DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
----------	)	ISCR Case No. 11-01994
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Raashid S. Williams, Esquire, Department Counsel
For Applicant: *Pro se*

04/25/2012

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding foreign influence. Eligibility for a security clearance and access to classified information is granted.

Statement of the Case

On June 15, 2010, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application (SF 86).[1] On September 14, 2011, the Defense Office of Hearings and Appeals (DOHA) issued him a set of interrogatories. He responded to the interrogatories on September 28, 2011.[2] DOHA issued a Statement of Reasons (SOR) to him on October 31, 2011, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified*

[1] Government Exhibit 1 (SF 86, dated June 15, 2010).

[2] Government Exhibit 2 (Applicant's Answers to Interrogatories, dated September 28, 2011).

Information (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR alleged security concerns under Guideline B (Foreign Influence), and detailed reasons why DOHA was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant acknowledged receipt of the SOR on November 21, 2011. In a sworn statement, dated December 2, 2011, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on February 23, 2012, and the case was assigned to me on March 2, 2012. A Notice of Hearing was issued on March 16, 2012, and I convened the hearing, as scheduled, on April 5, 2012.

During the hearing, two Government exhibits (GE 1 and 2) and three Applicant exhibits (AE A through C) were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on April 13, 2012.

Rulings on Procedure

At the commencement of the Government's case, Department Counsel requested that I take administrative notice of certain enumerated facts pertaining to Taiwan appearing in 13 U.S. Government publications. Facts are proper for administrative notice when they are easily verifiable by an authorized source and relevant and material to the case. In this instance, the source information relied upon by the Government was publications of the National Counterintelligence Center, now known as the Office of the National Counterintelligence Executive;[3] the Centre for Counterintelligence and Security Studies;[4] seven press releases from the U.S. Department of Commerce, Bureau of Industry and Security;[5] court documents

[3] National Counterintelligence Center, *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage - 2000, un*dated; National Counterintelligence Center, *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage - 2008,* dated *July 23,* 2009*.*

[4] Interagency OPSEC Support Staff, Center for Counterintelligence and Security Studies, *Intelligence Threat Handbook*, excerpts, dated June 2004.

[5] U.S. Department of Commerce, Bureau of Industry and Security, Press Release, *California Exporter Fined in Connection with Attempted Taiwan Export*, dated September 30, 1999; U.S. Department of Commerce, Bureau of Industry and Security, Press Release, *Commerce Department Imposes Civil Penalty on Minnesota Firm in Settlement of Export Violations*, dated December 20, 2001; U.S. Department of Commerce, Bureau of Industry and Security, Press Release, *Connecticut Company Settles Charges Concerning Unlicensed Pump Exports to China, Taiwan, Israel, and Saudi Arabia*, dated July 28, 2003; U.S. Department of Commerce, Bureau of Industry and Security, Press Release, *Emcore Corporation Settles Charges of Export Control Violations*, dated January 26, 2004; U.S. Department of Commerce, Bureau of Industry and Security, Press Release, *Parker Hannifin Corp. Settles Charges Pertaining To Illegal Exports To Taiwan And China*, dated November 17, 2005; U.S. Department of Commerce, Bureau of Industry and Security, Press Release, *Defendants Indicted On Charges Of Conspiracy To Export Controlled Items*, dated August 19, 2005; and U.S. Department of Commerce, Bureau of Industry and Security, Press Release, *Taiwan Exporter Arrested and Charged with Exporting Missile Components from the U.S. to Iran*, dated February 4, 2010.

pertaining to a case in the U.S. District Court, Southern District of Florida;[6] a press release from the U.S. Department of Justice, U.S. Attorney, Eastern District of Virginia;[7] and records of the U.S. District Court for the Eastern District of Virginia.[8]

With regard to the 2000 National Counterintelligence Center Report, I note that it is 12 years old, and the cited facts are based upon a "private survey" of "nearly a dozen selected Fortune 500 companies." The report does not indicate how the companies were selected, what companies were selected, or how they decided upon their input to the survey. The survey results do not indicate whether the collection of economic information was accomplished through "open" methods, such as reading a newspaper, that raise no security issues under the relevant criteria, or more covert methods that might raise security concerns. Furthermore, as the selected companies are unidentified, it is impossible to assess possible bias or determine if there is an existing anti-Taiwan economic or political agenda. For these reasons, I conclude the factual matters asserted by Department Counsel, as demonstrated by the proffered report, should be given less weight than information from a more authoritative source.

