

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: Applicant, a Taiwanese native, renewed his Taiwanese passport after he became a naturalized United States citizen in November 1991. Not wanting to surrender his Taiwanese passport to Taiwanese authorities out of concern it would call attention to his Department of Defense classified work, Applicant cut up his foreign passport at his hearing. Foreign preference concerns persist where he has not notified the Taiwanese authorities of the passport's destruction and would reacquire a foreign passport if necessary to remain in Taiwan to care for his mother. Foreign influence concerns also exist where his mother and sister are resident citizens of Taiwan, he has a significant financial interest in Taiwan, and his mother-in-law is a resident citizen of the PRC. Clearance is denied.

CASENO: 03-26412.h1

DATE: 02/22/2006

DATE: February 22, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-26412

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a Taiwanese native, renewed his Taiwanese passport after he became a naturalized United States citizen in November 1991. Not wanting to surrender his Taiwanese passport to Taiwanese authorities out of concern it would call attention to his Department of Defense classified work, Applicant cut up his foreign passport at his hearing. Foreign preference concerns persist where he has not notified the Taiwanese authorities of the passport's destruction and would reacquire a foreign passport if necessary to remain in Taiwan to care for his mother. Foreign influence concerns also exist where his mother and sister are resident citizens of Taiwan, he has a significant financial interest in Taiwan, and his mother-in-law is a resident citizen of the PRC. Clearance is denied.

STATEMENT OF THE CASE

On January 31, 2005, 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 preference (Guideline C) and foreign influence (Guideline B).

On February 7, 2005, Applicant responded to the SOR allegations and requested a hearing before a DOHA administrative judge. The case was assigned to me on May 10, 2005. On July 20, 2005, I scheduled a hearing for August 11, 2005. Applicant was granted a continuance on July 26, 2005. On September 7, 2005, the hearing was rescheduled for September 27, 2005.

At the hearing, four government exhibits and one Applicant exhibit was admitted, and testimony was taken from Applicant, as reflected in a transcript received on October 11, 2005. At the government's request, I agreed to take official notice of two U.S. State Department publications, *Overview of U.S. Policy Toward Taiwan*, dated April 21, 2004, and *Background Note: Taiwan*, dated January 2005; the National Counterintelligence Center's *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage* for 2000; and an article reporting on the Defense Personnel Security Research Center's Espionage Database Project titled *Espionage by the Numbers: A Statistical Overview*.

FINDINGS OF FACT

The SOR alleges foreign preference concerns because of Applicant's exercise of dual citizenship (U.S. and Taiwan) and his renewal, use, and continued possession of a Taiwanese passport after he acquired U.S. citizenship. Foreign influence concerns were also alleged because of the Taiwanese residency and citizenship of Applicant's parents and sister, the People's Republic of China (PRC) residency and citizenship of his mother-in-law, Applicant's travels to Taiwan in 2000 and 2002, and his stock ownership in his father's Taiwanese business. Applicant admitted the allegations. His admissions are 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:

Applicant is a 51-year-old principal scientist who has worked for his present employer, a defense contractor, since 1990. He seeks to retain the secret-level security clearance that he has held since August 1992 for his work in sensor design.

A native of Taiwan, Applicant was raised with his older brother and sister in Taiwan. Their father owned and operated a textile manufacturing business in Taiwan while his mother did not work outside of the home. In 1972, Applicant completed six weeks of compulsory military service in the Taiwanese army only to be discharged due to being underweight. He then entered college. In June 1976, his father gave him some stock in his textile business.

Applicant came to the U.S. in 1977 for doctoral studies. After he was awarded his Ph.D. in June 1982, he elected to remain in the U.S. for its better lifestyle and career opportunities in technology. From October 1982 to April 1990, Applicant did post doctorate work in the chemistry department at a university in the U.S. In 1988, he met his future spouse, a PRC native, who was pursuing graduate study at the university.

Applicant traveled to Taiwan for one month in November/December 1985 to visit his parents and other relatives. Applicant returned to Taiwan in 1988 to celebrate his mother's 60th birthday. In May 1990, Applicant began working for his present employer. Applicant went to Taiwan for eleven days in March 1991 for his brother's funeral.

In mid-November 1991, Applicant married a PRC native in the U.S. Later that month, he became a naturalized U.S. citizen, taking the 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. A dual citizen of the U.S. and Taiwan, he took no action to renounce his Taiwanese citizenship and continued to possess a Taiwanese passport.

