



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 07-10399
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Robert E. Coacher, Esquire, Department Counsel  
For Applicant: Adrienne E. Trent, Esquire

July 29, 2008

**Decision**

GALES, Robert Robinson, Chief Administrative Judge:

Applicant mitigated the security concerns regarding foreign preference and foreign influence. Eligibility for a security clearance and access to classified information is granted.

**Statement of the Case**

On June 1, 2005, Applicant applied for a security clearance and submitted an EPSQ version of a Security Clearance Application (hereinafter SF 86). On November 19, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive). The SOR alleged security concerns under Guideline C (Foreign Preference) and Guideline B (Foreign Influence), and detailed reasons why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and

recommended referral to an Administrative Judge to determine whether a clearance should be granted, continued, denied, or revoked.

On December 29, 2005, the President promulgated revised *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information*, and on August 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing implementation of those revised Adjudicative Guidelines (hereinafter AG) for all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended and modified (Regulation), in which the SOR was issued on or after September 1, 2006. The AG are applicable to Applicant's case because his SOR was issued after September 1, 2006.

Applicant received the SOR on December 3, 2007. In a sworn, written statement, dated December 19, 2007, Applicant responded to the SOR allegations and requested a hearing before an Administrative Judge. Department Counsel indicated the Government was prepared to proceed on February 1, 2008, and the case was assigned to Administrative Judge Henry Lazzaro on February 4, 2008. It was reassigned to me on February 14, 2008, due to caseload considerations. A Notice of Hearing was issued on February 19, 2008, and I convened the hearing, as scheduled, on March 20, 2008.

During the hearing, three Government exhibits and two Applicant exhibits were received without objection. Applicant testified. The transcript of the hearing (Tr.) was received on March 28, 2008.

### **Rulings on Procedure**

At the commencement of the hearing, Department Counsel requested that I take Administrative Notice of certain enumerated facts pertaining to Taiwan, also referred to as the Republic of China (hereinafter Taiwan), appearing in a written submission of the request. Facts are proper for Administrative Notice when they are easily verifiable by an authorized source and relevant and material to the case. In this instance, the source information relied upon by the Government was publications of the Department of State;<sup>1</sup> the Congressional Research Service;<sup>2</sup> the Center for Counterintelligence and Security Studies;<sup>3</sup> the National Counterintelligence Center, now known as the Office of the National Counterintelligence Executive;<sup>4</sup> a press release from the U.S. Department

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<sup>1</sup> U.S. Department of State, Bureau of East Asian and Pacific Affairs, *Background Note: Taiwan*, dated October 2007.

<sup>2</sup> Congressional Research Service, Library of Congress, *Taiwan: Recent Developments and U.S. Policy Choices*, dated October 9, 2006.

<sup>3</sup> Interagency OPSEC Support Staff, Center for Counterintelligence and Security Studies, *Intelligence Threat Handbook*, excerpts, dated June 2004.

<sup>4</sup> National Counterintelligence Center, *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage*, dated 2000.

of Justice, U.S. Attorney, Western District of New York;<sup>5</sup> a press release from the U.S. Department of Justice, U.S. Attorney, Eastern District of Virginia;<sup>6</sup> and records of the U.S. District Court for the Eastern District of Virginia.<sup>7</sup>

With regard to the National Counterintelligence Center Report, I note that it is eight years old, and 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. 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. Furthermore, as the selected companies are unidentified, it is impossible to assess possible bias or determine if there is an existing anti-Taiwan economic or political agenda. For these reasons, I conclude the factual matters asserted by Department Counsel, as demonstrated by the proffered report, should be given less weight than information from a more authoritative source.

The two press releases were presented apparently to substantiate that Taiwan actively pursues collection of U.S. economic and propriety information, and therefore, Applicant’s relationship with family members in Taiwan raises suspicion of him. Neither case involves Applicant personally or involved espionage through any familial relationship. The Western District of New York press release concerns the sentencing of a U.S. citizen for conspiring to commit trade secret theft during 1999-2001 to the benefit of a corporation based in Taiwan. There is no indication of any government sponsorship, approval, or involvement encouraging the Taiwanese company’s attempt to acquire sensitive commercial information for competitive advantage. Likewise, there is no evidence that Taiwan’s government was involved in, or sanctioned, the criminal activity.