The seven press releases of the U.S. Department of Commerce were presented apparently to substantiate that Taiwan actively pursues collection of U.S. economic and propriety information, and therefore, Applicant's relationship with family members in Taiwan raises suspicion of him. None of the cases involves Applicant personally or involved espionage through any familial relationship.[9] There is no indication of any government sponsorship, approval, or involvement encouraging the Taiwanese company's attempt to acquire sensitive commercial information for competitive advantage. Likewise, there is no evidence that Taiwan's government was involved in, or sanctioned, the criminal activity.

The Eastern District of Virginia press release and the court records set forth the facts and sentencing of a former U.S. State Department official for unauthorized possession of classified information, making false statements to the government concerning his relationship with a female Taiwanese intelligence officer, and not reporting that he had traveled to Taiwan where he met with the foreign intelligence officer. The criminal wrongdoing of other U.S. citizens is of decreased relevance to an assessment of Applicant's security suitability, especially where there is no evidence that Applicant, nor any member of his family, was ever involved in any aspect of the case or ever targeted by any Taiwanese intelligence official.

[6] U.S. District Court Southern District of Florida, Criminal Case No. 05-60218-CR-Seitz, *U.S. v. Ching Kan Wang and Robin Chang*, Superseding Indictment, filed October 6, 2005; Certificate of Trial Attorney, undated; Penalty Sheet, undated; Judgment in a Criminal Case, dated March 7, 2006.

[7] U.S. Department of Justice, U.S. Attorney, Eastern District of Virginia, *Press Release: Former State Department Official Sentenced for Mishandling Classified Material*, dated Jan. 22, 2007.

[8] U.S. District Court Eastern District of Virginia, Criminal Case No. 1:05CR43, *U.S. v. Donald W. Keyser*, Statement of Facts, dated Dec. 12, 2005.

[9] Tr. at 26-28.

After weighing the reliability of the source documentation and assessing the relevancy and materiality of the facts proposed by the Government, pursuant to Rule 201, *Federal Rules of Evidence*, I take administrative notice of certain facts,[10] as set forth below under the Taiwan subsection.

During the hearing, Department Counsel moved to amend the SOR to conform to the evidence. He sought to amend SOR ¶ 1.c. by deleting the word "China" and substituting the word "Taiwan." There being no objection, the motion was granted.

Findings of Fact

In his Answer to the SOR, Applicant admitted one of the factual allegations (¶ 1.b.) of the SOR. Applicant's admission is incorporated herein as a finding of fact. He denied the remaining allegations (¶¶ 1.a. and 1.c.) of the SOR. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 58-year-old employee of a defense contractor who, since June 2010, has been serving as a systems architect.[11] He has never served with the U.S. military, but was drafted and served as an officer with the armed forces of Taiwan from July 1976 until he was honorably discharged in May 1978.[12] He was granted a U.S. secret security clearance in 1996 and a top secret security clearance in 1997.[13]

Applicant was born in Taiwan to Taiwanese citizen-residents who fled from mainland China in 1949 during the Chinese civil war.[14] He completed his primary schooling and undergraduate college education in Taiwan, and received a degree in physics.[15] Upon completion of his military service, during which he served as an executive officer supervising the training of an infantry company,[16] Applicant entered the United States on a student visa in 1978.[17] He enrolled in a U.S. university that same

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[10] Administrative or official notice is the appropriate type of notice used for administrative proceedings. *See McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986); 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)). 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). Requests for administrative notice may utilize authoritative information or sources from the internet. *See, e.g*. *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006) (citing internet sources for numerous documents).

