DATE: January 31, 2007

In re:

SSN: ----------

Applicant for Security Clearance

ISCR Case No. 06-03765

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL J. BRESLIN

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant was born and raised in Taiwan, and served in the Taiwanese army to satisfy his mandatory service obligation. He came to the U.S. in 1988 and became a naturalized citizen in September 1994. Thereafter, he renewed his Taiwanese passport, and lived in Taiwan for two years as a dual citizen. His mother and siblings are citizens and residents of the U.S., however, his wife and father are citizens of Taiwan and permanent residents of the U.S. His spouse maintains contact with her family members, who are Taiwanese citizens. After initiation of this action, Applicant renounced his Taiwanese citizenship. Applicant failed to mitigate the security concerns arising from his close ties to Taiwan. Clearance is denied.

STATEMENT OF THE CASE

On April 16, 2003, Applicant submitted an application for a security clearance. The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (the "Directive"). On August 21, 2006, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under the Directive, specifically Guideline B, Foreign Influence, and Guideline C, Foreign Preference.

Applicant answered the SOR in writing on October 14, 2006. He elected to have the matter decided without a hearing.

Department Counsel submitted the government's case in a File of Relevant Material (FORM) dated November 6, 2006. On November 7, 2006, Department Counsel mailed a complete copy of the FORM to Applicant, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. Applicant received the FORM on November 20, 2006. By an undated letter received December 20, 2006, Applicant submitted an additional character reference, without objection. The case was assigned to me on December 27, 2006.

PROCEDURAL MATTERS

In the FORM, Department Counsel asked that I take "judicial notice" of the Memorandum of ASD/CCCI (Arthur L. Money) dated August 16, 2000 (Item 8); the Annual Reports to Congress from National Counterintelligence Executive (NCIX) for 2000 (Item 9) and 2004 (Item 10); and an issue brief from the Congressional Research Service entitled *Taiwan: Recent Developments and U.S. Policy Choices-2006* (Item 11). I note at the outset that this is not a court of law; we do not take "judicial notice," but may take administrative notice of certain adjudicative facts where appropriate. I will interpret Department Counsel's request as a motion to take administrative notice of facts, and the cited documents as support for the motion.

With regard to the Memorandum from Assistant Secretary of Defense Arthur Money, that document is guidance on matters of law, specifically the application of Guideline C under the Directive. An administrative judge need not take formal notice of matters of law. The memorandum does not contain matters of fact, and therefore may not properly be the basis for administrative notice. Department Counsel's request for administrative notice is denied; however, I will consider the policy guidance.

Department Counsel asked that I take administrative notice of the fact that Taiwan is "an active collector of economic information and [*sic*] industrial espionage," as demonstrated by the NCIX report for the year 2000 (Item 9). I note the report is more than six years old, and that the cited facts are based upon a "private survey" of "nearly a dozen selected Fortune 500 companies." The report does not indicate how the companies were selected, what companies were selected, or how they decided upon their input to the survey. Furthermore the survey results do not indicate whether the collection of economic information was accomplished through "open" methods (such as reading a newspaper) that raise no security issues under the relevant criteria, or more covert methods that might raise security concerns. For these reasons, I conclude the factual matters asserted by Department Counsel, as demonstrated by the proffered report, do not meet the standards for administrative notice, and are not material or relevant to this case. I deny Department Counsel's motion for administrative notice of the facts above.

Department Counsel asked that I take administrative notice that "the same countries continue to be key collectors of U.S. technology," as demonstrated by the NCIX report for 2004 (Item 10). This report does not specifically name Taiwan as a collector of foreign economic information, nor does it indicate that the government of Taiwan is engaged in industrial espionage. The report also suffers from the same problems as the one previously discussed, by failing to differentiate between collection methods that raise security concerns relevant to this case, and those that do not. Considering the proffered information and the standards for administrative notice, I take notice of the following fact: some countries employ unlawful methods to obtain U.S. economic and intelligence information.

Finally, Department Counsel offered that Item 11 "states the U.S. policy concerning Taiwan." However, Department Counsel failed to indicate what facts he wants noticed.

By Notice dated December 29, 2006, I informed the parties of my intent to take administrative notice of certain facts pursuant to DoD Directive 5220.6, ¶ E3.1.19 and Federal Rule of Evidence 201(c), subject to any objection raised on or before January 10, 2007. Having received no objection from either party, I take administrative notice of the adjudicative facts set out in the last paragraph of the Findings of Fact, below.

