



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



In the matter of:)
)
) ISCR Case No. 07-18080
)
)
Applicant for Security Clearance)

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: Elizabeth L. Newman, Esq.

August 13, 2008

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant has mitigated the government’s security concerns under Guideline B, Foreign Influence and Guideline C, Foreign Preference. Applicant’s eligibility for a security clearance is granted.

On March 31, 2008, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concerns under Guidelines B and C. 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 answered the SOR in writing on May 21, 2008, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on July 11, 2008, and reassigned to me on July 21, 2008. DOHA

issued a notice of hearing on July 23, 2008, and the case was scheduled at the request of Applicant's counsel for July 31, 2008. Applicant waived the 15-day notice requirement. I convened the hearing on the scheduled date.

Rulings on Procedure and Evidence

The government offered fourteen hearing exhibits (HE) and requested I take administrative notice of each exhibit. After I reviewed the exhibits I took administrative notice of HE I through V. I declined to take administrative notice of the other exhibits as they were not official documents from government sources whose accuracy cannot reasonably be questioned, but rather were news releases.

I permitted department counsel to submit the documents now marked as Government Exhibits (GE). He offered GE 1 and 2 which were admitted without objection.

GE 3, originally offered as a hearing exhibit is a memoranda of facts about the country of Taiwan. It was admitted without objection.

GE 4 through 12 were originally offered as hearing exhibits. Applicant's counsel objected to GE 4-12 on the grounds of authentication, reliability, materiality and relevance. Specifically that they were not reliable, were piece meal and not a complete record and they were irrelevant to the issues in subject case, as they did not deal with naturalized U.S. citizens, but rather dealt with export violations by U.S. companies. Department counsel's position was that the documents reflected the U.S. concerns about industrial espionage and showed the country of Taiwan reflected a heightened risk factor to be considered. I did not admit GE 4-8. These exhibits were news releases from the U.S. Department of Commerce reflecting snippets of information about U.S. companies that had settled allegations that the company had attempted to or had illegally exported items to Taiwan, among other countries. Although the rules of evidence are relaxed, the administrative judge is still required to ensure evidence offered is reliable, relevant and material to the security concerns raised. U.S. companies engaging in illegal exports to foreign countries are too far removed from security interest alleged in this case. These news releases do not comply with even the low threshold of reliability, relevance and materiality. In addition, the medium used to present information, that is a news release, barely provides the reader with more than a glimpse of the factual issues and does not meet the minimum bar or reliability. GE 9 was also not admitted for the same reason above. This news release reflected that two people were indicted for violation of export licensing laws. The article says the items were destined for Taiwan. No other information was provided. In addition, none of the above documents comply with the authentication requirements listed in accordance DoD Directive 5220.6 Section 5 (b), specifically they are not "records compiled in the regular course of business, or other physical evidence, other than investigative report" that have been "furnished to the Department concerned by an investigative agency pursuant to its responsibilities in connection with assisting the head of the Department concerned to safeguard classified information within industry."

GE 10 is a copy of an indictment dated October 2005 for an individual alleged to have violated U.S. export laws. No information was provided whether this person was targeted by a foreign agent or whether the individual was convicted. The indictment alone is not enough to raise it to the level of relevance and materiality. The above authentication requirement has not been met.

GE 11 and 12 were admitted. GE 11 is a news release from the United States Attorney's Office detailing the final sentencing of a defendant who pleaded guilty for unlawful removal of classified material from the Department of State and making false statements to the government. GE 12 is a stipulation of fact between the U.S. and the defendant in the above case, detailing his offenses and how he was targeted by a Taiwanese intelligence officer. I found these documents specifically relevant to the issue of an individual being targeted by the Taiwanese government.¹

Applicant testified and submitted Exhibit (AE) A-B, which were admitted without objection. Two witnesses testified on Applicant's behalf. DOHA received the transcript of the hearing (Tr.) on August 7, 2008

