DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 09-06543
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Tovah A. Minster, Esquire, Department Counsel
For Applicant: *Pro se*

February 28, 2011

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the written record in this case, I conclude that Applicant failed to rebut or mitigate the Government's security concerns under Guideline B (Foreign Influence) and Guideline C (Foreign Preference). His eligibility for a security clearance is denied.

Applicant completed and certified a Security Clearance Application (SF 86) on January 20, 2009. On September 7, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B (Foreign Influence) and Guideline C (Foreign Preference). 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 adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

On October 20, 2010, Applicant answered the SOR in writing and requested that his case be determined on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on December 7, 2010. The FORM contained

documents identified as Items 1 through 5. In addition, the Government compiled facts about Taiwan from 16 official U.S. Government publications and requested that I take administrative notice of those facts. By letter dated December 7, 2010, DOHA forwarded a copy of the FORM, the factual summary containing information about Taiwan, and the source documents from which those facts were derived to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the file on December 12, 2010. His response was due on January 11, 2011.

Applicant timely submitted four additional documents: a cover letter, containing additional facts and explanation, and three letters of character reference. Department Counsel did not object to Applicant's submissions. On January 31, 2011, the case was assigned to me for a decision. I marked Applicant's four documents as Exhibit (Ex.) A through Ex. D and admitted them to the record.

Findings of Fact

The SOR contains four allegations that raise security concerns under Guideline B, Foreign Influence (SOR ¶¶ 1.a. through 1.d.) and three allegations that raise security concerns under Guideline C, Foreign Preference (SOR ¶¶ 2.a. through 2.c.). In his Answer to the SOR, Applicant admitted all Guideline B allegations and all Guideline C allegations. His admissions are admitted as findings of fact.

In April 2009, Applicant was interviewed about his citizenship status and employment history by an authorized investigator from the U.S. Office of Personnel Management (OPM). He also responded to interrogatories sent to him by DOHA. On July 2, 2009, Applicant provided a 33-page affidavit to an OPM investigator.[1]

Applicant is 44 years old, married, and the father of a teenaged son. He is employed by a government contractor and seeks a security clearance for the first time. (Item 4 at 37; Item 5 at 51.)

Applicant was born and raised in Taiwan, where he earned an undergraduate degree in computer science. As an undergraduate, his special academic interests were artificial intelligence and computational linguistics. (Item 4; Item 5 at 34.)

In 1991, Applicant came to the United States for graduate study. In 1992, he and his wife, who was also born, raised, and educated in Taiwan, were married. In 1994, Applicant earned a Master of Science degree in Computer Science from a U.S. university. Applicant's wife earned a Ph.D. in biology with a concentration in virology from a U.S. university. (Item 4 at 10, 18; Item 5 at 30, 45.)

[1] On November 24, 2009, Applicant reviewed the investigator's summary of the interview and his affidavit. He provided a sworn statement in which he adopted the investigator's summary and the affidavit as accurate. He did not dispute the accuracy of the information in those documents, which is recited herein. (Item 5 at 62-64.)

In January 2004, Applicant and his brother-in-law, who is a Taiwan-born naturalized U.S. citizen, co-founded and incorporated a business in the United States. The company's original product was radio frequency identification. Since incorporation, the company also developed hardware, firmware, and monitoring devices. Applicant is Chief Technology Officer of the company. His brother-in-law is Chief Executive. The company has no other employees. (Item 5 at 49-50.)

In December 2005, Applicant and his wife became naturalized U.S. citizens. Applicant acquired a U.S. passport in December 2005. On his January 2009 SF-86, Applicant identified himself and his wife as dual citizens of the United States and Taiwan. He continued to use his Taiwan passport to enter Taiwan until about April 2009. In April 2009, shortly before his first security interview, he surrendered his Taiwan passport to his employer's facility security officer for destruction. At the security interview, he told an authorized investigator that he would be willing to renounce his Taiwan citizenship in order to obtain a security clearance. (Item 3, Enclosure 4; Item 4 at 7, 8, 18, 19, 30; Item 5 at 28.)

