



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



In the matter of:

SSN: -----

Applicant for Security Clearance

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ISCR Case No. 07-17932

Appearances

For Government: Jennifer Goldstein, Esquire, Department Counsel
For Applicant: *Pro Se*

November 25, 2008

Decision

WESLEY, Roger C., Administrative Judge:

History of Case

On June 9, 2008, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on July 17, 2008 and requested a hearing. The case was assigned to me on August 27, 2008, and was scheduled for hearing on October 8, 2008. A hearing was held on October 8, 2008, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's security clearance. At hearing, the Government's case consisted of three exhibits; Applicant relied on one witness (himself) and one exhibit. The transcript (R.T.)

was received on October 16, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility to access classified information is denied.

Besides its three exhibits, the Government requested administrative notice of 14 documents. Covered documents include *Background Note: Taiwan*, U.S. Department of State (March 2008); *Taiwan: Recent Developments and U.S. Policy Choices*, Congressional Research Service, Library of Congress (May 2008); ; *Intelligence Threat Handbook [Unclassified/For Official Use Only]*, Interagency OPSEC Support Staff (IOSS) (June 2004), *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage 2000*, National Counterintelligence Center; *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage 2005*.

Other documents covered by the Government's request for administrative notice entail: National Counterintelligence Executive; U.S. Department of Commerce, Bureau of Industry and Commerce (August 2006); *California Exporter Fined in Connection with Attempted Taiwan Export* (September 1999); U.S. Department of Commerce, Bureau of Industry and Commerce, *Commerce Department Imposes Civil Penalty on Minnesota firm in Settlement of Export Violations* (December 2001); U.S. Department of Commerce, Bureau of Industry and Commerce, *Connecticut Company Settles Charges Concerning Unlicensed Pump Exports to China, Taiwan, Israel, and Saudi Arabia* (July 2003); U.S. Department of Commerce, Bureau of Industry and Commerce, *Emcore Corporation Settles Charges of Export Control Violations* (January 2004); U.S. Department of Commerce, Bureau of Industry and Commerce, *Parker Hannifan Corp. Settles Charges Pertaining to Illegal Exports to Taiwan and China* (November 2005); U.S. Department of Commerce, Bureau of Industry and Commerce, *Defendants Indicted on Charges of Conspiracy to Export Controlled Items* (August 2005); U.S. Department of Commerce, Bureau of Industry and Commerce, *United States v. Ching Kan Wang and Robin Chang*, Case No. 05-60218-CR-Sietz (SD Fla), Superceding Indictment (filed October 2005) and Judgment in a Criminal Case (filed March 2006); Press Release, U.S. Department of Justice, U.S. Attorney (WD VA), *Former State Department Official Sentenced for Mishandling Classified Material* (January 2007); Statement of Facts [stipulated], *United States v. Keyser*, Crim. Case No.1:05CR543, (ED VA December 2005);

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 (App. Bd. April 2007); ISCR Case No. 02-24875 (App. Bd. October 2006). Administrative notice is appropriate for noticing facts or government reports that are well known. See Stein, *Administrative Law*, Sec. 25.01 (Bender & Co. 2006). For good cause shown, administrative notice was granted with respect to the above-named background reports addressing the geopolitical situation in Taiwan. Administrative notice was extended to the documents themselves, consistent with the provisions of Rule 201 of Fed. R. Evi. This notice did not foreclose Applicant from challenging the accuracy and reliability of the information contained in the reports addressing Taiwan's current state.

Before the close of the hearing, Applicant requested to leave the record open to supplement materials covering recent reports of U.S. arms sales to Taiwan. There being

no objections from Department Counsel, and for good cause shown, Applicant was afforded seven days to October 7, 2008 to supplement the record. The Government was granted to October 25, 2008 to respond.

Within the time permitted, Applicant supplement the record with documentation of the following articles relating to recent arms shipments to Taiwan from the U.S.: a web memo published by the Heritage Foundation (October 2008), an International Herald Tribune article (October 2008), a www.newsvine.com article (October 2008), and a boston.com article (October 2008) article. Department Counsel objected to the admission of these news articles, citing accuracy flaws that preclude their being received pursuant to the administrative notice rules (see Fed. R. Evi. 201). The articles cover generally reported news releases regarding recent U.S. arms shipments to Taiwan. While their sources are insufficiently reliable to permit administrative notice of the sources and contents, they are reported by generally respected and reliable news publications. Applicant's submissions, accordingly, are admitted as evidence to be assigned the weight they deserve under DOHA's less stringent evidentiary standards. Applicant's submissions are admitted as exhibits B through F.

