

KEYWORD: Foreign Preference; Foreign Influence; Personal Conduct

DIGEST: Applicant, a native of Taiwan and a naturalized U.S. citizen, is a university professor who does research for defense contractors, much of it in ballistic missile technology. He received a clearance in 1992. He obtained and used a Taiwanese passport after becoming a U.S. citizen. His brother is a Taiwanese citizen residing in Malaysia. His sister is a citizen and resident of Taiwan. He is married to a citizen of the People's Republic of China (PRC) whose mother and brother are citizens and residents of the PRC. He had two children by his present wife while she was married to a PRC citizen. On his security clearance application (SF-86), he falsified his marital status and did not disclose a brother, sister, and an illegitimate child. He failed to mitigate security concerns based on foreign preference, foreign influence, and personal conduct. Clearance is denied.

CASENO: 05-00148.h1

DATE: 02/28/2006

DATE: February 28, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-00148

DECISION OF ADMINISTRATIVE JUDGE

LEROY F. FOREMAN

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a native of Taiwan and a naturalized U.S. citizen, is a university professor who does research for defense contractors, much of it in ballistic missile technology. He received a clearance in 1992. He obtained and used a Taiwanese passport after becoming a U.S. citizen. His brother is a Taiwanese citizen residing in Malaysia. His sister is a citizen and resident of Taiwan. He is married to a citizen of the People's Republic of China (PRC) whose mother and brother are citizens and residents of the PRC. He had two children by his present wife while she was married to a PRC citizen. On his security clearance application (SF-86), he falsified his marital status and did not disclose a brother, sister, and an illegitimate child. He failed to mitigate security concerns based on foreign preference, foreign influence, and personal conduct. Clearance is denied.

STATEMENT OF THE CASE

On August 25, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to revoke Applicant's security clearance. This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).

The SOR alleges security concerns under Guidelines C (Foreign Preference), B (Foreign Influence), and E (Personal Conduct). Under Guideline C, it alleges Applicant is a dual citizen of Taiwan and the U.S. (SOR ¶ 1.a.); and he renewed (¶ 1.b.), possessed (¶ 1.d.), and used (¶ 1.c.) a Taiwanese passport after becoming a naturalized U.S. citizen. Under Guideline B, it alleges his brother is a citizen and resident of Taiwan working in the PRC (¶ 2.a.), his sister is a citizen and resident of Taiwan (¶ 2.b.), his spouse is a citizen of the PRC (¶ 2.c.), his mother-in-law (¶ 2.d.) and brother-in-law (¶ 2.e.) are citizens and residents of the PRC, and he has traveled to Taiwan (¶ 2.f.) and the PRC (¶ 2.g.). Under Guideline E, it alleges he intentionally omitted material and relevant information on his SF-86 by falsifying his marital status (¶ 3.a.) and failing to disclose a sister, brother, and a third child among his relatives and associates (¶ 3.b.).

Applicant answered the SOR in writing on September 8, 2005. He admitted all the allegations under Guidelines C and B, but explained that he stopped using his Taiwanese passport in 2003, and his brother no longer works in the PRC. Under Guideline E, he admitted answering the questions incorrectly but denied intentional falsification. He requested a hearing.

The case was assigned to me on December 1, 2005. On January 5, 2006, DOHA issued a Notice of Hearing setting the case for hearing on January 19, 2006. The case was heard as scheduled. Applicant expressly waived the 15-day notice required by the Directive ¶ E3.1.8. (1) DOHA received the transcript on January 27, 2006.

