



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



In the matter of:)	
)	
(Redacted))	ISCR Case No. 15-08029
)	
Applicant for Security Clearance)	

Appearances

For Government: Rhett C. Petcher, Esq., Department Counsel
For Applicant: *Pro se*

05/15/2017

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant's two brothers are resident citizens of Taiwan, and she has infrequent, cordial contact with a former mentor, a senior scientist for Taiwan's government. Yet, she held a security clearance in the past when employed as a research scientist for the U.S. military and has shown that she can be counted on to act in U.S. interests. Clearance is granted.

Statement of the Case

On May 5, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing a security concern under Guideline B, Foreign Influence, and explaining why it was unable to grant or continue a security clearance to Applicant. The DOD CAF acted under Executive Order 10865 (EO), *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 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) effective within the DOD on September 1, 2006.

Applicant responded to the SOR allegations on May 10, 2016, and she requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On August 19, 2016, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On August 22, 2016, I scheduled a hearing for September 26, 2016.

I convened the hearing as scheduled. One Government exhibit (GE 1) was admitted into evidence without objection. Additionally, the Government requested that I take administrative notice of several facts pertinent to the Republic of China (Taiwan). An August 10, 2016 letter from Department Counsel forwarding to Applicant discovery of the Government's exhibit and the Administrative Notice request with extracts of source documents was marked as a hearing exhibit (HE 1). The SOR was amended on the Government's motion, as set forth below. Applicant offered no documentary exhibits and relied solely on her testimony, which is reflected in a hearing transcript (Tr.) received on October 5, 2016.

SOR Amendment

The Government moved under ¶ E3.1.17 of the Directive to add the following allegation under Guideline B based on Applicant's hearing testimony about her foreign contacts:

- b. Your mentor is a citizen and resident of Taiwan and works for the Taiwanese national laboratory.

Finding good cause to amend the SOR, I granted the motion over Applicant's expressed concerns that her contact with this foreign national is not the type to raise concerns of foreign influence. I gave Applicant an opportunity to respond to the allegation, including by post-hearing submissions and requesting that I reconvene the hearing if necessary. Applicant elected to provide additional testimony at the hearing about her contacts and relationships with the Taiwanese citizen.

Administrative Notice

At the hearing, the Government requested administrative notice of several facts pertinent to Taiwan, as set forth in an Administrative Notice request dated August 10, 2016. The Government's request was based on several U.S. government publications referenced in the document.¹

¹ The Government's request for administrative notice was based on a Congressional Research Service publication identified in the request as *U.S.-Taiwan Relationship: Overview of Policy Issues* dated November 26, 2014. However, I was provided an excerpt with the same title but dated December 11, 2014. The Administrative Notice request was also based on three joint communiques between the United States and the People's Republic of China from February 1972, January 1979, and August 1982; annual reports to Congress for 2005 and 2009-2011 by the Office of the National Counterintelligence Center; four press releases and an October 2014 summary of export enforcement criminal cases from the U.S. Department of Justice; a November 2009 report from the Defense Personnel and Security Research

Pursuant to my obligation to take administrative notice of the most current political conditions in evaluating Guideline B concerns (see ISCR Case No. 05-11292 (App. Bd. Apr. 12, 2007)), I informed the parties of my intent to take administrative notice, subject to the reliability of the source documentation and the relevance and materiality of the facts proposed. Applicant confirmed her receipt of the Government's Administrative Notice request with extracts of the source documents. Applicant filed no objections to the facts set forth in the Government's Administrative Notice request, and she declined an opportunity to submit additional facts for administrative notice.

Concerning the U.S. Department of Justice press releases and its summary of major U.S. export enforcement and economic espionage criminal cases, they were presented by the Government apparently to substantiate that Taiwan actively pursues collection of U.S. economic and proprietary information. Neither Applicant nor any of her family members were implicated in that criminal activity. With that caveat, the facts administratively noticed are set forth below.

