



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



In the matter of:)	
)	
)	ISCR Case No. 08-02736
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: Ayala Yasgur, Esq.

February 23, 2009

Decision

TUIDER, Robert J., Administrative Judge:

Applicant has mitigated security concerns pertaining to Foreign Influence and Foreign Preference. Clearance is granted.

History of Case

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on June 18, 2007. On June 19, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines C (Foreign Influence), and B (Foreign Preference) for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant received the SOR on August 19, 2008. He answered the SOR in writing on August 22, 2008, and elected to have his case decided on the written record in lieu of a hearing. DOHA received Applicant's Response to SOR on August 24, 2008. Pursuant to the Additional Procedural Guidance of the Directive, Department Counsel requested that the case be converted to a hearing. Department Counsel was prepared to proceed on October 8, 2008, and I received the case assignment on October 21, 2008.

DOHA issued a notice of hearing on November 7, 2008, scheduling a hearing for December 4, 2008. The hearing was convened and completed as scheduled. The Government offered Government Exhibits (GE) 1 and 2, which were received without objection. Applicant testified on his own behalf and submitted Applicant Exhibits (AE) A, without objection. I held the record open until December 15, 2008 to afford the Applicant the opportunity to submit additional matters. DOHA received the transcript of the hearing (Tr.) on December 12, 2008. On January 6, 2009, Applicant submitted AE B and AE C, which were received without objection.

Procedural Rulings

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of the certain facts relating to Taiwan. The request, which contained a country summary, and accompanying documents, were marked as GE 3 through 17 and received without objection. (Tr. 9, 12-14).

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004)); *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). The most common basis for administrative notice at ISCR proceedings, is to notice facts that are either well known or from government reports. See Stein, ADMINISTRATIVE LAW, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice). Various facts pertaining to Taiwan were derived from GE 3 through 17 as indicated under subheading "Taiwan" of this decision.

Findings of Fact

In his response to the SOR, Applicant admitted all of the allegations in the SOR. His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is a 57-year-old systems engineer, who has been employed by his defense contractor employer since June 2007. He is a first-time applicant for a security clearance.

Applicant was born in Taiwan in December 1951, where he was raised and spent his formative years. He attended college/graduate school in Taiwan and was awarded a Bachelor of Science degree in chemistry in May 1974, and a Master's Degree in chemistry in June 1976. Tr. 60. He served two years of mandatory military service in the Taiwanese Army from 1976 to 1978 as a junior officer assigned to instructor duty teaching physics and mathematics. Tr. 23-25, 61-62. He pursued his graduate studies in the U.S., and was awarded a Ph.D. in chemistry instrumentation in March 1987, discussed *infra*. Tr. 60-61.

Applicant married his wife in December 1979 in Taiwan. Applicant's wife, like him, was born and spent her formative years in Taiwan. GE 1. In August 1982, Applicant immigrated to the U.S. on a student visa to attend graduate school for his Ph.D., discussed *supra*. Tr. 56. Applicant's wife and oldest son joined him later in the U.S. Applicant's oldest son was born in Taiwan in October 1982. Applicant became a naturalized U.S. citizen in January 1999. He was issued a U.S. passport in October 2003. Applicant's wife became a naturalized U.S. citizen in January 1988, and his oldest son became a naturalized U.S. citizen in March 1999. Applicant's second son was born in the U.S. in April 1989, and is a U.S. citizen by birth. GE 1.

Applicant's wife is employed as a secretary. Together, Applicant and his wife make a comfortable six figure income. Tr. 69-80. Applicant's oldest son is employed at a bank and currently lives with Applicant and his wife. Applicant's other son is a sophomore attending a prestigious university in the U.S. Tr. 53-54.

The SOR alleged Applicant is a dual citizen of the U.S. and Taiwan, and that he held a valid Taiwanese passport after being issued his U.S. passport (SOR ¶¶ 1.a.-1.c.). In November 2008, Applicant surrendered his Taiwanese passport to the Taiwanese government. He also applied for "expatriation" with the Taiwanese government renouncing his Taiwanese citizenship. In December 2008, the Taiwanese government issued him a "Certificate of Renunciation of Nationality" thus approving his request. Tr. 57-59, AE A – AE C.