[11] Government Exhibit 1, *supra* note 1, at 13.

[12] *Id.* at 20-21.

[13] *Id.* at 43-44.

[14] *Id.* at 6, 26-27; Tr. at 51.

[15] Tr. at 52-53.

[16] *Id.* at 53-54.

[17] *Id.* at 54, 56.

year, and in May 1980, he earned a master's degree in computer science.[18] He was able to extend his stay in the United States, and received his United States permanent resident Card (green card) in 1982.[19] Applicant became a naturalized U.S. citizen in February 1994.[20] When Applicant became a naturalized U.S. citizen, he took an oath of allegiance to the United States. That oath included the words:[21]

> I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom or which I have heretofore been a subject or citizen. . . .

Applicant has worked for a variety of federal government agencies, on-and-off since 1995.[22] The record is silent, however, as to the specifics of Applicant's early employment record until 2003. He was a senior systems programmer for two different employers from April 2003 until March 2006, and a computer systems analyst from March 2006 until June 2010.[23] He joined his current employer in June 2010.[24]

Applicant was married in July 1981.[25] He and his wife have three children, born in the United States in January 1987, March 1991, and May 1995.[26] His wife was born in Taiwan[27] and became a naturalized U.S. citizen alongside Applicant in February 1994.[28] She resides in the United States with Applicant and their children.

Both of Applicant's parents are deceased.[29] Applicant has four brothers, three of whom are Taiwanese citizen-residents.[30] His two oldest brothers are 72 and 70,[31] and

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[18] *Id.* at 55-56; Government Exhibit 1, *supra* note 1, at 11-12.

[19] Tr. at 56.

[20] Government Exhibit 1, *supra* note 1, at 8.

[21] 8 C.F.R. § 337.1(a) (1995).

[22] Applicant Exhibit A (Statement, undated), at 1.

[23] Government Exhibit 1, *supra* note 1, at 14-18.

[24] *Id.* at 13-14.

[25] *Id.* at 23-24.

[26] *Id.* at 27-29.

[27] *Id.* at 24.

[28] *Id.* at 24-25.

[29] *Id.* at 26; Tr. at 50, 61.

[30] Tr. at 51-52, 63; Government Exhibit 1, at 29-31; Government Exhibit 2 (Personal Subject Interview, dated August 17, 2010), at 1-2.

[31] Government Exhibit 1, at 29-31; Applicant Exhibit A, *supra* note 22, at 1.

are both retired from universities where one was a professor of Chinese literature and the other was an auditor.[32] Both have chronic diseases.[33] Applicant's youngest brother, born in 1960,[34] has a very low intelligence quotient of about 80, is unable to write or complete a full sentence, and is unemployed.[35] Applicant's fourth brother, born in 1949, no longer resides in Taiwan.[36] He and his family reside in the United States.[37] Applicant's 89-year-old mother-in-law is a citizen-resident of Taiwan.[38] She is a retired physician, and is currently in a vegetative state afflicted with Alzheimer's disease.[39] Other than the required military service of Taiwanese males, Applicant's father, brothers, and mother-in-law, have never been affiliated with the Taiwanese government or intelligence services.[40]

Applicant's method and frequency of contact with his brothers and mother-in-law is varied. He rarely has contact with his oldest brother as that brother does not use a computer and Applicant does not write mail any more. He and his second oldest brother communicate by e-mail and Skype as frequently as several times per month.[41] He rarely communicates with his youngest brother due to communication difficulties, and he rarely communicates with his mother-in-law.

