



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



In the matter of:)	
)	
)	ISCR Case No. 12-03779
)	
Applicant for Security Clearance)	

Appearances

For Government: Candace Garcia, Esquire, Department Counsel
For Applicant: *Pro se*

01/28/2013

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, Applicant's eligibility for access to classified information is denied.

Statement of the Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on November 8, 2011. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on August 31, 2012, detailing security concerns under Guideline B, foreign influence, Guideline C, foreign preference, and Guideline E, personal conduct. 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 For Determining Eligibility for Access to Classified Information* (AG) implemented on September 1, 2006.

Applicant received the SOR on September 7, 2012, and he answered it on September 14, 2012. Applicant requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on October 15, 2012, and I received the case assignment on October 22, 2012. DOHA issued a Notice of Hearing on November 20, 2012, and I convened the hearing as scheduled on December 18, 2012. The Government offered exhibits (GE) marked as GE 1 and GE 2, which were received and admitted into evidence without objection. Applicant testified. He submitted exhibits (AE) marked as AE A through AE C, which were received and admitted into evidence without objection. I held the record open until January 2, 2013, for Applicant to submit additional matters. Applicant timely submitted AE D - AE G, which were received and admitted without objection.¹ The record closed on January 2, 2013. DOHA received the hearing transcript (Tr.) on January 3, 2013.

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Taiwan and the Peoples Republic of China (PRC). The request and the attached documents were not admitted into evidence, but were included in the record as Hearing Exhibits 1 - 26.² The facts administratively noticed will

¹AE D is an email from Applicant dated December 22, 2012; AE E is three pages from Applicant's Taiwanese passport; AE F is a series of emails between Applicant and Department counsel from December 28, 2012 through January 1, 2013; and AE G is a complete copy of Applicant's Taiwanese passport. In his December 22, 2012 email, Applicant stated that he had submitted one page from his U. S. Passport, but this document was not included in his submission.

²The information submitted included six press releases of the U.S. Department of Commerce apparently to substantiate that Taiwan and China actively pursue 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, involve espionage, or involve espionage through any familial relationship. These cases involve the efforts of exporters to ship to Taiwan or China controlled equipment without obtaining proper export licenses and approval from the Department of Commerce. There is no indication of any Taiwan government sponsorship, approval, or involvement encouraging the conduct of these companies. Rather, five of the six press releases concern civil penalties against the companies involved. The last press release reflects an indictment of two individuals on charges of conspiracy to export controlled items and exportation of controlled items in violation of Title 18, U.S.C. § 371 and Title 50, U.S.C. § 1702. There is no evidence that the Governments of Taiwan and China were involved in, or sanctioned, this criminal activity. See HE 6- HE 11.

The information also included seven Department of Justice press releases concerning cases involving the export of controlled goods without obtaining the proper licenses. This information contains no reference to Applicant or classified information. The information does reflect that certain individuals are willing to ship controlled goods abroad without complying with U.S. law. Again, these documents do not show any involvement of the Taiwanese and Chinese governments in these incidents. See HE 13; HE 15; HE 22-HE26.

Two documents, a press release and the court record from the United States District Court for the Eastern District of Virginia (HE 4 and HE 5), 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 case does not indicate that

be limited to matters of general knowledge and matters not subject to reasonable dispute, and are set out in the Findings of Fact below.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a, 1.b, and 2.a of the SOR. His admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶¶ 1.c, 2.b, and 3.a of the SOR.³ He also provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant, who is 49 years old, works as a computer scientist for a DOD contractor. He began his current position in April 2011. Applicant's current supervisor describes him as "an excellent software developer with a very good work ethic and an attitude to do anything I ask of him." Their relationship is strictly work related. His supervisor has not witnessed any conduct by Applicant which would cause him concern about Applicant's ability to protect national security. His latest performance evaluation rated him above the average of his peers. A former manager described Applicant's code quality as excellent, his technical expertise as significant, and his team membership as good. This manager would hire him again if he had a position.⁴

Applicant was born and raised in Taiwan. Applicant received a bachelor's degree in 1985 in computer engineering and a master's degree in 1987 in computer engineering from universities in Taiwan. He immigrated to the United States in August 1989 and became a naturalized United States citizen in August 2002. He received his Doctor of Philosophy (Ph.D.) in computer science in 2005 from a major United States university.⁵

classified information was given to this intelligence officer. It does show that Taiwan maybe interested in collecting U.S. classified information, but that fact was not an issue in the case. One additional document from another federal trial court indicates that an individual was convicted and sentenced for violating export laws on protected goods. HE 12. These cases do not involve classified information.