Findings of Fact

The amended SOR alleges under Guideline B that Applicant's two brothers are resident citizens of Taiwan (SOR ¶ 1.a) and that Applicant's mentor is a resident citizen of Taiwan employed by a Taiwanese national laboratory (SOR ¶ 1.b). Applicant admits the foreign ties but denies that they present a security concern. After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 52-year-old native of Taiwan. She was raised and educated in Taiwan through undergraduate school, earning her bachelor's degree in chemistry. She came to the United States on a student visa for graduate study at a public university in 1987. Her parents and her two brothers remained in Taiwan. Applicant entered the United States on a Taiwanese passport issued in June 1987. She met her spouse, a U.S. native citizen, who was a graduate student in the same department. They married in May 1993 and have no children. (GE 1; Tr. 34-36.) In September 1999, Applicant and her spouse purchased their current residence. (GE 1.)

After finishing her doctoral program, Applicant returned to Taiwan in 1994. Her mother, who was a homemaker, was ill. Applicant performed post-doctoral academic research at a national laboratory in Taiwan for 1.5 years. Primarily an academic institution, the national laboratory was started by a Nobel Laureate recruited by Taiwan's government to establish the laboratory after he retired from his academic position at a U.S.-based university. At the laboratory, Applicant was mentored by a senior researcher, who is still employed there. Applicant believes her former mentor, now age 70, plans to retire in the near future. (Tr. 38-39.)

Center; and an annual report from the Office of the Secretary of Defense titled *Military and Security Developments Involving the People's Republic of China 2012*. I was provided the web addresses for the full articles.

Applicant's mother passed away in 1995, and in 1996 Applicant returned to the United States. (Tr. 36-37.) Her spouse, who performed his post-doctoral research in Europe, returned to the United States around the same time. Applicant's mentor at the Taiwanese national laboratory offered Applicant and her spouse positions, but they chose to return to the United States. (Tr. 94.) Her spouse accepted a position at a private university, and Applicant was awarded a post-doctoral fellowship to perform work for a U.S. military laboratory from 1996 to 1999. Applicant was then hired by a college's institute for scientific research for an in-house contractor position at the military laboratory. (Tr. 40-43.)

Applicant became a dual citizen of Taiwan and the United States on her U.S. naturalization in February 2000. (GE 1.) She had U.S. permanent residency as the spouse of a U.S. citizen and did not think about applying for U.S. citizenship until she heard that, as a contractor without U.S. citizenship, she would be denied computer access. (Tr. 45-46.) In December 2003, she started working directly for the military laboratory as a federal civilian research chemist. (GE 1; Tr. 41, 44.) In December 2004, Applicant was granted a DOD secret security clearance by the military component's adjudications facility despite her dual citizenship, her possession of a valid foreign passport, and her father's and her brothers' citizenship and residency in Taiwan. (GE 1.) Applicant considered relinquishing her citizenship with Taiwan, but her supervisor told her that it was not required for security clearance eligibility at the secret level, so she chose to maintain dual citizenship. (Tr. 69.) Applicant acquired her U.S. passport in February 2008. (GE 1.) She advised a government investigator that she retained her Taiwanese passport because she visited her father every year and wanted to avoid having to obtain a visa for longer stays. (Tr. 48, 60.)

Most of Applicant's work for the U.S. military laboratory did not involve classified matters, although she occasionally attended classified meetings. (Tr. 42-43.) Applicant traveled to Taiwan on U.S. government business, and she received appropriate security briefings. (Tr. 20, 74.) In 2008 or 2009, she attended a conference where she and her former mentor presented their respective findings on research funded by the U.S. government. Applicant and her former mentor renewed their acquaintance after some 12 to 13 years of no contact. (Tr. 92-99.)