Applicant and his wife have no financial assets, including bank accounts or real estate, in Taiwan.[42] They own a residence in the United States with an estimated worth of $900,000, with another estimated $900,000 in his 401(k), stocks, and cash.[43]

Taiwan

In 1949, a large number of Chinese refugees fled from the civil war in mainland China and immigrated to the off-shore Island of Formosa, now known as Taiwan. The Communists in mainland China established the People's Republic of China (PRC), and Chiang Kai-shek, the leader of the Kuomintang on mainland China, established a

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[32] *Id.* Applicant Exhibit A; Tr. at 63-66.

[33] Applicant's Answer to the SOR, dated December 2, 2011, at 1.

[34] Government Exhibit 1, *supra* note 1, at 31.

[35] Applicant Exhibit A, *supra* note 22, at 1; Applicant's Answer to the SOR, *supra* note 33, at 1.

[36] Government Exhibit 1, *supra* note 1, at 32.

[37] *Id.*

[38] *Id.* at 33; Applicant's Answer to the SOR, *supra* note 33, at 1.

[39] Tr. at 85; *Id.* Applicant's Answer to the SOR, at 1.

[40] Tr. at 83-85.

[41] *Id.* at 68-69.

[42] *Id.* at 81

[43] *Id.* at 85-86.

provisional government and capital in Taipei, Taiwan. The PRC refuses to recognize Taiwan's independence, and insists that there is only "one China." After recognizing Taiwan for nearly 30 years, on January 1, 1979, the United States formally recognized the government of the PRC as the sole legitimate government of China. The United States does not support independence for Taiwan and, under the Taiwan Relations Act, signed into law on April 10, 1979, is committed to a "one-China policy." Nevertheless, the United States has been also been committed to maintaining cultural, commercial and other nonofficial relations with Taiwan, and continues to provide arms in support of Taiwan's security and region stability.

Taiwan is a multi-party democracy with a strong economy, with significant economic contacts with both the PRC and the United States. Taiwan's own national security remains under constant threat from the PRC since PRC has not renounced the use of force against Taiwan, and this has led to Taiwan's large military establishment. Taiwan's armed forces are equipped with weapons obtained primarily from the United States, but Taiwan has stressed military self-reliance in recent years which has resulted in the growth of indigenous military production.

Taiwan is believed to be an active collector of U.S. economic intelligence and proprietary information. There is no evidence that Taiwan uses coercive measures to gain access to such information. While there have been a number of incidents involving individuals, companies, and Taiwanese intelligence officers improperly acquiring U.S. economic intelligence and proprietary information, there is no direct or indirect connection to, or involvement with, Applicant.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance."[44] 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. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."[45]

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

[44] *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

[45] Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. 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 meaningful decision.

In the decision-making process, facts must be established by "substantial evidence."[46] The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.[47]

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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 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. Furthermore, "security clearance determinations should err, if they must, on the side of denials."[48]

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."[49] Thus, 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. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are

[46] "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "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).

[47] *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

[48] *Egan*, 484 U.S. at 531

[49] *See* Exec. Or. 10865 § 7.

reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline B, Foreign Influence

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

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

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.[50]

The guideline notes several conditions that could raise security concerns. Under AG ¶ 7(a), "*contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion*" is potentially disqualifying. Similarly, under AG ¶ 7(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*" may raise security concerns. AG ¶¶ 7(a) and 7(b) apply in this case. However, the security significance of these identified conditions requires further examination of Applicant's respective relationships with his family members (three brothers) and one extended family member (a mother-in-law) who remain Taiwanese citizen-residents to determine the degree of "heightened risk" or potential conflict of interest.

The guideline also includes examples of conditions that could mitigate security concerns arising from foreign influence. Under AG ¶ 8(a), the disqualifying condition

[50] *See* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 at 12 (App. Bd. Feb. 8, 2001).

may be mitigated where "*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.*" Similarly, AG ¶ 8(b) may apply where the evidence shows "*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*." Also, AG ¶ 8(c) may apply where "*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*."

Applicant's relationships with his three brothers and mother-in-law are diverse. His contacts with his brothers were much more frequent while his father was alive, but, for the most part, have been extremely limited for two brothers and somewhat more frequent with one brother. He has had an even lesser relationship or contacts with his mother-in-law.