³When SOR allegations are controverted, the Government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the Government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the Government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). 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. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

⁴GE 1; AE A - AE C.

⁵GE 1; GE 2; Tr. 24.

Applicant married his wife, who was born in the PRC, in January 1991. She became a naturalized United States citizen in August 2002 and resides in the United States. Applicant has two daughters, who were born and raised in the United States and are students in the United States. Applicant and his wife adopted a son from China. His son is now 12 years old, and he is a resident in and a naturalized citizen of the United States.⁶

Applicant's parents, four brothers, and one sister are citizens of Taiwan. They live in Taiwan, except for one brother, who works and lives in the PRC. Applicant's in-laws are deceased. Applicant's father, who is 85 years old and ill with cancer, retired from the logging industry almost 30 years ago. Applicant's mother, who is 84 years old, has always been a housewife. Because his parents are not computer literate, Applicant talks with them by telephone at least once a month. He sends one brother \$1,500 to \$2,000 about every 18 months to help provide support for his parents, which he stated is a tradition in Taiwan. From this money, his brother distributes \$100 to \$200 a month to his parents.⁷ Applicant visited Taiwan June 2001, October 2004, September 2008, and February 2011. He stayed at his parents' home during his visits. Taiwan has a national health care system, which pays the costs of his father's medical treatment.⁸

Applicant's oldest brother is a retired teacher, who receives a government pension. Applicant and this brother talk by telephone once a year and do have email and Facebook contact. Applicant sees this brother when he visits his parents in Taiwan. Applicant's second brother is divorced, and his former wife and children live in Canada. Since 1998, his second brother has worked for a private Taiwanese company in the PRC. Applicant last spoke with this brother in February 2011; however, Applicant occasionally communicates with him by email. He assumes this brother has contact with the government of the PRC, but he does not know the nature of the contact. He saw this brother for the first time in ten years when Applicant visited Taiwan in 2011.⁹

Applicant's third brother was a factory worker, but is currently being treated for cancer and is receiving disability income. This brother is not computer literate, so Applicant's contacts are limited. He does see this brother when he visits his parents. Applicant's last brother is a banker with whom Applicant has frequent contact. Applicant and this brother talk once a month, and email regularly, often to talk about their parents' health. Applicant sends the parental support money to this brother. Applicant's sister is a factory worker, who is not computer literate. He sees his sister when he visits his parents in Taiwan.¹⁰

⁶GE 1; GE 2; Tr. 27-28.

⁷The SOR does not identify Applicant's payments to his parents as a security concern.

⁸GE 2; Tr. 28, 32, 38, 46-49, 51-53, 61-65.

⁹GE 2; Tr. 29-31, 35-36, 65.

¹⁰GE 2; Tr. 32, 38, 53-54, 65.

Applicant and his siblings agreed and signed a paper to give their parents' house to the brother who is being treated for cancer upon the death of their parents. They also agreed to give any monies their parents may have at the time of death to this brother. Applicant advised that he could claim his share of the inheritance, but he does not intend to do so. Applicant does not provide financial support to his brothers nor does he have financial assets in Taiwan.¹¹

In 2001, Applicant renewed his Taiwanese passport, which is titled Republic of China. When he became a U.S. citizen in 2002, he obtained a U.S. passport. When he traveled to Taiwan in 2004 and 2008, Applicant exited the United States with his U.S. passport, but entered and exited Taiwan on his Taiwanese passport for ease of entry into Taiwan. Applicant also had his U.S. passport stamped when he left Taiwan and used his U.S. passport for entry into the United States. His Taiwanese passport expired in January 2011, and he has not renewed it. He has no current intent to renew his Taiwanese passport. Applicant understands that he cannot use his Taiwanese passport for travel while holding his current job.¹²