Needing a secret-level security clearance for his duties with the defense contractor, Applicant executed a National Agency Questionnaire (DD Form 398-2) on arch 27, 1992. Applicant disclosed his dual citizenship, his ownership of some stock in his father's textile business in Taiwan, and his trips to Taiwan in 1985, 1988, and 1991, personal trips that necessitated contact with Taiwanese officials to renew his Taiwanese passport.

On July 16, 1992, Applicant was interviewed by a Defense Investigative Service special agent about his dual citizenship. Applicant explained he was not required to cancel his Taiwanese citizenship when he became a naturalized U.S. citizen. He expressed a willingness to renounce his foreign citizenship, which he had not done, as he had "not yet found it necessary to go through the extra paperwork." He admitted possessing both U.S. and Taiwanese passports but denied use of the Taiwanese passport in preference to the U.S. passport to gain entry into any sovereign state. Applicant indicated he would not bear arms for Taiwan and received no benefits from Taiwan. Following this interview, Applicant was granted his secret clearance in August 1992.

Applicant and his spouse have two children, who are U.S. citizens by virtue of their respective births in the U.S. in October 1992 and May 1995. Applicant's spouse became a naturalized U.S. citizen in August 1996.

Applicant again renewed his Taiwanese passport in August 1997 to give him easy access to Taiwan and the ability to stay in Taiwan for extended periods. Applicant traveled to Taiwan on this passport three times in 2000 and in February 2002 to visit family members. In March 2002, Applicant was issued his U.S. passport. (2) He went back to Taiwan in early September 2002 as his father had become seriously ill with pneumonia and respiratory failure. After nine days in Taiwan, he returned to the U.S. for one week before resuming his stay in Taiwan through his father's hospitalization until early November. While in Taiwan for this extended period, he renewed his Taiwanese passport (issued mid-October 2002 and valid to mid-October 2012).

On November 7, 2002, Applicant executed a security clearance application. He disclosed his dual citizenship, his possession of a valid U.S. passport, and his trips to Taiwan. In response to whether he had an active passport issued by a foreign government in the preceding seven years, Applicant indicated he had been issued a Taiwanese passport in August 1997 that had expired in August 2003. In answer to whether he had any foreign property interests, Applicant listed his ownership of stock in his family's textile business in Taiwan.

Applicant was interviewed on August 28, 2003, by a DSS agent about his possession of a Taiwanese passport, which he renewed in 2002 when in Taiwan to visit his parents. Applicant described his reason for maintaining the foreign passport as follows:

I maintain the ROC passport because I have elderly parents in Taiwan and I have had to return to Taiwan to assist in taking care of them on occasion in the past. If I did not have the ROC passport I would not have had easy access to Taiwan and would not be able to stay there for any extended period of time . . . I understand that holding a passport issued by a foreign country can cause a problem with my holding a security clearance. I only have the ROC passport so that I can help care for my parents if they were to need me for an extended period of time. I do not want to miss the chance to be with them at the time that they may need me the most in their life. My loyalty is to the US and I would even be willing to bear arms in defense of the US, even if it were against ROC or PROC. I will consider giving up my ROC passport if it were to be absolutely necessary in order to hold a security clearance.

Applicant indicated he had weekly contact with his parents and approximately six times yearly contact with his sister in Taiwan. Applicant disclosed to the agent that his mother-in-law was a retired factory worker residing in the PRC. As for his ownership of foreign stock, Applicant explained his father's textile business was no longer operating, but the building and property remained in the company name. Applicant was unable to estimate the value of his stock shares as he was unaware of the value of the real estate in Taiwan. (Ex. 4)

Applicant again traveled to Taiwan, entering the country on his Taiwanese passport, in September 2003 when his father was re-hospitalized. His father died in November 2003. When Applicant was in Taiwan, he resided in his parents' home and also visited with his sister.

After the death of his father, Applicant sought a buyer for his father's textile factory. He traveled to Taiwan on his Taiwanese passport in April and October 2004 to deal with the assets of the family business and to visit his mother. While the building, equipment, and real estate have been sold, the company had not yet been formally dissolved as of September 2005 as there was a required six-month waiting period. Eighty-five percent of the company, valued at about \$1 million US, is held by the family. Applicant's share is between \$150,000 and \$200,000. Applicant intends to leave the funds in Taiwan under his name for his mother's care.

On January 31, 2005, DOHA issued an SOR to Applicant, based in part on his exercise of dual citizenship (Taiwan and U.S.), and his possession of a Taiwanese passport. ⁽³⁾ Applicant inquired of the Taiwanese officials about the requirements for surrender of his passport and learned that it would require contact with the Taiwanese government. Told he should just let the passport expire, applicant took no action as he did not want the Taiwanese authorities to know that he was doing classified work for the U.S. government.

