



**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. 08-05517

Appearances

For Government: Melvin Howry, Esquire, Department Counsel
For Applicant: Joseph Testan, Esquire

November 30, 2009

Decision

WESLEY, Roger C., Administrative Judge:

History of Case

On June 8, 2009, the Defense Office of Hearings and Appeals (DOHA), under 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 6, 2009, and requested a hearing. The case was assigned to me on August 4, 2009, and was scheduled for hearing on September 16, 2009. A hearing was held on the scheduled date 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 two exhibits; Applicant relied on three witnesses (including himself) and eight exhibits. The transcript (Tr.) was received on September 22, 2009. Based

upon a review of the case file, pleadings, exhibits, and testimony, eligibility to access classified information is granted.

Rulings on Procedure

Besides its two exhibits, the Government requested administrative notice of nine documents: *Background Note: Taiwan*, U.S. Department of State (September 2008); *Taiwan: Taiwan, Specific Information*, U.S. Department of State (November 2009); *Recent Developments and U.S. Policy Choices*, Congressional Research Service, Library of Congress (August 5, 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*, National Counterintelligence Executive-2007 (September 2008); *Press Release, California Exporter Fined in connection with Attempted Taiwan Export* (September 1999); *Press Release, Commerce Department Imposes Civil Penalty on Minnesota Firm in Settlement of Export Violations*, U.S. Department of Commerce (December 2001); *Press Release, Connecticut Company Settles Charges Concerning Pump Exports to China*, U.S. Department of Commerce ((July 2003); *Press Release, Emcore Corporation Settles Charges of Export Control Violations*, U.S. Department of Commerce (January 2004); *Press Release, Parker Hannafin Corp. Settles Charges Pertaining to Illegal Exports to Taiwan and China*, U.S. Department of Commerce (November 2005); *Press Release, Defendants Indicted on Charges of Conspiracy to Export Controlled Items*, U.S. Department of Commerce (August 2005); *Superceding Indictment, United States v. Ching Kan Wang and Robin Chang* (SD. FL October 2005); *Press Release*, U.S. Department of Justice, U.S. Attorney (ED VA 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 12, 2007); ISCR Case No. 02-24875 (App. Bd. October 12, 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.

Summary of Pleadings

Under Guideline B, the allegations against Applicant, are as follows: (a) he has a girlfriend who is a citizen and resident of Taiwan; (b) his girlfriend has a brother and a sister-in-law who are citizens and residents of Taiwan; (c) he met his girlfriend on the Internet in November 2005; (d) his girlfriend visited him in the U.S. in December 2005, in

May 2006, in February 2007, and in July 2007; and (e) he visited his girlfriend in Taiwan January 2007, April 2007, and December 2007.

In his answer to the SOR, Applicant admitted each of the allegations. He provided no explanations.

Findings of Fact

Applicant is a 51-year-old manufacturing 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 married in February 1981, and divorced his wife in December 2000 over irreconcilable differences (see xs. 1 and 2). He has two adult children from this marriage: ages 27 and 23 (exs. 1 and 2; Tr. 53-54). He has been employed by his current defense contractor for over 30 years and has held a clearance since 1983 (Tr. 54).

In November 2005, Applicant made Internet contact with a woman who is a citizen and resident of Taiwan (Tr. 55, 58-59). They subsequently established a romantic relationship and exchanged visits (Tr. 55-56). Her parents are citizens and residents of Taiwan. So, too, her brother and sister-in-law are citizens and residents of Taiwan. None of her family members ever worked for Taiwan government, and none have any working or social relationships with any members of the Taiwan military or intelligence establishments (Tr. 58).

When asked, Applicant acknowledged that his girlfriend visited him in December 2005, in May 2006, and in February 2007 (Tr. 59-60). In turn, Applicant made visits to Taiwan to see her in January 2007, April 2007, December 2007, and finally in J (see ex. 1; Tr. 56-57, 61).

By June 2009, Applicant had become increasingly concerned that relationship could cause a security problem for him (Tr. 62-63). He insisted that she come to his home in the U.S. to discuss terminating their relationship (Tr. 70-71). His girlfriend came to see him in July 2009, as agreed. When she arrived, they talked for some time and agreed to end their relationship (Tr.71). Applicant shared his decision to terminate his relationship with his Taiwanese girlfriend with his supervisor (Tr. 14-15). Applicant's assurances that he has terminated his relationship with his Taiwanese girlfriend and severed all ties with her are credible and accepted.

Since ending his relationship with his Taiwanese girlfriend, Applicant has exchanged several e-mails with her and talked with her a couple of times by telephone (Tr. 64, 69-70). After she returned to Taiwan in July 2009, she telephoned him to let him know she was ok (Tr. 65-67). And in August 2009, Applicant called his ex-girlfriend to check on her safety following reports of a typhoon striking Taiwan (Tr. 66). Applicant has

no current relationship with her and no residual feelings of affection for her (Tr. 66-68). Applicant has no reason to believe he will ever resume his relationship with his ex-girlfriend (Tr. 71).

