

KEYWORD: Foreign Influence

DIGEST: Applicant is a native of the Republic of China (Taiwan) who became a naturalized United States citizen in August 1989. A dedicated employee for a U.S. defense contractor since October 1996, he has held a top secret security clearance since 1997. Undue foreign influence concerns nonetheless persist where close family members and a high school are resident citizens of Taiwan, some of whom work for the Taiwanese government.

CASE NO: 04-07268.h1

DATE: 06/16/2006

DATE: June 16, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-07268

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Braden M. Murphy, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a native of the Republic of China (Taiwan) who became a naturalized United States citizen in August 1989. A dedicated employee for a U.S. defense contractor since October 1996, he has held a top secret security clearance since 1997. Undue foreign influence concerns nonetheless persist where close family members and a high school are resident citizens of Taiwan, some of whom work for the Taiwanese government.

STATEMENT OF THE CASE

On May 18, 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 influence (Guideline B).

On June 25, 2005, Applicant filed an initial response to the SOR wherein he requested a hearing before a DOHA administrative judge. His answer was not considered responsive because he failed to admit or deny each of the allegations. Applicant filed a supplemental answer notarized on August 2, 2005, and again requested a hearing. The case was assigned to me December 1, 2005. On January 10, 2006, I scheduled a hearing for February 16, 2006. At the hearing, Applicant represented himself with the assistance of the former CEO of the company that employs Applicant. Two government exhibits were admitted, and Department Counsel called Applicant as an adverse witness. Also marked for administrative notice at the request of the government were two publications of the U.S. State Department: *Background Note: Taiwan*, dated December 2005, and the National Counterintelligence Center's *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage* for 2000. Applicant's case consisted of one exhibit, as well as his and his former CEO's testimonies. A transcript of the proceedings was received February 28, 2006.

FINDINGS OF FACT

The SOR alleges foreign influence concerns because of: (1) the Taiwanese residency and citizenship of several family members (Applicant's parents, brother, parents-in-law, sister-in-law, brother-in-law) and a close high school friend; (2) Applicant's father is a retired one-star general from the Taiwanese navy and also a retired division chief of a major Taiwanese political party; (3) his brother is employed by the same Taiwanese political party; (4) his brother's spouse holds a high-ranking position in a mayor's office in Taiwan; (5) his father-in-law is a retired colonel from the Taiwanese navy; (6) his brother-in-law holds a high-level position in a Taiwanese law enforcement agency; (7) his high school friend is an employee of a branch of the Taiwanese government; and (8) he traveled to Taiwan several times from about 1992 to at least 2003.

In his initial response to the SOR, Applicant denied he could be improperly influenced by his relatives or friend in Taiwan, and indicated his brother had retired from the Taiwanese political party and his father-in-law had died. On August 2, 3005, Applicant reiterated that he could not be improperly influenced and that his father-in-law was deceased. He admitted that he had traveled to Taiwan "a few times from about 1992 to 2003." After a thorough review of the evidence of record, and after having taken administrative notice of the two State Department publications, I make the following findings of fact.

Applicant is a 52-year-old senior principal engineer who has worked since mid-October 1996 for a small (about 20 employees) remote sensing firm engaged in defense contract work. Hired to strengthen the software development staff, Applicant has proven to be a very capable and dedicated employee. A director of the company, who served as CEO until September 2005, and hired and supervised Applicant, considers him a "model American" and a very significant asset to the company and its customers, including the U.S. government. In his opinion, Applicant's understanding of the company's software even exceeds that of the chief technical officer who founded the company. Applicant has held a top secret clearance since 1997 and has shown himself to be an "exemplary follower of rules and regulations, including security responsibilities." Applicant seeks to retain his clearance.

Applicant's background and foreign ties

A native of Taiwan, Applicant was raised with his two siblings (a sister born in 1950 and a brother born in 1953). Applicant's father was a career officer in the Taiwanese navy until he retired in 1973 at a rank equivalent to a one-star general. For about four years, he served at headquarters. On his retirement from the military, he became employed full-time by the Kuomintang, the only recognized political party in Taiwan at that time, and he rose to the level of a district manager before he retired in 1985. Applicant's mother never worked outside of the home.

Applicant earned his undergraduate degree from a Taiwanese university in 1974. He then served mandatory military service as a second lieutenant in the Taiwanese army's engineer corps from September 1974 to May 1976, where he was

involved in construction. Following his discharge, he returned to the same university for his master's degree in hydraulic and ocean engineering, which was awarded him in 1978.