Applicant has four living siblings in Taiwan, two sisters, ages 63 and 60, and two brothers, ages 52 and 50. His 63-year-old sister is a retired teacher, his 60-year-old sister is retired from a factory, his 52-year-old brother is a physician, and his 50-year-old brother is a dentist. He has one sister who is deceased (SOR ¶ 2.a.). Tr. 29-37, 65-66. Applicant speaks to his 63-year-old sister by telephone "about every three months" and speaks to his other siblings by telephone "every six months to one year." Tr. 66-67. Applicant's mother-in-law is 80 years old and lives in Taiwan (SOR ¶ 2.b.). Tr. 68. None of his siblings or relatives are associated with or employed by the Taiwanese government. Tr. 39.

Applicant visited Taiwan three times since he immigrated to the U.S. in 1984. The first visit was for eight days during December 2003/January 2004 for a family visit. The second and third visits were in 2006. The second visit was in October following his father's stroke and the third visit was a month later in November to attend his father's

funeral. The latter two visits lasted approximately one week each (SOR ¶¶ 1.e.-1.f.). GE 2, Tr. 63-65. Applicant used his Taiwanese passport when he traveled to Taiwan in 2003 and 2006 (SOR ¶ 1.e.). As noted *supra*, Applicant surrendered his Taiwanese passport to the Taiwanese government in November 2008.

The SOR alleged Applicant owned an apartment in Taiwan valued at approximately \$150,000 (SOR ¶¶ 1.d. 1.f.). During the hearing, the “official” value of the apartment was established at about \$300,000, which is divided among the six remaining children and/or their heirs. Applicant’s oldest sister pays taxes on that apartment. Applicant is unsure about his inheritance status in light of his having given up his Taiwanese passport and citizenship. Other than his uncertain interest in the apartment his father left to his six children, Applicant does not have any real or personal property in Taiwan. Tr. 45-47.

Applicant and his wife own their home valued at approximately \$350,000 free and clear. He has a 401(k) account valued at \$300,000 and approximately \$30,000 cash in the bank, with a total net worth of \$630,000. Tr. 62-63.

Taiwan¹

In 1949, two million refugees fled from a civil war in mainland China to Taiwan. That same year, Communists in mainland China established the Peoples’ Republic of China (PRC or China), and Chiang Kai-shek established a separate, provisional capital for his government in Taipei, Taiwan. The PRC does not recognize Taiwan’s independence, and insists that there is only “one China.” After long recognizing Taiwan, on January 1, 1979, the U.S. formally recognized the government of the PRC as the sole legal government of China. The U.S. does not support independence for Taiwan and is committed to a “one-China policy,” under the Taiwan Relations Act, signed into law on April 10, 1979.

Taiwan is a multi-party democracy that has significant economic contacts with China, and it has developed a strong economy since its separation from the PRC in 1949. However, Taiwan’s own national security remains under constant threat from the PRC and this has led to Taiwan’s large military establishment. The PRC’s Ministry of State Security is the “preeminent civilian intelligence collection agency in China,” and maintains intelligence operations in Taiwan, through a bureau utilizing PRC nationals with Taiwan connections.

Taiwan is known to be an active collector of U.S. economic intelligence, and the National Counterintelligence Center (NACIC)’s 2000 Annual Report to Congress on Foreign Economic Collection and Industrial Espionage lists Taiwan as being among the most active collectors of U.S. economic and proprietary information. The 2000 Report highlights specific incidents wherein Taiwan engaged in attempts to acquire export-restricted products.

¹ The contents of the Taiwan section are taken in whole or in part from GE 3 through 17.

These collection activities are ongoing, as evidenced by the January 2006 conviction and four-year prison sentence of Jonathan C. Sanders on charges related to the theft of sensitive and proprietary information by and for Taiwanese companies. Additionally, in December 2005, Donald Keyser, the Principal Deputy Assistant Secretary of State for East Asian and Pacific Affairs, pled guilty to illegally removing classified materials and to providing false statements to the U.S. Government. Mr. Keyser was engaged in a relationship with, and met with, an intelligence officer employed by the National Intelligence Bureau, the foreign intelligence agency of the government of Taiwan.

