

DATE: November 20, 2007

_____)	
In re:)	
)	
-----)	ISCR Case No. 07-03024
SSN: -----)	
)	
Applicant for Security Clearance)	
_____)	

**DECISION OF ADMINISTRATIVE JUDGE
MARK W. HARVEY**

APPEARANCES

FOR GOVERNMENT

Alison O'Connell, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant was born in the United States; however, he returned to Taiwan when he was five weeks old, where he grew to an adult. In 2000, after he completed his 2-years of mandatory military service in the Taiwan military, he returned to the United States. He visited Taiwan in 2001, 2002, 2003, 2005, and 2006. He has retained his Taiwan passport. His parents are citizens and residents of Taiwan. His spouse is a citizen of the Peoples Republic of China (PRC), and a permanent resident of the United States. His mother-in-law and father-in-law are citizens and residents of the PRC. Although he has substantial connections to the United States, foreign preference and foreign influence security concerns are not mitigated.

STATEMENT OF THE CASE

On August 3, 2004, Applicant submitted a Security Clearance Application (SF 86).¹ On June 7, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, modified and revised.² The SOR alleges security concerns under Guidelines C (Foreign Preference) and B (Foreign Influence). The SOR 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 him, and recommended referral to an administrative judge to determine whether his security clearance should be granted, continued, denied, or revoked.

In an answer dated June 25, 2007, Applicant responded to the SOR allegations, and elected to have his case decided on the written record in lieu of a hearing.³ A copy of the file of relevant material (FORM), dated August 20, 2007, was provided to him on August 28, 2007, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation.⁴ Submissions were due by September 27, 2007.⁵ Applicant did not provide any submissions. The case was assigned to me on November 2, 2007.

PROCEDURAL RULING

Department Counsel requested administrative notice of the facts in the FORM concerning the PRC and Taiwan (FORM at page 2-9). Department Counsel also provided supporting documents to show the basis for the facts in the FORM (Ex. I to XIV—listed in FORM at 8-9). Applicant did not object to me taking administrative notice.

Administrative or official notice is the appropriate type of notice used for administrative proceedings. *See* ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004)); *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)).

¹Item 6 (Standard Form (SF) 86, Security Clearance Application, EPSQ Version 2.2., dated August 3, 2004). There is no allegation of falsification of this SF 86.

²On August 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised Adjudicative Guideline to all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated January 1987, as amended, in which the SOR was issued on or after September 1, 2006. The revised Adjudicative Guidelines apply to this case.

³Item 4 (Applicant's response to SOR, dated June 25, 2007).

⁴Defense Office of Hearings and Appeals (DOHA) transmittal letter is dated August 21, 2007, and Applicant's receipt is dated August 28, 2007.

⁵*Id.* The DOHA transmittal letter informed Applicant that he had 30 days after Applicant's receipt to submit information.

The most common basis for administrative notice at ISCR proceedings, is to notice facts that are either well known or from government reports. *See* Stein, ADMINISTRATIVE LAW, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice). I took administrative notice of the facts under subheading “Taiwan” of this decision, which are derived from the FORM and Exhibits I to XIV.

FINDINGS OF FACT

In his response to the SOR, Applicant admitted his connections to Taiwan and the PRC with explanations. He also described substantial connections to the United States. His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is 33 years old.⁶ He was born in the United States. His grandmother took him to Taiwan when he was five months old. He served in Taiwan’s Coast Guard from 1998 to 2000. Taiwan law requires two years of Taiwan military service. He first learned of his U.S. citizenship when he was 25 years old after completing one year of Taiwan military service. In 2002, after returning to the United States, he received a Master of Science degree from a U.S. university. He married in May 2004. His son was born in the United States in July 2005. He and his wife are expecting their second child to be born in November 2007. He has not served in the U.S. military and has not registered with the U.S. selective service system. He traveled to Taiwan in 2001, 2002, 2003, 2005, and 2006. He traveled to the PRC in 2006. His trips to Taiwan and the PRC were to visit family, and not for any political activities.