Summary of Pleadings

Under Guideline C, Applicant is alleged to have (a) exercised dual citizenship with the U.S. and Taiwan, (b) maintained a valid Taiwan passport that was issued in March 2002 and is not due to expire until March 2012, (c) applied for and was issued a Taiwanese passport in March 2002 even though he became a naturalized, U.S. citizen in 1996, (d) and used his Taiwanese passport instead of his U.S. passport to travel to Taiwan in 2002, 2004, 2005, and 2007.

Under Guideline B, Applicant is alleged (a) to have a sister who is a citizen and resident of Taiwan, (b) to have a mother-in-law and father-in-law who are citizens and residents of Taiwan and ©) to have traveled to Taiwan in 2002, 2004, 2005, and 2007.

For his answer to the SOR, Applicant admitted some of the allegations. He admitted to possessing a Taiwan passport that was issued in March 2002 and is not due to expire until March 2012. He admitted to becoming a naturalized citizen in 1996 and to traveling to Taiwan in 2002, 2004, 2005, and 2007 using his Taiwan passport instead of his U.S. passport (claiming his use of his Taiwan passport enabled him to keep his one-year old son for more than 30 days).

Applicant also admitted to having a sister who is a citizen and resident of Taiwan (one of four sisters), while claiming three other sisters who are naturalized citizens and residents to the U.S. And Applicant admitted to having a mother-in-law and father-in-law who are citizens and residents of Taiwan. But Applicant expressed uncertainty over the meaning of exercising dual citizenship and denied any application of the core Guideline B concerns to his situation.

Findings of Fact

Applicant is a 45-year-old lead mechanic engineer for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Applicant's background

Applicant was born in Taiwan and immigrated to the U.S. in 1986 at the age of 24 to pursue his graduate studies (R.T., at 67). Before immigrating to the U.S., he was conscripted into the Taiwan military and served as an army officer in Taiwan's national army (see ex. 2; R.T., at 67, 90). He studied engineering at a recognized U.S. university and earned his masters degree in 1988 (R.T., at 77). After completing advanced engineering program, he returned to Taiwan (in 1989), where he worked for about a year for a private Taiwan company as a sales engineer (R.T., at 77-79). He held this job for about two months before changing employers (R.T., at 79). After working for a couple firms he returned to school at a local Taiwan college, while working on obtaining a green card that would enable him to return to the U.S.

Applicant returned to the U.S. in 1990 on the strength of a green card and quickly applied for U.S. citizenship. He became a naturalized U.S. citizen in 1996 (see ex. 1; R.T., at 48), and earned his PhD degree in 2005 (R.T., at 84-85).. After becoming a U.S. citizen, he retained his Taiwan passport for convenience reasons (see ex. 2). Applicant is married and has two children: a daughter (age 5) and a son (age 7). His wife (W) is also a naturalized citizen. Like Applicant, W and his two children each maintain dual citizenship and retain Taiwan passports (R.T., at 85-86).

Applicant's parents are deceased. During his early growth years in Taiwan, his father served as the president of a local college, and his mother was an elementary school teacher (R.T., at 66-68). He has a brother (B) who has dual U.S.-Taiwan citizenship and has a listed residence in the U.S. (see ex.1; R.T., at 88-89). B is a retired manufacturing engineer with a PhD from a prestigious American university who returned to Taiwan in 1995 to reside (R.T., at 61-63, 72). B served in the Taiwan military before immigrating to the U.S., but has never worked for the Taiwan government or military (R.T., at 103). Applicant has a sister (S), too, who is a citizen and resident of Taiwan (R.T., at 61-63). She is a retired elementary school teacher who receives a state teachers pension (see ex. 2; R.T., at 103-04). He has three other sisters as well, who are naturalized citizens and residents of the U.S. (see ex. 1; R.T., at 57-60, 73-74).

After becoming a naturalized U.S. citizen and obtaining a U.S. passport (see ex. 3, at 30), Applicant never renounced his Taiwan citizenship (see ex. 2). He applied for and received a renewed Taiwan passport in March 2002 (see ex. 3; R.T., at 48-50). This passport is not due to expire until March 2012. Applicant used both his Taiwan passport and U.S. passport) to travel to Taiwan in 2002, 2004, 2005, and 2007 to check out conditions for placing his one-year son with his grandparents during the summer months (see ex. 2, at 15 and ex. 3, at 16; R.T., at 50-52, 68, 94-96). Applicant used his Taiwan

passport once again in 2008 to travel with his son to Taiwan (R.T., at 92-93). He explained that were he to have used his U.S. passport exclusively, he would not have been permitted to keep his son in Taiwan with his grandparents for more than 30 days. To obtain the necessary waiver to stay in Taiwan for more than 30 days, it would have been necessary for him to travel some distance to see a Taiwan consulate (R.T., at 92). So, for convenience purposes, he elected to travel to Taiwan on his Taiwan passport, with his U.S. passport in reserve. When traveling to countries other than Taiwan, he documents using his U.S. passport exclusively, citing his use of his U.S. passport to enter and exit Indonesia and the PRC as examples of his sole reliance on his U.S. passport (see ex. 3; R.T., at 55-56).