In 2005, Applicant accepted employment as Chief Technology Officer with a Taiwanese company that produces wireless sensing platforms and sensor networks. His employment package included the following: a 7% stake or interest in the value of the company; a seat on the company's Board; an annual salary of approximately $37,000 to $38,000 USD; a one-month salary for Chinese New Year; and travel expenses for two round trips per year to Taiwan to conduct company business. Applicant's salary was deposited in a Taiwan bank. He then wired funds from his Taiwan bank account to his U.S. bank account for withdrawal.[2] (Item 5 at 36-37.)

The company owned by Applicant and his brother-in-law licensed one of its firmware products to the Taiwanese company that employed Applicant as Chief Technology Officer. The U.S. government contractor sponsoring Applicant for a security clearance has also hired his brother-in-law and business partner. Applicant reported that his brother-in-law had been awarded a security clearance. He also stated that his mother, his wife, his sister, his brother-in-law, and his wife's friend and her husband were aware that he was undergoing a security investigation.[3] (Item 5 at 38, 48-49, 53.)

Applicant's mother, a widow and a retired English teacher, is a citizen and resident of Taiwan. Applicant communicates with his mother by telephone two to four

[2] In his answer to the SOR, Applicant acknowledged that he served as Chief Technical Officer of the company from "about May 2005 to June 2008." He further reported that the company ceased all operations on July 31, 2010. He provided a letter to the Chief Executive Officer (CEO) and owner of the company, dated September 10, 2010, whereby he divested himself of all interest in the company. He also provided a letter from the CEO and owner confirming that Applicant had no existing ownership in the company. (Item 3, Enclosure 2, Enclosure 3.)

[3] The individuals Applicant identified as having knowledge of his security investigation all have connections with Taiwan. (Item 5 at 48-49, 53.)

times a month. He communicates with her by e-mail occasionally. Whenever he travels to Taiwan, Applicant resides at his mother's home. (Item 5 at 15.)

Applicant's father-in-law and mother-in-law are citizens and residents of Taiwan. Applicant's father-in-law has an ownership interest in a business that imports metal to make tools. His mother-in-law is a retired teacher. Applicant sees his in-laws when he travels to Taiwan, and he plays tennis with his father-in-law. (Item 5 at 47-48.)

Between 2001 and 2008, Applicant made 19 visits, for business and pleasure, to Taiwan. He also visited the People's Republic of China (PRC) twice on business. In 2004, he met with representatives of the PRC automotive industry on behalf of the U.S. company he owns with his brother-in-law. He visited Italy once for pleasure. His most recent trip to Taiwan occurred in April and May 2009, when he visited his mother. In 2008, Applicant voted in Taiwan's Presidential election. (Item 4 at 27-33, Item 5 at 34, 57-58.)

In an affidavit he provided in July 2009, Applicant acknowledged that he also possessed a Taiwanese National Identity Card. He opined that the card "is probably packed away somewhere in a box." He further stated that he had not renewed the card. In his answer to the SOR, Applicant reported that he surrendered his Taiwanese National Identity Card to his facility security officer (FSO) on October 3, 2010. He also provided a letter from the FSO, dated October 4, 2010, reporting that Applicant had relinquished the card to him for the purpose of destruction. (Item 3 at 2, Enclosure 5; Item 5 at 32.)

In response to DOHA interrogatories, Applicant admitted he possessed a bank account in Taiwan with a cash value of approximately $1,000 USD. He stated that the account could be closed at any time, but to do so, he would need to travel to Taiwan and close the account himself. In his answer to the SOR, Applicant stated that he used the account for emergency purposes when visiting his mother and in-laws in Taiwan. He reported that he had closed the account on October 15, 2010. (Item 3, Enclosure 1[4];Item 5 at 9.)