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 (April 2007)). Migration from the Chinese mainland over time supplanted the aborigines peoples of Taiwan. Japan exerted considerable influence over Taiwan following China's ceding of Taiwan to Japan in 1895 (see *Background Note: Taiwan, supra*, 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, two 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 today is a major international trading power. Its accession to the WTO in 2002 represented a significant achievement and strengthened its standing in the expanding global economy.

Taiwan has 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 6). Chen's DPP party 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*). Such referenda have been historically perceived to be closely linked to the question of Taiwan's independence.

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

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 7). 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.* 9-10).

During his two terms, Chen has recognized the PRC's "one China" insistence, but to date has declined to condone the concept. With both sides unwilling to compromise on this obstacle, they have cautiously progressed 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 *Background Note: Taiwan, supra*, at 7).

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. These consortia 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.

U.S.-Taiwan relations

In a joint communique with the PRC in January 1979, the U.S. announced its recognition of the government of the PRC as the sole government of China and 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 providing 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*, at 10). And even though 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, supra*, at 11-12). 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 10). 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 *Background Note: Taiwan, supra*, at 9). 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 most recent reports 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, supra*, at 4-6; *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage-2007, supra*, at 5). Specific incidents are cited in the NACIC Report that identify offenders of proprietary information thefts and attempts to acquire export-restricted products (see *2000 Annual Report to Congress on Foreign Economic Collection and Industrial Espionage, supra*, at 2-6).

Recent espionage convictions document ongoing collection activities covering theft of sensitive and proprietary information by and for Taiwan companies (see, e.g., *Press Release, California Exporter Fined in Connection with Attempted Taiwan Export, supra*; *Press Release, Commerce Department Imposes Civil Penalty on Minnesota Firm in Settlement of Export Violations, supra*; *Press Release, Connecticut Company Settles Charges Concerning Pump Exports to China, supra*; *Press Release, Emcore Corporation Settles Charges of Export Control Violations, supra*; *Press Release, Parker Hannafin Corp. Settles Charges Pertaining to Illegal Exports to Taiwan and China, supra*; *Press Release, Defendants Indicted on Charges of Conspiracy to Export Controlled Items,*

supra; *Superceding Indictment, United States v. Ching Kan Wang and Robin Chang, supra*; *Press Release, Statement of Facts (stipulated), United States v. Keyser, Crim. Case No.1:05CR543, (ED VA December 2005), supra*). Multilateral export control regimes in place are voluntary and not universally adhered to by member nations.

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

In its annual report to Congress in 2008, the NCC described 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 Annual Report to Congress on Foreign Economic Collection and Industrial Espionage-2007, supra*, at 5). 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. 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 Annual Report to Congress on Foreign Economic Collection and Industrial Espionage-2007, supra*, at 4-6). 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.*).

Without effective dual use export controls in place, the PRC can be expected to acquire dual use technologies with military potential from the U.S. and Taiwan through the U.S. and other source countries. 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).

Other stress points between the PRC and Taiwan are reflected in periodic PRC military exercises in the Taiwan Straits (*see Background Note: Taiwan, supra*, at 9). More frequent U.S.-PRC high-level exchanges have the potential to reduce cross-Strait military tensions (*id.*).

Cross-Straight dialogue between the PRC and Taiwan remained suspended during Chen's two terms. Still, economic and social ties continued to develop during Chen's presidency (*see Background Note: Taiwan, supra*, at 7). Following his election in 2008, Ma Ying-jeou has moved earnestly to resume cross-Straight dialogue, expand charter flights, and initiate new efforts to improve cross-Straight relations (*id.*). The U.S. officially welcomes these initiatives as a process that can hopefully contribute to the reduction of tensions in the region and creation of environmental conditions conducive to the peaceful resolution of differences between Taiwan and the PRC. For U.S. policy, Ma's election offers opportunities for improved cross-Straight relations, but also policy challenges to the durability, and efficacy of the Taiwan Relations Act in light of projected changes in the cross-Straight relationship between Taiwan and the PRC (*see Taiwan: Recent Developments and U.S. Policy Choices, supra*, at 4-5, 13).

For the foreseeable future, Ma's effectiveness in reducing cross-Straight tensions is likely to be tested by the recent corruption conviction of Chen. What implications this conviction has for Taiwan's domestic and cross-Straight relations is unclear at this point (Tr. 72-74). Any fundamental changes in cross-Straight relations can, of course, be expected to affect Taiwan's relations with the U.S.

Endorsements

Applicant's coworkers, daughter, and friends who have known Applicant for a number of years attest to his honesty and trustworthiness (see ex. A; Tr. 14-16). Two of his co-workers express awareness of his past relationship with a Taiwanese citizen; both consider him to be reliable and trustworthy and worthy of holding a security clearance (see ex. A; Tr. 15).

Applicant's daughter finds her father to be completely trustworthy (Tr. 44). She described his judgment to be good at all times (Tr. 44). His daughter acknowledged her awareness of Applicant's relationship with his Taiwanese girlfriend and accepted her father's assurances that he had terminated the relationship (Tr. 45).