Applicant remains in regular contact with his brother and sister in Taiwan. He exchanges e-mails with B and S several times a month (R.T., at 101-05). He sees B and S on his visits to Taiwan, and when S makes her annual visits to the U.S. (R.T., at 100-04). S provides some school advances for Applicant's son (R.T., at 104).

Applicant maintains a Taiwan bank account and uses this account to repay S's advances with wire transfers. He opened his first account in 2004 (R.T., at 113-14). Because this account is quite small, he opened another account in 2007 when he visited his sister in Taiwan. Like his 2001 bank account, his 2007 account is also quite small (R.T., at 106-07). Besides these two bank accounts, Applicant has a property inheritance from his father. This inherited property consists of an apartment house (4th floor of a seven-floor building). He does not know the value of his property interest in this building. While he does not need this property, he is not willing to relinquish it. He wants to retain this foreign property interest out of concern that his relinquishing it could prompt a fight over the interest with his sisters (R.T., at 123-24).

Before his death in 2007, Applicant's father set up a trust for his children. B manages this trust which has about \$100,000.00 in liquid assets in the trust's account (R.T., at 129). B sends Applicant \$10,000.00 a year from the trust (R.T., at 128-30). Applicant does not know B's trust title or whether the \$10,000.00 he receives represents interest earned or invasion of principal (R.T., at 130-31).

W's parents also reside in Taiwan. W's mother is a retired owner of a truck maintenance and repair business; her father is a retired bank manager (see ex. 2; R.T., at 107-08). W sends her parents money every six months. She, too, has a sister who resides in the U.S. When Applicant and W travel to Taiwan, they sometimes stay with W's in-laws. Likewise, W's parents stay with Applicant and W when they visit them in the U.S. (ex. 2; R.T., at 110-11). While Applicant talks with W's in-laws occasionally, W communicates with them monthly (R.T., at 112).

At this time, Applicant remains unwilling to renounce his Taiwan citizenship and surrender his Taiwan passport (see ex. 2; R.T., at 138). He is willing to consider relinquishing his Taiwan citizenship and surrendering his Taiwan passport only if it is necessary to obtain his security clearance, and not otherwise (R.T., at 138-39). Applicant's offer is a conditional one and may not be considered either an effective

demonstration of a renouncement of his Taiwan citizenship or a completed surrender of his Taiwan passport.

Taiwan's country status

Taiwan has a rich history that dates back 12 to 15 thousand years. Dutch and Spanish colonists claimed the island in the 16th and 17th centuries (see *Background Note: Taiwan*, U.S. Department of State (March 2008). Migration from the Chinese mainland over time supplanted the aboriginal peoples of Taiwan. Japan exerted considerable influence over Taiwan following China's ceding of Taiwan to Japan in 1895 (see *Background Note: Taiwan, id*, at 3).

Following the end of World War II in 1945, Taiwan reverted to Chinese rule. Civil war erupted soon after the reversion between Chiang Kai-Shek's KMT government and the increasingly influential Chinese Communist Party guided by Mao Zedong. When the civil war ended in 1949, 2 million refugees (predominantly nationalists) fled to Taiwan, where Chiang Kai-Shek established a separate provisional KMT capital in Taipei (see *Background Note: Taiwan, supra*, at 3). Mao's victorious Communist party, in turn, established the People's Republic of China (PRC).

For the past one-half century, Taiwan has demonstrated steady economic development and now is a major international trading power. Its accession to the World Trade Organization (WTO) in 2002 represented a significant achievement and strengthened its standing in the expanding global economy.

Taiwan exhibited steady political development as well since its establishment as an island government. Changes reflect a continuing liberalizing process that culminated in the tightly contested election of Chen Shui-bian in 2000 (see *Background Note: Taiwan, supra*, at 3). Chen's Democratic Progressive Party (DPP) won major parliamentary victories in 2000 and again in 2004, enabling Chen to become the first opposition party candidate to win the presidency. Chen was re-elected in 2004 on a platform that included a "defensive referendum" (*Background Note: Taiwan, supra*, at 6). Such referenda have been historically perceived to be closely linked to the question of Taiwan's independence. Historically, the DPP has maintained that Taiwan is an entity separate from mainland China, a marked contrast from Taiwan's opposition parties who stress that Taiwan (though currently divided) is a part of "one China" (see *id.*).