Applicant received a Taiwan passport in 2000, and it expires on October 31, 2010. He continues to maintain his Taiwan passport because it allows him to stay in Taiwan more than 30 days without a visa. He does not intend to renew his Taiwan passport after 2010. The FORM at page 12 notes that one Foreign Influence mitigating condition would be for Applicant to destroy, surrender, or otherwise invalidate his Taiwan passport. Applicant did not respond to the FORM. He did not offer to destroy, surrender, or otherwise invalidate his Taiwan passport prior to its expiration date in 2010 (although he did indicate he did not intend to renew it). He used his U.S. passport for his visit to Taiwan in 2006; however, he used his Taiwan passport for his visit to Taiwan in 2005 (Item 5 at 4).

Applicant met his future wife when they were both attending the same U.S. university. She received her undergraduate degree from a Chinese university. His wife had no connection with the Chinese government. His wife is currently a U.S. permanent resident. She will become a U.S. citizen at the end of 2008 after she completes the required three years as a U.S. permanent resident.

Applicant’s parents are citizens and residents of Taiwan. His father has substantial connections to the United States. His father attended a U.S. university, and worked for five years in the United States. His parents do not work for the Taiwan government, and are not involved in Taiwan’s political activities, except to vote. During the past seven years, his mother has

⁶Item 4, *supra* n. 3, is the source for all the Findings of Facts unless otherwise stated.

visited Applicant's family and his sister in the United States every year. His father intends to visit Applicant's family in 2007.

Applicant's brother and sister have manifested significant connections to the United States. She graduated from a U.S. university in 2005, and returned to Taiwan for two years because she could not find an employer who would sponsor her H-1 visa. She intends to begin her PhD program in August 2007 at a U.S. university. Her brother will begin attending a U.S. university for his graduate studies in August 2007. Both of his siblings intend to remain in the United States after completing their studies.

Applicant's mother-in-law and father-in-law are PRC citizens and residents. They are retired. Neither of them are PRC government employees or involved in political activities. His mother-in-law stayed in the United States with Applicant's family for a year (2005-2006). Applicant plans to apply for U.S. permanent residency for his in-laws after his wife becomes a U.S. citizen.

Applicant and his spouse plan to remain in the United States, raise their children as U.S. citizens, and eventually to retire in the United States. He has substantial U.S. financial interests, and owns a U.S. home. He is proud of his U.S. citizenship and is loyal to the United States.

Taiwan⁷

In 1949, a large number of Chinese war refugees emigrated to Taiwan, and established a government separate and independent from the mainland government. The PRC continues to refuse recognition of Taiwan's independence, and insists that there is only "one China." In 1979, the United States recognized the PRC as the sole legal government of China. The United States is committed to a "one-China policy," under the 1979 Taiwan Relations Act.

Taiwan is a multi-party democracy with a strong economy. Taiwan maintains a large military establishment primarily because of the PRC's threats of military attack. The PRC and Taiwan are active collectors of U.S. economic intelligence, and Taiwan and the PRC have attempted to acquire export-restricted products.

Several incidents (unrelated to Applicant) illustrate a potential security concern involving Taiwan and/or the PRC. Several individuals have been convicted and sentenced to prison terms on charges related to the theft of sensitive or proprietary information for Taiwan companies or the PRC.

The PRC maintains active intelligence operations in Taiwan utilizing PRC nationals with Taiwan connections. The PRC is a nuclear power with vast resources, and the PRC aggressively competes with the United States in a variety of areas. The PRC's competitive relationship with the United States exacerbates the risk posed by Applicant's connections to Taiwan.

⁷The contents of the Taiwan section are from the FORM and Exhibits I to XIV, as indicated in the Procedural Ruling.