The Eastern District of Virginia press release and the court record set forth the facts and sentencing of a former U.S. State Department official for unauthorized possession of classified information, making false statements to the government concerning his relationship with a female Taiwanese intelligence officer, and by not reporting that he had traveled to Taiwan where he met with the foreign intelligence officer. The criminal wrongdoing of other U.S. citizens is of decreased relevance to an assessment of Applicant’s security suitability, especially where there is no evidence that Applicant, nor any member of his family, was ever involved in any aspect of the case or ever targeted by any Taiwanese intelligence official.

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<sup>5</sup> U.S. Department of Justice, U.S. Attorney, Western District of New York, *Press Release: Defendant Sentenced to 48 months in Trade Secret Theft Case Re: United States v. Jonathan C. Sanders*, dated Apr. 18, 2006.

<sup>6</sup> U.S. Department of Justice, U.S. Attorney, Eastern District of Virginia, *Press Release: Former State Department Official Sentenced for Mishandling Classified Material*, dated Jan. 22, 2007.

<sup>7</sup> U.S. District Court Eastern District of Virginia, Criminal Case No. 1:05CR43, *U.S. v. Donald W. Keyser*, Statement of Facts, dated Dec. 12, 2005.

After weighing the reliability of the source documentation and assessing the relevancy and materiality of the facts proposed by the Government, I take administrative notice that the events described in the press releases or related court record occurred,<sup>8</sup> as well as that information set forth in the National Counterintelligence Center Report. However, the inference that somehow Applicant and/or his family participated in criminal activity was not argued and is not accepted. Pursuant to Rule 201, *Federal Rules of Evidence*, I take administrative notice of certain facts, as set forth below under the Taiwan subsection.

### Findings of Fact

In his Answers to the SOR, Applicant denied all of the factual allegations in ¶¶ 1.a. through 1.d., and 2.a. and 2.b., of the SOR.

Applicant is a 49-year-old employee of a defense contractor, and he is seeking to obtain a SECRET security clearance. He has been employed as a modem hardware engineer by the same government contractor since April 2004.<sup>9</sup>

Applicant was born in Taiwan in 1958,<sup>10</sup> and resided there with his parents. In January 1982, he came to the U.S. and enrolled in a graduate program at a U.S. university.<sup>11</sup> He received his Masters Degree in Electrical Engineering in September 1989.<sup>12</sup> In January 1990, after searching for employment, Applicant joined a subsidiary of a major U.S. corporation, as an electrical engineer.<sup>13</sup> He remained there for over eight years, and subsequently left for other opportunities in the U.S. He eventually joined his current employer. In 1993, Applicant married a naturalized U.S. citizen,<sup>14</sup> and he and his wife had two children, both of whom are native-born Americans.<sup>15</sup> Applicant became a naturalized U.S. citizen in April 2004.<sup>16</sup>

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<sup>8</sup> Tr. at 18, 26-28.

<sup>9</sup> Government Exhibit 1 (Security Clearance Application, dated Jun. 1, 2005), at 2.

<sup>10</sup> *Id.* at 1; Applicant Exhibit A (Taiwan Passport, issued Dec. 16, 2005), at 1. During the hearing, Applicant testified erroneously that he was born in 1957. See, Tr. at 30. Since the issuance of the passport requires official documentation, I find the date 1958 is the more accurate date.

<sup>11</sup> Tr. at 30.

<sup>12</sup> *Id.*

<sup>13</sup> Government Exhibit 1, *supra* note 9, at 3.

<sup>14</sup> *Id.* at 4-5.

<sup>15</sup> *Id.* at 5.

<sup>16</sup> *Id.* at 1.

