



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 07-14101 |
| SSN: |) | |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Eric H. Borgstrom, Esquire, Department Counsel
For Applicant: Edward J. Tolchin, Esquire

September 17, 2008

Decision

CREAN, Thomas M., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigation Processing (e-QIP) on October 7, 2005. On June 6, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns for Applicant under Guideline B, Foreign Influence. 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 acknowledged receipt of the SOR on June 16, 2008. He answered the SOR in writing on June 17, 2008, admitting all factual allegations in the SOR, and requested a hearing before an administrative judge. Department counsel was prepared to proceed on July 31, 2008, and I was assigned the case on August 4, 2008. DOHA issued a notice of hearing on August 13, 2008, and I convened the hearing as scheduled on September 3, 2008. The government offered four exhibits, marked Government Exhibit (Gov. Ex.) 1-4, which were received without objection. Applicant

submitted 51 Applicant Exhibits, marked App. Ex.s A through YY, which were received without objection. Applicant testified on his behalf. DOHA received the transcript of the hearing (Tr.) on September 12, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a formal request for administrative notice of certain facts relating to Taiwan. (Tr. 14) The request and the supporting documents were not admitted into evidence but were included in the record as Hearing Exhibit I. Applicant had no objection to the request for administrative notice and the attached documents. The facts administratively noticed are set out in the Findings of Fact.

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact. Applicant admitted the factual allegations in the SOR with explanation.

Applicant is a 60-year-old program manager for a defense contractor. He was born in Taiwan and received his early education, including his bachelor's degree in mathematics, in Taiwan. He completed his compulsory military service required by Taiwan of its male citizens as a second lieutenant but did not hold a security clearance. After college, he worked for a Taiwan bank for a year before coming to the United States in 1975 at age 27 to further his education. He received a master's degree in mathematics in 1976 from a United States university. He attended another United States university where he received both a master's degree and a doctorate in operations research in 1979. He then taught in the field of Information Systems at another United States university for three years.

He was accepted for a position in software development at a nationally recognized research and development laboratory in 1983. He worked for the laboratory for the next 22 years and retired in 2004 as the Program Director for business services for the laboratory. He did spend one year during this time working for a prominent United States airline as their director of operations research. His family did not move so Applicant only took this position for one year (Tr. 23-31, 80-81; Gov. Ex. 2, Interrogatories, dated November 24, 2007; App. Ex. YY, Resume, undated).

He is now employed as a program manager for a company that has government contracts. He has worked on various government projects for the company. He is now the program manager for a contract working on computer projects for a major military hospital which requires a security clearance. He previously served as the program director and United States representative on a project for the contractor for the United

States Navy providing training services to Taiwan which did not require a security clearance (Tr. 32-33, 83-84).

Applicant has received many awards for his work with the laboratory, including the highest award in the field of operations research (Tr. 35-41; App. Exs. A-C and WW, list of awards and citations, various dates). Applicant contributed in many innovations and projects with the laboratory (Tr. 34-38; App. Exs. D-I, K-N, yearly accomplishments and ratings, various dates). His work for his present government contractor employer has also been exceptional (App. Ex. J, Rating, undated).

Applicant's wife was also born in Taiwan and is 56 years old. They were married in the United States in 1977 and both became United States citizens in 1987. They have lived in the same house near the location of the laboratory since 1984. His wife has been employed as a computer programmer at the same laboratory for over 23 years. They do not discuss their work with each other. Applicant's wife still has a current Taiwanese passport. Applicant does not know if she is considered a dual citizen of Taiwan or why she still has her Taiwanese passport. They have three children who are all citizens and residents of the United States. Two have left the house and are working and the third is a college student. Applicant was the first Chinese-American to run for a local public office and served seven years on his community's school board. During his tenure on the school board, he twice served at the request of his town's mayor as the host of delegations from the People's Republic of China looking at local government management. He ran for a seat on the local governing council but was not elected. He has limited contact with former classmates or friends in Taiwan (Tr. 33-35, 47-50, 83-85, 88-89; Gov. Ex. 1, E-QIP, dated October 7, 2005).