POLICIES

In an evaluation of an applicant's security suitability, an administrative judge must consider the "Adjudicative Guidelines for Determining Eligibility For Access to Classified Information" (AG(s)). The AGs include brief introductory explanations for each AG, and provide specific disqualifying conditions and mitigating conditions.

These AGs are not inflexible ironclad rules of law. Instead, recognizing the complexities of human behavior, an administrative judge should apply the AGs in conjunction with the factors listed in the adjudicative process. AG ¶ 2. An administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," an administrative judge should consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. AG ¶ 2(c).

Specifically, an administrative judge should consider the nine adjudicative process 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) extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent 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." AG ¶ 2(a).

Since the protection of the national security is the paramount consideration, the final decision in each case is arrived at by applying the standard that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." AG ¶ 2(b). In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The Government initially has the burden of producing evidence to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to produce evidence and prove a mitigating condition.⁸ Directive ¶ E3.1.15 provides, "The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision." The burden of disproving a mitigating condition never shifts to the Government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).⁹

⁸ Facts must be established by "substantial evidence," which is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge's] finding from being supported by substantial evidence." *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620 (1966). "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. This special relationship requires a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

The scope of my decision is limited. Nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. Executive Order 10865, § 7.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to the allegations set forth in the SOR:

Foreign Preference

AG ¶ 9 articulates the Government's concern about foreign preference, stating, "when an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States." Conditions under AG ¶ 10 that could raise a security concern and may be disqualifying in this case include:

(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to:

- (1) possession of a current foreign passport;
- (2) military service or a willingness to bear arms for a foreign country;
- (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;
- (4) residence in a foreign country to meet citizenship requirements;

⁹"The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant's past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15." ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

- (5) using foreign citizenship to protect financial or business interests in another country;
- (6) seeking or holding political office in a foreign country;
- (7) voting in a foreign election;
- (b) action to acquire or obtain recognition of a foreign citizenship by an American citizen;
- (c) performing or attempting to perform duties, or otherwise acting, so as to serve the interests of a foreign person, group, organization, or government in conflict with the national security interest; and,
- (d) any statement or action that shows allegiance to a country other than the United States: for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship.

Applicant became a U.S. citizen by virtue of his birth in the United States. His grandmother took him to Taiwan, where he was raised, received educational benefits, performed military service, and exercised other attributes of Taiwan citizenship. He retained a Taiwan passport after immigrating back to the United States in 2000, and used it as recently as 2005 to enter Taiwan. Disqualifying conditions under AG ¶ 10(a)(1)-10a(3) apply.

Under AG ¶ 11, conditions that could mitigate security concerns include:

- (a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;
- (b) the individual has expressed a willingness to renounce dual citizenship;
- (c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;
- (d) use of a foreign passport is approved by the cognizant security authority.
- (e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated; and,
- (f) the vote in a foreign election was encouraged by the United States Government.

Applicant continues to retain his Taiwan passport. None of the mitigating conditions apply with respect to his use of a Taiwan passport after his residence changed to the United States (2002 to 2005) and continued possession of a Taiwan passport. The cognizant security authority did not authorize him to use the Taiwan passport. His other foreign preference security

concerns are mitigated because he was brought to Taiwan when he was a baby and had no real choice about receiving benefits from Taiwan or providing military service to Taiwan.

Foreign Influence

AG ¶ 6 explains the Government's concern about "foreign contacts and interests" stating, "if the individual has divided loyalties or foreign financial interests, [he or she] may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism."

AG ¶ 7 indicates conditions that could raise a security concern and may be disqualifying in this case include:

- (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information;
- (c) counterintelligence information, that may be classified, indicates that the individual's access to protected information may involve unacceptable risk to national security;
- (d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion;
- (e) a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation;
- (f) failure to report, when required, association with a foreign national;
- (g) unauthorized association with a suspected or known agent, associate, or employee of a foreign intelligence service;
- (h) indications that representatives or nationals from a foreign country are acting to increase the vulnerability of the individual to possible future exploitation, inducement, manipulation, pressure, or coercion; and,

(i) conduct, especially while traveling outside the U.S., which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country.