In March 2008, Taiwan elected a new president (Ma Ying-jeou) in a landslide election (see ex. D, International Tribune article, China Strongly Criticizes US Arms Sale to Taiwan, Associated Press (October 2008)). Ma committed to improved relations with the PRC. His policies, as framed, marked a determined shift from the independence track pursued by his predecessor, Chen (see *id.*). Historically, the PRC has strongly opposed Chen's efforts to push for Taiwan's independence. These Chen efforts wrought repeated admonitions from U.S. officials and renewed strains in U.S.-Taiwan relations (see *Taiwan: Recent Developments and U.S. Policy Choices*, Congressional Research Service, Library of Congress, *supra*, at 8, 15-16).

Today's Taiwan political system is a multi-party democracy under a Constitutional umbrella comprising five branches: executive, legislative, judicial, control and examination. Taiwan's reported human rights record and demonstrated respect for the rule of contract in its commercial relations is quite good.

Taiwan's PRC relations

The PRC does not recognize Taiwan's independence, and insists that there is only "one China" (see *Background Note: Taiwan, supra*, at 6). Despite differences over the PRC's one China policy, Taiwan and the PRC have enjoyed increased contacts over the past decade. With Taiwan's continued relaxation of its PRC policy regarding unofficial contacts, cross-strait interactions have grown significantly. Efforts by the PRC, however, to resume cross-strait dialogue without any preconditions have been hampered by the PRC's insistence that the two sides first reach consensus that there is only "one China" before restarting talks (see *id.*). Cheng has recognized the PRC's "one China" insistence but to date has declined to condone the concept. With both sides unwilling to compromise this obstacle, they have cautiously felt each other out with smaller intermediary steps like cross-Strait cargo and passenger charter flights, sale of Taiwan agricultural products in the PRC, and PRC tourists visiting Taiwan (see *id.*).

The PRC operates a large and sophisticated intelligence bureau, entitled the MSS (see *Intelligence Threat Handbook* [Unclassified/For Official Use Only], Interagency OPSEC Support Staff (IOSS), at 71 (June 2004)). The MSS maintains active intelligence gathering operations in Taiwan (see *id.*, at 72). These operations use clandestine agents to collect intelligence on Western consortia investing in the PRC who are suspected of involvement in attempts to democratize the PRC, as well as other pro-democracy groups thought to be engaging in anti-communist activities (see *Intelligence Threat Handbook, supra*, at 72).

In the current political environment, it is still too early to predict the direction of cross-Strait negotiations between Taiwan and the PRC. Because of the PRC's long insistence on Taiwan's acceptance of the "one China" principle as a requisite to any jump-starting of negotiations over practical agreements in trade, cultural exchanges, and other areas of mutual interest, future relations between the two sides remain cloudy at best. Current options for Ma and PRC premier Wen Jiabao include PRC support of meaningful Taiwan participation in the WHO, the jump-starting of cross-Strait talks, and the dropping of PRC objections to Taiwan participation in other multilateral organizations (see *Taiwan: Recent Developments and U.S. Policy Choices*, Congressional Research Service, Library of Congress, *supra*, at 16)

For U.S. policy, Ma's election does present an auspicious opportunity to develop a new framework in Taiwan-PRC relations (see *id.*). Recent high level talks between the PRC and Taiwan reveal hopes for reduced tensions and better relations through increased trade and a formal renunciation of the independence option of Ma's predecessor (see ex. E, newsvine article, *U.S.-Taiwan-China Relationship Back in Balance*, Associated Press, at 2 (October 2008)). Culminating their high level meetings,

the PRC's envoy (Chen Yunlin) signed an agreement with Taiwan's Ma that expands air shipping and postal links between the island and the mainland. These expanded contacts offer the promise of improving the prospects for peace and easing diplomatic strains between Taiwan and the U.S.

U.S.-Taiwan relations

In a joint communique with the PRC in January 1979, the U.S. announced its recognition of the PRC government as the sole government of China. In this joint communique, the U.S. accepted that there is but one China, of which Taiwan is a part (see *Background Note; Taiwan, supra*, at 9). The joint communique stated that within this context the people of the U.S. will maintain cultural, commercial, and other unofficial relations with the people of Taiwan.

To implement the Joint communique, Congress passed the Taiwan Relations Act (TRA) in April 1979. President Carter, in turn, signed the legislation into law on April 10, 1979. Besides providing the legal basis for maintaining the U.S. unofficial relationship with Taiwan, the TRA reinforced the U.S. commitment to provide defense assistance to Taiwan. The TRA expressly provides for the continued sale of appropriate defensive military equipment to Taiwan and declares that peace and stability in the area are in U.S. interests (see *Background Note: Taiwan, supra*). Although the U.S. terminated its Mutual Defense Treaty with Taiwan following its de-recognition of the latter, it has continued its sale of appropriate defensive military equipment to Taiwan (see *id.*).