Applicant has extensive funds and holdings in the United States. He also owns his home and two rental properties and has no debt. His investments and properties have a net worth of about \$5.4 million. He pays taxes which are current and draws social security each month (Tr. 62-72; App Exs. O-II, Statements of investments, various dates; App. Exs. JJ-LL, Property taxes on house and rental property, various dates; App Exs, MM-PP, Social Security payments, various dates).

Applicant also has financial holdings and real estate in Taiwan. In 1982 when his brother-in-law in Taiwan started a software development company, he was asked to invest in the company. He did invest and the funds were held by a brokerage company in Taiwan. He left the funds with the brokerage company and the investment is now worth about \$650,000. He does not control the funds and permits the brokerage company to manage the assets. The brokerage company has the funds in stock in companies that are publicly traded in Taiwan. Some of the companies are also traded in the United States. He does pay taxes to Taiwan as required by law on the investments (Tr. 52-57; Gov. Ex. 2, Interrogatories, dated November 24, 2007; Gov. Ex. 3, Interrogatories, undated; App. Exs. RR-UU, Brokerage firm statements, various dates).

Applicant's father purchased a piece of farm land in June 1973 for approximately \$50,000 with five other investors. Since Applicant was his first born son, the father's share of the property was placed in his name. Applicant did not know of the property or his ownership rights until recently. The government at some time divided the property in half by using part for a highway right of way. The value of the property is now \$10,000 and Applicant owns 23% of that value. He has not sold his share because it would require the concurrence of the other investors or their successors. He does not pay taxes on the property and he does not know if his mother pays taxes on the property (Tr. 57-61, 71-72, 87-88; Gov. Ex. 3, Interrogatories, undated; Applicant Exhibits VV-WW, land contract, undated).

Applicant visited Taiwan in 2001 for his mother's 80th birthday celebration. He traveled to Taiwan in 2004 because of a special deal offered by the Taiwanese airline. As part of the arrangement, he was required to obtain a Taiwanese passport and vote in the Taiwan elections that year. He traveled on the Taiwanese passport and voted in the Taiwanese presidential election. On return to the United States, he relinquished his Taiwanese passport to the Taiwanese consulate in the United States. He also traveled to Taiwan four times in 2005-2006 and twice in 2007 as part of his duties with his employer to provide training support to Taiwan using his United States passport. Other than his contacts with Taiwanese officials when working as the United States government representative on the Navy training support contract, he had no contact with Taiwanese government officials. He does have some limited contact with former friends from Taiwan (Tr. 50-52, 82-83; See, Gov. Ex. 2, Interrogatories, dated November 24, 2007, at 5; Gov. Ex. 4, Testimony, dated January 4, 2007).

Applicant's mother is a resident and citizen of Taiwan living with Applicant's brother and his wife in an apartment owned by his mother. She is 89 years old and has been retired for over 30 years from her employment at the Taiwan national bank. His father served in a government capacity in a position similar to a Senator for over 49 years before he died over 20 years ago. His mother draws a pension from her own employment with the bank and from her husband's work as a government employee. She also has health coverage through the national health plan. His mother has visited him in the United States but returned to Taiwan because of difficulties with culture and language in the United States. He talks to her almost weekly and they have a strong loving relationship. Their conversations are fun loving like he was still her young son. He does not provide her any support and does not send her gifts since she is self sustaining with the pension payments she receives (Tr. 42-44, 74-78)

Applicant's brother was educated in the United States and received a doctorate in civil engineering from a United States university. He returned to Taiwan and retired as the president of the software development company founded by Applicant's sister's husband. He talks to his brother approximately once a month during one of his conversations with his mother (Tr. 44-45, 78-79; Gov. Ex. 4, Testimonies, dated January 4, 2007).

One of Applicant's sisters is a housewife married to the brother-in-law that founded the software development company. She has not been employed but is a painter. Applicant does have telephone contact with his sister (Tr. 45-47). Applicant has another sister in Taiwan who retired about ten years ago after working for the United States Consulate in Taiwan. Her husband is a professor at a Taiwan university who will retire soon. Applicant also has periodic telephone contact with her. Applicant also has a sister who has been a resident and citizen of the United States for over 30 years (Tr. 46-47, 80-81; Gov. Ex. 4, Testimony, dated January 4, 2007).