Policies

In an evaluation of an applicant's security or trustworthiness suitability, an administrative judge must consider the "Adjudicative Guidelines for Determining Eligibility For Access to Classified Information" (AG(s)). The AGs include brief introductory explanations for each AG, and provide specific disqualifying conditions and mitigating conditions.

These Guidelines are not inflexible ironclad rules of law. Instead, recognizing the complexities of human behavior, an administrative judge should apply these guidelines in conjunction with the factors listed in the adjudicative process. AG ¶ 2. An administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," an administrative judge should consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. AG ¶ 2(c).

Specifically, an administrative judge should consider the nine adjudicative process factors listed at AGs ¶ 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."

Since the protection of the national security is the paramount consideration, the final decision in each case is arrived at by applying the standard that "[a]ny doubt concerning personnel being considered for access to classified [or sensitive] information will be resolved in favor of national security." AG ¶ 2(b). In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, the Government has the initial burden of establishing controverted facts by “substantial evidence,”² demonstrating, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant’s access to classified information. Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to produce evidence “to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).³

A person seeking access to classified or sensitive 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. It is because of this special relationship the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to such information. Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified or sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of such information.

The scope of an administrative judge’s decision is limited. Nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. Executive Order 10865, § 7.

Analysis

Guideline C, Foreign Preference

AG ¶ 9 explains the Government’s concern:

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

² “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge’s] finding from being supported by substantial evidence.” *Consolo v. Federal Maritime Comm’n*, 383 U.S. 607, 620 (1966). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

³The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant’s past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15.” ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

provide information or make decisions that are harmful to the interests of the United States.

AG ¶ 10 sets out the following conditions that could raise a security concern and may be disqualifying in this case:

(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

(5) using foreign citizenship to protect financial or business interests in another country.

At the time the SOR was issued, Applicant held dual citizenship with Taiwan and the U.S., and held a valid Taiwanese passport because it was his belief that he was required to demonstrate he was a Taiwanese citizen in order to inherit property from his father. AG ¶ 10(a)(1) has been raised by the evidence.

Three Foreign Preference Mitigating Conditions under AG ¶ 11 are potentially mitigating to this disqualifying condition:

(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

(b) the individual has expressed a willingness to renounce dual citizenship; and

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

Applicant's dual citizenship was derived from his parents and/or residence in Taiwan. Applicant exceeded the requirement to express a willingness to renounce his dual citizenship by formally renouncing his Taiwanese citizenship as well as surrendering his Taiwanese passport to the Taiwanese government in November 2008. Confirmation of this was acknowledged by the Taiwanese government in December 2008. He took such action being uncertain of the collateral affects it would have on his inheritance rights, desiring to comply with DoD requirements for a security clearance. This concern is deemed mitigated under AG ¶¶ 11(a), 11(b), and 11(e).

Guideline B, Foreign Influence

AG ¶ 6 explains the Government's concern about "foreign contacts and interests" stating:

[I]f the individual has divided loyalties or foreign financial interests, [he or she] 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 indicates four conditions that could raise a security concern and may be disqualifying in this case, including:

- (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;
- (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;
- (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; and
- (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 risk of foreign influence or exploitation.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001). Applicant has frequent contact with his older sister and to a lesser extent his remaining siblings in Taiwan. These close relationships create a potential risk of foreign exploitation, inducement, manipulation, pressure, or coercion meriting a close examination of all circumstances.

The Government produced substantial evidence of these two disqualifying conditions as a result of Applicant's admissions and evidence presented. The Government established Applicant's siblings are resident citizens of Taiwan, and that Applicant maintains frequent contact with them by telephone and infrequent travel. The

Government also identified the concerns associated with Applicant's potential inheritance of his father's apartment in Taiwan. The burden shifted to Applicant to produce evidence and prove a mitigating condition. The burden of disproving a mitigating condition never shifts to the Government.