FINDINGS OF FACT

Applicant's admissions in his answer to the SOR and at the hearing are incorporated into my findings of fact. I make the following findings:

Applicant is a 48-year-old university professor who has done research for defense contractors for more than 20 years. (2) He holds a Ph.D. in electrical engineering, and much of his research has dealt with ballistic missile tracking. (3) He was born in Taiwan and became a naturalized U.S. citizen in July 1990. He holds dual Taiwan-U.S. citizenship. He has held a security clearance since November 1992. (4) A computer programmer who has worked with Applicant on several classified projects testified he regards Applicant as very trustworthy, reliable, and very careful to protect classified information. (5)

Applicant was married in August 1982 to a native of Taiwan who became a naturalized U.S. citizen in November 1990. They separated in December 1999, and were divorced in October 2002. Two children, both native-born U.S. citizens, were born during the marriage. (6)

While Applicant was still married to his first wife, he had a child by his now-second wife, whom he married in June 2004. They had a second child after Applicant was divorced but before his second wife was divorced. (7) His second wife is a citizen of the PRC and a permanent resident of the U.S., and states she intends to become a U.S. citizen as soon as she is eligible, in about one year. (8)

Applicant's second wife was a software engineer for a private company, but she is now a stay-at-home mother and (9) (10)

housewife. She was divorced in March 2004. Her ex-husband is a citizen of the PRC, a permanent resident of the U.S., and a professor at a U.S. university. They have a son who is a citizen of the PRC residing in the U.S. with his father. Applicant's second wife has biweekly contact with her son.⁽¹¹⁾ Applicant testified his second wife hated the PRC and persuaded her former husband to come to the U.S., obtain an education, and live in the U.S.⁽¹²⁾

Applicant executed an SF-86 in December 2002. In response to Question 8, regarding his marital status, he replied he was married, and he did not disclose he was divorced in October 2002.⁽¹³⁾ In response to Question 9, asking him to list foreign national relatives and associates with whom he or his spouse are bound by affection, obligation, or close and continuing contact, he failed to list his sister, brother, and a third child.⁽¹⁴⁾ His fourth child was born after he executed the SF-86.

With respect to Question 8, Applicant explained that his first wife filed for divorce in July 2002, and he was uncertain of his marital status when he executed the SF-86 because he had not received a copy of the final divorce decree.⁽¹⁵⁾ With respect to Question 9, he explained he thought it was sufficient to list only immediate family members. He listed the two children born by his first wife during their marriage, but he did not list the illegitimate child he fathered by his now-second wife who was still married to her first husband. After an interview with a security investigator in March 2004, he executed a sworn statement saying he did not list his third child, born in June 2001, because he drafted his SF-86 ahead of time and forgot to make the change when he submitted the form in December 2002.⁽¹⁶⁾ In his answer to the SOR, he said he was uncertain how to list his third child, because that child was residing with his mother, who was in the process of divorcing her first husband.⁽¹⁷⁾ At the hearing he testified he was uncertain whether this child should be listed on the SF-86, because the child's mother was still married to her former husband when the child was born.⁽¹⁸⁾ He has consistently denied any intent to falsify his application.

Applicant admitted obtaining and using a Taiwanese passport after becoming a naturalized U.S. citizen. He explained he used it to make travel to Taiwan easier, but he stopped using it in 2003, when Taiwan changed its rules to permit him to visit without a visa after entering with his U.S. passport.⁽¹⁹⁾ His Taiwanese passport expired in December 2005. At the hearing, he testified he contacted the Taiwan Economic and Cultural representative Office (TECRO) and attempted to surrender his passport and renounce his Taiwanese citizenship, but the process is time-consuming, requires a large amount of documentation from various governmental agencies in Taiwan, and had not been completed.⁽²⁰⁾ He presented his original passport with a corner cut off. A duplicate copy of the mutilated passport is incorporated in the record.⁽²¹⁾ He retained the original mutilated passport because he is required to include it with the forms to be submitted to TECRO.⁽²²⁾ He also holds a U.S. passport, issued in May 2000, which he now uses for all travel, including travel to Taiwan.⁽²³⁾

Applicant's brother is a citizen of Taiwan. He is employed by a Taiwanese manufacturer of computer equipment, but he no longer works in the PRC, having been relocated by his employer to Malaysia. Applicant has telephone contact with his brother about twice a year.⁽²⁴⁾ At the hearing he testified that his contact with his brother is infrequent, but they are "close brothers, in a sense," concerned about each other's welfare.⁽²⁵⁾