Applicant's wife's family is mostly in the United States. Her mother and two brothers are citizens and residents of the United States. She has one brother in Taiwan who is an engineer involved in research. Applicant's wife speaks to her brother in Taiwan periodically when she updates him on the condition of their mother. Applicant speaks to this brother-in-law about once a year (Tr. 48-49, 90-91).

During World War II and after, a civil war was fought on the mainland of China between the Chinese Communist Party and the Nationalist Chinese. In 1949, the Chinese Communist Party was victorious and established a government on the mainland. The Nationalist Chinese fled to the island that is now Taiwan and established a government. Taiwan has developed steadily since then and is now the world's 17th largest economy. Taiwan became a member of the World Trade Organization in 2002, further expanding its trade opportunities and further strengthening its standing in the global economy. This prosperity established economic and social stability.

Until 1986, Taiwan's political system was effectively controlled by one party, the Kuomintang. Since ending martial law in 1987, Taiwan has taken dramatic steps to improve respect for human rights and create a democratic political system. The United States has been committed to maintaining cultural, commercial, and other nonofficial relations with Taiwan since January 1979, when it formally recognized the government of the People's Republic of China (PRC) as the sole legal government of China. By formal act of Congress (Taiwan Relations Act of 1979), the United States is committed to provide Taiwan with military defensive arms in support of Taiwan's security and stability in the region. The United States also stated it would maintain cultural, commercial, and other unofficial relations with the people of Taiwan. Despite the United States clear and consistent position that Taiwan and the mainland are part of one China, United States commercial ties have expanded with Taiwan and the United States is supportive of Taiwan's membership in international organizations, such as the World Trade Organization and the Asian Development Bank (*See Hearing Exhibits, United States, Department of State's Background Note: Taiwan, dated March 2008*).

While still pursuing a closer relationship with Taiwan, the official United States position on Taiwan and mainland China seems to be a criticism of mainland China's buildup opposite Taiwan with periodic cautions and warnings to the effect that United States support for Taiwan is not unconditional, but has limits. Smooth United States and PRC relations are an important tool in cooperating against terrorism and maintaining stability in the Pacific region. Faced with competing pressures and the

continuing transformation on both the PRC and Taiwan systems, the United States government may be facing new and more difficult policy choices in the future (See *Hearing Exhibits*, Congressional Research Service Report to Congress: Taiwan: Recent Developments and U.S. Policy Choices, dated December 14, 2007).

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 United States is targeted by a large number of foreign countries for economic and industrial espionage. The report notes that the foreign private sector is 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.

The report list a number of factors that could cause concern for the United States. Among the concerns are the number of foreign visitors from any country to United States sensitive sites, the number of non-immigrant persons from a country that are admitted as visitors to the United States, and the number of requests from a country for visits to military and defense industry sites. There are a large number of visitors from Taiwan to the United States for business, pleasure, or other purposes. But Taiwan does not send a large number in comparison to other countries of visits to selected nuclear sensitive facilities in the United States. By comparison, the number of request for visits to military and defense industry sites by Taiwan jumped ten fold from Fiscal Year 2004 to Fiscal Year 2005. Taiwan does not appear to be any more active in the collection of economic and industrial intelligence than many other allied counties.

The government also presented information concerning individuals in the United States 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. Some of these cases involve individuals in the United States, both native born and foreign born and both citizens and non-citizens of the United States, 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. In a case in which a Federal Bureau of Investigation (FBI) employee provided classified information to Taiwan, Applicant presented information showing that Taiwan did not solicit information from the individual. In fact, the FBI stated that Taiwan was cooperating with it on the investigation (App. Ex. XX, Article, dated August 28, 2008).

The fact that there are cases of Taiwan intelligence agents accepting intelligence information from sources in the United States, no matter how obtained, does raise security concerns.