Applicant traveled to Taiwan from January 2009 to February 2009 for tourism and to see family members, from September 2009 to October 2009 to see her father before his death, from March 2010 to April 2010 to visit her brothers, and from September 2010 to October 2010 for tourism and to visit family. (GE 1; Tr. 60.)

In April 2011, Applicant renewed her Taiwanese passport for another ten years. In July 2011, Applicant resigned from her employment with the U.S. government. The research laboratory was moved in a base realignment and closure (BRAC) to another military base across the country. Applicant "regrettably" left her job to stay with her spouse in her present locale. (GE 1; Tr. 26, 47.)

In August 2011, Applicant began working for her present employer, a small defense contractor, as its director of applied sciences. (GE 1; Tr. 26, 30.) Her security clearance was transferred with no problem. (Tr. 27.) In September 2012 and in October 2014, she and her spouse traveled to Taiwan for tourism and to visit her family members. Applicant testified that she used her U.S. passport to enter Taiwan on all trips after her father's death. (Tr. 70.) However, she indicated on her SF 86 that she last used her Taiwan passport in 2012. (GE 1.) In 2014, she used her U.S. passport because her stay was only two weeks and so she did not require a visa. However, she also had her Taiwanese passport in her possession in case she needed to extend her stay. (Tr. 70-71.)

On March 9, 2015, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86) to renew her security clearance eligibility. (Tr. 24.) She disclosed her dual citizenship and her possession of current Taiwanese and U.S. passports. Applicant explained why she holds dual citizenship, as follows:

I am a citizen of both the United States and Taiwan. I maintain dual citizenship because most of my family is in Taiwan so that I can visit them more easily and do not have to apply for visas for longer stays. I have not maintained dual citizenship to protect a financial interest in Taiwan. I have not traveled to or resided in Taiwan to meet citizenship requirements because Taiwan has no requirements. I have not sought or held office in Taiwan as a political official. I have not voted in any elections in Taiwan since becoming [a] US citizen. I have a Taiwanese passport which I had before obtaining my US citizenship and have maintained [it] since then. In my previous position as a scientist in the [military research laboratory], I was granted security clearance and also allowed to hold dual citizenship because it was determined that my association with Taiwan is a family association only.

Applicant also listed her foreign travel since 2009, including her several trips to Taiwan. (GE 1.)

After Applicant submitted her SF 86, she was contacted by security personnel at work and told that she had to relinquish her foreign passport. She surrendered her Taiwanese passport to her facility security officer as part of the application process to renew her security clearance eligibility. (Tr. 48, 67-69, 72.)

Applicant described her relationship with her brothers in Taiwan as "just as close as any sibling can be." (Tr. 29.) Applicant tries to visit them every two or three years. (Tr. 30.) To her knowledge, nothing has changed about her brothers' finances or their employments in Taiwan since she obtained her security clearance. (Tr. 28.) Her brothers are both educators and do not conduct business in Taiwan or have any contact with Taiwan's military or government. (Tr. 22, 54.) The elder brother is a 50-year-old professor employed by a private university in Taiwan. He teaches only part time because of his

health issues. (GE 1; Tr. 50-51.) Applicant indicated on her SF 86 that she has quarterly contact with this brother. (GE 1.) As technology has improved, they have changed their means of contact from electronic mail to Skype. Of late, Applicant primarily monitors his activities via Facebook. During the first nine months of 2016, Applicant contacted this brother twice. She texted him to wish him Happy New Year around the lunar new year and on his birthday in August 2016. Applicant's brother likes to travel with his spouse, who is a professor in accounting at another private university in Taiwan. Applicant and her brother's conversations usually involve his travel plans. This brother visited Applicant in the United States in approximately 2003. (Tr. 51-53.)