In his answer to the SOR, Applicant stated he had no contact with his sister, a citizen and resident of Taiwan, for more than 10 years. [\(26\)](#) In a signed, sworn statement to a security investigator in March 2004, he said he last saw his sister more than five years ago. His sister is a homemaker, married to a businessman involved with herbal medications. [\(27\)](#) His sister was adopted and not the biological child of his mother. She is about 10 years older than Applicant and poorly educated. They have little in common. Nevertheless, he still feels some affection for her because they grew up together and she was his babysitter for six years. [\(28\)](#)

Applicant's mother-in-law and brother-in-law are citizens and residents of the PRC. His mother-in-law is widowed, a retired schoolteacher, and currently a homemaker. His second wife has telephone contact with her mother every three months. He met his mother-in-law in October 2003, but had no further contact. [\(29\)](#)

Applicant's brother-in-law is a software engineer and is married to an information technology specialist. His wife contacts her brother and his wife about twice a year. Applicant met them in October 2003, but had no further contact. [\(30\)](#)

Applicant visited Taiwan in 2000 and 2003. [\(31\)](#) In 2000 he visited his brother and sister. In 2003 he met his second wife's family, visited his brother, and visited his parents' grave sites. [\(32\)](#)

The PRC is a Communist state. The Chinese Communist Party is authoritarian in structure and ideology and dominates the government. Party committees work in all important government, economic, and cultural institutions to ensure party policy guidance is followed and nonparty members do not create organizations that could challenge party rule. The U.S. State Department has documented numerous instances of human rights abuses stemming from the government's intolerance of dissent and the inadequacy of legal safeguards for basic freedoms. [\(33\)](#)

The PRC and the U.S. are major trading partners. [\(34\)](#) After the terrorist attacks of September 11, 2001, the PRC became an important partner in U.S. counter-terrorism efforts. The PRC and the U.S. have worked closely on regional issues, especially those involving North Korea. However, U.S.-PRC relations continue to be sometimes complicated by events in Taiwan and Hong Kong. [\(35\)](#)

Taiwan is a multiparty democracy, a U.S. ally, and a major U.S. trading partner. [\(36\)](#) It has a good human rights record. It maintains a large military establishment, and its primary mission is the defense of Taiwan against the PRC. [\(37\)](#) With the encouragement of the U.S., contact between Taiwan and the PRC has grown significantly over the last decade, with increases in direct trade, travel, and postal links. [\(38\)](#) The Taiwan Relations Act, 22 U.S.C. §§ 3301-3316, is the legal basis for the unofficial relationship between the U.S. and Taiwan and the U.S. commitment to ensuring Taiwan's defensive capability. [\(39\)](#)

The PRC and Taiwan are both active collectors of U.S. defense information and technology through industrial espionage.⁽⁴⁰⁾ The PRC is known to have stolen classified design information about the U.S.'s most advanced thermonuclear weapons from the early 1970s through the mid-1990s.⁽⁴¹⁾ In 2004, the PRC increased its ballistic missile forces deployed across from Taiwan, and it continues its efforts to develop more robust and survivable nuclear armed missiles.⁽⁴²⁾

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), as amended and modified. 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 (App. Bd. Dec. 19, 2002).

The Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶¶ 6.3.1 through 6.3.6.

In evaluating an applicant's conduct, an administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the applicant's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. Directive ¶¶ E2.2.1.1 through E2.2.1.9.

The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3; *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

CONCLUSIONS

Guideline C (Foreign Preference)

When an applicant acts in such a way as to indicate a preference for a foreign country over the U.S., he or she may be prone to provide information or make decisions that are harmful to the interests of the U.S. Directive ¶ E2.A3.1.1. While dual citizenship is not *per se* disqualifying, a disqualifying condition may arise if an individual exercises dual citizenship (DC 1), or possesses or uses a foreign passport (DC 2). Directive ¶¶ E2.A3.1.2.1., E2.A3.1.2.2. The use of a foreign passport is an exercise of dual citizenship. Applicant admitted using his Taiwanese passport until 2003 to make his travel easier. I conclude DC 1 and DC 2 are established.