FINDINGS OF FACT

Applicant denied the allegation in paragraph 1.i, but admitted the remaining factual allegations in the SOR. (Item 3 at 1.) Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact.

Applicant is 40 years old. (Item 4 at 1.) He was born and raised in Taiwan (The Republic of China). (*Id.*) He served as a corporal in the Taiwanese army from August 1986 until June 1988 in order to fulfill Taiwan's mandatory service requirement.

Applicant's family immigrated to the U.S. over the course of many years in order to enjoy a better lifestyle. (Item 4 at 1.) His mother immigrated to the U.S. in about 1980, and sponsored other family members thereafter. (*Id.*) One sister

came to the U.S. in about 1984, another sister and a brother entered in 1986. His father was a manager for a department of the Taiwanese government. (Item 4 at 2.) He did not immigrate to the U.S. until 1990, after he retired from his government job. (*Id.*)

Applicant came to the U.S. from Taiwan in 1988 and became a naturalized citizen of the U.S. in September 1994. (Item 5 at 1; Item 4 at 1.) The day before becoming a U.S. citizen, he renewed his Taiwanese passport in order to receive the benefit of an exemption from capital gains taxes on certain real property in Taiwan belonging to his parents but held under his name. (Item 5 at 4.) He was issued a U.S. passport in December 1994. (Item 4 at 1.) The property in Taiwan in Applicant's name was sold in March 2003. (Item 5 at 4.)

He attended a U.S. university between 1992 and 1994, and received a masters degree in electrical engineering. (Item 4 at 2.) Between 1995 and 2000, he worked for a federal contractor in the U.S. as a member of its technical staff. (Item 4 at 3.) He was awarded a security clearance in January 1997. (Item 4 at 9.) Applicant traveled to Japan for two weeks in March 1997 to visit his brother. He also visited Taiwan in about December 1998 and May 1999, December 1999, and June 2000. (Item 4 at 7.)

He worked as a project manager for a communications equipment company from February to July 2000. (Item 4 at 3.) He visited Thailand in about October 2000. (Item 4 at 7.)

In July 2000, Applicant accepted a job with a U.S. electronics firm, working as a field application engineer in Taiwan. (Item 4 at 2; Item 5 at 2.) He renewed his Taiwanese passport in August 2000 with a new expiration date of August 1, 2010, in order to live and work in Taiwan. He could have stayed only two months (with the possibility of only two extensions) had he used his U.S. passport. (Item 5 at 4.) While in Taiwan he met his future wife. (Item 5 at 3.) Applicant had a bank account in Taiwan, and filed tax returns with the government of Taiwan and the U.S. (*Id.*) Subsequently, a tax refund was credited to Applicant's Taiwanese bank account. In February 2004, he indicated his intention to retrieve the money during his next visit. (In his October 2006 response to the SOR, he denied having any funds remaining in a Taiwanese account.)

He quit his job and returned to the U.S. in April 2002. (Item 5 at 5.) He assumed his present position with a defense contractor in June 2002. (Item 4 at 2.) He returned to Taiwan for a visit in November 2002. (Item 4 at 7.) His (then) future spouse came to the U.S. in January 2003 on a fiancée visa, and they were married that month. (Item 4 at 4; Item 5 at 3.) She applied for permanent resident status. (Item 5 at 3.)

Presently, Applicant's mother and father live permanently in the U.S. (Item 4 at 5.) His mother became a U.S. citizen in 1999. (*Id.*) His father receives a pension from the Taiwanese government, which is deposited to an account in his name in Taiwan. (Item 5 at 2.) Applicant's father or mother travel to Taiwan at least once every two years to transfer funds from their Taiwan account to the U.S. Applicant's father is unlikely to become a U.S. citizen because it would require him to forfeit his pension. (*Id.*) Applicant's brother and two sisters are also citizens and residents of the U.S. (Item 4 at 4.)

Applicant's wife's family, including her mother, father, one sister, and two half-brothers are citizens and residents of Taiwan. (Item 4 at 5; Item 5 at 3.) One of his wife's sisters is a citizen of Taiwan residing in Thailand. (Item 5 at 3.) His wife contacts her father and younger brothers about twice each month, and contacts her mother and sisters about four times each year. (Item 5 at 3.) None of her immediate family members work for the government of Taiwan. (Item 5 at 4.)