The younger of Applicant's brothers in Taiwan is 47 years old. He teaches mathematics, but primarily works as an administrator at a high school in Taiwan. His spouse was educated as an accountant, but she now stays at home to care for their three children, who are all under age 12. (Tr. 56.) Applicant indicated on her SF 86 that she had quarterly contact with this brother. (GE 1.) Applicant testified to twice yearly contact with her brother and more frequent correspondence with his spouse about their children via Facebook instant messaging. (Tr. 56-57.) Applicant contacted her sister-in-law most recently in May 2016, when she inquired about a birthday gift for her nephew. (Tr. 57.) Applicant stays with her younger brother and her family during her visits to Taiwan. (Tr. 61.) Applicant has not had any contacts with Taiwanese officials apart from routine contact at the border when she travels to Taiwan. (Tr. 62.)

Since renewing her acquaintance with her former mentor, Applicant has contacted him by email to exchange New Year's greetings (Tr. 97-98), and she and her spouse had dinner with her former mentor when they were last in Taiwan.² Her former mentor told her at that dinner that he was turning 70 and planned to retire from his employment with Taiwan's government. (Tr. 36-39, 58, 94-95.) He asked her whether she was still involved in research, and she told him she works for a small company without much opportunity for research. (Tr. 74-75.) He knows where she works, but his knowledge of her work is limited to published papers. (Tr. 39-40, 75.) Applicant does not have regular contact with her former mentor. (Tr. 39.)

Applicant monitors the activities of some of her high school friends and five college friends via Facebook, but she contacts them only when she is in Taiwan and has some free time. (Tr. 57-58, 61.) She apparently also has contact with members of her father's family when she is in Taiwan (Tr. 90), but the extent of her contact with these foreign family members is unclear.

Applicant and her spouse each earn about \$140,000 in annual salary from their employments. Their home in the United States is worth about \$450,000. Applicant has about \$200,000 in her retirement account from her former federal civilian employment at the military laboratory. Her spouse has 401(k) assets, but Applicant does not know the

² Applicant testified that she and her spouse went to Taiwan one time after March 2015, but she also testified that she has been to Taiwan only twice in the last seven years. (Tr. 60.) She disclosed on her SF 86 trips to Taiwan in September 2012 and October 2014. (GE 1.) It is unclear whether Applicant traveled to Taiwan more recently than October 2014.

amount. They have about \$300,000 in bank accounts because they are planning on remodeling their home. Applicant owns no foreign real estate. To her knowledge, she does not have a foreign bank account. (Tr. 63-65.)

Applicant has published one research paper during her present employment. It was for a joint service conference for the U.S. military with attendance restricted to government employees and government contractors. Her employer discourages publication in academia because of the proprietary nature of their research. (Tr. 76.) Additionally, her employer's product is subject to international traffic in arms regulations (ITAR). Applicant is aware of the prohibitions related to ITAR-controlled information. (Tr. 77.) When asked what she would do if her brothers or their families were to be subjected to foreign influence or pressure, Applicant responded, "I don't think they have the need to know it . . . I would say that's not something I can tell them. (Tr. 78.) If her relatives' lives were in danger, she would tell them to call the police. She has not considered the scenario as even remotely possible because her work is "so fundamentally science" or subject to licensing agreements with the U.S. government. (Tr. 79-82.) When asked what she would do if Taiwan's government attempted to acquire proprietary information from her through threatening one of her brothers, Applicant responded, "if that ever happened, he should flee the country." (Tr. 83.) Having sworn to protect the secrecy of information, Applicant indicated that there were no circumstances under which she would reveal information. When asked what she would do if her brother was facing jail if she failed to comply, Applicant stated, "I'm afraid he may have to go to jail." (Tr. 84.)

