



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



In the matter of: )  
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----- ) ISCR Case No. 11-13710  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Braden M. Murphy, Esquire, Department Counsel  
For Applicant: *Pro se*

01/30/2013

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant is close to his parents and siblings, who are citizens and residents of Taiwan. He frequently communicates with them and visits Taiwan about every two years. He is an outstanding electrical engineer and manager, who is willing to renounce his Taiwan citizenship. He immigrated to the United States in 1977, and he has much greater connections to the United States than to Taiwan. He refuted the personal conduct allegation and turned in his Taiwan passport to his security officer. Foreign preference, foreign influence, and personal conduct security concerns are mitigated. Eligibility for access to classified information is granted.

**Statement of the Case**

On August 1, 2011, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) (SF 86) (Government Exhibit (GE) 1). On August 20, 2012, the Department of Defense (DOD) issued a statement of reasons (SOR) to him, alleging security concerns under Guidelines C (foreign preference), B (foreign influence), and E (personal conduct) (Hearing Exhibit (HE) 2). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

The SOR detailed reasons why DOD 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 him, and recommended referral to an administrative judge to determine whether a clearance should be granted for Applicant.

On September 4, 2012, Applicant responded to the SOR and requested a hearing before an administrative judge. (HE 3) On December 7, 2012, Department Counsel was prepared to proceed. On December 20, 2012, DOHA assigned the case to me. On December 26, 2012, DOHA issued a notice of the hearing, setting the hearing for January 17, 2013. The hearing was held as scheduled. I received the transcript of the hearing on January 28, 2013.

### **Procedural Rulings**

At the hearing, Department Counsel offered five exhibits, and Applicant offered three exhibits. (Tr. 12-13, 21-24, 32-33; GE 1-5; AE A-C) Applicant and Department Counsel did not object to my consideration of any exhibits, and I admitted GE 1-5 and AE A-C. (Tr. 22-25, 33-34) On January 24, 2013, I received evaluations by Applicant's employer, which were admitted into evidence without objection. (AE D)

Department Counsel requested administrative notice (AN) of facts concerning Taiwan. (Tr. 25-27; HE 4, AN Request) Department Counsel provided supporting documents to show detail and context for those facts. (HE 4, Ex. I to XVI) Applicant did not object, and I granted Department Counsel's request. (Tr. 26-27) I also took administrative notice of the information in the *State Department Background Note on Taiwan*, dated February 8, 2012. (Tr. 71-74; HE 5)

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). Usually administrative notice at ISCR proceedings is accorded to 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).

### **Findings of Fact<sup>1</sup>**

Applicant's SOR response admitted the allegations in SOR ¶¶ 1.a to 1.d and 2.a to 2.c. (HE 3) He denied the allegation in SOR ¶ 3.a. (HE 3) He also provided mitigating evidence. His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

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<sup>1</sup>The facts in this decision do not specifically describe employment, names of witnesses, names of other groups or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information.

Applicant is a 59-year-old electrical engineer and senior technical manager, and he has worked for the same large U.S. Government contractor for 34 years. (Tr. 6, 34, 62) In 1971, he graduated from high school in Taiwan. (Tr. 5) In 1975, he received a bachelor's degree in electrical engineering, and in 1979, he earned a master's degree in electrical engineering and began working for his current employer that same year. (Tr. 7, 36) In 1979, Applicant married, and he has two children, who are ages 17 and 20. His children were born in the United States, and they live in the United States. (Tr. 56-58) He received a secret clearance in the 1990s. (Tr. 8) There is no evidence that Applicant has engaged in criminal activity, abused alcohol or illegal drugs, or committed any security violations.

Applicant was born in Taiwan and educated through his bachelor's degree in Taiwan. (Tr. 35) In 1977, he moved to the United States, and in 1987, he became a U.S. citizen. (Tr. 36, 57) Around 1990, he received his U.S. passport. (Tr. 37) Whenever he went to Taiwan, he informed his security officer. (Tr. 45) He traveled to Taiwan ten times since 1989. (Tr. 49; GE 1) He most recently traveled to Taiwan in February 2011. (Tr. 46, 49) When he goes to Taiwan, he stays for 7 to 10 days. (Tr. 54) He is considering traveling to Taiwan in May 2013. (Tr. 47) He intends to retire in the United States because his spouse and children live in the United States. (Tr. 63; GE 5)

Applicant's spouse was born in Taiwan. (Tr. 55) In 1978, she moved to the United States from Taiwan, and she is a U.S. citizen. (Tr. 55) Her mother died, and her father lives in the United States. (Tr. 55) Her siblings all live in the United States. (Tr. 58-59) She has nieces and nephews that live in the United States. (Tr. 59)