In late July/early August 2005, Applicant traveled to the PRC with his spouse and children. During that trip, he traveled to Taiwan and brought his mother to the PRC to meet his mother-in-law. He used his U.S. passport on that trip as he was traveling with family members who only have U.S. passports.

Applicant's mother and sister remain Taiwanese resident citizens. His sister, who has a college degree in business economics, worked in the family business until she had children. Applicant's mother-in-law had stayed with Applicant and his spouse in the U.S. for six months in 1998, and for four to six months in 2000/01 but she does not intend to return to the U.S. She resides with Applicant's brother-in-law, who works for a U.S. consumer health care products company in the PRC. The elder of Applicant's spouse's siblings is a U.S. resident citizen.

Reminded at his September 2005 security clearance hearing that his Taiwanese passport must be surrendered or permission obtained from the U.S. government for its use, Applicant testified he was willing to surrender his foreign passport to the U.S., but did not think it was appropriate to relinquish possession to Taiwan as would call undue attention to his work for the U.S. defense contractor and its classified nature. He offered to turn in the passport to the Department of Defense. On being advised that the Department of Defense could not accept his Taiwanese passport, Applicant cut it up in the presence of this Judge and Department Counsel. He intended to discard the pieces in the trash without notifying the Taiwanese authorities of the passport's destruction. Applicant planned to apply for a visa that would allow him multiple entries into Taiwan on his U.S. passport. Asked what he would do if Taiwan denied an entry or extended stay in Taiwan, Applicant responded, "And that part I have to experiment in, and if that situation coming everything is negative, doesn't mean with the multiple entrance visas I couldn't take care of my mom, then I will give up my current clearance." (Tr. 72)

Applicant has reported all of his foreign travel to his employer as required of security clearance holders. He obtained required briefings before he left for the PRC in 2005.

Applicant's spouse works as a scientist for a pharmaceutical company in the U.S. Applicant and his spouse own their home, which is valued at about \$360,000. Their liquid assets in the U.S. are approximately equivalent to his Taiwanese financial interests. Applicant and his spouse send their children to Chinese language school once weekly. Their children attend public school in the U.S.

On January 1, 1979, the U.S. formally recognized the government of the People's Republic of China (PRC) as the sole legal government of China. The U.S. has since been committed to maintaining cultural, commercial and other nonofficial relations with Taiwan. (4) By formal act of Congress (Taiwan Relations Act of 1979), the U.S. is committed to provide Taiwan with arms of a defensive character in support of Taiwan's security and stability in the region.

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 has 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). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the 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 that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

After a complete review of the evidence of record, the following adjudicative guidelines are most pertinent to an evaluation of Applicant's suitability for continued access:

Foreign Preference. When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States. (¶ E2.A3.1.1.)

Foreign Influence. 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.A2.1.1.)

CONCLUSIONS

Having considered the evidence 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 C and B:

A native of Taiwan, Applicant is a dual citizen of the U.S. and Taiwan since his naturalization in the U.S. in November 1991. While status as a dual citizen is not necessarily indicative of a foreign preference,⁽⁵⁾ he actively exercised his foreign citizenship by using and then renewing his Taiwanese passport after he became a U.S. citizen. Applicant used his Taiwanese passport in preference to his U.S. passport in to enter Taiwan three times in 2000, three times in 2002, in September 2003, and twice in 2004. While it is not clear whether he had been apprised specifically of the ASDC3I policy clarification governing the use and possession of foreign passports, Applicant understood as of his DSS interview in August 2003 that holding a foreign passport could cause a problem with his clearance. As clarified by the ASDC3I in August 2000, possession and/or use of a foreign passport raises doubt as to whether the person prefers the U.S. interests over others, and it could also facilitate foreign travel unverifiable by the United States.⁽⁶⁾ Guideline C, foreign preference, 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*, apply.