From 1978 to 1979, Applicant was employed for a private engineering consulting firm in Taiwan where he designed a harbor breakwater. In July 1979, Applicant married his spouse, also a Taiwanese native with military ties. Her father had already retired from Taiwan's navy, having attained a rank equivalent to a colonel, and was employed as a middle school teacher. Her mother was employed by a petroleum company in Taiwan before she retired.

In Fall 1979, Applicant and his spouse came to the U.S. on student visas to pursue further education. He enrolled in a coastal engineering program but transferred in January 1980 to a major technological university to be closer to his spouse who was attending a public university in a nearby state. After she graduated in about 1982, she joined Applicant and began working. In 1984, they acquired U.S. permanent residency, and their first child, a son, was born. Applicant's sister, who had immigrated to the U.S. before Applicant, became a naturalized U.S. citizen in August 1984.

Applicant was awarded his doctorate degree in ocean engineering in June 1985. He and his family remained in the U.S., and Applicant began working. His parents came to the U.S. for the first time from Taiwan, to visit Applicant and his sister and their families.

In 1988, Applicant and his spouse bought their present residence, and shortly thereafter, they had a daughter. His parents came to the U.S. in 1989 to see their new grandchild. They stayed with Applicant for less than one month. In August 1989, Applicant and his spouse became naturalized U.S. citizens, 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. Since his naturalization, Applicant has considered himself a citizen only of the U.S. He has not filed an application to renounce citizenship in Taiwan.

Applicant obtained a U.S. passport in December 1991. He traveled on this U.S. passport with his family to Taiwan to visit his parents, brother, and in-laws in December 1992, July 1994, July 1996, December 1997, and July 1999. In May 2000, Applicant went to Taiwan by himself when his father had heart bypass surgery.

After nine years as a research and development engineer for the same company, Applicant went to work for his present employer as a principal software engineer developing and implementing algorithms for computer software code in mid-October 1996. He was hired at the recommendation of an employee who had worked for Applicant's former employer as well and was familiar with Applicant's work. At his employer's request, Applicant executed a security clearance application (SF 86) on February 19, 1997, for a top secret clearance so that he could better serve the company. He disclosed his and his spouse's births in Taiwan, the Taiwanese residency and citizenship of his parents and brother, his former military service in the Taiwanese army, and his travels to Taiwan for pleasure in 1992, 1994, and 1996. Applicant was granted his top secret clearance shortly thereafter.

For a periodic reinvestigation, Applicant executed a SF 86 on January 3, 2003. He disclosed travel to Taiwan since his February 1997 SF 86: in December 1997, July 1999, and May 2000. Later in 2003, Applicant again traveled to Taiwan. His trips to Taiwan, all about two weeks in duration, were to see his family, and he stayed with them when in the country.

In December 2004, Applicant's father-in-law, who had battled colon cancer for the previous three years, died of pneumonia in a Taiwanese hospital. Applicant's spouse traveled to Taiwan in 2004 and 2005.

In addition to owning their home, Applicant and his spouse have 401(k) funds, stocks, and other investments in the U.S. They have no foreign financial or real estate assets, and provide no financial support for their relatives in Taiwan. Applicant and his spouse each earn a little more than \$100,000 per year in their respective employments. His spouse works as a software engineer for a U.S. telecommunications company. Their son is pursuing a computer engineering degree at a public university in the U.S. Their daughter attends a private high school.

As of February 2006, Applicant's sister, who has lived in the U.S. since the late 1970s, was employed as a software engineer for a U.S. computer company. Applicant's parents (father age 85, mother age 76) and brother were still resident citizens of Taiwan. Applicant's parents live off his retirement and savings. When Applicant's father retired from the Taiwanese military, he took a lump sum benefit. He is paid a pension of about \$1,000 USD per month from his position with the political party. Applicant has telephone contact with his parents about once a month. Applicant's brother worked for the same political party full-time from about 1978 until he retired in 2003 or 2004. His spouse is employed by a municipality in Taiwan as an assistant to the city's mayor. They have one son, who is a 22-year-old college student. Applicant expects his nephew will have to fulfill his mandatory military obligation after he graduates. Applicant has telephone contact with his brother in Taiwan about two or three times a year. He last spoke to him in late January 2006. Applicant understands his father and brother are no longer politically active in Taiwan. Applicant has not told his family members in Taiwan that he holds a top secret security clearance ("I don't need to tell them." Tr. 102). He has told his relatives that he is engaged in image processing work.