Three Foreign Influence Mitigating Conditions under Guideline ¶ 8 are potentially applicable to these disqualifying conditions:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;

(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 conflict of interest in favor of the U.S. interest; and

(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.

Applying common sense and life experience, there is a rebuttable presumption that a person has ties of affection for, and/or obligation to his immediate family. ISCR Case No. 04-07766 at 4 (App. Bd. Sept. 26, 2006); ISCR Case No. 01-03120 at 4 (App. Bd. Feb. 20, 2002). Applicant has demonstrated the indicia of ties of affection for/and or obligation to siblings by telephone as well as his travel to Taiwan in 2003 and 2006.

Applicant's siblings are not associated with or affiliated with the Taiwanese government. His two sisters are retired and his two brothers are respectively employed as a physician and a dentist. The record does not identify what influence, if any, the Taiwanese government could exert on Applicant's siblings as a result of their being resident citizens of Taiwan. However, their presence in Taiwan and Applicant's foreign travel create concerns under this Guideline. As such, the burden shifted to Applicant to show his relatives in Taiwan and travel there does not create security risks.

"[T]he nature of the foreign government involved in the case, and the intelligence-gathering history of that government are important evidence that provides context for all the other evidence of the record . . ." See, e.g., ISCR Case No. 04-0776 at 3 (App. Bd. Sept. 26, 2006); see also ISCR Case No. 02-07772 at 7 (App. Bd. Aug. 28, 2003). As noted *supra* under the subheading "Taiwan," Taiwan actively engages in intelligence gathering against the U.S.

Applicant denies having “divided loyalties” between the U.S. and any foreign country. It should be noted Applicant’s allegiance to the U.S. was not challenged in this proceeding. The issue is rather a positional one.

[Guideline B] hinges not on what choice Applicant might make if he is forced to choose between his loyalty to his family and the United States, but rather hinges on the concept that Applicant should not be placed in a position where he is forced to make such a choice. ISCR Case No. 03-15205 at 3-4 (App. Bd. Jan. 21, 2005).

On balance, Applicant has not met his burden of showing there is “little likelihood that [his relationship with his in-laws] could create a risk for foreign influence or exploitation.” The nature of the Taiwan’s government and its ongoing intelligence gathering activities against the U.S. places Applicant in just this position, given his close relationship with his family and their continued presence and connection with Taiwan. Accordingly, Mitigating Conditions 8(a) and 8(b) do not apply. On the other hand, the affirmative steps Applicant has taken by renouncing his Taiwanese citizenship and surrendering his Taiwanese passport to Taiwanese authorities may preclude him from inheriting property from his parents. When compared with having no assets in Taiwan and having little or no likelihood of acquiring property in Taiwan through inheritance and his substantial assets in the U.S., application of Mitigating Condition 8(f) is appropriate for SOR ¶ 2.c.

Whole Person Concept

In addition to the enumerated disqualifying and mitigating conditions as discussed previously, I have considered the general adjudicative guidelines related to the whole person concept under Directive ¶ E2.2.1. “Under the whole person concept, the Administrative Judge must not consider and weigh incidents in an applicant’s life separately, in a piecemeal manner. Rather, the Judge must evaluate an applicant’s security eligibility by considering the totality of an applicant’s conduct and circumstances.”⁴ The directive lists nine adjudicative process factors (APF) which are used for “whole person” analysis. Because foreign influence does not involve misconduct, voluntariness of participation, rehabilitation and behavior changes, etc., the eighth APF, “the potential for pressure, coercion, exploitation, or duress,” Directive ¶ E2.2.1.8, is the most relevant of the nine APFs to this adjudication.⁵ In addition to the

⁴ ISCR Case No. 03-04147 at 3 (App. Bd. Nov. 4, 2005) (quoting ISCR Case No. 02-01093 at 4 (App. Bd. Dec. 11, 2003)); ISCR Case No. 05-02833 at 2 (App. Bd. Mar. 19, 2007) (citing *Raffone v. Adams*, 468 F.2d 860 (2nd Cir. 1972) (taken together, separate events may have a significance that is missing when each event is viewed in isolation).