Administrative Notice

I take administrative notice that the United States no longer diplomatically recognizes Taiwan as a sovereign nation. In joint communiques with the People's Republic of China (PRC), the United States recognized the government of the PRC as the sole legal government of China; acknowledged the PRC's claim that there is but one China while not recognizing the PRC's claim over Taiwan; and refrained from taking its own stance on Taiwan's status. Taiwan continues to be of significant security, economic, and political interest to the United States. Taiwan has been described by the United States as a "beacon of democracy." The country is a major recipient of U.S. arms sales and is a significant trading partner of the United States. U.S. policy seeks to support security, political, and economic interests that foster peace and security in the region and human rights in Taiwan as cross-strait relations between the PRC and Taiwan continue to improve. In May 2008, Taiwan resumed dialogue with the PRC, which has resulted in closer economic engagement between the two countries. The United States and Taiwan have put more effort into their respective relations with the PRC, while pursuing a parallel, positive U.S.-Taiwan relationship.

Taiwan has an extensive, pervasive history of engaging in economic and technological espionage against the United States. In September 2004, a U.S. State Department former Principal Deputy Assistant Secretary of State was arrested for trying to conceal a 2003 meeting with two Taiwanese intelligence agents in Taiwan. In December 2005, this former State Department official pleaded guilty to keeping numerous

classified documents in his home and concealing an affair with one of the Taiwanese intelligence agents, with whom he had shared sensitive information. U.S. Justice Department releases show that U.S. and Taiwanese citizens and corporations have been involved in the illegal export or attempted export of U.S. restricted dual-use technology to Taiwan. In 2008, two persons were convicted for arms export control violations involving the attempted illegal export to Taiwan of infrared laser aiming devices, thermal weapons sights, and a fighter pilot cueing system. In August 2010, a Taiwan passport holder was sentenced to 3.5 years in prison for conspiring with a Taiwan corporation to illegally export dual-use commodities (missile components) to Iran. In April 2012, two Taiwanese nationals were charged with seeking to export sensitive U.S. military technology to China. In December 2012, a U.S. resident citizen was arrested for allegedly shipping military-grade protective-coating materials to customers in Taiwan and attempting to ship microwave amplifiers to China without the requisite export licenses. In January 2013, another U.S. citizen was sentenced to 42 months in prison for altering invoices and shipping documents to conceal the classification of national security sensitive items so they could be shipped without the required export licenses to several foreign countries, including Taiwan. In March 2013, a citizen of Taiwan was sentenced to nine months in prison for violating the International Emergency Economic Powers Act by attempting to export weapons-grade carbon fiber from the United States to Taiwan. In October 2014, a former resident of Taiwan pleaded guilty to defrauding the United States in its enforcement of regulations targeting proliferators of weapons of mass destruction. The defendant, his son, and an associate in Taiwan with ties to three companies based in Taiwan, purchased and exported machinery used to fabricate metals.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence

contained in the record. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that 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. 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

The security concern relating to the guideline for foreign influence is articulated 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 evidence shows that Applicant’s only siblings are resident citizens of their native Taiwan. The elder of her two brothers is a professor at a private university while the younger brother works primarily as a high school administrator. Applicant has also had contact since 2008 or 2009 with a senior research scientist, who is employed by a national laboratory in Taiwan and had served as her mentor during her post-doctoral research at the laboratory in the mid-1990s.

Applicant questions why her foreign ties are now at issue, given she was granted a secret clearance in 2005 for her duties as a research chemist with the U.S. military

when the government was fully aware of her dual citizenship and of her foreign family members in Taiwan. Even assuming that nothing has changed about her brothers' employments or finances, the government is not estopped from reevaluating a person's security worthiness. See ISCR Case No. 03-04172 at 3-4 (App. Bd. Jun. 7, 2005). Her case does not fall within the reciprocity provision of DOD 5220.22M, *National Industrial Security Program Operating Manual* ¶ 2-204, which is predicated on a person having an existing security clearance based on a current investigation of a scope that meets or exceeds that necessary for the security clearance at issue, and the absence of significant derogatory information not previously adjudicated. If Applicant's security clearance was transferred to her defense contractor employment after she separated from federal service in July 2011, she was still due for a new investigation in 2015. Her renewal of her acquaintance with her former mentor at the Taiwanese national laboratory occurred after her previous investigation when they met at a conference to present their respective research findings for the U.S. government. Review of Applicant's contacts and connections to Taiwanese resident citizens is warranted to determine whether they present a heightened risk under AG ¶ 7(a) or create a potential conflict of interest under AG ¶ 7(b). AG ¶¶ 7(a) and 7(b) provide:

(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.