Applicant's father was born in mainland China in 1929, and subsequently immigrated to Taiwan.<sup>17</sup> He visited the U.S. frequently, commencing in 1962-63, and in about 1970, served a medical residency in the U.S.<sup>18</sup> After serving as a medical officer with the Taiwan military, he retired and went into private medical practice.<sup>19</sup> He retired from that practice approximately 20 years ago.<sup>20</sup> Applicant's father passed away in December 2007.<sup>21</sup>

His mother was born in 1932.<sup>22</sup> She passed away in 1991.<sup>23</sup>

Applicant's wife was born in Taiwan in 1967.<sup>24</sup> It is unclear where she was raised or when she immigrated to the U.S. with her parents and sister. She became a naturalized U.S. citizen in September 1990.<sup>25</sup> Her parents are naturalized U.S. citizens, residing in the U.S.<sup>26</sup>

Applicant has two brothers, both of whom were born and raised in Taiwan.<sup>27</sup> They are Taiwanese citizens and residents.<sup>28</sup> They attended U.S. universities and graduated as mechanical engineers about 15 years ago.<sup>29</sup> Both brothers are employed by the same non-Taiwanese multinational corporation,<sup>30</sup> and neither brother has had any affiliation or association with any Taiwanese governmental service or intelligence-related entity.<sup>31</sup> Applicant has had very little communication with his brothers since his mother passed away. He generally spoke to his father or, if his father was not home, to

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<sup>17</sup> *Id.* at 4.

<sup>18</sup> Government Exhibit 2 (Personal Subject Interview, dated Nov. 30, 2005, attached to Answers to Interrogatories, dated Sep. 20, 2007), at 1.

<sup>19</sup> Tr. at 62.

<sup>20</sup> *Id.*

<sup>21</sup> Applicant Exhibit B (Death Certificate, dated Dec. 4, 2007).

<sup>22</sup> Government Exhibit 1, *supra* note 9, at 4.

<sup>23</sup> Tr. at 45.

<sup>24</sup> Government Exhibit 1, *supra* note 9, at 4.

<sup>25</sup> *Id.* at 5.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 4-5.

<sup>28</sup> *Id.*

<sup>29</sup> Tr. at 46.

<sup>30</sup> *Id.* at 46-47, 56.

<sup>31</sup> Government Exhibit 2, *supra* note 18, at 2; Tr. at 61-62.

his younger brother who resided with their father.<sup>32</sup> During the few months since their father passed away, he has had monthly contact with them.<sup>33</sup>

When he passed away, Applicant's father owned two pieces of real estate. He resided in one and rented the other and then left them to his three sons.<sup>34</sup> Aside from that joint inheritance, Applicant does not own any property in Taiwan and has no other financial interests there.<sup>35</sup> Applicant is prepared to renounce any interest he may have in the inheritance because his future in the U.S. is much more important to him than two very old structures in Taiwan.<sup>36</sup> He owns the family residence in the U.S.<sup>37</sup>

Applicant was issued a Taiwan passport in April 2000. It was to expire in April 2006.<sup>38</sup> He was issued his U.S. passport in July 2004. It expires in June 2014.<sup>39</sup> In November 2005, during an interview with an investigator pertaining to his application for a security clearance, Applicant stated his Taiwan passport was due to expire in about May 2006, and it would not be renewed since he now had a U.S. passport.<sup>40</sup> However, due to circumstances described below, in December 2005, Applicant renewed his Taiwan passport.<sup>41</sup> He attempted to surrender it to Taiwan authorities, but they insisted there was no such process, so he destroyed it by cutting it, and submitted the entire destroyed passport to me at the hearing.<sup>42</sup>

From the time he first arrived in the U.S. in January 1982, until September 2002, a period of nearly 21 years, Applicant remained in the U.S. and did not return to Taiwan.<sup>43</sup> In 2002, because of his father's deteriorating health, Applicant returned briefly to Taiwan as a Taiwan citizen, using his Taiwan passport.<sup>44</sup> In December 2005, his

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<sup>32</sup> *Id.* at 45, 56.

<sup>33</sup> *Id.* at 46.

<sup>34</sup> *Id.* at 53.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 53-54.

<sup>37</sup> *Id.* at 29.

<sup>38</sup> Government Exhibit 3 (Taiwan passport, issued Apr. 2000, attached to Answers to Interrogatories, dated Sep. 20, 2007).

<sup>39</sup> *Id.* (U.S. passport, issued Jul. 2000, attached to Government Exhibit 3).

<sup>40</sup> Answer to SOR, dated Dec. 10, 2007, at 1.

<sup>41</sup> *Id.* (Taiwan passport, issued Dec. 2005, attached to Government Exhibit 3).

<sup>42</sup> Applicant Exhibit A, *supra* note 10; Tr. at 42.