⁵ See ISCR Case No. 02-24566 at 3 (App. Bd. July 17, 2006) (stating that an analysis under the eighth APF apparently without discussion of the other APFs was sustainable); ISCR Case No. 03-10954 at 5 (App. Bd. Mar. 8, 2006) (sole APF mentioned is eighth APF); ISCR Case No. 03-17620 at 4 (App. Bd. Apr. 17, 2006) (remanding grant of clearance because Judge did not assess “the realistic potential for exploitation”), *but see* ISCR Case No. 04-00540 at 6 (App. Bd. Jan. 5, 2007) (rejecting contention that eighth APF is exclusive circumstance in whole person analysis in foreign influence cases).

eighth APF, other “[a]vailable, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.” Directive ¶ E2.2.1. Ultimately, the clearance decision is “an overall common sense determination.” Directive ¶ E2.2.3.

The Appeal Board requires the whole person analysis address “evidence of an applicant’s personal loyalties; the nature and extent of an applicant’s family’s ties to the U.S. relative to his [or her] ties to a foreign country; his or her social ties within the U.S.; and many others raised by the facts of a given case.” ISCR Case No. 04-00540 at 7 (App. Bd. Jan. 5, 2007).

I have carefully considered Applicant’s family connections and personal connections to Taiwan. Several circumstances weigh against Applicant in the whole person analysis. First, and most importantly for security purposes, Taiwan actively seeks classified and industrial/economic information. Taiwan may attempt to use Applicant’s siblings who live in Taiwan to obtain such information. Also, Applicant spent his formative years in Taiwan. Applicant has visited Taiwan three times recently, i.e. one time in 2003 and two times in 2006. Applicant also maintains frequent contact with his older sister and to a lesser extent his remaining siblings in Taiwan. These contacts and visits are manifestations of strong affection and regard Applicant has for family members in Taiwan.

There is substantial mitigating evidence that weighs towards grant of Applicant’s security clearance. Applicant immigrated to the U.S. in 1987 to pursue his graduate studies, and has continuously lived in the U.S. for the past 22 years. His wife and oldest son became U.S. citizens, and his youngest son was born in the U.S. His assets in the U.S. are substantial when contrasted to his uncertain assets in Taiwan. He is a U.S. citizen and U.S. passport holder. His ties to the United States are stronger than his ties to his siblings in Taiwan. He has vested his life and future in the U.S. There is no evidence Applicant has ever taken any action which could cause potential harm to the United States. He takes his loyalty to the United States very seriously, and he has worked diligently for a Government contractor since June 2007. The evidence contains no derogatory record evidence about the Applicant.

I considered the totality of Applicant’s family ties to Taiwan. Taiwan is a multi-party democracy. In the unlikely event that Applicant’s family in Taiwan was subjected to coercion or duress from the Taiwanese government in an attempt to obtain sensitive information, I find that because of his deep and longstanding relationships and loyalties in the U.S., that Applicant would resolve any attempt to exert pressure, coercion, exploitation, or duress in favor of the United States. Noteworthy is the affirmative and overt steps Applicant recently took to formally renounce his Taiwanese citizenship and surrender his Taiwanese passport to the Taiwanese government, at the risk of negating his inheritance rights.

This case must be adjudged on his own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful

analysis. This Analysis must answer the question whether there is a legitimate concern under the facts presented that the Taiwanese government or its agents might exploit or attempt to exploit Applicant's family members in such a way that this U.S. citizen would have to choose between his pledged loyalty to the U.S. and those family members. After weighing the disqualifying and mitigating conditions, all the facts and circumstances, in the context of the whole person, I conclude Applicant has mitigated the security concerns pertaining to foreign influence and preference.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my "careful consideration of the whole person factors"⁶ and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has mitigated or overcome the Government's case. For the reasons stated, I conclude he is eligible for access to classified information.

Formal Findings

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

Paragraph 1, Guideline C:	FOR APPLICANT
Subparagraphs 1.a - 1.f:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a. – 2.d.:	For Applicant

Conclusion

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

ROBERT J. TUIDER
Administrative Judge

⁶See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).