In assessing whether there is a heightened risk because of an applicant's relatives or associates in a foreign country, it is necessary to consider all relevant factors, including the totality of an applicant's conduct and circumstances, and the realistic potential for exploitation. One such factor is the potential for pressure, coercion, exploitation, or duress. In that regard, it is important to consider the character of the foreign power in question, including the government and entities controlled by the government, within the relevant foreign country. Nothing in Guideline B suggests it is limited to countries that are hostile to the United States. Nevertheless, the relationship between a foreign government and the U.S. may be relevant in determining whether a foreign government or an entity it controls is likely to attempt to exploit a resident or citizen to take action against the U.S. through the Applicant. It is reasonable to presume that a friendly relationship, or the existence of a democratic government, is not determinative, but it may make it less likely that a foreign government would attempt to exploit a U.S. citizen through relatives or associates in that foreign country.

As noted above, the United States and Taiwan have a history of friendly relations, making it less likely that the Taiwanese government would attempt coercive means to obtain sensitive information. However, it does not eliminate the possibility that a foreign power would employ some non-coercive measures in an attempt to exploit his relatives. While Applicant has three brothers and a mother-in-law still residing in Taiwan, there may be speculation as to "some risk," but that speculation, in the abstract, does not, without substantially more, establish evidence of a "heightened risk" of foreign exploitation, inducement, manipulation, pressure, or coercion.

As to Applicant's relationship with his brothers and mother-in-law, there is a very low potential of forcing him to choose between the interests of United States and those of either Taiwan or those family members. He has met his burden of showing there is little likelihood that those relationships could create a risk for foreign influence of

exploitation. I find AG ¶¶ 8(a) and 8(c) partially apply in this case and 8(b) fully applies. Applicant has been a resident of the United States since 1978, and a naturalized U.S. citizen since 1994. He attended a U.S. university for his higher education. His wife became a naturalized U.S. citizen in 1994. Their three children are native-born U.S. citizens. One of his four siblings resides in the United States. Applicant and his wife have no foreign financial interests, and their relationships and loyalties in the United States are of such depth and longstanding nature that Applicant can be expected to resolve any conflict of interest in favor of the United States. Moreover, Applicant has held a security clearance since 1996, and the only fact that has changed is that his father is now deceased. That one change does not establish increased evidence of a "heightened risk" of foreign exploitation, inducement, manipulation, pressure, or coercion.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

> (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) 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. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.[51]

There is some evidence against mitigating Applicant's situation. Taiwan is believed to be an active collector of U.S. economic intelligence and proprietary information. With three brothers and a mother-in-law who are Taiwanese citizen-residents, there is a potential risk that Taiwan would forcefully attempt to coerce Applicant through his siblings and mother-in-law still residing in Taiwan. (*See* AG ¶ 2(a)(8).)

The mitigating evidence under the whole-person concept is more substantial. While Taiwan may be an active collector of U.S. economic intelligence and proprietary

[51] *See U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); *See also* ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

information, there is no evidence that Taiwan uses coercive measures to gain access to such information. It is in Taiwan's interests to maintain friendship with the United States to counterbalance the PRC. It is very unlikely Taiwan would forcefully attempt to coerce Applicant through his three brothers or mother-in-law still residing in Taiwan. The presence of those family members and the extended family member in Taiwan without any affiliation or relationship to the Government of Taiwan does not generate a realistic potential for exploitation. As noted above, only one fact has changed since Applicant first received a security clearance in 1996: his father is now deceased. That one change does not establish increased evidence of a "heightened risk" of foreign exploitation, inducement, manipulation, pressure, or coercion. Under the evidence presented, I have no questions about Applicant's reliability, trustworthiness, and ability to protect classified information. *See* AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

Formal Findings

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

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

Conclusion

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

ROBERT ROBINSON GALES
Administrative Judge