<sup>43</sup> Tr. at 31, 40-41.

<sup>44</sup> *Id.* at 35-36.

father's health deteriorated further. Believing he needed a visa to enter Taiwan on his new U.S. passport, a process that could have been lengthy,<sup>45</sup> Applicant opted to take the quickest route to Taiwan and that meant using his Taiwan passport rather than his U.S. passport.<sup>46</sup> However, after being advised by Taiwanese authorities that his old Taiwan passport could not be used if it was expected to expire within six months, he reluctantly renewed it.<sup>47</sup> He used the renewed Taiwan passport to travel to Taiwan.<sup>48</sup> Applicant returned to Taiwan in December 2006 to attend his father's funeral.<sup>49</sup> This time he used his U.S. passport after learning that he didn't need a visa to enter Taiwan.<sup>50</sup>

Applicant inquired as to the process for renouncing his Taiwanese citizenship, but was advised by Taiwan authorities that it was a lengthy process which required extensive documentation which had to be filed in Taiwan.<sup>51</sup> He intends to do so.<sup>52</sup>

## Taiwan

In 1949, a large number of Chinese refugees fled from the civil war in mainland China and immigrated to the off-shore Island of Formosa. The Communists in mainland China established the PRC, and Chiang Kai-shek, the leader of the Kuomintang on mainland China, established a provisional government and capital in Taipei, Taiwan. The PRC refuses to recognize Taiwan's independence, and insists that there is only "one China." After recognizing Taiwan for nearly 30 years, on January 1, 1979, the U.S. formally recognized the government of the PRC as the sole legitimate government of China. The U.S. does not support independence for Taiwan and, under the Taiwan Relations Act, signed into law on April 10, 1979, is committed to a "one-China policy." Nevertheless, the U.S. has been also been committed to maintaining cultural, commercial and other nonofficial relations with Taiwan, and continues to provide arms in support of Taiwan's security and regional stability.

Taiwan is a multi-party democracy with a strong economy, with significant economic contacts with both the PRC and the U.S. Taiwan's own national security remains under constant threat from the PRC since PRC has not renounced the use of force against Taiwan, and this has led to Taiwan's large military establishment.

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<sup>45</sup> *Id.* at 36-37.

<sup>46</sup> Answer to SOR, *supra* note 40, at 1; *Id.* at 38-39.

<sup>47</sup> *Id.* Applicant had no intention of renewing his old Taiwan passport until he was advised he had to do so if he hoped to enter Taiwan. Government Exhibit 3 (Answers to Interrogatories, dated Sep. 20, 2007), at 3.

<sup>48</sup> Tr. at 39.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at 39-40, 49-52.

<sup>51</sup> *Id.* at 40, 48, 52-53.

<sup>52</sup> *Id.* at 48; Answer to SOR, *supra* note 40, at 1.

Taiwan's armed forces are equipped with weapons obtained primarily from the U.S., but Taiwan has stressed military self-reliance in recent years that has resulted in the growth of indigenous military production.

Taiwan is believed to be an active collector of U.S. economic intelligence and proprietary information. There is no evidence that Taiwan uses coercive measures to gain access to such information. While there have been a number of incidents involving individuals, companies, and Taiwanese intelligence officers improperly acquiring or attempting to acquire U.S. economic intelligence and proprietary information, there is no direct or indirect connection to, or involvement with, Applicant.

### **Policies**

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the 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.

An Administrative Judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging 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, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

Since 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.

In the decision-making process, facts must be established by "substantial evidence."<sup>53</sup> The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the Applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.

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<sup>53</sup> "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1).



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 as well. It is because of this special relationship that 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. 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.” Accordingly, 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.