The government argues that the geographical closeness of Taiwan and the PRC causes Taiwan to engage in industrial, military, and economic espionage to ensure that they are strong enough to counter threats from the PRC. It is correct that the closeness of the PRC causes Taiwan concern. However, that threat is counter balanced by the need of Taiwan to continue friendly relations with the United States as one of its prime protectors and sources of military equipment. The relationship between the United States and Taiwan is defined in the Taiwan Relations Act which recognizes Taiwan. (Public Law 96-8) Taiwan has a long history of friendly relations with the United States, 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.

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, 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.

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

There is a security concern because 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 the U.S. interests, or is vulnerable to pressure or coercion by any foreign interests. 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 consideration 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 ¶ 6)

Applicant has foreign contact through his mother, brother, two sisters, and brother-in-law, who are all citizens and residents of Taiwan. These contacts raise security concerns under Foreign Influence Disqualifying Conditions (FI DC) 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); and FI DC 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). Each individual contact by itself may not create a risk of foreign influence, but the totality of the contacts may indicate a risk of foreign influence. Applicant’s substantial stock holdings in a Taiwanese brokerage company and his interest in a piece of land inherited from his father raises security concerns under FI DC AG ¶ 7(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 risks of foreign influence or exploitation).

Applicant resides with his wife in the United States. Both have been United States citizens for over 21 years. However, Applicant's wife has a brother that is a citizen and resident of Taiwan which raises FI DC AG ¶ 7(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).

The government has established that there is a heightened risk of a security concerns because Taiwan does engage in economic and industrial espionage, even though there is no evidence that Taiwan targets United States citizens to obtain protected information. Taiwan and its intelligence agents did receive protected information from persons in the United States but in these cases the information was offered to the agents by the United States citizens rather than Taiwan targeting the United States citizens by exploiting, manipulating, pressuring, or coercing United State 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 United States sources but in obtaining that information Taiwan does not use tactics and endeavors that could cause issues with the United States as their main protector and supplier of military equipment.

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. Under the new guidelines, however, 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.

In determining if Applicant's contacts in Taiwan cause security concerns, I considered that Taiwan is an ally of the United States, has a defense agreement with the United States, and is one of the United States' substantial trading partners. I considered that Taiwan improved its human rights position and its people enjoy basic freedoms. While the United States has a one-China policy, the United States does maintain cultural, commercial, and other ties with Taiwan. I considered that Taiwan does engage in economic and other types of espionage, and there are instances of Taiwan officials and companies engaging in such espionage with individuals in the United States. There are no indications in these instances Taiwan was targeting United States citizens to provide economic or other sensitive information. I also considered that faced with new and competing national interests, the United States policy toward Taiwan could change. While Taiwan is a country that is friendly to the United States, it

could engage in espionage against United States interests. Friendly countries may have profound disagreements with the United States or have engaged in espionage against United States economic, scientific, or technical interest. A friendly relationship is not determinative, but it makes it less likely that a foreign government would attempt to exploit a United States citizen through relatives or associates in that country. Taiwan is not a hostile country, nor is its interests inimical to the United States. The United States 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 their friendly position with the United States because of their need for trade and defense assistance from the United States. It would be considered an act unfriendly to the interest of the United States to coerce its citizens with relatives in the United States to pressure their United States relatives to provide economic or other espionage information against the interest of the United States. Taiwan has cooperated with the United States 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.

Since Applicant admitted the SOR allegations and the government produced substantial evidence by way of exhibits to raise the disqualifying conditions in AG ¶ 7(a), (b), (d), and (e), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns (Directive ¶E3.1.15). An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government (See, ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005)).

Applicant has raised Foreign Influence Mitigating Conditions (FI MC) ¶ 8(a) (the nature of the relationship 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 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 interest of the United States). Applicant's mother is 89 year old has retired from the Taiwan banking system for over 30 years and draws a pension from them. She draws a pension from her husband's service as a Taiwan government employee. She is dependent on the government for her pension and medical support. Applicant's siblings and their spouses are professionals who worked for private businesses in Taiwan. They are not dependent on the Taiwanese government for their subsistence. Applicant talks to his mother frequently, at least once a week, but less to his siblings, about once a month. Applicant made a number of trips to Taiwan for normal visits to his family or on business for his employer. His mother and siblings have come to the United States to visit and stay with him or obtain an education at a United States university. It is clear that they have a close family relationship. His contact with his immediate family is frequent and not casual. Applicant's information concerning his family members' living conditions, life style, and professions, shows it is unlikely Applicant will be placed in a position to choose between the interests of his family and the interests of the United States. Applicant established his family members in Taiwan are ordinary citizens leading normal lives, and that they do not present a heightened risk of foreign exploitation, inducement,

manipulation, pressure, or coercion. The positions and activities of his family in Taiwan show that it is unlikely that Applicant will be placed in a position of being coerced or pressured to choose between these people and his interests in protecting the national security of the United States. FI MC ¶ 8(a) applies.