This security clearance action was initiated in August 2006. (Item 1.) In October 2006, Applicant indicated he relinquished his Taiwanese citizenship. (Answer to SOR at 4.) Department Counsel acknowledged the evidence of renunciation. (FORM at 6.)

Applicant's supervisor described him as "a knowledgeable, conscientious, honest, and dedicated worker." (Answer to FORM, Atch. 1.) He indicated Applicant held security clearances previously, and that he had no reservations about recommending him for a security clearance again. (*Id.*)

I take administrative notice of the following facts. The government of Taiwan is a multi-party democracy. The United

States recognizes that there is only one China, that the government of the People's Republic of China is the sole legal government of China, and that Taiwan is part of China. Nonetheless, under the Taiwan Relations Act of 1979, the U.S. conducts unofficial relations with Taiwan. Although the U.S. terminated its Mutual Defense Treaty, it has continued to sell appropriate military defensive material to Taiwan. It is U.S. policy that the resolution of disputes between Taiwan and China be peaceful. Taiwan is a major international trading power and a member of the World Trade Organization. It enjoys normal trade relations with the U.S., and ready access to U.S. markets. The U.S. State Department reports that Taiwan authorities generally respect the human rights of its citizens. Problems were noted in the areas of official corruption, violence against women, trafficking in persons, and abuses of foreign workers; the government is taking action to combat these problems. Also, I note some countries employ unlawful methods to obtain U.S. economic and intelligence information.

POLICIES

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." *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to this adjudicative guideline, are set forth and discussed in the conclusions below.

On August 16, 2000, the Assistant Secretary of Defense, Command, Control, Communications, and Intelligence (ASD/C3I) issued a passport policy clarification pertaining to Adjudicative Guideline C, Foreign Preference. The memorandum states, 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.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." (Directive, ¶ E2.2.1.) An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. (*Id.*) An administrative judge should consider the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the 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. (*Id.*)

Initially, the government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. (Directive, ¶ E3.1.14.) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. (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). "Any doubt as to whether

access to classified information is clearly consistent with national security will be resolved in favor of the national security." (Directive, ¶ E2.2.2.)

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. (Exec. Ord. 10865, § 7.) It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

CONCLUSIONS

I considered carefully all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Guideline C, Foreign Preference

Under Guideline C, Foreign Preference, the security concern is that "[w]hen 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." (Directive, ¶ E2.A3.1.1.**)**

Paragraph E2.A3.1.2.1 of the Directive indicates it is potentially disqualifying where an Applicant exercises dual citizenship. Obtaining and using a foreign passport constitutes the exercise of foreign citizenship. Similarly, the "[p]ossession and/or use of a foreign passport" may raise a security concern under ¶ E2.A3.1.2.2 of the Directive. In this case, Applicant exercised his rights as a citizen of Taiwan several times after becoming a U.S. citizen by renewing his Taiwanese passport and residing in Taiwan as a Taiwanese citizen for about two years. While it is completely lawful for U.S. citizens to retain and exercise dual citizenship (*see Afroyim v. Rusk*, 387 U.S. 253 (1967)), it can create concerns for those seeking a security clearance. The available evidence raises security concerns under these potentially disqualifying conditions.

Department Counsel argues that Applicant has failed to prove that he properly surrendered his foreign passport as required by the Money Memorandum. (FORM at 6.) However, Department Counsel accepted that Applicant renounced his Taiwanese citizenship; renunciation of citizenship requires the destruction or surrender of current passports.

Under ¶ E2.A3.1.2.3 of the Directive, "military service or a willingness to bear arms for a foreign country" is potentially disqualifying. Applicant served in the Taiwanese army for two years to fulfill his compulsory service obligation. The facts raise this potential security concern.

Paragraph E2.A3.1.2.6 of the Directive provides that "using foreign citizenship to protect financial or business interests in another country" can raise possible security concerns. Applicant renewed his Taiwanese passport the day before he became a U.S. citizen (and thereafter maintained his dual citizenship) in order to qualify for preferential tax treatment for real estate in his name in Taiwan. I find this potentially disqualifying condition is raised in this case.

The Directive sets out conditions that could mitigate these security concerns. Under ¶ E2.A3.1.3.1 of the Directive, it is potentially mitigating where "[d]ual citizenship is based solely on parent's citizenship or birth in a foreign country." Although Applicant's Taiwanese citizenship arose from his birth in that country, he also formally exercised that citizenship by thereafter renewing and using a Taiwanese passport. This potentially mitigating condition does not apply.