## **Analysis**

### **Guideline C, Foreign Preference**

The security concern relating to the guideline for Foreign Preference is set out in AG ¶ 9:

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.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 10(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” is potentially disqualifying. Under AG ¶ 10(a)(1), this includes but is not limited to: “possession of a current foreign passport.” Similarly, under AG ¶ 10(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” may raise security concerns. After becoming a naturalized U.S. citizen in April 2004, Applicant retained the Taiwan passport that had been previously issued to him. Not only did he retain it, but in December 2005, due to a combination of circumstances, he renewed it and used it as well, even though he had previously stated to an investigator that he would not do so. By his actions, he exercised the rights and privilege of foreign citizenship after becoming a U.S. citizen. I find AG ¶¶ 10(a)(1) and 10(d) apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from foreign preference. Under AG ¶ 11(a), the disqualifying condition may be mitigated where the “dual citizenship is based solely on parents' citizenship or

birth in a foreign country.” Similarly, AG ¶ 11(b), may apply where “the individual has expressed a willingness to renounce dual citizenship.” Also, AG ¶ 11(e) may apply where “the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.”

Applicant explained that his only motivation for using his Taiwan passport in December 2005 was not an indication of a preference for Taiwan over the United States, but rather solely for his convenience in entering Taiwan quickly to visit with his sick father. Such actions, since 2000, have security significance. However, prior to 2000, that was not the case. Applicant’s actions would not have been considered foreign preference-driven, or of security significance, but rather in pursuit of personal interest of the type identified in a memorandum by the Director, Security Plans and Programs, Office of the Under Secretary of Defense, to the Director, Defense Investigative Service, in March 1983, wherein he stated:<sup>54</sup>

. . . If an individual retains his/her foreign citizenship as a result of affirmative action on his/her part, an investigation should be initiated to determine the reasons for his/her action. If these reasons adversely implicate his/her loyalty or trustworthiness, there may be basis to deny, suspend, or revoke a personnel security clearance. **If, however, an individual asserts his/her rights to foreign citizenship in pursuit of personal interest (e.g., wills, trusts, estates, taxes, family, etc.) there are no grounds to deny, suspend, or revoke a personnel security clearance.**

Thus, the issue is, distilled to its basic components: whether Applicant’s actions in renewing, possessing, and using his Taiwan passport in December 2005, were merely for personal convenience, or indicative of a preference for Taiwan over the United States. Considering Applicant’s explanations, and his subsequent action in destroying his Taiwan passport and surrendering all the pieces to me, I find ¶¶ 11(a), 11(b), and 11(e) apply.

### **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

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<sup>54</sup> See Memorandum from Director, Security Plans and Programs, Office of the Under Secretary of Defense, to Director, Defense Investigative Service, subject: "Personnel security clearances for U.S. citizens actively maintaining dual citizenship with another country, dated March 15, 1983, at 1. (emphasis supplied)

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.

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.<sup>55</sup>

The guideline notes several conditions that could raise security concerns. Under AG ¶ 7(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” is potentially disqualifying. Similarly, under AG ¶ 7(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” may raise security concerns. Also, AG ¶ 7(e) may apply if there is “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.” I find AG ¶¶ 7(a), 7(b), and 7(e) apply in this case. However, the security significance of these identified conditions requires further examination of Applicant’s respective relationships with his family members who are Taiwanese citizen-residents to determine the degree of “heightened risk” or potential conflict of interest.

The guideline also includes examples of conditions that could mitigate security concerns arising from foreign influence. Under AG ¶ 8(a), the disqualifying condition may be mitigated where “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.” Similarly, AG ¶ 8(b) may apply where the evidence shows “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.” In addition, AG ¶ 8(c) may apply where “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.” And AG ¶ 8(e) may apply where “the value or routine nature of the foreign business, financial, or

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<sup>55</sup> See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 at 12 (App. Bd. Feb. 8, 2001).

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.”

Applicant’s relationship with his two brothers, his travel to Taiwan, and his inheritance of property in Taiwan are current concerns for the Government. Both of Applicant’s parents are now deceased. He had little contact with either brother from the time he arrived in the U.S. in 1982 until their mother passed away in 1991. Thereafter, he had no contact with his older brother and very infrequent contact with his younger brother until their father died in December 2007. In the few months since that time, he has had monthly contact with them.