While ambiguously written, the U.S. commitment to Taiwan's security against cross-strait aggression by the PRC's military forces is implicit in the TRA's coverage of U.S. responsibilities towards Taiwan. This implicit construction is oft-used to support proponents of a "two China" policy. To be sure, initial actions of the Bush Administration in 2001 provided cause to conclude the new President had abandoned longstanding U.S. policy of "strategic ambiguity" in favor of a policy that placed a clearer emphasis on Taiwan's interests at the expense of the PRC (see *Taiwan: Recent Developments and U.S. Policy Choices*, CRS Report to Congress, *supra*, at 13). More recent developments, though, reflect the smoothing of U.S.-PRC relations as a part of the broader war on terrorism.

Currently, the U.S. does not support Taiwan independence and opposes unilateral steps by either side to alter the status quo (see *Background Note; Taiwan, supra*, at 9). For so long as Taiwan's national security remains under threat (both veiled and unveiled) from the PRC, Taiwan can be expected to pursue the development of its military amidst expectations of military assistance from the U.S. Stressing self-reliance, Taiwan maintains a large military establishment (accounting for 15.3 per cent of its central budget). Its principal mission is to defend itself against the PRC, which has not renounced the use of force against Taiwan (see *id.*, at 8). With its unchanged public policy of maintaining "strategic ambiguity" in its official relations with Taiwan, the U.S. can be expected to continue its support of Taiwan's island security with the sale of defensive military equipment.

Taiwan's economic collection practices

Based on past reports to Congress, Taiwan is considered one of the most active collectors of U.S. economic and proprietary information. In its 2000 Annual Report to Congress on Foreign Economic Collection and Industrial Espionage, the preparers list Taiwan as well as the PRC among the most active collectors based on cited surveys (see *2000 Annual Report to Congress on Foreign Economic Collection and Industrial Espionage*, National Counterintelligence Center (NACIC), at 16). Specific incidents are cited in the NACIC Report that identify offenders of proprietary information thefts and attempts to acquire export-restricted products (see *id.*, 7-10).

Recent espionage convictions document ongoing collection activities covering theft of sensitive and proprietary information by and for Taiwan companies (see, e.g., *Press Release, United States v. Ching Kan Wang and Robin Chang*, Case No. 05-60218-CR-Sietz (SD Fla), Superseding Indictment (filed October 2005) and Judgment in a Criminal Case (filed March 2006); *Press Release*, U.S. Department of Justice, U.S. Attorney (ED VA January 2007), and *Statement of Facts (stipulated)*, No.1:05CR 543 (December 2005)).

Besides these above-cited individual convictions, there have been numerous reported cases of Taiwan business entities capitalizing on private acquisitions of sensitive U.S. technology which are adaptable to dual military applications (see, e.g., U.S. Department of Commerce, Bureau of Industry and Commerce (August 2006); *California Exporter Fined in Connection with Attempted Taiwan Export* (September 1999); U.S. Department of Commerce, Bureau of Industry and Commerce, *Commerce Department Imposes Civil Penalty on Minnesota firm in Settlement of Export Violations* (December 2001); U.S. Department of Commerce, Bureau of Industry and Commerce, *Connecticut Company Settles Charges Concerning Unlicensed Pump Exports to China, Taiwan, Israel, and Saudi Arabia* (July 2003); U.S. Department of Commerce, Bureau of Industry and Commerce, *Emcore Corporation settles Charges of Export Control Violations* (January 2004); U.S. Department of Commerce, Bureau of Industry and Commerce, *Parker Hannifan Corp. Settles Charges Pertaining to Illegal Exports to Taiwan and China*, (November 2005).

Stress points between Taiwan, the PRC and the U.S.

In recent years, the PRC has aimed thousands of missiles across the Taiwan Strait for the purpose of pressing Taiwan into eventual reunification. Longstanding PRC designs on Taiwan reunification has entangled the U.S. in cross-Strait relations, because the U.S. commitments to the Taiwan Relations Act has left unclear whether U.S. forces would intervene to defend the island.

In October 2008, the U.S. announced its approval of a \$6.4 billion U.S. arms sales to Taiwan (see ex. C, web memo published by the Heritage Foundation (October 2008). The sales are reported to be modest efforts to neutralize the PRC's increasing military

advantage over Taiwan in its cross-Strait relations. The sales do not include Taiwan-requested upgrades to its F-16C/D fighter aircraft to help ensure air balance or modern diesel-electric submarines that can challenge PRC surface missiles. What the sale provides are apache helicopters and 330 Patriot “advanced capability” missiles. These missiles are intended to help Taiwan meet the PRC’s rapidly increasing short-range ballistic missile (SRBM) fleets (1,400 in all) that are currently arrayed against Taiwan (see Annual Report to Congress on Foreign Economic Collection and Industrial Espionage 2000, National Counterintelligence Center; *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage 2005*, National Intelligence Center).