In his answer to the SOR, Applicant provided documentation that he had divested himself of any ownership interest in the Taiwanese company that employed him from 2005 to 2008. He also provided documentation intended to show that he had closed his bank account in Taiwan.[5] He provided documentation corroborating his statement that he had voluntarily surrendered his Taiwanese passport and his Taiwanese Identity Card to his FSO, and that both documents had been destroyed. He claimed that prior to submitting his application for a security clearance, he did not know that, as a U.S. citizen, he could not vote in a foreign election. In response to the FORM,

[4] Applicant's Item 3, Enclosure 1 was written in Chinese. No translation from Chinese into English was provided by the Applicant. I was unable to determine if the document corroborated Applicant's assertion that the account had been closed. (Item 3, Enclosure 1.)

[5] Please see Footnote 4.

Applicant argued that he had provided information to mitigate the security concerns raised in SOR allegations 1.c., 1.d., 2.a., 2.b., and 2.c. (Item 3; Response to FORM, Ex. A.)

Applicant provided three letters of character reference in his response to the FORM. The individuals who wrote in support of Applicant worked with and observed him in his position with his current employer. One writer praised his knowledge of sensor technology. Another writer noted that Applicant was "an extremely bright, hardworking and totally dedicated individual." The third writer noted that Applicant is "an outstanding professional and a self-starter." (Ex. B; Ex. C; Ex. D.)

I take administrative notice of the following facts about Taiwan, as contained in official U.S. Government documents provided by Department Counsel to Applicant in the FORM:

> In 1949, following a civil war between the Nationalist Chinese and the Chinese Communist Party, two million refugees, predominately Nationalist members and supporters, fled from mainland China to Taiwan. That same year, Communists in mainland China established the People's 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. Despite substantial economic ties, the People's Republic of China did not hold any official talks with Taiwan from October 1998 until June 2008. Moreover, the governments of Taiwan and the People's Republic of China still do not negotiate directly. "The military's primary mission is the defense of Taiwan against the P.R.C., which is seen as the predominant threat and which has not renounced the use of force against Taiwan." 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's 2000 Annual Report to Congress of 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. There have been various cases involving the illegal export, or attempted illegal export, of U.S. restricted, dual use technology to Taiwan, including: (1) laser gun aimer/ sights; (2) measuring probes controlled for nuclear nonproliferation and national security reasons; (3) centrifugal pumps that are controlled for chemical and biological weapons and anti-terrorism reasons; (4) Metal Organic Vapor Disposition tools controlled for national security and anti-terrorism reasons; (5) fluid control valves that are controlled for national security, foreign policy, nonproliferation or anti-terrorism reasons; (6) radio communication encryption modules; and (7) controlled nickel powder.
>
> 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 office employed by the National Intelligence Bureau, the foreign intelligence agency of the government of Taiwan.

(FORM at 3-7; footnotes and citations omitted.)

Burden of Proof

The Government has the initial burden of proving controverted facts alleged in the SOR. The responsibility then shifts to the applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant then bears the burden of persuasion. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of protecting national security.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id*. at 527. The President has authorized the Secretary of Defense or his designee to grant an applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief

introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used 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, the administrative judge applies these guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense 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.

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 in seeking to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." *See also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

Under Guideline B, Foreign Influence, "[f]oreign 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." AG ¶ 6.

Additionally, adjudications under Guideline B "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 U.S. citizens to obtain protected information and/or is associated with the risk of terrorism." AG ¶ 6.

I have considered all of the disqualifying conditions under the Foreign Influence guideline. Applicant's close contacts and relationships with family members who are citizens and residents of Taiwan raise security concerns under disqualifying conditions AG ¶¶ 7(a) and 7(b). AG ¶ 7(a) reads: "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." AG ¶ 7(b) reads: "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." Moreover, Applicant shares his home with his wife, a naturalized U.S. citizen whose parents are citizens and residents of Taiwan. These circumstances raise security concerns under AG ¶ 7(d), which reads: "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." Additionally, Applicant's financial and business interests in Taiwan raise security concerns under AG ¶ 7(e). AG ¶ 7(e) reads: "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."