Applicant told his family in Taiwan that he is doing engineering software for defense and that he applied for a security clearance. He has never been questioned by government officials when he is in Taiwan nor has he had contact with Taiwanese officials on his trips to Taiwan. His family does not have contact with Taiwanese government officials.¹³

Applicant has not renounced his Taiwanese citizenship and will not do so unless the U.S. Government asks him to renounce it. He indicated that it was possible that he will return to live in Taiwan when he retires because Taiwan has affordable health care and a less expensive lifestyle.¹⁴ Applicant told the Office of Personnel Management (OPM) investigator that he did not have any allegiance to Taiwan, that he did not have any rights, privileges, benefits, or obligations to Taiwan, and that he had never accepted any benefits from Taiwan since becoming a U.S. citizen. He also told the OPM investigator that he would willingly renounce his Taiwan citizenship, if necessary, to obtain a security clearance.¹⁵

In 2003, Applicant began teaching at the university level. He worked on a year-to-year contract, During the fall of his third year, the faculty committee reviewing his contract decided not to renew his teaching contract when it expired in May 2006. The

¹¹Tr. 53-55.

¹²AE E; AE G; Tr. 39-40, 66-77.

¹³Tr. 61, 75-76.

¹⁴The SOR does not identify Applicant's possible retirement to Taiwan at some point in the future as a security concern.

¹⁵GE 2; Tr. 40, 77.

committee based its decision on his student evaluations. At the same time, Applicant began searching for another job, which would bring him closer to his family, who lived in another state. Applicant left the university in December 2005 when he received a job offer closer to home.¹⁶

In the e-QIP, Section 13A: Employment Activities asked Applicant to list all of his employment activities, including unemployment and self-employment for the last 10 years. The Section 13C: Employment Record asked Applicant “Had any of the following happened to you **in the last seven (7) years** at employment activities that you have not previously listed? (If ‘yes’, you will be required to add an additional employment in Section 13A.)

- Fired from a job?
- Quit a job after being told you would be fired?
- Have you left a job by mutual agreement following charges or allegations of misconduct?
- Left a job by mutual agreement following notice of unsatisfactory performance?
- Received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace, such as violation of a security policy?

Applicant answered “no” to the questions in Section 13C. Applicant did not believe he had been fired from his teaching position, although at the hearing, he acknowledged that his contract was not renewed because of negative student evaluations and that he chose not to explain what happened with his contract when he completed his e-QIP. During the personal interview in December 2011, the OPM investigator asked Applicant to confirm the reason why he left the university teaching position in December 2005. Applicant voluntarily advised that the University decided not to renew his contract. Applicant also told the investigator that he had planned to move back to where his family lived even if his contract had not been terminated. Applicant denies intentionally falsifying his answer to this question.¹⁷

Administrative Notice

Peoples Republic of China (PRC)

The PRC is an authoritarian, communist party-led state. Human rights violations continue to be problematic. Concerns regarding the PRC’s weapons development, theft of classified technology information between 1979 and 1999, and industrial espionage activities remain. The PRC continues to have active intelligence operations in the United States, which seek to obtain military and industrial secrets through Americans of Chinese ancestry. On the other hand, the PRC supports the United State’s anti-terrorism position and activities. The United States and the PRC have developed joint trade agreements,

¹⁶GE 2; Tr. 43-45, 82-83.

¹⁷GE 1; GE 2; Tr. 44, 82- 91.

resulting in the sale of goods to each other, and work together on environmental issues. The PRC enjoys a most favored nation status in trading with the United States. The PRC has opened its doors to outside investment.

Taiwan

In 1949, a large number of Chinese refugees fled from the civil war in mainland China and emigrated 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 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 the PRC has not renounced the use of force against Taiwan. 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

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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, 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. 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, an applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” An applicant has the ultimate burden of persuasion for obtaining 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 an 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

AG ¶ 6 expresses the security concern regarding foreign influence:

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.