Applicant expressed to the DSS agent in August 2003 that he would consider giving up his foreign passport if absolutely necessary in order to hold his security clearance. With the issuance of the SOR to Applicant in January 2005, he was placed on notice that he either surrender his foreign passport or be denied his clearance. Applicant took the affirmative step of contacting the local Taiwanese officials to ascertain the requirements to surrender his foreign passport. However, he had the Taiwan passport in his possession at his hearing, as he did not want the Taiwanese government to learn of the classified nature of his work. Even appropriate concern for one's security responsibilities cannot substitute for compliance with Department of Defense policy. At his hearing, Applicant expressed a willingness to surrender his Taiwanese passport to Department of Defense control. On being advised that the Department of Defense could not take custody of the passport, Applicant cut it up, invalidating it for travel. The DOHA Appeal Board has held that an offer to give the passport to DOHA or another department of the U.S. government, to place it in escrow with the security department of the defense contractor, or destroying it, does not constitute surrender under the terms of the ASDC3I memo (*see* ISCR 99-0480, App. Bd. Nov. 28, 2000). Certainly where Applicant has not turned in the defaced passport to Taiwanese officials and has no intent of informing them that he has rendered it invalid for travel, he remains free as a Taiwanese citizen to simply reapply for a Taiwanese passport at some future date. Applicant plans to obtain a multiple-stay visa that would permit extended stay in Taiwan on his U.S. passport, but he also admitted that if the visa or extended stay was to be denied on his U.S. passport, and he had to take care of his mother, he would reapply for a new Taiwanese passport. His "eleventh-hour" destruction of his foreign passport does not mitigate the foreign preference concerns in this case. SOR ¶¶ 1.a., 1.b., 1.c., and 1.d. are resolved against him.

Guideline B concerns exist as well where Applicant has a close bond with his mother and sister, who are resident citizens of his native Taiwan. He renewed and retained his Taiwanese passport so he could stay for extended periods in Taiwan primarily caring for his parents, and he remains sufficiently concerned with his mother's welfare to where he cannot rule out the acquisition of another Taiwanese passport, even knowing it is against Department of Defense policy. Applicant has made several trips to Taiwan since 2000, and stayed with his parents (and then his mother after his father's death), and he calls her on a weekly basis. During his trips to Taiwan, Applicant visited with his sister, and he telephones her about six times per year. DC ¶ 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*, applies.

Furthermore, the DOHA Appeal Board has held it reasonable for the administrative judge to consider the significance not only of an applicant's ties, but also of his spouse's ties to a foreign country and the possible effect they may have on Applicant's contacts under Guideline B (see ISCR Case No. 01-02452, App. Bd. Nov. 21, 2002). Applicant has hosted his mother-in-law in his home in the U.S. for between four to six months in 1998 and in 2000/01. DC ¶ 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, and ¶ E2.A2.1.2.1. apply because of her PRC resident citizenship.*

Foreign financial interests may also increase an applicant's vulnerability to undue foreign influence. On the closure of his family's textile business in Taiwan, Applicant stands to realize between \$150,000 and \$200,000. While he plans to leave the funds in Taiwan for the care of his mother and has equivalent cash assets in the U.S., DC ¶ E2.A2.1.2.8. *A substantial financial interest in a country, or in any foreign-owned or operated business that could make the individual vulnerable to foreign influence, must be considered in evaluating Applicant's continued security suitability.*

The foreign influence concerns raised by his family connections in Taiwan 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 them and the United States (see C E2.A2.1.3.1.).⁽⁷⁾ Applicant's father was a self-employed businessman who owned and operated a textile factory in Taiwan before his death. Applicant's mother never worked outside of the home. His sister worked in the family business until she elected to stay at home with her children. Applicant's mother-in-law in the PRC is retired from a factory job. The evidence does not establish that any of his or his spouse's relatives is or ever was a foreign agent.⁽⁸⁾

Yet, the inquiry in a foreign influence case is not limited to consideration of whether the foreign contacts or connections are agents of a foreign power. The foreign contacts or connections must also be evaluated in terms of whether they place an applicant in a position of vulnerability, even if there is no evidence that a foreign country has sought to exploit that vulnerability. (See ISCR Case No. 00-0628, Feb. 24, 2003) As long as there is a tie of obligation or affection to a person who is subject to a foreign government's jurisdiction/laws and/or is within physical reach of the foreign authorities, undue foreign influence remains possible. Common sense suggests that the stronger the ties of affection or obligation, the more vulnerable a person is to being manipulated if the relative is improperly influenced, brought under control, or even used as a hostage by a foreign intelligence or security service.

Reports of Taiwan targeting U.S. economic and proprietary interests in 2000⁽⁹⁾ are counterbalanced by Taiwan's partnership in a defense pact with the U.S. and Taiwan's progress in achieving democratic elections, civil liberties, and stable, viable governmental institutions. As reported by the U.S. State Department in January 2005, 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. Taiwan also has a history of favorable relations with the U.S. While the U.S. does not support independence for Taiwan and is committed to 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 now the eighth-largest trading partner of the U.S. Taiwan is not likely to jeopardize its relationship with the U.S. by overly pressuring its citizens, but even nations with a history of friendly relations do not always have the same interests.