Many students of U.S.-Sino affairs view this modest arms sale as no more than a minimum maintenance of the status quo against the backdrop of a growing U.S.-PRC partnership relationship. This view holds that U.S. security assurances mandated by the Taiwan Relations Act need to be considered and honored without regard to the PRC’s views on the subject. This latest arms sale assessed in this light represents but another step forward in the fulfillment of U.S. security pledges for Taiwan.

To be sure, the PRC filed objections to the Taiwan arms sale (see ex. D, Intl Herald Tribune article, *China Strongly Criticizes U.S. Arms Sale to Taiwan*, Associated Press (October 2008). Its foreign ministry cited reasons that the sale would interfere in the development of peaceful relations between the PRC and the U.S. and undermines the U.S. publicly maintained “one China” policy and its promise to oppose Taiwanese independence (see *id.*). As expected, Taiwan’s president (Ma Ying-jeou) welcomed the U.S. arms package as an important contribution towards ensuring a strong defense and peace in the Taiwan strait.

In balance, the recent U.S. arms sale to Taiwan represents a renewed U.S. effort to aid Taiwan’s defenses, and improve the balance in the sometimes shaky three-way relationship between the PRC, Taiwan, and the U.S. (see ex. E, newsvine article, *U.S.-Taiwan-China Relationship Back in Balance*, Associated Press (October 2008). These efforts to ensure the maintenance of the status-quo in the Taiwan Strait does mean, however, that the U.S. is willing to back Taiwan’s bid to participate in the UN. This remains a controversial issue, and one vigorously opposed by the PRC, because of its potential for suggesting Taiwan is a sovereign state, separate from the mainland (see *Taiwan: Recent Developments and U.S. Policy Choices*, Congressional Research Service, *supra*, at 6-7). In 2004, Congress did craft something of a middle ground for Taiwan when it enacted P.L 108-28 that required the Secretary of State to seek Taiwan’s observer status in the WHO at every annual meeting (see *id.*, at 7).

In its November 2006 Report to Congress, the Security Review Commission describes the PRC as a country intent on acquiring and exploiting the knowledge developed by multiples of collection agents: legally, if possible, and otherwise illegally by espionage (see *2006 Report to Congress, supra*, at 138. The PRC’s concerted efforts to acquire sensitive technology poses a considerable challenge to U.S. counterintelligence measures.

Recent indictments of Chinese citizens for espionage have served to highlight the PRC's spying activities in the U.S. (*see id.*). Violating its own 2004 U.S.-China agreement, the PRC oft-fails to schedule timely end-use inspection visits of dual-use items licensed for export to the PRC. Better export controls can be effective only if they are multilateral in scope (*see id.*). Multilateral export controls and arms embargoes, however, do provide additional insurance against altering the cross-strait military balance that has been long maintained (*see id.*, at 144).

Other stress points between Taiwan, the PRC, and the U.S. include PRC acquired dual use technologies with military potential from the U.S. and Taiwan through the U.S. and other source countries and the PRC's periodic military exercises in the Taiwan. Reported intelligence, though, is lacking on any Taiwan use of its collection resources in the U.S. to supply the PRC with needed military technology (alone or through technology with known dual use capabilities).

Policies

The revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (effective September 2006) list Guidelines to be considered by administrative judges in the decision making process covering DOHA cases. These Guidelines require the administrative judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the administrative judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the administrative judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Foreign Preference

The Concern: When an individual acts in such a way as to indicate 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. See AG, ¶ 9.

Foreign Influence

The Concern: "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 the this Guideline can and should considered 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.”

Burden of Proof

By virtue of the precepts framed by the Directive, a decision to grant or continue and Applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of proof shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

Analysis

Applicant is a naturalized U.S. citizen who immigrated to the U.S. from Taiwan in 1986 to pursue higher education goals. Security concerns focus on members of Applicant's family and his retention of his Taiwan passport (indicative of a foreign preference) and immediate family (*i.e.*, his brother, and sister) and in-laws who are citizens and residents of Taiwan, a country historically friendly to the U.S., albeit, one with a reported history of economic collection activities in the U.S.

Foreign preference concerns

Dual citizenship concerns necessarily entail allegiance assessments and invite critical considerations over acts indicating a preference or not for the interests of the foreign country over the interests of the U.S. The issues, as such, raise concerns over Applicant's preference for a foreign country over the U.S.