The "heightened risk" under AG ¶ 7(a) denotes a risk greater than the normal risk inherent in having a family member living under a foreign government. The nature and strength of the family ties or other foreign interests and the country involved (*i.e.*, the nature of its government, its relationship with the United States, and its human rights record) are relevant in assessing whether there is a likelihood of vulnerability to government coercion. 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 on, the foreign government; or the country is known to conduct intelligence operations against the United States. In considering the nature of the foreign government, the administrative judge must take into account any terrorist activity in the country at issue. See *generally* ISCR Case No. 02-26130 at 3 (App. Bd. Dec. 7, 2006). Despite the peaceful, democratic transition of power in recent years and positive relations with the United States, Taiwan has an extensive, pervasive history of engaging in economic and technological espionage against the United States.

Applicant's ties to Taiwan were more substantial when she was granted DOD security clearance eligibility in December 2004. Since the death of her father in 2009, Applicant now travels to Taiwan to see her brothers every two or three years rather than

annually, and she stays for only two weeks. On her January 2015 SF 86, she indicated that he was in touch with both brothers on a quarterly basis. She testified at her hearing in late September 2016 that she contacts her brothers a few times a year. Even so, she described her relationship to her brothers as “just as close as any sibling can be.” Applicant stays with her younger brother and his family when she is in Taiwan. She is interested enough in her younger brother’s children to inquire about their activities and appropriate birthday gifts. Applicant had no contact with her former mentor from 1996 to 2008 or 2009, when they renewed their acquaintance at the conference. Since then, she has extended New Year’s greetings by email and had contact with him in Taiwan. Applicant and her spouse had dinner with him during their latest trip to Taiwan. AG ¶¶ 7(a) and 7(b) apply primarily because of Applicant’s close bonds to her brothers and their families. Applicant’s former mentor’s longtime employment with Taiwan’s national laboratory heightens the risk somewhat, but they have not had regular contact since the mid-1990s.

It is relevant that Taiwan is a democratic country that generally respects the human rights of its citizens, and it enjoys good foreign relations with the United States, despite the lack of diplomatic relations between the two countries with the United States’ recognition of the PRC.³ Yet, it is difficult to apply mitigating condition AG ¶ 8(a) in light of Taiwan’s targeting of economic and technological information developed in the United States. AG ¶ 8(a) provides:

(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.

Applicant has a cordial relationship at present with her former mentor, but there is nothing in the infrequent and casual nature of their contacts that suggests loyalty or obligation to him. AG ¶ 8(b) provides for mitigation where the sense of loyalty or obligation is so minimal to pose no conflict of interest:

(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.

³ Presumably because of the U.S. government’s one-China policy, the Government submitted facts for administrative notice that show the PRC to be one of the most active and persistent perpetrators of economic espionage targeting U.S. technology and economic information. Applicant is seen as unlikely to succumb to any attempt at undue influence by the PRC or to aid the PRC, given she was adamant that Taiwanese are not Chinese (“I take the offense that Taiwanese are Chinese because they’re not.”). (Tr. 81.)

However, Applicant's close bonds to her brothers cannot reasonably be characterized as minimal. Applicant's retention of dual citizenship with Taiwan after her U.S. naturalization, and her renewal of her Taiwanese passport in April 2011 for another ten years, could be viewed as indicators of loyalty or allegiance to her native Taiwan. Yet, her motivation was of convenience in that she would not have to obtain the visa required for an extended stay on her U.S. passport. She used her U.S. passport in preference to her Taiwanese passport during her trip to Taiwan in October 2014 because she planned a short stay that did not require a visa.