Applicant's parents, three sisters, and one brother are citizens and residents of Taiwan. (Tr. 28-29, 49-50, 52; SOR ¶¶ 2.a and 2.b) His parents are in their 80s and retired. (Tr. 50) His parents receive pensions similar to social security. (Tr. 50) He communicates with his parents about once a month, and his parents have never visited the United States. (Tr. 51) When he travels to Taiwan, he attempts to see his parents and siblings. (Tr. 54-55)

One of Applicant's sisters works as a researcher for a Taiwan Government entity or an entity related to the Taiwan Government. (Tr. 29; SOR ¶ 2.c) The Taiwan Government does not employ any of his other siblings. (Tr. 53) He does not own any real estate or bank accounts in Taiwan. (Tr. 52-53) He does not provide financial support to his family in Taiwan. (Tr. 52-53)

Applicant owns his residence in the United States without a mortgage. (Tr. 60) His residence is worth about \$400,000. (Tr. 60) His and his spouse's total net worth is over \$1,400,000. (Tr. 61) Applicant and his spouse's total annual income is about \$250,000. (Tr. 60)

## Foreign Preference

In August 2006, Applicant renewed his Taiwan passport, even though he became a U.S. citizen in 1987. (Tr. 39; SOR ¶ 1.c) From 1995 to 2006, he used his U.S. passport to travel. (Tr. 42) After 2006, he used the Taiwan passport approximately every two years to travel to Taiwan. (Tr. 39, 42; SOR ¶ 1.b) He did not need to apply for a visa because he had a Taiwan passport. (Tr. 44) He possessed the Taiwan passport until he turned it in to his facility security officer on November 13, 2012. (Tr. 39, 47, 68-69; AE A; SOR ¶ 1.a)

Applicant has never voted in a Taiwan election. (Tr. 47) He has a Taiwanese ID card, which is like a driver's license. (Tr. 48) However, he does not drive in Taiwan. (Tr. 48) He believed that surrendering his Taiwan passport showed his willingness to renounce his Taiwan citizenship. (Tr. 48, 62)

## Personal Conduct

Question 15 of Applicant's March 14, 2001 SF 86 asks, "**Your Foreign Activities—Passport:** In the last 7 years, have you had an active passport that was issued by a foreign government?" Applicant answered, "No." SOR ¶ 3.a alleges that Applicant held a valid Taiwan passport since at least 1987. Applicant provided documentary evidence establishing that his Taiwan passport expired in April 1992, which was more than seven years prior to his completion of his March 14, 2001 SF 86. (Tr. 30-31, 39-41, 67-68; AE B, C) He did not have a foreign passport from April 1992 to August 2006. (Tr. 38; AE B, C)

## Character Evidence

Applicant has received twenty patents in the course of his employment. (Tr. 61) He has excellent performance evaluations. (AE D at 3) He "exceeded targets" with respect to quality and quantity and "delivered those results on or ahead of schedule." (AE D at 3) He is diligent, innovative, "very data driven," and highly respected for his expertise and leadership. (AE D at 3, 4, 9) He is an innovative thinker, and he pursues opportunities, growth, teamwork, and development of subordinates. (AE D at 6) Due to his efforts and leadership, program performance is strong. (AE D at 4, 6)

## Taiwan

Taiwan is a multi-party democracy. The United States does not support Taiwan independence, in keeping with the "one China" policy; however, "maintaining strong, unofficial relations with Taiwan is also a major U.S. goal, in line with [the U.S.] desire to further peace and stability in Asia." (HE 5 at 7) The United States supports Taiwan's membership in appropriate international organizations where statehood is not a requirement for membership and encourages its meaningful participation in appropriate international organizations, such as the World Trade Organization, Asia-Pacific Economic Cooperation (APEC) forum, and the Asian Development Bank. Maintaining

diplomatic relations with the People's Republic of China (PRC) has been recognized to be in the long-term interest of the United States by six consecutive administrations.

There are significant economic ties between Taiwan and the PRC, which are attributable to their physical proximity and history. Because of its location, Taiwan has a particular interest in information from the United States that could aid it in its own defense. Taiwan's primary defense goal is to deter invasion from the PRC. The PRC maintains intelligence operations in Taiwan through a bureau utilizing PRC nationals with Taiwanese connections. Unlike the PRC, however, the constitutional basis of the Taiwanese government suggests that resort to coercive measures against its citizens to collect economic intelligence is unlikely.