AG ¶ 7 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

(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's wife and children are citizens and residents of the United States. Thus, no security concern is raised by these family members. Applicant's parents, three brothers, and sister are citizens and residents of Taiwan. One brother is a citizen of Taiwan, but he works and resides in the PRC, and has done so since 1998. Applicant maintains a normal familial relationship with his parents and one brother in Taiwan. He talks with them by telephone once or twice a month, and he provides financial support for his parents. He talks with his brother in the PRC and another brother once a year and has Facebook and email contact with these brothers during the year. He has limited contact with his last brother and sister because neither are computer literate, and he does not telephone them. He sees his siblings who live in Taiwan, when he visits his parents. He has seen his brother living in the PRC only once in the last ten years. His family relationships are not *per se* a reason to deny Applicant a security clearance, but his contacts with his family members must be considered in deciding whether to grant Applicant a clearance. The Government must establish that these family relationships create a risk of foreign exploitation, inducement, manipulation, pressure, or coercion by terrorists or would create a potential conflict of interest between his obligations to protect sensitive information and his desire to help his family members who may be threatened by terrorists.

In determining if such a risk exists, I must look at Applicant's relationships and contacts with his family, as well as the activities of the Governments of Taiwan and PRC and terrorist organizations within those countries. The risk that an applicant could be targeted for manipulation or induced into compromising classified information is real, not theoretical. Applicant's relationship and contacts with his family in Taiwan and the PRC raise a heightened risk and a security concern because the monitoring and surveillance activities of the PRC Government intrude upon the privacy of its citizens. The evidence of record fails to show that the Taiwanese Government targets U.S. citizens in the United States or in Taiwan by exploiting, manipulating, pressuring, or coercing them to obtain protected information. Thus, the concern that the Taiwan Government will seek classified information is moderate. The same cannot be said of the PRC Government, which

actively engages in espionage activities in the United States and targets American-Chinese citizens for classified information. The press releases reflect activities by some citizens of Taiwan, not the Government of Taiwan, to violate U.S. laws and ship controlled goods without proper licenses to Taiwan, although there is no information that these incidents involved classified information.

Under the guideline, the potentially conflicting loyalties must be weighed to determine if an applicant can be expected to resolve any conflict in favor of U.S. interests. In determining if Applicant's contacts in Taiwan and the PRC cause security concerns, I considered that Taiwan, the PRC, and the United States have a relationship, which includes working together on international security issues and trade. There is no evidence that the Taiwanese Government targets U.S. citizens for protected information, but there is evidence that the PRC does. The human rights issues in the PRC continue to be a concern, but are not an issue with the Taiwanese Government. While none of these considerations by themselves dispose of the issue, they are all factors to be considered in determining Applicant's vulnerability to pressure or coercion because of his family in Taiwan and the PRC. Applicant's contacts with his family raise a heightened risk under AG ¶¶ 7(a) and (b). However, since Applicant's father-in-law died many years ago, he does not raise a heightened risk under AG ¶¶ 7(a) and (b).

The Foreign Influence guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 8(a) through 8(f), and the following are potentially applicable:

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

Applicant told his family members that he had applied for a security clearance to work on computers for the DOD. His parents, one brother, and one sister are not computer literate. He communicates with his remaining family members by email and on Facebook. His communications with two brothers and his sister in Taiwan are limited and create little likelihood for foreign influence or exploitation. His parents are elderly, retired factory workers, who have no contact with government officials. It is unlikely that the

Government of Taiwan would target them to pressure Applicant for classified information, and thus, Applicant would not be placed in a position of having to choose between the interests of Taiwan and the interests of the United States. Applicant has given up his right to a portion of his parents' house upon their death to provide housing for a brother who is disabled. He does regularly talk with one brother, who is a banker, not a government employee. Outside of his family, his ties to Taiwan are nonexistent as Applicant does not own property, bank accounts, or other assets in Taiwan. He does not receive any benefits from Taiwan, although he stated he may retire to Taiwan in the distant future. His contacts in Taiwan do not show that he would chose the interests of Taiwan over the interests of the United States. In reviewing all the evidence of record, there is little likelihood that Applicant's family in Taiwan are a security risk. Applicant has mitigated the security concerns about his family in Taiwan, except his banker brother living in Taiwan, under AG ¶¶ 8(a)-8(c).