Applicant has substantial ties to the United States that establish AG ¶ 8(b). She has lived in the United States for 30 years, for the past 17 years in a home that she owns with her spouse, who is a U.S. native citizen. She has held U.S. citizenship since 2000. As for her 1.5 years of post-doctoral research in Taiwan, she went to Taiwan because her mother was ill. After her mother died, Applicant and her spouse were both offered positions by her former mentor at the Taiwanese national laboratory, but they elected to return to the United States. Applicant then spent about 15 years working as a scientist for a U.S. military laboratory, initially with a post-doctoral fellowship, then as a subcontractor, and from December 2003 to July 2011 as a federal civilian. She held a DOD secret clearance for her duties. There is no evidence that she committed any security violations or infractions. Applicant and her spouse have considerable financial assets in the United States. Their joint employment income is approximately \$280,000 annually, they have about \$300,000 in bank deposits in the United States, and their home is worth \$450,000. They have retirement and 401(k) assets in the United States. Applicant receives no benefits from Taiwan. She has not voted in Taiwan since her U.S. naturalization. She has no financial assets in Taiwan. She surrendered possession of her Taiwanese passport to her facility security officer in 2015 when notified of the DOD requirement to do so. Her ties to the United States increase the likelihood of her resolving any conflict in favor of U.S. interests.

AG ¶ 8(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," partially applies. Applicant's contacts with her former mentor have been infrequent. Since Applicant returned to the United States from Taiwan in 1996, their in-person contact has been limited to the government conference in 2008 or 2009 and the dinner during Applicant's latest trip to Taiwan. To the extent that her former mentor's employment with the Taiwanese national laboratory presents a risk, it is noted that Applicant voluntarily informed the Government about her contact with this research scientist and about her post-doctoral fellowship in the mid-1990s. Her candor allows me to accept her account of their present relationship as casual and polite born of their past work together.

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 her conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶

2(a).⁴ Furthermore, in weighing these whole-person factors in a foreign influence case, the Appeal Board has held that:

Evidence of good character and personal integrity is relevant and material under the whole person concept. However, a finding that an applicant possesses good character and integrity does not preclude the government from considering whether the applicant's facts and circumstances still pose a security risk. Stated otherwise, the government need not prove that an applicant is a bad person before it can deny or revoke access to classified information. Even good people can pose a security risk because of facts and circumstances not under their control. See ISCR Case No. 01-26893 (App. Bd. Oct. 16, 2002).

Applicant understandably has close bonds of affection to her only siblings. When asked what she would do if a family member in Taiwan was threatened or pressured in an attempt to gain sensitive or classified information from her, she responded that they would not have a need to know the information and that she could not provide it. She sees the issue as “very black and white” in that she cannot reveal information that she has sworn not to tell. In the event that her family members’ lives were in danger, she would tell them to call the police, although she could not conceive of it happening. If faced with the scenario of her brother being jailed unless she cooperated, Applicant indicated that her brother would have to go to jail because she would not provide the information under any circumstances. While acknowledging that people act in unpredictable ways when faced with choices that could be important to a family member,⁵ Applicant has been trusted with U.S. classified information in the past, and she understands the obligation to protect classified or sensitive information. After considering all the facts and circumstances, I find that it is clearly consistent with the national interest to grant or continue security clearance eligibility for Applicant.

⁴ The factors under AG ¶ 2(a) are as follows:

(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.

⁵ As stated by the DOHA Appeal Board in ISCR Case No. 08-10025 (App. Bd. Nov. 3, 2009), “Application of the guidelines is not a comment on an applicant’s patriotism but merely an acknowledgment that people may act in unpredictable ways when faced with choices that could be important to a loved-one, such as a family member.”

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the amended 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

Conclusion

In light of all of the circumstances, it is clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Elizabeth M. Matchinski
Administrative Judge