Applicant traveled to Taiwan in 2001, 2002, 2003, 2005, and 2006, and he traveled to the PRC in 2006. He had contact with family members living in Taiwan and the PRC. Family members also visited Applicant in the United States. The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country, and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. *See* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

Applicant has frequent contacts and close relationships with his parents, who are residents and citizens of Taiwan, and his siblings, who are citizens of Taiwan. His close relationship with his parents, creates a heightened risk of foreign pressure or attempted exploitation because PRC agents reside in Taiwan and actively seek intelligence, classified and economic information from United States' businesses. His connections to his Taiwanese parents also create a potential conflict of interest because his relationships are sufficiently close to raise a security concern about his desire to help his parents or Taiwan by providing sensitive or classified information. The disqualifying conditions outlined in AG ¶¶ 9(a) and 9(b) apply.

The Government produced substantial evidence of these two disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove a mitigating condition. As previously indicated, the burden of disproving a mitigating condition never shifts to the Government. AG ¶ 8 lists six conditions that could mitigate security concerns including:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and,

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

AG ¶¶ 8(a) and 8(c) do not apply. Applicant did not establish “it is unlikely [he] will be placed in a position of having to choose between the interests of [his siblings] and the interests of the U.S.” His frequent contacts and close relationships with his Taiwanese family members and his PRC in-laws could potentially force him to choose between the United States and the PRC or Taiwan. He did not meet his burden of showing there is “little likelihood that [his relationships with his siblings] could create a risk for foreign influence or exploitation.”

AG ¶ 8(b) partially applies because Applicant has “such deep and longstanding relationships and loyalties in the U.S., [he] can be expected to resolve any conflict of interest in favor of the U.S. interest.” He has lived in the United States since 2002. He is a U.S. citizen from his birth in the United States. His wife plans to become a U.S. citizen, and his son was born in the United States. His next child will be born in the United States. Other relatives are in the process to moving to the United States, and/or becoming permanent U.S. residents and/or U.S. citizens. AG ¶ 8(f) applies because he has no interest in property in Taiwan or the PRC and he has significant U.S. property and assets. Although these two mitigating conditions are partially or fully applicable, they are insufficient to fully overcome the foreign influence security concerns.

“Whole Person” Analysis

In addition to the enumerated disqualifying and mitigating conditions as discussed previously, I have considered the general adjudicative AGs related to the whole person concept under Directive ¶ E2.2.1. “Under the whole person concept, the Administrative Judge must not consider and weigh incidents in an applicant’s life separately, in a piecemeal manner. Rather, the Judge must evaluate an applicant’s security eligibility by considering the totality of an applicant’s conduct and circumstances.”¹⁰ The directive lists nine adjudicative process factors (APF) which are used for “whole person” analysis. Because foreign influence does not involve misconduct, voluntariness of participation, rehabilitation and behavior changes, etc., the eighth APF, “the potential for pressure, coercion, exploitation, or duress,” Directive ¶ E2.2.1.8, is the most relevant of the nine APFs to this adjudication.¹¹ In addition to the eighth APF, other

¹⁰ ISCR Case No. 03-04147 at 3 (App. Bd. Nov. 4, 2005) (quoting ISCR Case No. 02-01093 at 4 (App. Bd. Dec. 11, 2003)); ISCR Case No. 05-02833 at 2 (App. Bd. Mar. 19, 2007) (citing *Raffone v. Adams*, 468 F.2d 860 (2nd Cir. 1972) (taken together, separate events may have a significance that is missing when each event is viewed in isolation).