Under ¶ E2.A3.1.3.2 of the Directive, it may be mitigating where "indicators of possible foreign preference (e.g., foreign military service) occurred before obtaining United States citizenship." Applicant's compulsory military service occurred before he immigrated to the U.S., therefore this potentially mitigating condition applies.

Paragraph E2.A3.1.3.4 of the Directive provides that it may be mitigating where the applicant "has expressed a willingness to renounce dual citizenship." In his answer to the SOR, Applicant indicated that he renounced his Taiwanese citizenship. In the FORM, the Department Counsel acknowledged applicant's evidence of renunciation. I find this potentially mitigating condition applies.

Guideline B, Foreign Influence

Under the Directive, ¶ E2.A2.1.1, the security concern under Guideline B, Foreign Influence, is that:

A security risk may exist when an individual's immediate family, including cohabitants, or other persons to whom he 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.

Paragraph E2.A2.1.2.1 of the Directive provides that it may be disqualifying if "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." Paragraph E2.A2.1.3.1 defines "immediate family members" to include a spouse, father, mother, sons, daughters, brothers, and sisters. Applicant's wife and his father are citizens of Taiwan, permanently residing in the U.S. Also, his wife's father, mother, sister and brother are citizens and residents of Taiwan, and it may be presumed that Applicant has close ties of affection or obligation to his in-laws. Thus, this potentially disqualifying condition applies.

Under the Directive, this potentially disqualifying condition can be mitigated under certain circumstances. Where the Government produces substantial evidence establishing a disqualifying condition, an applicant has the burden to produce evidence to rebut, explain, extenuate, or mitigate the condition. Directive, ¶ E3.1.15. The government never has the burden of disproving a mitigating condition. ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Paragraph E2.A2.1.3.1 of the Directive provides that it is potentially mitigating where the "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 involved and the United States." Notwithstanding the facially disjunctive language, applicants must establish: (1) that the individuals in question are not "agents of a foreign power," and (2) that they are not in a position to be exploited by a foreign power in a way that could force the applicant to chose between the person(s) involved and the United States. ISCR Case No. 02-14995 at 5 (App. Bd. Jul. 26, 2004).

In 50 U.S.C.A. § 438(6), the federal statute dealing with national security and access to classified information, the U.S. Congress adopted the definitions of the phrases "foreign power" and "agent of a foreign power" from 50 U.S.C.A. § 1801(a) and (b). 50 U.S.C. § 1801(b) defines "agent of a foreign power"to include anyone who acts as an officer or employee of a foreign power engaged in international terrorism, or engages in clandestine intelligence activities in the U.S. contrary to the interests of the U.S. or that may involve a violation of the criminal statutes of the United States. oreover, the statutory definition for "agent of a foreign power" was explicitly included in Executive order 12968, Aug.2, 1995, part 1.1f, which established "a uniform Federal personnel security program for employees who will be considered for initial or continuing access to classified information."

The Appeal Board, however, has adopted a broader definition of the phrase "agent of a foreign power." The Appeal Board has held that, "An employee of a 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 Foreign Influence Mitigating Condition 1." ISCR Case No. 02-24254, 2004 WL 2152747 (App. Bd. Jun. 29, 2004). *See also* ISCR Case No. 03-04090 at 5 (App. Bd. Mar. 3, 2005) (employee of the Israeli government is an agent of a foreign power) and ISCR Case No.02-29143 at 3 (App. Bd. Jan. 12, 2005) (a member of a foreign military is an agent of a foreign power).

In this case, the evidence demonstrates that Applicant's father was formerly an employee of the Taiwanese government, but is now retired and receives a pension. The Appeal Board has declared that an individual who is retired from a foreign government position and receiving a pension is not an "agent of a foreign power" under the Directive. (ISCR Case No. 03-17071 at 3 (App. Bd. Nov. 22, 2006).)

The second prong of the test is whether the relatives in question are "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." A federal statute, 50 U.S.C.A. § 1801(a), defines "foreign power" to include: a foreign government; a faction of a foreign

nation; an entity openly acknowledged by a foreign government to be controlled by that foreign government; a group engaged in international terrorism; a foreign-based political organization; or an entity directed and controlled by a foreign government. The Appeal Board also construes the term "foreign power" broadly. As noted above, Applicant indicated that none of his immediate family members or the members of his wife's family worked for the Taiwanese government. However, Applicant provided no information indicating whether his relatives are or were associated with or subject to the influence of a "foreign power" as defined above.

