



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:	)	
	)	
	)	ISCR Case No. 07-03204
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Eric Borgstrom, Esquire, Department Counsel  
For Applicant: Pro Se

January 14, 2009

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**Decision**

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HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant's eligibility for access to classified information is granted.

Applicant submitted his Security Clearance Application (SF 86), on September 27, 2007. On September 12, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant received the SOR, which he answered in writing on September 18, 2008. He requested a hearing before an administrative judge. DOHA received the request on September 25, 2008. Department Counsel was prepared to proceed on

October 9, 2008, and I received the case assignment on October 21, 2008. DOHA issued a notice of hearing on November 10, 2008, and I convened the hearing as scheduled on December 10, 2008. The government offered eight exhibits (GE), 1 through 8, which were received and admitted into evidence without objection. Applicant and one witness testified on his behalf. He submitted seven exhibits (AE), A through G, which were received and admitted into evidence without objection. In addition, the government offered GE 9 and the Applicant offered two decisions by colleagues, which are marked as Hearing Exhibit 1. These exhibits were admitted for administrative notice purposes only. The record closed on December 10, 2008. DOHA received the transcript of the hearing (Tr.) on December 16, 2008.

## **Procedural and Evidentiary Rulings**

### **Request for Administrative Notice**

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Taiwan. (Tr. 16.) The request and the attached documents were not admitted into evidence, but were included in the record as GE 9. Applicant submitted two recent decisions by DOHA administrative judges, who granted clearances to individuals from Taiwan, which are marked as Hearing Exhibit 1, asked that I take administrative notice of these decisions. (Tr. 38.) The facts administratively noticed are set out in the Findings of Fact, below.

### **Findings of Fact**

In his Answer to the SOR, dated September 25, 2008, Applicant admitted the factual allegations in the SOR, with explanations. He also provided additional information to support his request for eligibility for a security clearance. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.<sup>1</sup>

Applicant, who is 50 years old, works as an engineer and technical staff person for a Department of Defense contractor. He has worked for this contractor since 2003.<sup>2</sup>

Applicant, the youngest of six sons,<sup>3</sup> was born and raised in Taiwan. He graduated from a public Taiwanese university with a degree in mechanical engineering in 1980. Upon his graduation, he served his legally required two years of duty in the Taiwan military, performing administrative duties. He achieved the rank of sergeant and received an honorable discharge. He did not hold a security clearance while in the

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<sup>1</sup>Response to SOR.

<sup>2</sup>GE 1 (Applicant's security clearance application, dated September 27, 2007).

<sup>3</sup>Two brothers died in separate accidents in 1976. Tr. 56-57.

military. Two brothers also served in the Taiwan military as required by law. His third brother was exempt from service because he did not meet the height requirement.<sup>4</sup>

In June 1983, Applicant married a Taiwanese woman. Shortly thereafter, they immigrated to the United States (U.S.) and he entered graduate school. He completed a master's degree at a major U.S. university. He has worked in the U.S. at U.S. companies since his graduation. He and his wife have two children, ages 16 and 14, who are U.S. citizens by birth and reside in the U.S. He became a naturalized citizen in 1996. His wife is also a U.S. citizen. In 2002, they adopted his wife's Taiwanese niece under U.S. law to help her obtain a better education. In 2007, he and his wife divorced. They have joint and shared physical custody of their two children. Since the divorce, Applicant has had little contact with his adopted daughter (niece), who is a college student, a Taiwan citizen and a permanent U.S. resident. She is now eligible for U.S. citizenship and plans to apply for it.<sup>5</sup>

Applicant's mother died in an earthquake in 1999. His father received injuries in the same earthquake. His father died in 2007. In the last few years prior to his death, Applicant's father required extensive hospital care. Because of his father's health issues, Applicant visited his father five times between December 2003 and August 2007. Applicant returned to Taiwan for his father's funeral in October 2007. Six weeks after his father's funeral, Applicant returned to Taiwan once more to sign papers relinquishing any inheritance rights under his father's estate. He saw his brothers during these visits.<sup>6</sup>

Applicant's three living brothers are citizens of and reside in Taiwan. One brother works in fundraising for a private university in Taiwan. In November 2008, a second brother retired, after 30 years, from his human resources job at a private company. His retirement income comes from investments, not the Taiwanese government. His third brother closed his fish farm. He now works for a private security company at desk security for his residence. Applicant considers this brother semi-retired. Two brothers are married and one is divorced. All three have children in Taiwan. His two sisters-in law work for private companies. His brothers have not held political office or worked in a government job. One brother has traveled to the U.S. to raise money for his university, and while in the U.S., stayed one night with Applicant. Since his father died 15 months ago, Applicant's contacts with his older brother have declined to about twice a year. His contacts with his other brothers are about twice a year. He has two aunts still alive and living in Taiwan. He has not had any contact with them since leaving Taiwan in 1983.<sup>7</sup>

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<sup>4</sup>Under the laws of Taiwan, all male citizens are required to serve in the military. Tr. 49-50, 63.