Several mitigating conditions are relevant. MC 1 applies if dual citizenship is based solely on parents' citizenship or birth in a foreign country. Directive ¶ E2.A3.1.3.1. This mitigating condition is established because Applicant did not affirmatively seek foreign citizenship, but acquired it by virtue of his birth in Taiwan to Taiwanese parents.

MC 2 applies if indicators of possible foreign preference occurred before the individual obtained U.S. citizenship. Directive ¶ E2.A3.1.3.2. This mitigating condition is not established, because Applicant obtained and used his Taiwanese passport after becoming a U.S. citizen. Use of a foreign passport for personal convenience is not mitigating under this guideline. ISCR Case No. 99-0424, 2001 DOHA LEXIS 59 at *47 (App. Bd. Feb. 8, 2001).

When use of a foreign passport is involved, the clarifying guidance issued by the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence (the "Money Memorandum") dated August 16, 2000, requires denial of a clearance unless the applicant surrenders the foreign passport or obtains official approval for its use from the U.S. Government. Surrender contemplates returning it to the issuing authority, and merely keeping a foreign passport until it expires does not satisfy this requirement. ISCR Case No. 01-24306 at 5, 2003 WL 22706190 (App. Bd. Sep. 30, 2003). Likewise, mutilating or defacing a passport does not satisfy the requirement. Because Applicant's passport was already expired, its validity was not affected by mutilating it. The Money memorandum requires denial of his application for continuation of his clearance, because he has not surrendered his expired passport to the issuing authority.

Guideline B (Foreign Influence)

A security risk may exist when an applicant's immediate family, or other persons to whom he or she may be bound by affection, influence, or obligation, are not citizens of the U.S. or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Directive ¶ E2.A2.1.1. A disqualifying condition (DC 1) may arise when "[a]n immediate family member [spouse, father, mother, sons, daughters, brothers, sisters], 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." Directive ¶ E2.A2.1.2.1.

"[T]here is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse." ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at * 8 (App. Bd. Feb. 20, 2002). Applicant met his mother-in-law and brother-in-law once in October 2003, and he has had no other contact with them. I conclude he has rebutted the presumption.

The citizenship status of the child born by his now-wife while she was still married to a PRC citizen is unclear. However, DC 1 is established, because Applicant's wife is a citizen of the PRC, his brother is a citizen of Taiwan, and his sister is a citizen and resident of Taiwan.

In cases where an applicant has immediate family members who are citizens or residents of a foreign country, a mitigating condition (MC 1) may apply if "the immediate family members . . . 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." Directive ¶ E2.A2.1.3.1.

Notwithstanding the facially disjunctive language of MC 1 ("agents of a foreign power **or** in a position to be exploited"), it requires proof "that an applicant's family members, . . . are (a) not agents of a foreign power, **and** (b) not in a position

to be exploited by a foreign power in a way that could force the applicant to choose between the person(s) involved and the United States." ISCR Case No. 02-14995 at 5 (App. Bd. Jul. 26, 2004). Since the Government produced substantial evidence to establish DC 1, the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). The distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly. Friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. *See* ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). Nevertheless, the nature of a nation's government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the U.S.

Applicant's spouse, brother, and sister are not agents of a foreign power under either the statutory definition in 50 U.S.C. § 1801(b) or the broader definition apparently adopted by the Appeal Board. *See* ISCR Case No. 02-24254, 2004 WL 2152747 at *4-5 (App. Bd. Jun. 29, 2004) (employee of foreign government need not be employed at a high level or in a position involving intelligence, military, or other national security duties to be an agent of a foreign power for purposes of MC 1). His brother and sister are not connected to the government. However, his brother is involved in the highly competitive computer industry, a frequent target as well as practitioner of economic and industrial espionage. On the other hand, his sister is uneducated, a homemaker, and married to a man who is not involved in any business engaging in industrial or economic espionage.