Several mitigating conditions under AG ¶ 8 might be applicable to Applicant's case. If "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.," then AG ¶ 8(a) might apply. If "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," then AG ¶ 8(b) might

apply. If "contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation," then AG ¶ 8(c) might apply. If "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," then AG ¶ 8(f) might be applicable.

In his answer to the SOR, Applicant provided documentation establishing that he was no longer employed by the Taiwanese company he worked for from May 2005 until June 2008. Additionally, Applicant provided documentation to corroborate his statement that he no longer held a financial interest in the company, which ceased operations in July 2010. Since Applicant no longer has a business interest in the company and is no longer employed by the company, I conclude that mitigating condition AG ¶ 8(f) applies to SOR allegation at ¶ 1.d. for Applicant.

It was Applicant's responsibility to refute, extenuate, or mitigate the Government's case. In his answer to the SOR, Applicant offered Enclosure 1 to show that he no longer possessed the bank account alleged in SOR ¶ 1.c. However, Enclosure 1 was written in Chinese, and Applicant failed to provide an English translation of the document. I was unable, therefore, to conclude that the document established that Applicant no longer held the account with a bank in Taiwan. I conclude that Applicant failed to meet his burden of proof because his evidence did not resolve reasonable doubts about his continued ownership of the Taiwanese bank account.

Two additional Guideline B allegations also raise security concerns. While the United States and Taiwan share common democratic values, Taiwan is strongly focused on protecting itself from possible military action from the PRC. Toward that end, Taiwan is known to be an active collector of U.S. economic and proprietary information that could assist in strengthening its defensive position, and it has targeted U.S. government organizations in order to acquire U.S. technology. American citizens with immediate family members who are citizens or residents of Taiwan could be vulnerable to coercion, exploitation, inducements, or pressure by those seeking to acquire proprietary or otherwise restricted U.S. technology for the benefit of Taiwan.

Applicant's mother, father-in-law, and mother-in-law are citizens and residents of Taiwan. Applicant communicates with his mother by telephone two to four times a month. He shares his home with his wife, whose parents are residents and citizens of Taiwan. He visits his wife's parents when he goes to Taiwan. His father-in-law has business interests in Taiwan.

Applicant's relationships with his mother and his in-laws are neither casual nor infrequent, but are based on long-standing family ties of affection and obligation. Applicant is in close familial contact with his mother. While he communicates less frequently with his wife's parents, he nevertheless has long-standing familial obligations to them.

Taiwan is an active collector of U.S. proprietary information. Applicant's mother, a citizen and resident of Taiwan, knows he is being investigated for a security clearance as a federal contractor, as do his wife, brother-in-law, sister, and his wife's friend and her husband, all of whom have connections to Taiwan. Applicant's brother-in-law and business partner is his co-worker as a federal contractor.[6] Applicant failed to meet his burden of providing information to rebut or mitigate the security concerns raised by AG ¶¶ 7(a), 7(b), and 7(d). I therefore conclude that the mitigating conditions under AG ¶¶ 8(a), 8(b), and 8(c) are inapplicable.

Nothing in Applicant's answers to the Guideline B allegations in the SOR suggested he was not a loyal U.S. citizen. Section 7 of Executive Order 10865 specifically provides that industrial security clearance 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."

Guideline C, Foreign Preference

Under AG ¶ 9, the security concern involving foreign preference arises "[w]hen an individual acts in such a way as to indicate a preference for a foreign country over the United States." Such an individual "may be prone to provide information or make decisions that are harmful to the interests of the United States."

AG ¶ 10 describes several conditions that could raise a security concern and may be disqualifying. These disqualifying conditions are as follows:

> (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;
>
> (2) military service or a willingness to bear arms for a foreign country;
>
> (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;
>
> (4) residence in a foreign country to meet citizenship requirements;
>
> (5) using foreign citizenship to protect financial or business interests in another country;

[6] It is not clear from the record if other friends, business contacts, and family members know of the nature of Applicant's work as a federal contractor, but if they did, this could raise additional conflict of interest concerns that might also threaten U.S. security interests.