<sup>5</sup>GE 1, *supra* note 2; AE A (Adoption Judgment); AE B (College transcript for adopted daughter); Tr. 42-44, 51, 53-55.

<sup>6</sup>Response to SOR; Tr. 46-48.

<sup>7</sup>GE 1, *supra* note 2; AE D (Information on brother's employment with a private university); T.41-42, 44-45, 48, 56-62, 64.

Prior to his present employment, Applicant worked for two companies, which required him to travel to Taiwan on business. Between January 2001 and October 2003, Applicant made nine business trips to Taiwan. He traveled on his U.S. passport, which he has used for international travel since becoming a U.S. citizen.<sup>8</sup>

Applicant does not have any financial interest in Taiwan. All his financial interests are in the U.S. He owns a house, valued at \$500,000, and an investment property, valued at \$600,000. His debt on both properties totals \$530,000. He also has a 401K account and another retirement account, with a total value of approximately \$170,000. He pays his taxes every year and has voted in every U.S. election since becoming a citizen. He does not provide any financial support to his brothers in Taiwan.<sup>9</sup>

Applicant's department manager and former direct supervisor testified on his behalf. He describes Applicant as a conscientious, committed, motivated, honest, and intelligent worker with a very good work ethic. Applicant is an excellent performer with unique skills. The witness indicated that their work group does not normally handle classified information, but must test the technology hardware they develop in a classified laboratory. Occasionally, his staff may have access to classified information and future projects may necessitate a security clearance. He would trust Applicant with classified information.<sup>10</sup>

Applicant describes himself as a very loyal American. His closest ties are to his two children who live in the U.S. He has chosen to invest in the U.S., not Taiwan. He intends to remain in the U.S., where he has deep roots.<sup>11</sup>

I take administrative notice of the following facts. In 1949, Chinese refugees fled a civil war in mainland China to the Island of Taiwan. That same year, Communists in mainland China established the Peoples Republic of China (PRC), and these refugees established a separate, independent government in Taiwan. The PRC does not recognize Taiwan, and insists there is only "one China".

Taiwan is a multiparty democracy, a U.S. ally, and a major trading partner. Through nearly five decades of hard work and sound economic management, Taiwan has transformed itself from an underdeveloped, agricultural island to a power that is a leading producer of high-technology goods. On January 1, 1979, the U.S. formally recognized the PRC as the sole legal government of China. The U.S. also announced that it would maintain cultural, commercial, and other unofficial relations with the people on Taiwan. The Taiwan Relations Act (TRA),<sup>12</sup> which was signed into law on April 10,

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<sup>8</sup>Response to SOR; AE E; AE F; Tr. 46, 65.

<sup>9</sup>AE G (Retirement accounts); AE H (Deed); AE I (Deed); Tr. 56, 65, 67, 70.

<sup>10</sup>Tr. 19-27.

<sup>11</sup>*Id.* 42, 56, 70.

<sup>12</sup>22 U.S.C. §§ 3301-3316

1979, created the legal basis for the unofficial relationship between the U.S. and Taiwan.

Maintaining strong, unofficial relations with Taiwan is a major U.S. policy. The U.S. does not support Taiwan independence, but it does support Taiwan's membership in appropriate international organizations such as the World Trade Organization (WTO), which it joined in 2002, the Asia-Pacific Economic Cooperation (APEC) forum, and the Asian Development Bank. In addition, the U.S. supports appropriate opportunities for Taiwan's voice to be heard in organizations where its membership is not possible.

The TRA enshrines the U.S. commitment to help Taiwan maintain its defensive capability. The U.S. continues to sell appropriate defensive military equipment to Taiwan, in accordance with the TRA. President Bush publicly stated in 2001 that the U.S. would do "whatever it takes" to help Taiwan's defense and approved a substantial sale of U.S. weapons to Taiwan, including destroyers, anti-submarine aircraft, and diesel submarines.