Concerning his brother in the PRC, a security concern remains because of the activities of the PRC government towards its citizens in the country and in the United States. The PRC actively seeks U.S. classified information, using any method it can to obtain it. Because his brother lives in the PRC, he is vulnerable to pressure from the PRC government. While there is no evidence that the Government of Taiwan has targeted his banker brother or will target him in the future because of political or business activities, his frequent and regular contact with this brother still raises a concern that he could be placed in a position of having to chose between the interests of the United States and the interests of Taiwan. Applicant has not mitigated the security concerns related to his brother living in the PRC and one brother living in Taiwan under AG ¶ 8(a).

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, 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 the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

(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.

Applicant maintains dual citizenship with Taiwan and the United States. He retained and used his Taiwan passport issued in 2001 after becoming a U.S. citizen in 2002. The Government has established a security concern under AG ¶ 10(a)(1).

The Foreign Preference guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 11(a) through 11(f), and the following are potentially applicable:

- (b) the individual has expressed a willingness to renounce dual citizenship; and
- (e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

Applicant's Taiwan passport expired on January 11, 2011, making it invalid. He has not renewed the passport and does not intend to renew it. Applicant has twice expressed a willingness to renounce his Taiwanese citizenship if his job requires him to renounce it, although he has not yet renounced his Taiwanese citizenship. Applicant does not receive any benefits from Taiwan and whether he will receive benefits in the future cannot be determined at this time. Applicant has mitigated the security concerns about his foreign preference.

Guideline E, 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 the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

- (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;

For AG ¶ 16(a) to apply, Applicant's omission must be deliberate. The Government established that Applicant omitted material facts from his November 2011 e-QIP, when he failed to explain the reasons for departure from his university job. This information is material to the evaluation of Applicant's trustworthiness and honesty. In his response and at the hearing, he denied that he intentionally falsified his answers on his e-QIP and an intent to hide his debts from the Government. Applicant did acknowledge at the hearing that he chose not to explain that his contract had not been renewed because he received negative student evaluations. When the allegation of falsification is controverted, the Government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's intent or state of mind at the time the omission occurred. In light of Applicant's acknowledgment that he chose not to provide the correct information for his departure from the University, the Government has established its case under AG ¶ 16(a) as the fourth question in Section 13C required a "yes" answer from Applicant.¹⁸

The Personal Conduct guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 17(a) through 17(g), and the following are potentially applicable:

AG ¶ 17 provides conditions that could mitigate security concerns:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts.

When Applicant met with the OPM investigator in December 2011, he volunteered that the University decided not to renew his contract after May 2006 after being asked to confirm the reasons for his departure. Applicant has mitigated the personal conduct security concerns under AG ¶ 17(a).

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 an applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

¹⁸See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004)(explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

(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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant immigrated to the United States as an adult, after completing his undergraduate and masters degrees in Taiwan, his homeland. His immediate family lives in the United States, but his parents and siblings remain in Taiwan and one brother lives in the PRC. He regularly contacts his family in Taiwan by telephone, email, or Facebook. With the exception of his banker brother with whom he has a close relationship, the family in Taiwan is not a security concern because the Taiwanese Government does not target its citizens or seek to collect U.S. classified information. Applicant allowed his Taiwanese passport to expire and has taken no action to renew it. He expressed a willingness to renounce his Taiwanese citizen if it is necessary for him to work for the U.S. government.

Applicant's brother in the PRC remains a security concern because of the actions and goals of the Government of the PRC. The brother's knowledge about Applicant's position and security clearance application places the brother at greater risk to be pressured by the PRC government to seek classified information.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guidelines C and E, but he has not mitigated the security concerns arising under Guideline B.

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Paragraph 3, Guideline C:	FOR APPLICANT
Subparagraph 3.a:	For 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.

MARY E. HENRY
Administrative Judge