Taiwan's commercial ties with the United States have expanded since 1979. Export-Import Bank financing, Overseas Private Investment Corporation guarantees, normal trade relations (NTR) status, and ready access to U.S. markets have enhanced the Taiwan economy. "In recent years, AIT<sup>2</sup> commercial dealings with Taiwan have focused on expanding market access for American goods and services. AIT has been engaged in a series of trade discussions that have focused on protection of intellectual property rights and market access for U.S. goods and services." (HE 5 at 7)

The record references various cases involving the illegal export or attempted illegal export of U.S. restricted, dual-use technology to and/or through Taiwan. One report to the U.S. Congress concerns foreign economic collection and industrial espionage. That report notes that Taiwan was then known to be an active collector of U.S. economic intelligence. The report ranked Taiwan after China, Japan, Israel, France, and Korea as an active collector of such information. Although some of the record information about Taiwan's intelligence activities targeting U.S. classified or sensitive information is more than 10 years old, several exhibits address more recent espionage by Taiwan's National Intelligence Bureau (NSB). There is some evidence that Taiwan has specifically targeted U.S. citizens in the last five to seven years to obtain protected and classified information.

The United States is committed to assisting Taiwan with maintenance of Taiwan's defensive capabilities. "The United States has continued the sale of appropriate defensive military equipment to Taiwan in accordance with the Taiwan Relations Act, which provides for such sales and which declares that peace and stability in the area are in U.S. interests. Sales of defensive military equipment are also consistent with the 1982 U.S.-P.R.C. Joint Communiqué." (HE 5 at 7)

Taiwan is a modern democracy with vibrant public participation during which demonstrations may become confrontational. The U.S. State Department urges caution within the vicinity of any political demonstrations. Overall crime is noted as low.

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<sup>2</sup> The American Institute in Taiwan (AIT) is a private nonprofit corporation with its headquarters in the Washington, DC area and offices in Taipei and Kaohsiung. It is authorized to issue visas, accept passport applications, and provide assistance to U.S. citizens in Taiwan. (HE 5 at 7)

## 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.” *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 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.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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 about potential, rather than actual, risk of compromise of classified information. 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.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), § 3.1. 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 about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the

facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

### **Analysis**

As stated in the SOR, the relevant security concerns are under Guidelines C (foreign preference), B (foreign influence), and E (personal conduct).

#### **Foreign Preference**

AG ¶ 9 describes the foreign preference security concern stating, “when an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.”

AG ¶ 10 describes conditions that could raise a security concern and may be disqualifying in Applicant’s case:

(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to:

- (1) possession of a current foreign passport;
- (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) 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.

In August 2006, Applicant renewed his Taiwan passport, even though he became a U.S. citizen in 1987. After 2006, he used his Taiwan passport approximately every two years to travel to Taiwan so he would not need to apply for a visa. AG ¶ 10(a)(1), 10(b), and 10(d) apply because of his application for and use of a Taiwan passport after becoming a U.S. citizen.

AG ¶ 11 provides conditions that could mitigate security concerns:

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

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

(c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;

(d) use of a foreign passport is approved by the cognizant security authority;

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

(f) the vote in a foreign election was encouraged by the United States Government.

Applicant turned his Taiwan passport in to his facility security officer on November 13, 2012. He has never voted in a Taiwan election. He has a Taiwanese ID card, which is like a driver's license; however, he does not drive in Taiwan. He offered to renounce his Taiwan citizenship, and he believed that surrendering his Taiwan passport showed his willingness to renounce his Taiwan citizenship. AG ¶¶ 11(b) and 11(e) apply, and foreign preference concerns are mitigated.

## **Foreign Influence**

AG ¶ 6 explains the security concern about "foreign contacts and interests" stating:



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

AG ¶ 7 indicates two conditions that could raise a security concern and may be disqualifying in this case:

(a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and

(b) connections to a foreign person, group, government, or country that 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.

Applicant, his parents, his spouse, some of his in-laws, and his siblings were all born in Taiwan. His parents and siblings are citizens of Taiwan and currently live in Taiwan. He has frequent contact with his parents and siblings. He cares about the welfare of his family living in Taiwan. Taiwan's economic espionage activities create a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion.

The mere possession of close family ties with a family member living in Taiwan, is not, as a matter of law, disqualifying under Guideline B. However, if an applicant has a close relationship with even one relative, living in a foreign country, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See *Generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government or the country is known to conduct intelligence collection operations against the United States. The relationship of Taiwan with the United States, places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that his relationships with his family members living in Taiwan do not pose a security risk. Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist a family member living in Taiwan.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at \*\*15-16 (App. Bd. Mar. 29, 2002).