More recently, U.S.-Taiwan relations have changed. Taiwan's new president disavowed key concepts long embraced by the opposing party - the "status quo" that there is only one China and Taiwan is part of it - and instead has adopted the more provocative position that Taiwan already "is an independent, sovereign country," a "status quo" he promises to maintain. While still pursuing a close relationship with Taiwan, U.S. officials now appear to be balancing criticisms of the PRC military buildup opposite Taiwan with periodic cautions and warnings to the effect that U.S. support for Taiwan is not unconditional, but has limits.

Taiwan's Constitution provides its citizens with many rights similar to those provided to U.S. citizens. It has a good human rights record. It maintains a large military establishment whose primary mission is the defense of Taiwan against the PRC.<sup>13</sup> On the other hand, Taiwan is an active collector of defense, medical, economic, and computer information through industrial espionage. There are reports of cases involving the export of certain devices to Taiwan without approval of the Department of Commerce.

The government claims through Administrative Notice that Taiwan poses a threat to national security because, in the past, it was one of the countries most actively engaged in industrial espionage and the collection of foreign economic information. The request cites to the Annual Report to Congress on Foreign Economic Collection and Industrial Espionage of 2000. This report lists Taiwan as one of the most active collectors of industrial and economic intelligence. However, the government also attached to its request the more recent Annual report from 2005 which was dated August 2006. The report does not list Taiwan as being one of the biggest collectors of economic and industrial espionage. It does list the PRC and Russia as the most active collectors. The report states the U.S. is targeted by a large number of foreign countries for economic and industrial espionage. The report notes that the foreign private sector is

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<sup>13</sup>The PRC's Military Intelligence Department's main intelligence target is Taiwan.

the most active collector of this type of economic and industrial intelligence, but there is ample evidence that foreign intelligence services and other government organizations remain aggressive in collecting information by using the private sector to collect information for them and by their own continued direct intelligence gathering operations. Taiwan does not appear to be any more active in the collection of economic and industrial intelligence than many other allied countries.

The government also presented information concerning individuals in the U.S. convicted of engaging in espionage practices on behalf of Taiwanese companies or officials, as well as companies that violate export control requirements in sending items to Taiwan. Where companies are involved, the government has not identified any specific individuals of Taiwanese descent as the person responsible for the decision to violate U.S. law. Some of these cases involve individuals in the U.S., native born and foreign born and citizens and non-citizens of the U.S., that formed friendships with Taiwan Intelligence agents and then provided the agents with classified information. While the government presented information only on Taiwan cases, it is not difficult to assume that there are cases that pertain to other countries as well. The fact that there are cases of Taiwan intelligence agents accepting intelligence information from sources in the U.S., no matter how obtained, does raise security concerns.

The geographical closeness of Taiwan and the PRC causes Taiwan concern and can lead it to engage in industrial, military, and economic espionage to ensure that it is strong enough to counter threats from the PRC. However, that threat is counterbalanced by the need of Taiwan to continue friendly relations with the U.S. as one of its prime protectors and sources of military equipment. The relationship between the U.S. and Taiwan is defined in the Taiwan Relations Act which recognizes Taiwan. Taiwan has a long history of friendly relations with the U.S., including substantial levels of foreign trade. Taiwan is an ally and friend, but also poses a security threat because of its activities and efforts to obtain economic, industrial, and national security information.<sup>14</sup>

## **Policies**

When evaluating an Applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The administrative judge must consider all available,

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<sup>14</sup>All of the information about Taiwan is contained in GE 9.

reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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. . . .” The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.<sup>15</sup>

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<sup>15</sup>After any decision, the losing party has a right to appeal the case to the Defense Office of Hearings and Appeals Appeal Board. The Appeal Board’s review authority is limited to determining whether three tests are met:

E3.1.32.1. The Administrative Judge’s findings of fact are supported by such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record. In making this review, the Appeal Board shall give deference to the credibility determinations of the Administrative Judge:

E# a.32.2. The Administrative Judge adhered to the procedures required by E.O. 10865 (enclosure 1) and this Directive: or

E3.1.32.3. The Administrative Judge’s rulings or conclusions are arbitrary, capricious, or contrary to law.