An important factor for consideration is the character of the foreign power, including the government and entities controlled by the government, within the relevant foreign country. This factor is not determinative; it is merely one of many factors which must be considered. Of course, nothing in Guideline B suggests it is limited to countries that are hostile to the United States. *See* ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002); ISCR Case No. 00-0489 at 12 (App. Bd. Jan. 10, 2002). The Appeal Board repeatedly warns against "reliance on overly simplistic distinctions between 'friendly' nations and 'hostile' nations when adjudicating cases under Guideline B." ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002). It is well understood that "[t]he 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). Distinctions between friendly and unfriendly governments must be made with extreme caution. Relations between nations can shift, sometimes dramatically and unexpectedly. Moreover, even friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, friendly nations have engaged in espionage against the United States, especially in economic, scientific, military, and technical fields. ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002). Nevertheless, the relationship between a foreign government and the U.S. may be relevant in determining whether a foreign government or an entity it controls is likely to attempt to exploit a resident or citizen to against the U.S. through the applicant. The nature of the foreign government might also relate to the question of whether the foreign government or an entity it controls would risk jeopardizing its relationship with the U.S. by exploiting or threatening its private citizens in order to force a U.S. citizen to betray this country. The Appeal Board has specifically held that it is error for an administrative judge to fail to consider a hostile relationship between the U.S. and a foreign country. ISCR Case No. 02-13595 at 4 (App. Bd. May 10, 2005). The Appeal Board has held that "a country's poor human rights record and its differences with the United States on important security issues such as terrorism are factors" that a judge must consider. ISCR Case No. 04-05317 at 5 (App. Bd. June 3, 2005). A friendly relationship is not determinative, but it may make it less likely that a foreign government would attempt to exploit a U.S. citizen through relatives or associates in that foreign country.

As noted above, the U.S. and Taiwan have a history of friendly relations making it less likely that the government would attempt coercive means to obtain sensitive information. It does not eliminate the possibility that a foreign power would employ some non-coercive measures in an attempt to exploit his relatives, however. Applicant has the burden of presenting information that would mitigate these concerns. He has shown that his immediate family members are permanent residents of the U.S., who visit Taiwan only occasionally. Their physical location in the U.S. substantially reduces the possibility of exploitative measures by a foreign power. On the other hand, his spouse's family members are citizens or residents of Taiwan. I conclude this potentially mitigating condition applies only in part.

Under ¶ E2.A2.1.3.3 of the Directive, it may also be mitigating where "[c]ontact and correspondence with foreign citizens are casual and infrequent." It may be presumed that an individual has close ties of affection or obligation to members of their immediate family. As discussed above, applicant's wife and father are citizens of Taiwan. Moreover, Applicant has not presented evidence to persuade me that his or his wife's contact with her relatives is "casual and infrequent." I conclude this potentially mitigating condition does not apply.

Whole Person Concept

I considered carefully all the potentially disqualifying and mitigating conditions in this case in light of the "whole person" concept, keeping in mind that any doubt as to whether access to classified information is clearly consistent with national security must be resolved in favor of the national security. Applicant is a mature individual with many years of experience in positions of responsibility. Clearly, Applicant has strong ties to this country: his mother and siblings are U.S. citizens, his father and spouse are permanent residents, and much of his professional experience is with U.S. firms.

Indeed, he renounced his Taiwanese citizenship in an effort to resolve that security concern.

At the same time, Applicant's has strong, continuing ties to Taiwan. He held dual citizenship for many years and renewed his Taiwanese passport while he was a U.S. citizen. Moreover, he lived in Taiwan as a dual citizen between about 2000 and 2002. His wife and father are Taiwanese citizens and both maintain ties with that country. Most of his wife's family members are citizens and residents of Taiwan, and she stays in regular contact with them. Balancing these potentially disqualifying and mitigating conditions in light of all the evidence, I conclude Applicant has not mitigated the potential security concerns arising from his ties with Taiwan.

FORMAL FINDINGS

My conclusions as to each allegation in the SOR are:

Paragraph 1, Guideline C: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: Against Applicant

Subparagraph 1.i: For Applicant

Paragraph 2, Guideline B: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: Against Applicant

Subparagraph 2.d: Against Applicant

DECISION

In light of all of 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.

Michael J. Breslin

Administrative Judge