By virtue of his birth in Taiwan to parents of Chinese ancestry, Applicant acquired Taiwan citizenship and passport, which he continued to retain even after becoming a U.S. citizen in 1996 and was thereupon free to renounce his foreign citizenship and relinquish his foreign passport at any time of his choosing. Until this hearing, he consistently declined to relinquish his Taiwan passport because of the convenience it afforded him when he traveled to Taiwan to visit his family. Since becoming a naturalized U.S. citizen, Applicant has taken multiple actions and exercised Taiwanese privileges that can be fairly characterized as active indicia of dual citizenship. Specifically, he renewed his Taiwan passport in 2002 and traveled on his Taiwan passport on multiple occasions between 2002 and 2008 to visit his family and place his son with family members in Taiwan for extended periods. In fairness to Applicant, he holds no assets in Taiwan, retains no other Taiwan privileges, and has never (save for his possession and use of his Taiwan passport) performed or attempted to perform duties, or otherwise acted so as to serve the interests of Taiwan or the PRC in preference to the interests of the U.S. since becoming a U.S. citizen.

Because Applicant continued to possess his Taiwan passport after becoming a naturalized U.S. citizen, the Government may apply disqualifying condition (DC) ¶ 10(a) of AG ¶ 9, "exercise of any right, privilege or obligations of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to:

- (1) possession of a current foreign passport;
- (2) military service or a willingness to bear arms for a foreign country;
- (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;
- (4) residence in a foreign country to meet citizenship requirements;
- (5) using foreign citizenship to protect financial or business interests in another country;
- (6) seeking or holding political office in a foreign country; and
- (7) voting in a foreign election."

To be fair, Applicant offers to surrender his passport, if his doing so would make a difference in his getting a security clearance. This offer is conditional, though, and conditional clearances are not available under the Adjudicative guidelines administered by DOHA. So, for as long as Applicant elects to maintain his Taiwan citizenship and retain and use his Taiwan passport to enter and exit Taiwan, he may not claim any of the mitigating conditions that might otherwise be available to him. Accordingly, none of the mitigating conditions covered by Guideline C have any application to Applicant's situation.

Failure to satisfy a mitigating condition may be taken into account when assessing an applicant's overall claim of extenuation, mitigation, or changed circumstances, but may not be turned into a disqualifying condition. See ISCR Case No. 01-02270 (Appeal Bd. Aug. 29, 2003). That Applicant herein may wish to maintain his Taiwan citizenship and retain his Taiwan passport for convenience reasons only is not sufficient reason to enable him to mitigate security concerns over his retention of a foreign passport.

Whole person precepts do not enable Applicant to surmount the Government's preference concerns herein. Failure to indicate any intention to renounce his Taiwan citizenship and surrender or destroy his Taiwan passport preclude him from documenting his undivided loyalty and preference for U.S. institutions and its way of life over those of his birth country (Taiwan), and indirectly the PRC.

Overall, Applicant is unable to convince that his preference is with the U.S. He fails to meet his proof burden in several ways: lack of demonstrated non-exercise of any privileges associated with his maintenance of his Taiwan citizenship and retention of his passport after his naturalization as a U.S. citizen in 1996. Applicant fails to absolve himself of foreign preference concerns and does not carry his evidentiary burden on the presented issue of whether his preference lies with his adopted country (U.S.) or the country (Taiwan) where he was born and raised as a minor through his parents' Taiwan citizenship. Unfavorable conclusions warrant with respect to the allegations covered by subparagraphs 1.a through 1.d of Guideline C.

Foreign influence concerns

Department Counsel urges security concerns over risks that Applicant's siblings and in-laws residing in Taiwan might be subject to undue foreign influence by Taiwanese government authorities to access classified information in Applicant's possession or control. Because Applicant's immediate family members and in-laws reside in Taiwan, they present potential heightened security risks covered by disqualifying condition (DC) ¶ 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," of the Adjudication Guidelines for foreign influence. The citizenship/residence status of these immediate family members and in-laws in Taiwan pose some potential concerns for Applicant because of the risks of undue foreign influence that could compromise sensitive or classified information under Applicant's possession and/or control.

Because Applicant's brother and sister have some prior government links to Taiwan (schooling, employment, and pension entitlements, respectively), some consideration of ¶ DC 7(b), "connection 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," is warranted as well. Applicant's contacts with his siblings and in-laws residing in Taiwan afford him some potential for accessing Taiwan officials who might be interested in proprietary, sensitive, or even classified information that Applicant is privy to. Still, none of Applicant's family members have any identified affiliations or contacts with Taiwan officials currently known to be associated with intelligence or military organizations interested in collecting proprietary or sensitive information in the U.S. DC ¶ 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," may have some application, given the dual citizenship status of Applicant's family members and his sharing living quarters with W's in-laws during their visits to Taiwan.