Applicant's vulnerability to duress is also important. Applicant has been in the United States for over 33 years, more than half of his life, and a United States citizen for over 21 years. His wife has been a resident of the United States for a similar period and a United States citizen for the same amount of time. He has three children born and educated in the United States, who are citizens of the United States. Applicant has contributed to his community by serving on the local school board and running for public office. Applicant has substantial assets in the United States. Even though he has assets in Taiwan, those assets are about ten percent of his total assets and are with a brokerage company which has the assets in publicly traded stocks. He has worked for and retired from a prestigious laboratory in the United States. Applicant established FI MC ¶ 8(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 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), and FI MC AG ¶ 8(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).

Applicant's numerous and repeated trips to Taiwan were mostly for business and to visit family. He took a trip to Taiwan in 2004 using a Taiwan passport and voted in a Taiwan election. He was taking advantage of a special airline ticket price requiring him to obtain the passport and vote in a Taiwanese election. He was not applying for a security clearance at the time so he did not consider that accepting the favorable terms of the arrangement from the Taiwan airline was a security concern. He immediately returned his Taiwan passport to Taiwan after returning from the trip. In spite of this one trip by Applicant, I find that Applicant has demonstrated that he is not unusually vulnerable to duress.

Applicant has a normal sense of loyalty or obligation to his family in Taiwan. But he also has long standing relationship and connections in the United States. He has demonstrated that these relationships will lead him to resolve any conflict of interest in favor of the United States. FI MC ¶ 8(b) and 8(f) apply.

Applicant has raised FI MC ¶ 8(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). Applicant has the burden of presenting information to refute, extenuate, or mitigate the security concerns raised by the government. Applicant's contact with his mother and siblings and their spouses are not casual and infrequent. His wife's contacts with her brother and his contact with his brother-in-law are minimal and infrequent but not casual. There is little likelihood that the contacts

could create a risk for foreign influence or exploitation. Accordingly, FI MC 8(c) applies to his wife's brother but not to his mother and siblings in Taiwan.

In sum, Applicant has met his heavy burden to show that his family contacts and financial and land holdings in Taiwan do not cause a security concern. I conclude FI MC AGs ¶¶ 8(a), (b), (c), and (f) are established.

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) 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 family in Taiwan both individually and collectively are in positions and circumstances that make it unlikely Applicant will be placed in a position to choose between the interests of his family and the interest of the United States, or that he can be exploited, pressured, or coerced because of them. His contacts with his family in Taiwan are strong but they do not create a conflict of interest between the family members and his loyalty to the United States. Applicant has been in the United States for over 33 years and a citizen of the United States for over 21 years. His children were born here and are United States citizens. He has accumulated significant assets in the United States, which offset his financial and property interests in Taiwan. He has had a successful career working for a prestigious laboratory in the United States and contributed to his community in the United States. His travels to Taiwan were for business or pleasure and not connected to the Taiwanese government. He established that his contacts with his family in Taiwan do not indicate a security risk.

Applicant's life story is an example of the success of many immigrants to the United States. He came to the United States to better himself through education. He remained here, became a United States citizen, established himself in his community, and worked to obtain a better life in the United States. He was very successful in his work with a prestigious laboratory. The family enjoys a typical United States life style

and he successfully contributed as a member of society and community in the United States. Overall, on balance 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 foreign influence.

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:

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|---------------------------|---------------|
| 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 |
| Subparagraph 1.e: | For Applicant |
| Subparagraph 1.f: | For Applicant |
| Subparagraph 1.g: | 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.

THOMAS M. CREAN
Administrative Judge