¹¹ See ISCR Case No. 02-24566 at 3 (App. Bd. July 17, 2006) (stating that an analysis under the eighth APF apparently without discussion of the other APFs was sustainable); ISCR Case No. 03-10954 at 5 (App. Bd. Mar. 8, 2006) (sole APF mentioned is eighth APF); ISCR Case No. 03-17620 at 4 (App. Bd. Apr. 17, 2006) (remanding grant of clearance because Judge did not assess “the realistic potential for exploitation”), but see ISCR Case No. 04-00540 at 6 (App. Bd. Jan. 5, 2007) (rejecting contention that eighth APF is exclusive circumstance in whole person analysis in foreign influence cases).

“[a]vailable, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.” Directive ¶ E2.2.1. Ultimately, the clearance decision is “an overall common sense determination.” Directive ¶ E2.2.3.

The Appeal Board requires the whole person analysis address “evidence of an applicant’s personal loyalties; the nature and extent of an applicant’s family’s ties to the U.S. relative to his [or her] ties to a foreign country; his or her ties social ties within the U.S.; and many others raised by the facts of a given case.” ISCR Case No. 04-00540 at 7 (App. Bd. Jan. 5, 2007).

Substantial mitigating evidence weighs towards grant of Applicant’s security clearance. Applicant has lived in the United States for approximately five years and has been a U.S. citizen from birth. His spouse is a permanent U.S. resident and plans to become a U.S. citizen next year. His son is a U.S. citizen by birth, and his next child will be a U.S. citizen. Other family members are in the process of enhancing their connections to the United States. His ties to these family members are stronger than his ties to family members in Taiwan or the PRC. His closest family members are his wife and son. They live with him. Because his wife and son live in the United States, they are not vulnerable to direct coercion or exploitation by a foreign power. The realistic possibility of pressure, coercion, exploitation or duress with regard to his wife and son are low. He owns his U.S. home, and his U.S. financial interests are significant. He has no financial interests in Taiwan or the PRC. There is no evidence he has ever taken any action which could cause potential harm to the United States. His response to the FORM credibly articulates his strong loyalty to the United States.

Five circumstances weigh against Applicant in the whole person analysis. First, the PRC is a nuclear power and PRC’s government is a rival of the United States. More importantly for security purposes, the PRC and Taiwan actively seek classified and industrial/economic information. They may attempt to use his family living in Taiwan or his in-laws living in the PRC to obtain such information. Second, he had significant connections to Taiwan before he returned to the United States. He was raised to adult, and served in the Taiwanese military for two years. Third, his siblings and parents are Taiwanese citizens, and his parents still live in Taiwan. His in-laws are citizens and residents in the PRC. Fourth, he has frequent and non-casual contact with his family members in Taiwan and his in-laws in the PRC. In the last seven years, he visited Taiwan five times, and the PRC once in 2006. His contacts with family members and in-laws are manifestations of his affection and regard for them. Fifth, he retained a Taiwan passport. After receipt of the FORM, containing notification of the security concerns regarding his Taiwan passport, he did not divest himself of his Taiwan passport.

“Because of the extreme sensitivity of security matters, there is a strong presumption against granting a security clearance. Whenever any doubt is raised . . . it is deemed best to err on the side of the government’s compelling interest in security by denying or revoking [a] clearance.” *Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir. 1990). After weighing the disqualifying and mitigating conditions, all the facts and circumstances, in the context of the whole person, I conclude he has not mitigated the security concerns pertaining to foreign preference or foreign influence. Ultimately, the evidence leaves me with doubts as to Applicant’s security eligibility and suitability.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my “careful consideration of the whole person factors” and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the AGs. *See* ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 006). Applicant has not mitigated or overcome the government’s case. For the reasons stated, I conclude he is not eligible for access to classified information.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline C:	AGAINST APPLICANT
Subparagraphs 1.a to 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraphs 2.a to 2.g:	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 or continue eligibility for a security clearance for Applicant. Clearance is denied.

Mark W. Harvey
Administrative Judge