Based on what is known from the presented evidence, none of Applicant's immediate family and in-laws residing in Taiwan have any political affiliations with Taiwan's government or the PRC's military or intelligence organizations, or have any history to date of being subjected to any coercion or influence, or appear to be vulnerable to the same. Any risk of undue foreign influence on Applicant and/or his siblings and in-laws would appear to be insubstantial, and clearly manageable ones.

The PRC, although a country reported to have targeted U.S. economic and proprietary interests in the past, has shown considerable patience and reluctance to mount any foreseeable assaults on Taiwan's territorial, economic and political autonomy, or use its immense intelligence powers to target specific Taiwan residents for the compromise of classified or sensitive materials in the hands of relatives in the U.S. or NATO partners.

The Adjudicative Guidelines governing collateral clearances do not dictate *per se* results or mandate particular outcomes for applicants with relatives who are citizens/residents of foreign countries in general. What is considered to be an acceptable risk in one foreign country may not be in another. While foreign influence cases must by practical necessity be weighed on a case-by-case basis, guidelines are available for referencing in the supplied materials and country information about Taiwan.

The special relationship that has existed between the U.S. and Taiwan over the past half-century has been one marked by mutually reconcilable political and economic interests. Reports of Taiwan intelligence gathering against U.S. companies are counterbalanced by Taiwan's history of friendship and partnership in a defense pact formalized in 1979. The mutually supportive bonds that have linked Taiwan's special relationship with the U.S. have not been weakened by either the TRA, or the geopolitical forces that have shaped the U.S.'s evolving relationship with the PRC. Whatever potential security risks arise as the result of Applicant's having family members with citizenship and residency in Taiwan, they are manageable ones which are mitigated.

Taiwan remains a friend of the U.S. and is a country whose democratic institutions are not incompatible with our own traditions and respect for human rights and the rule of law. Unlike the old Adjudicative Guidelines, the new ones do take into account the country's demonstrated relations with the U.S. as an important consideration in gauging whether the particular relatives with citizenship and residency elsewhere create a heightened security risk. The geopolitical aims and policies of the particular foreign regime involved do matter. Taiwan, while reported to target the U.S. and its companies in the past for economic and proprietary information, is still a country with no known recent history of hostage taking or disposition for exerting undue influence against family members to obtain either classified information, or unclassified economic and proprietary data.

As for security concerns associated with the presence of Applicant's siblings and in-laws in Taiwan (a country historically friendly to the U.S) and relatively modest financial interests in the country, any potential heightened risk of a hostage situation or undue foreign influence brought in the hopes of eliciting either classified information or economic or proprietary data out of Applicant through his family members residing in Taiwan is a manageable one. Applicant, accordingly, may take advantage of one important mitigating condition: MC ¶ 8(a), "the nature of the relationships with foreign persons, the country in which these persons are located, or the persons or activities of these 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."

Whole person assessment also serves to minimize Applicant's exposure to conflict of interests with his Taiwan family members. Not only has Applicant become a naturalized U.S. citizen and received his advance professional training in the U.S., but he has made every effort to work, save, and pursue his financial interests exclusively in the U.S.

In Applicant's case, any likelihood of coercion, pressure, or influence being brought to bear on any of his immediate family members and in-laws would appear to be minimal. By all reasonable accounts of the presented record, Applicant has no visible conflicts of interest with Taiwan citizen/residents or property interests in Taiwan that could be at risk to exploitation or compromise by Taiwan authorities.

Overall, any potential security concerns attributable to Applicant's immediate family members in Taiwan are sufficiently mitigated to permit safe predictive judgments about Applicant's ability to withstand risks of undue influence attributable to his familial relationships in Taiwan. Favorable conclusions warrant with respect to the allegations covered by Guideline B.

In reaching my recommended decision, I have considered the evidence as a whole, including each of the factors and conditions enumerated in 2(a) of the Adjudicative Process of Enclosure 2 of the Directive.

FORMAL FINDINGS

In reviewing the allegations of the SOR in the context of the findings of fact, conclusions, and the factors and conditions listed above, I make the following separate formal findings with respect to Applicant's eligibility for a security clearance.

GUIDELINE C: (FOREIGN PREFERENCE): AGAINST APPLICANT

Sub-para. 1.a :	AGAINST APPLICANT
Sub-para. 1.b :	AGAINST APPLICANT
Sub-para. 1.c :	AGAINST APPLICANT
Sub-para. 1.d :	AGAINST APPLICANT

GUIDELINE B: (FOREIGN INFLUENCE): FOR APPLICANT

Sub-para. 2.a :	FOR APPLICANT
Sub-para. 2.b :	FOR APPLICANT
Sub-para. 2.c :	FOR APPLICANT

Conclusions

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is denied.

Roger C. Wesley
Administrative Judge