(6) seeking or holding political office in a foreign country; and,

(7) voting in a foreign election;

(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen;

(c) performing or attempting to perform duties, or otherwise acting, so as to serve the interests of a foreign person, group, organization, or government in conflict with the national security interest; and

(d) any statement or action that shows allegiance to a country other than the United States: for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship.

After becoming a U.S. citizen in 2005, Applicant used his Taiwanese passport multiple times to travel to Taiwan to conduct business related to his employment with and financial interest in a Taiwan-based company. He possessed a Taiwanese National Identification card. He voted in the Taiwan Presidential election in 2008. These actions after becoming a U.S. citizen raise a concern that he actively exercises dual citizenship with Taiwan and suggest a preference for a foreign country over the United States. I conclude that Applicant's conduct raises potentially disqualifying security concerns under AG ¶¶10 (a)(1), 10(a)(3), 10(a)(5),10(a)(7) and 10(b).

Under AG ¶11(a), dual citizenship might be mitigated if "it is based solely on [an applicant's] parents' citizenship or birth in a foreign country." Under AG ¶ 11(b), an individual's dual citizenship might be mitigated if he or she "has expressed a willingness to renounce dual citizenship." Under AG ¶11(c), an individual's "exercise of the rights, privileges, or obligations of foreign citizenship might be mitigated if it occurred before becoming a U.S. citizen or when the individual was a minor." Under AG ¶11(d), an individual's use of a foreign passport might be mitigated if it were "approved by the cognizant security authority." Under AG ¶ 11(e), an individual's use of a foreign passport might be mitigated if he or she presents credible evidence that "the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated." Under AG ¶ 11(f), a vote in a foreign election might be mitigated if it "was encouraged by the United States Government."

Applicant claimed dual citizenship on the SF-86 he completed in January 2009. After becoming a U.S. citizen in 2005, he used his Taiwan passport from 2005 until 2009 to enter Taiwan. Nothing in the record establishes that Applicant's use of his Taiwanese passport was approved by a cognizant security authority. However, when he was interviewed by an authorized investigator, he stated he would be willing to renounce his dual citizenship in order to obtain a security clearance. He surrendered his Taiwan passport and his Taiwanese National Identification card to his facility security officer, who destroyed both documents. At the present time, it appears that Applicant's dual citizenship is based solely on his birth in Taiwan.

In 2008, Applicant exercised his Taiwanese citizenship by voting in Taiwan's Presidential election. When he cast his vote, he was a 42-year-old U.S. citizen. Nothing in the record indicates that Applicant's vote in the Taiwanese Presidential election was encouraged by the United States Government. Accordingly, I conclude that AG ¶¶ 11(a), 11(b), and 11(e) apply in mitigation to the facts of Applicant's case. I also conclude that AG ¶¶ 11(c). 11(d), and 11(f) do not apply in mitigation in this case.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all relevant 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) the 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 an intelligent and well-educated professional with a specialty in computer science and radio frequency identification hardware, firmware, and monitoring devices. He has close familial ties with his mother and his wife's parents, all of whom are citizens of Taiwan. He is in frequent contact with his family members and travels to Taiwan often to visit his mother. Although he was U.S. citizen, he voted in Taiwan's Presidential election in 2008, thereby expressing a preference for Taiwan. Taiwan actively seeks to collect proprietary information from U.S. businesses and government contractors. Because of his close relationships with Taiwanese citizens, Applicant could be vulnerable to foreign exploitation, inducement, pressure, or coercion.

Overall, the record evidence leaves me with questions and doubts at the present time as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising under the foreign influence and foreign preference adjudicative guidelines.

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:	AGAINST APPLICANT
Subparagraphs 1.a. through 1.c.:	Against Applicant
Subparagraph 1.d.:	For Applicant
Paragraph 2, Guideline C:	Against APPLICANT
Subparagraphs 1.a. and 1.b.:	For Applicant
Subparagraph 1.c.:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

_____
Joan Caton Anthony
Administrative Judge