Applicant's performance evaluations for the past three years rate him as a successful contributor who meets the objectives and expectations of his position (see ex. B). He is characterized as a valued team player who has the necessary abilities and motivational skills to effectively carry out his assigned responsibilities (ex. B).

Policies

The AGs list guidelines to be used by administrative judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns." These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the revised AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following AG ¶ 2(a) factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral chances; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following adjudication guideline is pertinent herein:

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

Under the Directive, a decision to grant or continue an 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 commonsense 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 adversarial 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 by substantial evidence any controverted facts alleged in the SOR; 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 his security worthiness through evidence of refutation, extenuation or mitigation of the Government's case. Because Executive Order 10865 requires that all security clearances be clearly consistent with the national interest, "security-clearance determinations should err, if they must, on the side of denials." See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Analysis

Applicant is a U.S. citizen by birth. Security issues of concern to the Government focus on a former girlfriend of Applicant's who, along with her parents, brother, and sister-in-law, are citizens and residents of Taiwan. Taiwan is a country that has been historically friendly to the U.S., albeit, one with a reported history of economic collection activities in the U.S.

Because of the status of Applicant's ex-girlfriend and family members in Taiwan, concerns were raised that his ex-girlfriend and her family members residing in Taiwan might be subject to undue foreign influence by Taiwanese government authorities to access classified information in Applicant's possession or control. Due to their relationship with Taiwan, his ex-girlfriend and her immediate and extended family members presented some 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 AGs for foreign influence apply to Applicant's situation.

None of the family members connected to Applicant's ex-girlfriend have any prior military service. As a result, no 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.

Further, from what is known from the presented evidence, none of Applicant's ex-girlfriend's family residing in Taiwan have any political affiliations with Taiwan's government, have any known history to date of being subjected to any coercion or influence, or appear to be vulnerable to the same. Upon fully considering Applicant's explanations about his discontinued relationship with his Taiwanese girlfriend, and indirectly her family members, any risk of undue foreign influence on Applicant and his ex-girlfriend and her family members would appear to be insubstantial, and clearly not of the

magnitude that could make them subject to a heightened security risk of pressure or compromise under Guideline B.

Taiwan, although a country reported to have targeted U.S. economic and proprietary interests in the past, enjoys a special relationship with the U.S. through the TRA, and is a democratic government with a history of respect for human rights and the rule of law. While Taiwan has been a reported active collector of economic intelligence in the U.S., it has not been known to use acquired information to harm U.S. strategic interests. Taiwan remains a member in good standing with the WTO, and a constructive trading partner with the U.S., who at times has itself been targeted by agents of the PRC for intelligence collection on Western groups thought to be promoting democracy and engaging in anti-communist activities directed at the PRC.

The AGs 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, applicable guidelines are available to evaluate Applicant's situation in light of 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 heightened security risks arise as the result of Applicant's having family members with citizenship and residency in Taiwan are by every reasonable measure 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 account of the covered 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 ex-girlfriend and her family members in Taiwan, 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 ex-girlfriend and her family members residing in Taiwan is an acceptable 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 a foreign individual, group, organization, or government and the interests of the U.S.”

MC ¶ 8(b), “there is no conflict of interest, either because the individual’s sense of loyalty or obligation to the foreign person, group, government, or country is 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” has direct application, too, to Applicant’s situation. Both at home and in his work, Applicant has demonstrated loyalty, patriotism, and professional commitments to the U.S. for his entire life.

Whatever potential conflicts Applicant may have had while in a romantic relationship with his ex-girlfriend (a Taiwanese citizen with family in Taiwan) have since been abated by the severance of their relationship. Moreover, any heightened risk that might have been imputed to Applicant due to his Taiwanese relationship have been more than counterbalanced by his demonstrated U.S. citizenship commitments and responsibilities.

Evaluating Applicant’s security worthiness in the context of a whole person assessment also serves to minimize Applicant’s exposure to any hypothetical conflict of interests with his ex-girlfriend and her family who still reside in Taiwan. Applicant is highly regarded and trusted by his daughter, his supervisors, and his co-workers, and is not aware of any risks of coercion, pressure, or influence that any of her family members might be exposed to.

Under the recounted circumstances presented, any likelihood of any coercion, pressure, or influence being brought to bear on him as the result of his prior relationship with a Taiwanese citizen and resident, and her family members, would appear to be minimal at this time. Put another way, 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 military or intelligence officials.

Overall, any potential security concerns attributable to Applicant's 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 ex-girlfriend’s familial relationships in Taiwan. Favorable conclusions warrant with respect to the allegations covered by Guideline B.

In reaching my decision, I have considered the evidence as a whole, including each of the factors and conditions enumerated in the ¶ 2(a) factors of the AGs.

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 B: (FOREIGN INFLUENCE): FOR APPLICANT

Subparagraphs. 1.a through 1.e: FOR APPLICANT

Conclusions

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 Applicant's security clearance.

Roger C. Wesley
Administrative Judge