Findings of Fact

Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 44-year-old woman who is the co-founder/chief executive officer and co-owner of her own business. The business has contracts with the Department of Defense. Her husband is the co-founder/chief financial officer/managing director and co-owner. The third co-owner is also a co-founder and president. Applicant was born in Taiwan and received her bachelor's degree while there. She came to the U.S. in 1995 to pursue a masters in business and completed the degree in 1997. She was married when she came to the U.S. but the marriage was failing and her husband did not accompany her. She met her future husband, a U.S. citizen, in 1996. He was also pursuing a graduate degree at the time. She returned to Taiwan in 1997 and realized she had some life changing decisions to make. She decided to get divorced and return to the U.S. to pursue a career and permanently settle. In 1998 she and her husband married. Both she and her husband earned their certified public accountant certificates. She worked in business until two months before her first child was born in March 2001. Her second child was born in September 2003 and she remained at home until 2005. She has since resumed working in the joint business venture.²

Applicant returned to Taiwan in September 2001 to introduce her daughter to her family residing there. She returns yearly to visit her family, so they will have an

¹ Tr. 17-32.

² Tr. 33-38, 52-53, 87-89, 105.

opportunity to know her children. She approximates that she spent between four and six weeks visiting her relatives in Taiwan in the years 2001 through 2004. In 2005 and 2006, she stayed for two weeks because she had resumed work. In 2008, she also spent two weeks.³

In 1998 after Applicant got married she started the process to become a U.S. citizen. She became a naturalized U.S. citizen on October 26, 2004. She testified the reason it took so long for her to obtain her citizenship is because the immigration process was backed up. She eventually hired an immigration lawyer to assist her.⁴

In 2006, Applicant traveled to Taiwan. She obtained a visa from Taiwan because it was required of all U.S. citizens. During this trip Applicant brought both her new U.S. passport and her Taiwanese passport. Both her U.S. and Taiwanese passports were stamped. She testified that when she arrived in Taiwan, after an 18-hour flight, with her two small children, she and the children were tired and she found it expedited the process of getting through the entry process by showing both her Taiwan and U.S. passport. She testified that because she spoke Chinese the immigration officer assumed she was using her Taiwanese passport. She advised him she was using her U.S. passport, and both passports were stamped. After this first trip she has not used the Taiwanese passport. She credibly testified that she is willing to renounce any citizenship rights she may have with Taiwan. She surrendered her passport to her facility security manager and defaced the passport by writing the word "void" on all of its pages.⁵ The facility security manager provided a statement verifying he had her passport in his possession and should she request its return he would notify the Defense Security Service.⁶ She did not send it back to Taiwan or formally renounce her citizenship because she was advised that by doing so it may heighten Taiwan's interest in her because they may suspect her reason for returning the passport and formally renouncing her Taiwanese citizenship is because she is applying for a U.S. security clearance. She obtained paperwork from the government of Taiwan to go through the renouncement procedures and verified she has no criminal history or delinquent taxes in Taiwan.⁷ Applicant has never attempted to obtain Taiwanese passports or citizenship documents for her two children.

All of Applicant's financial interests are in the U.S. She has no financial interests or potential inheritance interests in Taiwan. She estimates her financial worth, including she and her husband's assets, both business and personal, is approximately \$750,000 to \$1 million. Their business employs approximately 25 people, many of whom are

³ Tr. 38-40.

⁴ Tr. 40-42.

⁵ Tr. 42-44, 62-76; Answer to SOR.

⁶ *Id.*

⁷ *Id.*; AE B.

retired military officers. No Taiwanese nationals are employed by their business. She also estimates the company did approximate \$1.5 million in revenue in 2007, with a profit of about 13%. This year they anticipate revenue of approximately \$3.5 million and a similar profit. She and her husband own two houses.⁸

Applicant's widowed mother lives in Taiwan. She is 77 years old and raised eight children. Her father died when Applicant was nine years old. He was a chef by trade. Her mother never worked outside of the home. She was raised on a farm and has no connection to the government or military, nor is she involved in politics. She lives in an apartment that she has already titled in her son's name. This same son lives with his family in the mother's home.⁹

Two of Applicant's brothers live in Taiwan. The older is a security guard at a factory. Applicant does not know what is manufactured at the factory. Her brother's wife is a housewife. They have one son who works on an assembly line in a factory. Applicant is not aware of what is assembled. Applicant's other brother is married and has two children. Her younger brother who lives with their mother works for a business that manufactures promotional items for businesses. Neither brother is connected to the government, military or has political inclinations¹⁰.