In assessing whether there is a heightened risk because of an applicant’s relatives or associates in a foreign country, it is necessary to consider all relevant factors, including the totality of an applicant’s conduct and circumstances, including the realistic potential for exploitation. One such factor is the potential for pressure, coercion, exploitation, or duress. In that regard, it is important to consider the character of the foreign power in question, including the government and entities controlled by the government, within the relevant foreign country. Nothing in Guideline B suggests it is limited to countries that are hostile to the United States.<sup>56</sup> In fact, the Appeal Board has cautioned against “reliance on overly simplistic distinctions between ‘friendly’ nations and ‘hostile’ nations when adjudicating cases under Guideline B.”<sup>57</sup>

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 take action against the U.S. through the Applicant. It is reasonable to presume that a friendly relationship, or the existence of a democratic government, 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 Taiwanese Government would attempt coercive means to obtain sensitive information. However, it does not eliminate the possibility that a foreign power would employ some non-coercive measures in an attempt to exploit his relatives. While Applicant has two brothers still residing in Taiwan, there may be speculation as to “some risk,” but that speculation, in the abstract, does not, without more, establish sufficient evidence of a “heightened risk” of foreign exploitation, inducement, manipulation, pressure, or coercion to disqualify Applicant from holding a security clearance.

As to Applicant’s relationship with his two brothers, there is a very low potential of forcing him to choose between the interests of U.S. and those of either Taiwan or his brothers. He has met his burden of showing there is little likelihood that those

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<sup>56</sup> 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).

<sup>57</sup> ISCR Case No. 00-0317 at 6 (App. Bd. Mar. 29, 2002).

relationships could create a risk for foreign influence of exploitation. I find AG ¶¶ 8(a) and 8(c) partially apply in this case.

Applicant has been a resident of the U.S. since 1982. He and his wife became naturalized U.S. citizens and their two children are native-born U.S. citizens. He surrendered his Taiwanese passport and he is willing to renounce his dual citizenship. They have no foreign financial interests other than the small inheritance from his father, described as two very old structures, which he is willing to renounce. He is fully involved in his children's lives and activities. Applicant and his wife have "such deep and longstanding relationships and loyalties in the U.S., that [they] can be expected to resolve any conflict of interest in favor of the U.S. interest."

It is true that, since 1982, Applicant took three trips back to Taiwan to visit his father who was in deteriorating health. At the time of his first visit, in 2002, about 20 years after he had been in the U.S., he was still a Taiwanese citizen. And that trip should have no current security interest. However, when his father's condition worsened in 2005, and he eventually died in 2006, Applicant did so as a U.S. citizen. I find AG ¶¶ 8(b) and 8(e) apply to his travel to Taiwan, his relationship with his brothers, and his foreign financial interests.

### **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. Applicant's parents are deceased. Applicant has resided in the U.S. since 1982, and became a U.S. citizen in 2004. He married in the U.S., and his closest family members are his wife and two children—all U.S. citizens—and they reside with him in the U.S. As such, they are not vulnerable to direct coercion or exploitation, and the realistic possibility of pressure, coercion, exploitation, or duress with regard to them is low.

Applicant's relationships with his two brothers are not close and his contact with them is sporadic. He had no relationship whatsoever with one brother from 1982 until December 2007, and has spoken to him only since their father passed away in December 2007. His relationship with his other brother was only slightly closer by virtue of having spoken to him infrequently when their father was not at home. They have spoken several times since their father's death. While Taiwan is believed to be an active collector of U.S. economic intelligence and proprietary information, there is no evidence that Taiwan uses coercive measures to gain access to such information. It is in Taiwan's interests to maintain friendship with the U.S. to counterbalance the PRC. It is very unlikely Taiwan would forcefully attempt to coerce Applicant through his two brothers still residing in Taiwan. (See AG ¶ 2(a)(8).) The presence of those family members in Taiwan without any affiliation or relationship to the Government of Taiwan, does not generate a realistic potential for exploitation.

As to Applicant's actions in renewing and using his Taiwan passport on one occasion after he became a naturalized U.S. citizen, and after telling an investigator that he had no intention of ever renewing that passport, they raise several different issues. Applicant renewed the Taiwan passport only because he was under the erroneous impression he needed to obtain a visa to see his ailing father and was advised by the Taiwanese authorities that a passport renewal was required. He now knows better and has destroyed the Taiwan passport. (See AG ¶¶ 2(a)(1), 2(a)(2), 2(a)(3), 2(a)(5), 2(a)(7), and 2(a)(9).)

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 foreign influence and foreign preference concerns.

### **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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant

## **Conclusion**

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

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ROBERT ROBINSON GALES  
Chief Administrative Judge