The Appeal Board does not conduct a “*de novo* determination”, recognizing they have no opportunity to observe witnesses and make credibility determinations. The Supreme Court in *United States v. Raddatz*, 447 U.S. 667, 690 (1980) succinctly defined the phrase “*de novo* determination”:

[This legal term] has an accepted meaning in the law. It means an independent determination of a controversy that accords no deference to any prior resolution of the same controversy. Thus, in *Renegotiation Board v. Bannerkraft Clothing Co.*, 415 U.S. 1, 23 [(1974)], the Court had occasion to define “*de novo* proceeding” as a review that was “unfettered by any prejudice from the [prior] agency proceeding and free from any claim that the [agency’s] determination is supported by substantial evidence” and, in *United States v. First City National Bank*, 386 U.S. 361, 368 [(1967)], this Court observed that “review *de novo*” means “that the court should make an independent determination of the issues” and should “not . . . give any special weight to the [prior] determination of “the administrative agency.”

(Internal footnotes omitted). See ISCR Case No. 07-10396 (App. Bd., Oct. 2, 2008) and ISCR Case No. 07-07144 (App. Bd., Oct. 7, 2008). In ISCR Case No. 05-01820 (App. Bd. Dec 14, 2006), the Appeal Board criticized the administrative judge’s analysis supporting grant of a clearance for a PRC-related Applicant, and then decided the case itself. Judge White’s dissenting opinion cogently explains why credibility determinations and ultimately the decision whether to grant or deny a clearance should be left to the judge who makes witness credibility determinations. *Id.* at 5-7. See also ISCR Case No. 04-06386 at 10-11 (App. Bd. Aug. 25, 2006)(Harvey, J., dissenting) (discussing limitations on Appeal Board’s authority to reverse hearing-level

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the 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.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline B, Foreign Influence**

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, 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.

Under the potential disqualifying conditions described in AG ¶ 7, the following conditions could raise a security concern and may be disqualifying in this case:

- (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; and
- (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.

Since his divorce, Applicant has not had any contact with his former wife's family. Thus, no security concern is raised by any contacts his former wife may have with her family. His two children are citizens and residents of the U.S. Thus, his relationship with his children is not a security concern. His adopted daughter (former wife's niece) is a permanent resident of the U.S., who is planning on becoming a U.S. citizen. She is in college. Since he does not have any contact with her following his divorce, there is no security concern related to her. However, Applicant's three brothers are citizens and residents of Taiwan. Applicant maintains a normal, but limited, familial relationship with his brothers. These relationships are not *per se* a reason to deny Applicant a security clearance. The government must establish that these family relationships create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion or would create a potential conflict of interest between his obligations to protect sensitive information and his desire to help his family members.

In determining if a heightened risk exists, I must look at Applicant's relationship and contacts with family members as well as the activities of the government of Taiwan. See ISCR Case No. 07-05809 (App. Bd. May 27, 2008). The risk that an Applicant could be targeted for manipulation or induced into compromising classified information is real, not theoretical. Applicant's relationship and contacts with his brothers in Taiwan raises a heightened risk of security concerns because Taiwan does engage in economic, industrial, and other types of espionage, and Taiwan officials and companies have engaged in such espionage with individuals in the U.S. There are no indications in these instances that Taiwan targets U.S. citizens to obtain protected information. Taiwan and its intelligence agents did receive protected information from persons in the U.S., but in these cases the information was offered to the agents by the U.S. citizens rather than Taiwan targeting the U.S. citizens by exploiting, manipulating, pressuring, or coercing U.S. citizens for protected information. The government has not established a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion by the geographic proximity of Taiwan to the PRC. The geographic closeness might induce Taiwan to obtain protected information from U.S. sources, but in obtaining that information Taiwan does not use tactics and methods that could cause issues with the U.S. as its main protector and supplier of military equipment.

Under the new guidelines, the potentially conflicting loyalties may be weighed to determine if an applicant can be expected to resolve any conflict in favor of the U.S. interest.<sup>16</sup> In determining if Applicant's contacts in Taiwan cause security concerns, I

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<sup>16</sup>Under the old adjudicative guidelines, a disqualifying condition based on foreign family members could not be mitigated unless an applicant could establish that the family members were not in a position to be exploited. The Appeal Board consistently applied this mitigating condition narrowly, holding that its underlying premise was that an applicant should not be placed in a position where he is forced to make a choice between the interest of the family member and the interest of the United States. (See, ISCR Case No. 03-17620, (App. Bd. Apr. 17, 2006); ISCR Case No. 03-24933, (App. Bd. Jul. 28, 2005); ISCR Case No. 03-02382, (App. Bd. Feb. 15, 2005); and ISCR Case No. 03-15205, (App. Bd. Jan. 21, 2005)). Thus, an administrative judge was not permitted to apply a balancing test to assess the extent of the security risk.