While there is no evidence that intelligence operatives or terrorists from Taiwan seek or have sought classified or economic information from or through Applicant or his family, nevertheless, it is not possible to rule out such a possibility in the future. International terrorist groups are known to conduct intelligence activities as effectively as capable state intelligence services; however, Taiwan does not have a significant problem with terrorism. Applicant's relationship with family members living in Taiwan creates a potential conflict of interest because this relationship is sufficiently close to raise a security concern about his desire to assist family members in Taiwan by providing sensitive or classified information. Department Counsel produced substantial evidence of Applicant's contacts with his family living in Taiwan and has raised the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a) and 7(b) apply, and further inquiry is necessary about potential application of any mitigating conditions.

AG ¶ 8 lists six conditions that could mitigate foreign influence security concerns including:

- (a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;
- (b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;
- (c) 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;
- (d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

AG ¶¶ 8(a) and 8(c) do not apply. Applicant has frequent contacts with his parents and siblings, who are citizens of Taiwan, and they live in Taiwan. His parents are in their 80s and retired. His parents receive pensions similar to social security. One of Applicant's sisters works as a researcher for a Taiwan Government entity or associated entity. He traveled to Taiwan ten times since 1989. He most recently traveled to Taiwan in February 2011. When he goes to Taiwan, he stays for 7 to 10 days, and he is considering traveling to Taiwan in May 2013. He has a Taiwan identification card. He renewed his Taiwan passport in 2006 and used it several times after becoming a U.S. citizen. His loyalty and connections to his family living in Taiwan are a positive character trait; however, for security clearance purposes, those same connections to his family living in Taiwan negate the possibility of mitigation under AG ¶ 8(a), and Applicant failed to fully meet his burden of showing there is "little likelihood that [his relationships with his relatives who are Taiwan citizens] could create a risk for foreign influence or exploitation."

AG ¶ 8(b) fully applies. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant has significant connections to the United States. His spouse, children, father-in-law and siblings-in-law are all living in the United States. His spouse and children are U.S. citizens. Applicant has worked for the same large government contractor for 34 years. In 1977, he moved to the United States, and in 1978, his spouse moved to the United States. In 1979, he earned a master's degree in electrical engineering and began working for his current employer that same year. He received a secret clearance in the 1990s. There are no allegations of security violations. In 1987, he became a U.S. citizen. He intends to continue to reside in the United States, and he intends to retire in the United States because his spouse and children live in the United States.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationships with his family living in Taiwan, and indirectly, his family's relationships with other Taiwan citizens living in Taiwan. He frequently communicates with his family living in Taiwan. There is no evidence, however, that terrorists, criminals, the Taiwan Government, or those conducting espionage have approached or threatened Applicant or his family in Taiwan to coerce Applicant or his family for classified or sensitive information.<sup>3</sup> As such, there is a reduced possibility that Applicant or his family would be specifically selected as targets for improper coercion or exploitation. While the Government does not have any burden to prove the presence of such evidence, if such record evidence were present,

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<sup>3</sup>There would be little reason for U.S. enemies to seek classified information from an applicant before that applicant has access to such information or before they learn of such access.

Applicant would have a heavier evidentiary burden to mitigate foreign influence security concerns. It is important to be mindful of the United States' many years of friendship and trade with Taiwan.

AG ¶¶ 8(d) and 8(e) do not apply. The U.S. Government has not encouraged Applicant's involvement with family members living in Taiwan. Applicant is not required to report his contacts with family members living in Taiwan.

AG ¶ 8(f) does not apply because there is no evidence that Applicant has any interest in property or bank accounts in Taiwan. However, this mitigating condition can only fully mitigate the disqualifying condition under AG ¶ 7(e), which provides, "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." Applicant has assets in the United States that exceed \$1,400,000, and he and his spouse's employment with gross annual earnings of about \$250,000 are an important connection to the United States.

In sum, Applicant's connections to family living in Taiwan are significant; however, they are less important than his and his family connections to the United States. His connections to the United States taken together are sufficient to fully overcome the foreign influence security concerns under Guideline B. Foreign influence concerns under Guideline B are mitigated; however, assuming AG ¶ 8(b) is not applicable, security concerns are separately mitigated under the whole-person concept, *infra*.