Applicant's mother-in-law, and his spouse's siblings (a sister and a brother) are also resident citizens of Taiwan. Applicant assumes his mother-in-law receives a pension as the widow of a retired military officer. Applicant's spouse has telephoned her mother on a daily basis since her father died in December 2004. Applicant's mother-in-law lives with her daughter-in-law (her son's wife, who is employed by a private bank) and granddaughter in their home. Applicant's spouse's brother works for a federal law enforcement agency in Taiwan in another city where he maintains his primary residence. Applicant speaks to her brother about twice a year. Applicant has not had in-person contact with his brother-in-law since his trip to Taiwan in 1999. Applicant's spouse's sister is a retired teacher who spends most of her time caring for her mother. She and her husband, who is retired from Taiwan's army, live next door to her mother. Applicant's spouse speaks to her sister on a daily basis when she calls their mother. She came to the U.S. for a visit in about 2001 and stayed with Applicant and his spouse for about a week.

Applicant has a close friend from high school whom Applicant has visited on occasion when he is in Taiwan. This friend also came to the U.S. with his family in 2002 and they stayed in Applicant's home. Applicant last saw his friend in 2003 during his trip to Taiwan. His friend used to work for an internal affairs branch of the Taiwanese government. He has changed jobs within the government and now handles competitive examinations.

Taiwan's political and economic state

Until 1986, Taiwan's political system was effectively controlled by one party, the Kuomintang. Since ending martial law in 1987, Taiwan has taken dramatic steps to improve respect for human rights and create a democratic political system. The U.S. has been committed to maintaining cultural, commercial and other nonofficial relations with Taiwan since January 1979, when it formally recognized the government of the People's Republic of China (PRC) as the sole legal government of China. 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. Despite the U.S.' clear and consistent position that Taiwan and the Mainland are part of China, U.S. commercial ties have expanded with Taiwan and the U.S. is supportive of Taiwan's membership in international organizations, such as the World Trade Organization and the Asian Development Bank, where independent statehood is not required for membership. ⁽²⁾ Taiwan was reported to be an active collector of U.S. economic intelligence as of 2000. ⁽³⁾

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 guideline is most pertinent to an evaluation of Applicant's security suitability:

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 government has established its case with respect to Guideline B, foreign influence.

Applicant's parents and brother are resident citizens of his native Taiwan. He contacts his parents about once a month, and he visits them in Taiwan approximately once every two years. His telephone contact with his brother averages only two or three times yearly, but he also spends time with his brother when in Taiwan. 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,* applies.

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's spouse's mother and siblings (sister and brother and their families) are also resident citizens of Taiwan. Since her father's death in December 2004, Applicant's spouse has telephoned her mother every day, and she speaks with her sister when she calls since her sister cares for their mother. She has limited contact with her brother, but her mother lives with her brother's wife and child. Accordingly, 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,* also applies.

DC ¶ E2.A2.1.2.3. *Relatives, cohabitants, or associates who are connected with any foreign government* must be considered as well. At the federal level, Applicant's spouse's brother serves in a managerial position for Taiwan's law enforcement agency. Applicant has a close high school friend who works in the branch of the government that administers civil service examinations. At the municipal or local government level, Applicant's brother's wife is an assistant to a mayor.

Given the foreign connections that exist, Applicant has a heavy burden of persuasion as to whether it is clearly consistent with the national interest to continue his security clearance. The Directive provides for mitigation where the family members and/or close associates 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* ¶ E2.A2.1.3.1.).⁽⁴⁾ As affirmed by the DOHA Appeal Board in ISCR 02-14995 (App. Bd. Jul. 26, 2004), both prongs must be satisfied to meet this mitigating condition. The Directive does not define who may be considered an agent of a foreign power. The federal statute dealing with national security and access to classified information, 50 U.S.C. § 438(6) adopted the definitions of "foreign power" and "agent of a foreign power" from 50 U.S.C. § 1801, which pertains to foreign intelligence surveillance. Under that statute, any entity that is openly acknowledged by a foreign government to be directed and controlled by the foreign government is considered a foreign power. An agent of a foreign power is defined 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).