Applicant has five sisters. One lives in Canada and is a contractor doing home renovations. Applicant has very little contact with her. One sister is a retired accounting supervisor who was in the shoe business. Three years ago she joined her husband and they work in a company manufacturing medical devices. They have two children. She does not know what her nephew does. Her niece went to school in the U.S. and is now living in Singapore. Another sister is retired from a financial institution where she sold stocks and bonds. She is now a home maker. This sister is divorced and has a grown daughter who works as an accountant for a commercial company. Another sister is a homemaker. Her husband owns a small printing company. The last sister is a certified insurance salesperson. She is single and lived with Applicant for a few months while in the U.S. Applicant is unaware of any specific contacts her relatives may have with the Taiwanese or People's Republic of China businesses.¹¹

None of Applicant's siblings are involved in technology or the corporate world. When Applicant visits her mother and siblings in Taiwan they do not talk about her business, but rather their interests are about typical family and children issues.¹²

⁸ Tr. 100-104.

⁹ Tr. 44-45, 55.

¹⁰ Tr. 46-47, 79-82.

¹¹ Tr. 47-50, 82-91, 110.

¹² Tr. 50-53.

Applicant has given her mother birthday and holiday gifts in the past, but does not provide any financial support to her or any other family member. Her mother is aware that she is a partner in a company involving engineering services, but is not privy to any other information. She speaks with her mother about once a week or once every two weeks. She may speak with one or some of her siblings about once a month, but it is irregular as to whom she speaks and how often. Her discussion topics are of a personal nature about the family. Applicant's family is not aware of any specifics about her business. Applicant does not maintain contact with any friends in Taiwan. She is friends with two couples in the U.S. that are Taiwanese, but are not associated with the Taiwanese government or other Taiwanese companies. One couple are naturalized U.S. citizens and the other hold "green" cards and are in the process of obtaining their U.S. citizenship. Applicant has never been contacted, retained, or arrested by any representative of the Taiwanese government.¹³

Applicant credibly testified that if she was ever placed in a position of having to choose between her family living in Taiwan and her loyalty to the U.S., she strongly and adamantly testified that she would never compromise her loyalty to the U.S. She has actually discussed this issue with her husband. She credibly testified that her conscience would not allow her to betray the U.S. It is not something she would be able to live with. Her first priority would be to her children and husband who are American citizens and she would not put them or her country at risk.¹⁴

Applicant's business has two sides, one that contracts with the Department of Defense and the other that provides financial consulting services to other companies. The two different business interests are not located together. The financial consulting side of the business does not deal directly with any Taiwanese contractors. The consulting side of the company may have dealings with company clients that may have business dealings with Taiwanese companies, but neither Applicant nor her company has direct contact with the client company's clients and none of these companies are involved in the defense contract side of their business. Furthermore the relationship with these companies is in the area of financial support and accounting services.¹⁵

Applicant's life is firmly rooted in the U.S. She is registered to vote in the U.S. and has not voted in Taiwan since her departure. Her husband's family lives close and they celebrate traditional American holidays together. She has not received any benefits from Taiwan, including health benefits.¹⁶

¹³ Tr. 54-55, 91-100.

¹⁴ Tr. 71-73, 111-112.

¹⁵ Tr. 98, 126-137.

¹⁶ Tr. 55-62, 91-92.

Applicant's business partner has known her for more than 12 years and their families have socialized together. They visit each others homes and have developed a high level of trust. He believes Applicant is a loyal American.¹⁷

Taiwan and PRC¹⁸

In 1949, Taiwan was populated by refugees fleeing a civil war in China. That same year, Communists in mainland China established the People's Republic of China (PRC), and a separate, independent government was established in Taiwan. The PRC does not recognize Taiwan, and insists there is only "one China."

Taiwan is a multi-part democracy. Through nearly five decades of hard work and sound economic management, Taiwan has transformed itself from an underdeveloped, agricultural island to an economic power that is a leading producer of high-technology goods. On January 1, 1979, the United States formally recognized the PRC as the sole legal government of China. The U.S. also announced that it would maintain cultural, commercial, and other unofficial relations with the people on Taiwan. The Taiwan Relations Act (TRA) signed into law on April 10, 1979, created the legal authority for the conduct of unofficial relations with Taiwan. The American Institute in Taiwan, a private nonprofit corporation with offices in Taiwan, is authorized to issue visas, accept passport applications, and provide assistance to U.S. citizens in Taiwan. A counterpart organization was established by Taiwan. It has multiple offices in the U.S.