## **Personal Conduct**

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes one condition that could raise a security concern and may be disqualifying in this case:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

AG ¶ 16(a) applies. Question 15 of Applicant's March 14, 2001 SF 86 asks, "**Your Foreign Activities—Passport:** In the last 7 years, have you had an active

passport that was issued by a foreign government?" Applicant answered, "No." SOR ¶ 3.a alleges that Applicant held a valid Taiwan passport since at least 1987. Further consideration of mitigating conditions is warranted.

AG ¶ 17 provides seven conditions that could mitigate security concerns, and one mitigating condition is pertinent. AG ¶ 17(f) states, "the information was unsubstantiated or from a source of questionable reliability." AG ¶ 17(f) applies. Applicant provided documentary evidence establishing that his Taiwan passport expired in April 1992, which was more than seven years prior to his completion of his March 14, 2001 SF 86. He did not have a foreign passport from April 1992 to August 2006. His answer to Question 15 of Applicant's March 14, 2001 SF 86 was factually correct. The allegations of intentional falsification of security-related documentation are unsubstantiated. Personal conduct concerns are mitigated.

### **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. I have incorporated my comments under Guidelines C, B, and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

There are foreign influence security concerns arising from Applicant's parents and siblings being citizens and residents of Taiwan. Applicant, his spouse, his parents, and his siblings were born in Taiwan. He frequently communicates with his parents and siblings in Taiwan. His parents receive pensions similar to social security. One of Applicant's sisters works as a researcher for a Taiwan Government entity or associated entity. He traveled to Taiwan ten times since 1989. He most recently traveled to Taiwan in February 2011. When he goes to Taiwan, he stays for 7 to 10 days. He is considering traveling to Taiwan in May 2013. He has a Taiwan identification card. He renewed his Taiwan passport in 2006 and used it several times after becoming a U.S. citizen.

The factors weighing towards approval of Applicant's security clearance are more substantial than the factors weighing against its approval. There is no evidence that Applicant has engaged in criminal activity, abused alcohol or illegal drugs, or committed any security violations. His spouse, children, father-in-law and siblings-in-law are all living in the United States. His spouse and children are U.S. citizens. In 1977, he moved to the United States, and in 1978, his spouse moved to the United States. In 1979, he earned a master's degree in electrical engineering, and he began working for his current employer that same year. In 1987, he became a U.S. citizen, which included swearing an oath of allegiance to the United States. He received a secret clearance in the 1990s. There are no allegations of security violations. He is willing to renounce his Taiwan citizenship, and he turned in his Taiwan passport to his security officer. He intends to retire in the United States because his spouse and children live in the United States. He and his spouse have U.S. employment with income of about \$250,000 per year and U.S. assets of over \$1,400,000. He has made substantial contributions to his government-contractor employer, and he has 20 patents. He has excellent personnel evaluations, which laud his diligence, responsibility, and leadership. His performance for 34 years as an electrical engineer and manager, show his loyalty, trustworthiness, and reliability, and they weigh heavily towards approval of his security clearance.

A Guideline B decision concerning Taiwan must take into consideration the geopolitical situation and dangers there.<sup>4</sup> Various court cases establish the illegal export or attempted illegal export of U.S. restricted, dual-use technology to and/or through Taiwan. One U.S. Government report describes Taiwan as one of the top seven countries, who are active collectors of U.S. economic intelligence. There is some evidence that Taiwan has specifically targeted U.S. citizens in the last five to seven years to obtain protected and classified information.

The United States is committed to assisting Taiwan with maintenance of Taiwan's defensive capabilities. "The United States has continued the sale of appropriate defensive military equipment to Taiwan in accordance with the Taiwan Relations Act, which provides for such sales and which declares that peace and stability in the area are in U.S. interests. Sales of defensive military equipment are also consistent with the 1982 U.S.-P.R.C. Joint Communiqué." (HE 5 at 7) The United States is committed to the maintenance of a free and independent Taiwan Government. Taiwan and the United States have close relationships in diplomacy and trade.

I have carefully assessed Applicant's demeanor and sincerity at his hearing, and I find his statements to be credible. I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude Applicant has carried his burden and foreign preference, foreign influence, and personal conduct concerns are mitigated. Eligibility for access to classified information is granted.

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<sup>4</sup> See ISCR Case No. 04-02630 at 3 (App. Bd. May 23, 2007) (remanding because of insufficient discussion of geopolitical situation and suggesting expansion of whole-person discussion).

## Formal Findings

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

Paragraph 1, Guideline C:	FOR APPLICANT
Subparagraphs 1.a through 1.d:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a through 2.c:	For Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraph 3.a:	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.

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Mark Harvey  
Administrative Judge