In an unrelated case involving an applicant whose brother is an engineer for the Taiwanese government, I relied on the federal statutory definitions to conclude that the brother was not an agent of a foreign power for purposes of ¶ E2.A2.1.3.1. Status as a foreign agent could not be presumed solely on the basis of a government connection, and there was no evidence the foreign national was acting in the U.S. as an officer or employee of a foreign power or as a member of an international terrorism group, or was otherwise acting for, or on behalf of, a foreign power that engages in clandestine activities in the U.S. (*See* ISCR Case No. 04-00436, Nov. 30, 2005).⁽⁵⁾

Recently, in ISCR Case No. 03-10954 (App. Bd. Mar. 8, 2006), the DOHA Appeal Board refused to adopt the definition of "agent of a foreign power" as set forth in 50 U.S.C. § 1801 because it is part of the Foreign Intelligence Surveillance Act (FISA), which has a narrower scope than the security concerns in the Directive. However, the DOHA Appeal Board did not address why the terms "foreign power" and "agent of a foreign power" should be defined more expansively under the Directive than under the federal statute 50 U.S.C. § 438 that directly concerns access to classified information and national security. While I remain convinced that the federal statutory definitions specifically incorporated by reference in 50 U.S.C. § 438 should apply to DOHA proceedings under Directive 5220.6, I am bound by DOHA Appeal Board rulings. The Appeal Board has held that an employee of a foreign government is an agent of a foreign power (*see* ISCR Case No.04-00436, *supra*, and ISCR Case No. 03-04090, App. Bd. Mar. 3, 2005). Whereas Applicant's brother-in-law is a manager for Taiwan's federal law enforcement agency (equivalent to the Federal Bureau of Investigation in the U.S.) and his friend works for the government in its examinations branch, they are agents of a foreign government under Appeal Board precedent. Applicant's brother's wife is an assistant to a mayor in Taiwan. As such, she works for a local government rather than the Taiwanese authorities, so the risk associated with her job is primarily under the second prong of ¶ E2.A2.1.3.1. (in position to be exploited).

In determining whether an associate or family member is not in a position to be exploited by a foreign power, the DOHA Appeal Board has held it hinges not on what choice Applicant might make if he is forced to choose between his loyalty to his family member or associate, but on whether Applicant is placed in a position where he is forced to make a choice. (*See* ISCR Case No. 03-24933 App. Bd. Jul. 28, 2005). Based on this reasoning, 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. Although not specifically stated in the adjudicative guideline, the particular foreign country of which the close relative or associate is a citizen or resides is relevant in determining the likelihood of undue influence being brought to bear on its citizens/residents. Countries with strong democratic institutions and respect for the rule of law are generally regarded as presenting less of a risk than totalitarian regimes with a record of human rights abuses, support for terrorist activities, or hostility to the U.S.

Dated reports of Taiwan targeting U.S. economic and proprietary interests in 2000⁽⁶⁾ 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 December 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 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.

Applicant's family members have held positions of responsibility, including in the Taiwanese military and government, which increase the risk of exploitation, pressure or coercion. While his father retired from the Taiwanese military in about 1973, he achieved rank equivalent to a one-star general and was stationed for at least four years at headquarters. After his military retirement, he worked directly for the Kuomintang in Taiwan at the division manager level where his activities may well have come to the attention of governmental authorities, given the Kuomintang was effectively in control of the government at that time. His brother spent his entire civilian career working directly for the party. Despite Applicant's contacts with his relatives, he claims to not know what his brother did. Applicant also could not elaborate as to his brother-in-law's duties for the Taiwanese equivalent of the FBI. Mitigating condition ¶ E2.A2.1.3.1. does not apply.

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. Applicant has telephone contact with his brother and his wife's brother only a few times per year. Yet the relationships with these siblings are not so casual to fall within ¶ E2.A2.1.3.3. *Contact and correspondence with foreign citizens are casual and infrequent.* Applicant visited with his brother on each of his trips to Taiwan. He does not have a particularly close personal bond with his spouse's brother, but his mother-in-law relies on her son for her living arrangements, and Applicant's spouse calls the house daily. Similarly, even though Applicant has not seen his high school friend since his last visit to Taiwan, the duration and close nature of their relationship precludes a favorable application of ¶ E2.A2.1.3.3.