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

The TRA enshrines the U.S. commitment to help Taiwan maintain its defensive capability. The U.S. continues to sell defensive military equipment to Taiwan, in accordance with the TRA. President Bush publicly stated in 2001 that the United States would do "whatever it takes" to help Taiwan's defense and approved a substantial sale of U.S. weapons to Taiwan, including destroyers, anti-submarine aircraft, and diesel submarines. The White House also was more accommodating to visits from Taiwan's officials than previous U.S. administrations, and permitted visits from Taiwan's president in 2001 and 2003, and Taiwan's vice president and defense minister in 2002.

Since then, there have been changes in U.S.-Taiwan relations. Taiwan's new president disavowed key concepts long embraced by the opposing party - the "status quo" that there is only one China and Taiwan is part of it - and instead has adopted the more provocative position that Taiwan already "is an independent, sovereign country," a

¹⁷ Tr. 123-125.

¹⁸ Information in this section is from HE I, II, III, IV, and V.

“status quo” he promises to maintain. There was also a series of recent corruption scandals.

In response to Taiwan’s political developments, the U.S. administration appears to have dialed back its earlier enthusiasm for supporting Taiwan’s initiatives. While still pursuing a close relationship with Taiwan, U.S. officials now appear to be balancing criticisms of the PRC military buildup opposite Taiwan with periodic cautions and warnings to the effect that U.S. support for Taiwan is not unconditional, but has limits.

The PRC is a large and economically powerful country, with a population of over a billion people and an economy growing at about 10% per year. The PRC has an authoritarian government, dominated by the Chinese Communist Party. The PRC has a poor record with respect to human rights, suppresses political dissent, and its practices include arbitrary arrest and detention, forced confessions, torture, and mistreatment of prisoners.

Both the PRC and Taiwan are known to be active collectors of U.S. economic intelligence. The PRC also maintains intelligence operations in Taiwan.

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 C, Foreign Preference

Under AG ¶ 9 the security concern involving Foreign Preference arises: “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.”

AG ¶ 10 describes conditions that could raise a security concern and may be disqualifying: I have specifically considered 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. This includes but is not limited to: (1) possession of a current foreign passport”) and (b) (“action to acquire or obtain recognition of a foreign citizenship by an American citizen”). Applicant held a Taiwanese passport, after becoming a U.S. citizen, until she defaced and relinquished it to her facilities security manager. She also used both her U.S. and Taiwanese passport during a trip to Taiwan. I find (a) applies to the extent that she used her foreign passport, although not exclusively, when she entered Taiwan on one occasion. I find (b) applies under the same set of facts.

I have considered all the mitigating conditions applicable to this guideline. Specifically I have considered AG ¶ 11 (b) (“the individual has expressed a willingness to renounce dual citizenship”); (c) (“exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor”); and (e) (the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.) Applicant has expressed a

willingness to renounce any citizenship ties she may have with Taiwan. She does not consider herself a dual citizen. She completed some aspects of formally renouncing any citizenship ties she may have with Taiwan, but was directed to stop the process so as not to create a heightened awareness of her application for a security clearance. She has written “void” on her Taiwanese passport. Although she used the passport on a trip to Taiwan, it was in conjunction with her U.S. passport. She has obtained the appropriate visas to enter Taiwan and followed all other requirements for U.S. citizens to travel to Taiwan. She has since voided the passport and not used it. I find Applicant has mitigated the foreign preference security concerns.

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern regarding foreign influence: “Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.”

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. I have considered them all and especially considered 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 (b) (“connections to a foreign person, group, government, or country that creates 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 country by providing that information”). Applicant’s mother and siblings are citizens and residents of Taiwan, a country known to be an active collector of U.S. economic intelligence. This creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. It also creates a potential conflict of interest. Therefore (a) and (b) have been raised by the evidence.

AG ¶ 8 describes conditions that may be mitigating. I have considered them all and especially considered AG 8 ¶ (a) (“ the nature of the relationships with foreign person, the country in which these persons are located, or the positions or activities of those person in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.”); (b) (“there is no conflict of interest, either because the individual’s sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S. that the individual can be expected to resolve any conflicts of interest in favor of the U.S. interest.”); (c) (“contact

or communication with the foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.”)