considered that Taiwan is an ally of the U.S., has a defense agreement with the U.S., and is a substantial trading partner of the U.S. I considered that the people of Taiwan enjoy basic freedoms similar to U.S. citizens. While the U.S. has a one-China policy, the U.S. does maintain cultural, commercial and other ties with Taiwan. I considered that Taiwan does engage in economic and other types of espionage. There are no indications in these instances that Taiwan was targeting U.S. citizens to provide economic or other sensitive information. While Taiwan is a country that is friendly to the U.S., it could engage in espionage against U.S. interests. Friendly countries may have profound disagreements with the U.S. or have engaged in espionage against U.S. economic, scientific, or technical interests. A friendly relationship is not determinative, but it makes it less likely that a foreign government would attempt to exploit a U.S. citizen through relatives or associates in that country. Taiwan is not a hostile country, nor are its interests inimical to the U.S. The U.S. and Taiwan are large democracies, enjoy good relations, and are trading partners. It is reasonable to consider that Taiwan would not take any action to jeopardize its friendly position with the U.S. because of its need for trade and defense assistance from the U.S. It would be considered an act unfriendly to the interest of the U.S. to coerce its citizens with relatives in the U.S. to pressure their U.S. relatives to provide economic or other espionage information against the interest of the U.S. Taiwan has cooperated with the U.S. in the investigation of espionage incidents with Taiwan. While none of the considerations by themselves dispose of the issue, they are all factors to be considered in determining Applicant's vulnerability to pressure or coercion from his family members in Taiwan. Because of his frequent trips to Taiwan between January 2001 and January 2008, which included contacts with his family members, the government has established that there is a heightened risk that Applicant will be targeted under AG ¶¶ 7(a) and (b).

In deciding if Applicant has submitted evidence of mitigation, under AG ¶ 8 (a), I must consider:

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.

and under AG ¶ 8(b), I must consider if

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. interests.

Applicant's normal relationship with his family members is not a basis to deny him a security clearance; however, his burden of proof on mitigation requires more than statements about the limited scope of his conversations with his three brothers. See ISCR Case No. 07-02485 (App. Bd. May 9, 2008). Applicant's three brothers have

never worked for the Taiwanese government nor held a political position. They do not rely upon the Taiwan government for their income or retirement benefits. Applicant provides no financial support to his brothers and relinquished all his rights to any inheritance he may have from his father's estate. His only financial interests are in the U.S., not Taiwan. Applicant's business trips to Taiwan ceased in 2003. He has voted in U.S. elections since he became a citizen in 1996. His children live in the U.S. Balancing these factors against Taiwan's espionage activities and the lack of evidence that Taiwan targets U.S. citizens for protected information, I find that Applicant would resolve any conflict in favor of the U.S. interests. Applicant has mitigated the government's security concerns as to his family contacts specified in SOR ¶ 1.a, 1.b and 1.c under AG ¶¶ 8a and 8b.

### **Whole Person Concept**

Under the whole person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. The "whole person" concept requires consideration of all available information about Applicant, not a single item in isolation, to reach a common sense determination concerning Applicant's security worthiness. Applicant's brothers in Taiwan work in private industry, not for the Taiwanese government. They are not politically active. They do not depend upon the government for income, even in their retirement. Given their circumstances and Applicant's strong ties to the U.S., it is unlikely Applicant will be placed in a position to choose between the interests of his family and the interest of the U.S. or be exploited, pressured, or coerced because of his brothers in Taiwan.

Applicant came to the U.S. more than 25 years ago, as a young man. He has lived most of his adult life in the U.S. His children, who are his closest family members, were born in the U.S. and are being raised in the U.S. He came to the U.S. for an advanced college education and remained. He has contributed to the country through

his work and has achieved the American dream of financial success and home ownership. His employer praises his work ethic and treasures the unique skills and talents he brings to the workplace. He enjoys his U.S. lifestyle and intends to remain in the U.S. His contacts with his family members in Taiwan do not indicate a security risk nor does his past travel to Taiwan.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his financial considerations.

### **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 B:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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MARY E. HENRY  
Administrative Judge