As recently reaffirmed by the DOHA Appeal Board in ISCR 03-17620 (App. Bd. Apr. 17, 2006), consistent with the overall common sense determination required under the Directive (¶¶ E2.2.1., E2.2.2., and E2.2.3.), a favorable outcome may be warranted, even where the positions of an applicant's foreign family members are significant and none of the Guideline B mitigating conditions apply. Objective indicators reflect a commitment to the U.S. made only stronger over the years as Applicant and his spouse established roots. Initially in the U.S. on student visas in 1979, Applicant and his spouse acquired U.S. permanent residency in 1984 and then in August 1989 U.S. citizenship. In 1991, he obtained a U.S. passport, which he has used to travel to Taiwan on several occasions since to see family members, most recently in 2003. His and his spouse's financial assets are in the U.S. where he has owned his present residence since May 1988. In addition to their employment income, they have 401(k), mutual fund, and stock assets. Their children, both U.S. citizens from birth, attend school in the U.S. Applicant also deserves significant credit under the "whole person" concept for his dedication to his employer and his proven compliance with the rules and regulations governing access to classified information.

Neither his ties to the U.S. nor track record of handling classified information compels continuation of his clearance, however. The government is required to conduct periodic reinvestigation to assess continued suitability for access, and is not estopped from revisiting a decision to grant clearance. Based on Applicant's February 1997 SF 86 disclosures, the government knew before it granted Applicant his top secret clearance that he and his spouse were Taiwanese natives, that his parents and brother are Taiwanese resident citizens, that Applicant had completed mandatory military service in the 1970s, and that Applicant traveled to Taiwan for pleasure several times. Asked at his hearing whether he had divulged the details of his Taiwanese relatives' occupational endeavors during his previous background investigation,

Applicant affirmed he had disclosed his father's former military service. Given Applicant's favorable credibility, buttressed by his SF 86 disclosures, candid testimony, and character reference from the company's CEO who has known Applicant since October 1996, I have no reason to doubt his testimony. At the same time, I cannot speculate as to whether the government knew, for example, that Applicant's brother was employed by the Kuomintang, or that his brother-in-law (assuming he was so employed in 1997) held a managerial position in Taiwan's law enforcement agency. Even if Applicant had candidly disclosed his foreign ties during his previous investigation, the decision as to whether to continue Applicant's clearance is a risk assessment based on the foreign ties that exist as of 2006. Changed circumstances since the 1997 clearance grant include his brother's retirement, and his father-in-law's death, but also his spouse's daily contacts with her mother and sister in Taiwan. Applicant's ties to the U.S. and his contributions to the defense effort are not enough to overcome the substantial risks of undue foreign influence that exist. SOR ¶¶ 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., 1.g., 1.h., 1.i., and 1.j. ⁽⁷⁾ SOR ¶ 1.k. is resolved in Applicant's favor, as while Applicant admits the travel alleged, there is nothing about his travel that is disqualifying per se. It merely confirms the close bond he shares with his family members in Taiwan.

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: 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

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: Against the Applicant

Subparagraph 1.h.: Against the Applicant

Subparagraph 1.i.: Against the Applicant

Subparagraph 1.j.: Against the Applicant

Subparagraph 1.k.: For 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. *See* the U.S. Department of State's *Background Note: Taiwan*, dated December 2005.

3. *See* the National Counterintelligence Center's *Annual Report to Congress on Foreign Economic Collection and Espionage*. In the report's appendix, Taiwan is listed as one of the seven countries who are the most active collectors of targeted information and technology. The distilled opinions expressed in the report, based on a statistically small sample (the views of "nearly a dozen selected Fortune 500 companies") and very dated, were afforded less weight than the more recent assessments of the U.S. State Department.

4. *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.

5. Clearance was still denied because of the undue foreign influence concerns that existed because of his strong ties to family members in Taiwan.

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

7. Applicant's brother is no longer employed by the Kuomintang (¶ 1.d.), his father-in-law has died so is no longer a resident citizen of Taiwan (¶ 1.f.) or a retired colonel (equivalent) from the Taiwanese navy (¶ 1.g.), and his friend has switched agencies within the Taiwanese government (¶ 1.j.). Those allegations are nonetheless resolved against him to the extent that foreign influence concerns exist because of their former situations. With respect to Applicant's father-in-law, the present risk is solely through his widow (Applicant's mother-in-law), who Applicant believes gets a pension

because of his former military service and may be subject to influence because of his former service.