I do not find (c) applicable because Applicant’s communicates regularly with her mother and visits her and some of her siblings on a semi-regular basis so that her children can get to know their extended family.

Applicant is a naturalized U.S. citizen who has lived in the U.S. since 1998. She received her master’s degree from a U.S. university in 1997. She returned to Taiwan the same year to contemplate her future. Her decision to move to the U.S. was a thorough thought-out process, rather than a default decision. She contemplated its long-term ramifications on both her personal and professional life. She chose to leave Taiwan and make the U.S. her home. Part of her decision to return was to marry her present husband and make a life in the U.S. She is now the mother of two U.S. born children and a successful business woman. She and her husband have no assets in Taiwan and have substantial business and personal assets in the U.S. Her mother, who lives in Taiwan, has never worked outside the home. None of her siblings work for the government of Taiwan. Although some work in the manufacturing industry, none of it can be characterized as high technology. There is no indication that any of her relatives living in Taiwan are aware of the specifics of her business or do they have any government contacts. Taiwan collects U.S. intelligence, as does other U.S. allies. It does not have a poor human rights record and there is no indication that it uses coercion in its intelligence operations. Applicant has considered what she would do if she was faced with a choice between her family living in Taiwan and the security of the U.S. She has contemplated what it would mean and discussed it with her husband. She credibly testified that she could never live with herself if she betrayed the U.S. Faced with her maternal bond to her children, her marriage, and the loyalty she has for the U.S. versus her familial relationships in Taiwan, she would resolve the conflict in favor of the U.S. I find it unlikely that Applicant would ever be placed in a position of having to choose between the interests of Taiwan or her relatives and the interests of her immediate family and the U.S. I further find there is no conflict of interest, because Applicant has such deep and longstanding relationships and loyalties in the U.S. that she can be expected to resolve any conflict of interest in the favor of the United States. Therefore, I find (a) and (b) are applicable. No other mitigating condition is applicable.

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 commonsense 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 is a naturalized U.S. citizen. Her husband and two children were all born in the U.S. She has been in the U.S. since 1997. Her life is in the U.S. now. She is the co-founder and co-owner of a successful business. She and her husband have substantial assets in the U.S. She has none in Taiwan. I considered the totality of Applicant’s family ties in Taiwan. Taiwan is an ally of the United States. However, Guideline B is not limited to countries hostile to the United States. “The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States.”¹⁹ The distinctions between friendly and unfriendly governments must be made with caution. Relationships between nations can shift, sometimes dramatically and unexpectedly. Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. Nevertheless, the nature of the nation’s government, its relationship with the U.S., and its human rights record are relevant to assessing the likelihood that an applicant’s family members are vulnerable government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependant upon the government or the country is known to conduct intelligence operations against the U.S.

The PRC has an authoritarian government, a poor human rights record, and has a very aggressive espionage program. The U.S. officially supports the “one China” policy. However, to treat the PRC and Taiwan the same is to ignore reality. They currently function as separate entities. That is not to say that the PRC is irrelevant to this case. The PRC conducts intelligence operations in Taiwan. The threat to Taiwan from the PRC is real. It is this threat that is the impetus to Taiwan’s defense spending. It also provides motivation for Taiwan’s intelligence gathering. The threat from the PRC also provides motivation for Taiwan to keep the U.S. as a friend, as it is dependent on the U.S. for arms and defense.

Taiwan is a democracy, does not have a poor human rights record, and is dependent upon the United States for arms, as well as its defense against the PRC. Taiwan is known to conduct intelligence operations against the United States, but there is no indication that Taiwan utilizes coercion against its citizens for espionage purposes. Many of our allies conduct intelligence gathering against the U.S. Taiwan would be risking a great deal by raising the stakes, and attempting to use duress against one of

¹⁹ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

its citizens in an attempt to coerce a U.S. citizen to commit espionage. Applicant's mother and her siblings are also not good candidates for coercion as they are not dependent upon the government of Taiwan.

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

Formal Findings

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

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Paragraph, Guideline C:	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.

Carol G. Ricciardello
Administrative Judge