Furthermore, the particular circumstances of each applicant must be taken into account. Not only is Applicant's financial share in the family's soon-to-be dissolved textile business too substantial to fall within MC ¶ E2.A2.1.3.5. *Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities*, but Applicant was tasked with closing the business. This required travel to Taiwan, and contact with Taiwanese nationals to sell the assets. While there is nothing in the record to suggest that his mother engages in pursuits likely to call attention to herself, she and her sister have their ownership shares as well. As for Applicant's mother-in-law, Applicant and his family traveled to see her in the PRC in July/August 2005. Applicant deserves substantial credit for handling classified information without adverse incident since about 1992. While his concerns for his family members in Taiwan are understandable and reflect favorably on Applicant's personal integrity, he has not mitigated the security significant foreign influence concerns. Accordingly, SOR ¶¶ 2.a., 2.b., 2.c., 2.d., and 2.e. [\(10\)](#) are resolved against him.

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 C: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Paragraph 2. Guideline B: AGAINST THE APPLICANT

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: Against the Applicant

Subparagraph 2.c.: Against the Applicant

Subparagraph 2.d.: Against the Applicant

Subparagraph 2.e.: Against the Applicant

DECISION

In light of all the circumstances presented by the record 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

1. The SOR was issued under the authority of 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. This passport was apparently a renewal of a previously issued U.S. passport. (*See Ex. 3*)
3. In his memorandum of August 16, 2000, the Assistant Secretary of Defense for Command, Control, Communications and Intelligence (ASDC3I) 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.

4. *See* the U.S. Department of State's *Background Note: Taiwan*, dated January 2005.

5. Dual citizenship is recognized by the United States. While the U.S. Government does not encourage its citizens to remain dual nationals because of the complications that might ensue from obligations owed to the country of second nationality, the Department of Defense does not require the renunciation of foreign citizenship to gain access. As the DOHA Appeal Board articulated (*see* ISCR Case No. 99-0454, Oct. 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 his actions for the foreign country of which he is also a citizen.

6. *Supra*, n.3.

7. See MC ¶ E2.A2.1.3.1. *A determination that the immediate family members(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.* The mitigating condition is bifurcated in nature ["A determination that the immediate family member(s). . . are not agents of a foreign power or in a position to be exploited by a foreign power. . . ."]. To construe the conjunction "or" as "and" would be against the plain language. While MC ¶ E2.A2.1.3.1. can be applied if an applicant satisfies only one of the two parts, a given adjudicative condition (either disqualifying or mitigating) cannot be read in such a way to be inconsistent with other adjudicative conditions. Under Guideline B, if foreign relations, who are not government agents or employees, are in a position to be exploited then MC ¶ E2.A2.1.3.1. does not mitigate the foreign influence concerns.

8. See 50 U.S.C. §1801(b), which defines agent of a foreign power as:

(1) any person other than a United States person, who-

(A) acts in the United States as an officer or employee of a foreign power, or as a member of a foreign power as defined in subsection (a)(4) of this section;

(B) acts for or on behalf of a foreign power which engages in clandestine activities in the United States contrary to the interests of the United States when the circumstances of such person's presence in the United States indicate that such person may engage in such activities in the United States, or when such person knowingly aids or abets any person in the conduct of such activities or knowingly conspires with any person to engage in such activities; or

(2) any person who-

(A) knowingly engages in clandestine intelligence gathering activities for or on behalf of a foreign power, which activities involve or may involve a violation of the criminal statutes of the United States;

(B) pursuant to the direction of an intelligence service or network of a foreign power, knowingly engages in any other clandestine intelligence activities for or on behalf of such foreign power, which activities involve or are about to involve a violation of the criminal statutes of the United States;

(C) knowingly engages in sabotage or international terrorism, or activities that are in preparation therefor, for or on behalf of a foreign power;

(D) knowingly enters the United States under a false or fraudulent identity for or on behalf of a foreign power or, while in the United States, knowingly assumes a false or fraudulent identity for or on behalf of a foreign power; or

(E) knowingly aids or abets any person in the conduct of activities described in subparagraph (A), (B), or (C) or knowingly conspires with any person to engage in activities described in subparagraph (A), (B), or (C).

Under federal law, the terms foreign power and agent of a foreign power have the same meanings with respect to national security and access to classified information. *See* 50 U.S.C. § 438.

9. *See* the National Counterintelligence Center's Annual Report to Congress on Foreign Economic Collection and Industrial Espionage for 2000.

10. Applicant's travels to Taiwan are not security disqualifying in their own right under Guideline B, but ¶ 2.e. is resolved against him to the extent his travel is evidence of his close relationship to the Taiwanese resident citizens alleged in ¶¶ 2.a. and 2.b.