese authorities, there is no evidence she knew before her receipt of the SOR in November 2002 of the Department of Defense's requirement to surrender the passport or obtain official approval from the U.S. government for its retention/use. Applicant's recent filing for renunciation of her Taiwanese citizenship is consistent with her intent to exercise only the rights and privileges of U.S. citizenship in the future, and mitigating of foreign preference concerns (*see* E2.A3.1.3.4.). Although there is no indication that the Taiwanese government had acted on her request as of July 2003, there is no known impediment to acceptance.

Applicant has 15 years of dedicated contributions to her employer and adherence to security practices and procedures, including those concerning the handling and safeguarding of classified information. Applicant is not entitled to retain her secret clearance merely because she has held it without adverse incident. Yet those coworkers who have had the opportunity to assess her character and work performance vouch for her personal integrity and trustworthiness. After consideration of all the facts and circumstances presented, Applicant has successfully mitigated the foreign influence and foreign preference concerns. There are adequate assurances that Applicant can be counted on to act consistent with her U.S. citizenship and to report to U.S. authorities any improper contacts, requests, or threats by foreign entities involving her or her family members. Favorable findings are warranted with respect to subparagraphs 1.a., 1.b., 1.c., 1.d., 2.a. and 2.b. of the SOR.

FORMAL FINDINGS

Formal Findings as required by Section 3. Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

Paragraph 1. Guideline B: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Paragraph 2. Guideline C: FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: For the Applicant

DECISION

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

Elizabeth M. Matchinski

Administrative Judge

1. The SOR was issued under Executive Order 10865 (as amended by Executive Orders 10909, 11328, and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4).
2. The Government objected to this change, contending that Applicant was referring in her testimony to her August 11, 2000, interview with the agent and not the July 12, 2000, interview. After reviewing the testimony of the Applicant given May 15, 2003, and the testimony of the special agent given July 22, 2003, I am persuaded Applicant was referring to the statement which was prepared from information presented during the initial subject interview on July 12, 2000. While the agent asked Applicant additional questions during their subsequent interview, the substance concerned additional travel by Applicant to Taiwan in July 2000. This information was added at the end of the statement (on page 6) presented for Applicant's signature on August 11, 2000. Applicant has not claimed that any information provided by her during her second interview was incorrectly recorded.
3. Department Counsel was also ordered to provide Applicant's counsel with any documentation not privileged in control of the DSS or her agency on which the agent relied in preparing her May 20, 2003, statement or in recollecting her interviews of the Applicant. On July 16, 2003, Department Counsel furnished the undersigned with a copy of the documentation provided to Applicant's counsel. That documentation was not tendered by either party at the hearing held on July 22, 2003. Documents not admitted were not considered in determining Applicant's security suitability. It is noted the documentation furnished Applicant's counsel included Applicant's sworn statement, which was admitted during the earlier proceeding as Government exhibit 2.
4. In preparation for her May 15, 2003 hearing, Applicant reviewed the statement and made several changes to it, claiming she lacked sufficient time to correct the statement on August 11, 2000. While the agent testified credibly that she does not rush through statements with subjects because of their importance, she also lacked specific recall of the amount of time she gave the Applicant to review the statement on August 11, 2000, and admitted she has "probably" told an interviewee in the past that she was missing another appointment. The statement as corrected by Applicant was admitted as Exhibit R over the Government's objection. While the changes made by Applicant must be viewed in the context of when they were made, *i.e.*, after the Applicant had been made aware of the specific security concerns alleged by the Government, the corrections are relatively minor in nature and are in no way denials by Applicant of the primary issues in the case, which are that Applicant has close family members who are Taiwanese resident citizens and that she acquired and twice used a Taiwanese passport after she became a U.S. citizen. Assuming Applicant initially told the agent that she acquired the foreign passport in part to facilitate the disbursement of her parents' estate, it was in the context of discussing the property purchased in her name in Taiwan. Applicant denied any intent to accept an inheritance from her parents.
5. *See Operations Security Intelligence Threat Handbook*, Section 1. As reported in the *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage* for 2000, Taiwan is among the most active of collectors of U.S. proprietary economic information.
6. *See* the U.S. State Department's *Background Note* on Taiwan, published by the Department's Bureau of East Asian and Pacific Affairs in November 2002. Although the U.S. changed its diplomatic recognition from Taiwan to the People's Republic of China on January 1, 1979, U.S. commercial ties with Taiwan have expanded since. Taiwan has most-favored-nation status, and enjoys ready access to U.S. markets. The U.S. does not support Taiwanese independence, but supports Taiwan's membership in international organizations such as the World Trade Organization where statehood is not a requirement.
7. Applicant's removal from the family's census in Taiwan is a plausible explanation for her belief that she was no

longer a citizen of Taiwan. However, with the issuance of her Taiwanese passport in September 1996, Applicant had reason to question that assumption. Applicant testified she viewed the passport as a visiting document and not as a benefit of Taiwanese citizenship. There is no evidence Taiwan grants passports to individuals who are not citizens, including expatriates.

8. Dual citizenship is recognized, but not encouraged, by the U.S., and a decision to deny or revoke security clearance based solely on one's status as a dual citizen would raise constitutional issues. As the DOHA Appeal Board articulated in ISCR Case No. 99-0454, decided October 17, 2000, dual citizenship in and of itself is not sufficient to warrant an adverse security clearance decision. Under Guideline C, the issue is whether an applicant has shown a preference through her actions for the foreign country of which she is also a citizen. Among the specific behaviors which raise significant Guideline C issues is possession/use of a foreign passport.

9. It is noted that Applicant's acquisition and use of her Taiwanese passport predated the August 16, 2000, policy clarification on the use/possession of foreign passports issued by the Assistant Secretary of Defense for Command, Communications, Control and Intelligence (ASD3I). The ASD3I stated in pertinent part:

The purpose of this memorandum is to clarify the application of Guideline C to cases involving an applicant's possession or use of a foreign passport. The Guideline specifically provides that "possession and/or use of a foreign passport" may be a disqualifying condition. It contains no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country. The only applicable mitigating factor addresses the official approval of the United States Government for the possession or use. The security concerns underlying this guideline are that the possession and use of a foreign passport in preference to a U.S. passport raises doubt as to whether the person's allegiance to the United States is paramount and it could also facilitate foreign travel unverifiable by the United States. Therefore, consistent application of the guideline requires that any clearance be denied or revoked unless the applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United States Government.