The totality of an applicant's family ties to a foreign country as well as each individual family tie must be considered. ISCR Case No. 01-22693 at 7 (App. Bd. Sep. 22, 2003). Applicant's wife's ties to the PRC and the possible effect they may have on Applicant's conduct are relevant considerations under this guideline. ISCR Case No. 01-02452 at 8 (App. Bd. Nov. 21, 2002). The vulnerability of Applicant's wife is a concern. Her mother has never been involved in high technology, but her brother and his wife are both involved in computer technology. Applicant's wife is vulnerable to pressure regarding custody and visitation rights from her cuckolded ex-husband, a citizen of the PRC. She and her ex-husband have a child who lives with his father and is a PRC citizen. Her ex-husband's connections to the PRC government are unknown.

Applicant has the burden of proving a mitigating condition, and the burden of disproving it is never shifted to the government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). I conclude he has not carried his burden of establishing MC 1 with respect to his second wife and his brother.

A mitigating condition (MC 3) may apply if "[c]ontact and correspondence with foreign citizens are casual and infrequent." Directive ¶ E2.A2.1.3.3. There is a rebuttable presumption that contacts with an immediate family member in a foreign country are not casual. ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002). The record establishes Applicant's contacts with his brother and sister are infrequent, but he has not rebutted the presumption that they are not casual. Applicant admitted his continuing concern for his brother and feeling of affection for his sister. I conclude Applicant has not established MC 3.

Applicant's travel to Taiwan and the PRC is related to his family ties in those countries. It has no independent security significance.

Applicant's special expertise in ballistic missile technology is relevant in light of the PRC's aggressive efforts to improve its capability in that area and its record as an active practitioner of military and industrial espionage. His family connections to the PRC make him vulnerable.

None of the individual family circumstances discussed above are determinative. After evaluating each family member's individual circumstances as well as the totality of Applicant's family ties to Taiwan and the PRC, and evaluating all the evidence in the context of the whole person, I conclude he has not mitigated the security concern based on foreign influence.

Guideline E (Personal Conduct)

Under this guideline, conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. Directive ¶ E2.A5.1.1. A disqualifying condition (DC 2) applies where there has been a deliberate omission or falsification of relevant and material facts from any personal security questionnaire. Directive ¶ E2.A5.1.2.2.

Applicant's negative answer to Question 8 on SF-86, pertaining to his marital status, clearly was erroneous, because his divorce was final two months before he executed the SF-86. When he executed the form, he had been separated from his wife for three years and had fathered a child by a woman who was still married to another man but is now his second wife.

I find Applicant's explanations implausible. He is a highly educated university professor. He has held a security

clearance since 1992. He impressed me at the hearing as very intelligent and articulate. At the time he submitted his SF-86, he was seriously involved with his current wife and had already fathered one child with her. Termination of his first marriage was essential to formalizing his relationship with his current wife. I find it implausible that he would not know for more than two months that the legal impediment to formalizing his new relationship had been removed.

Similarly, his explanations for not listing his siblings and third child are contradictory and implausible. His assertion that he did not list his brother and sister because he thought "only immediate family members" needed to be listed is implausible in light of his education and background. He had a motive to conceal the fact that his brother was working in the PRC for a computer manufacturer. There is no apparent motive for concealing his sister other than to minimize his family connections with Taiwan. Regarding his first child, he first said, in March 2004, that he simply forgot to update his SF-86. In his answer to the SOR and at the hearing, he asserted he did not list his third child because he did not know how to legally characterize him, since the mother was still married to her former husband. His implausible and contradictory explanations are not credible. I am satisfied he intended to conceal his adulterous relationship with a PRC citizen and his illegitimate child by her while she was still married to a PRC citizen. I conclude DC 2 is established.

Two mitigating conditions (MC) are relevant to this case. MC 2 applies when the falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily. Directive ¶ E2.A5.1.3.2. MC 3 applies when the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts. Directive ¶ E2.A5.1.3.3. Neither mitigating condition is established. Applicant's falsification was recent and continued through the hearing, and he did not disclose his third child until confronted with the facts.

FORMAL FINDINGS

The following are my findings as to each allegation in the SOR:

Paragraph 1. Guideline C (Foreign Preference): AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Paragraph 2. Guideline B (Foreign Influence): AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: Against Applicant

Subparagraph 2.d.: Against Applicant

Subparagraph 2.e.: Against Applicant

Subparagraph 2.f.: Against Applicant

Subparagraph 2.g.: Against Applicant

Paragraph 3. Guideline E (Personal Conduct): AGAINST APPLICANT

Subparagraph 3.a.: Against Applicant

Subparagraph 3.b.: Against 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 Applicant a security clearance. Clearance is denied.

LeRoy F. Foreman
Administrative Judge

1. Transcript (Tr.) at 3.
2. Government Exhibit (GX) 5 at 3; Applicant's Exhibit (AX) B, C.
3. AX C.
4. Government Exhibit (GX) 1 at 1, 2, 6.
5. Tr. 57-59.
6. GX 1 at 3; Tr. 80.
7. GX 5 at 5.
8. Answer to SOR.
9. Tr. 93.
10. GX 5 at 6-7.
11. GX 2 at 2.
12. Tr. 95.
13. GX 1 at 3.
14. *Id.*
15. Answer to SOR; AX A; Tr. 69.
16. GX 2 at 2.
17. Answer to SOR.
18. Tr. 71.
19. Answer to SOR.
20. Tr. 65-66.
21. AX D.
22. Tr. 87-88.
23. GX 4.
24. GX 2 at 3.
25. Tr. 76.
26. Answer to SOR.

27. GX 2 at 3.
28. Tr. 90-92.
29. GX 2 at 3.
30. GX 2 at 3.
31. Answer to SOR.
32. GX 2 at 3-4.
33. U.S. Dept. of State, *Background Note, China* 1, 7-9 (Mar. 2005), attached to the record as Hearing Exhibit (HX) V; U.S. Dept. of State, *Country Reports on Human Rights Practices - 2004* 1-3 (Feb. 28, 2005), attached to the record as HX VI.
34. *Id.* at 13.
35. *Id.* at 19-20.
36. U.S. Dept. of State, *Background Note: Taiwan* 1, 9 (Sep. 2005) attached to the record as HX VII.
37. *Id.* at 9.
38. *Id.* at 7.
39. *Id.* at 10.
40. National Counterintelligence Center (NACIC), *Annual Report to Congress* 15 (2000), attached to the record as HX IV, identified the PRC and Taiwan as two of the seven "most active" practitioners of industrial espionage. The number of countries targeting the U.S. rose to 75 in 2000, more than 90 in 2002 and 2003, and "almost 100" in 2004. The NACIC Annual Reports for 2001 through 2004, available on the internet at www.nacic.gov, did not identify the most active practitioners of industrial espionage by name. The 2004 report states the gravest threat comes from foreign entities in only a few countries, and many of the major collectors have been aggressive for as long as their activity has been tracked.
41. Report of the Select Committee on U.S. National Security and Military/Commercial Concerns with the People's Republic of China at ii-iii (Jan. 9, 1999), attached to the record as HX I..
42. Porter J. Goss, Director of Central Intelligence, Testimony before the Senate Select Committee on Intelligence (Feb. 16, 2005), www.cia.gov/public_affairs/speeches/2004, attached to the record as HX II; Vice Admiral Lowell E. Jacoby, Director, Defense Intelligence Agency, Statement for the Record for the Senate Select Committee on Intelligence (Feb. 16, 2005), at 9, 11, attached to the record as HX III.