



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



In the matter of:

ISCR Case No. 17-01693

Applicant for Security Clearance

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel

For Applicant: Robert M. Barga, Esq.

01/17/2018

Decision

HARVEY, Mark, Administrative Judge:

Applicant's spouse is a citizen of the Republic of China (Taiwan), and her parents are citizens and residents of Taiwan. Foreign influence security concerns are not mitigated. Access to classified information is denied.

Statement of the Case

On August 19, 2015, Applicant completed and signed a Questionnaire for National Security Positions (e-QIP) (SF 86) (SCA). Government Exhibit (GE) 1. On June 6, 2017, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, effective on September 1, 2006 (Sept. 1, 2006 AGs).

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Hearing Exhibit (HE) 2. Specifically, the SOR set forth security concerns arising under the foreign influence guideline. HE 2.

On June 28, 2017, Applicant responded to the SOR and requested a hearing. HE 3. On August 24, 2017, Department Counsel was ready to proceed. On August 28, 2017, the case was assigned to me. On November 8, 2017, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for December 1, 2017. HE 1. Applicant's hearing was held as scheduled.

Department Counsel offered two exhibits; Applicant offered eight exhibits; there were no objections; and all proffered exhibits were admitted into evidence. Tr. 14-17; GE 1-2; Applicant Exhibit (AE) A-H. On December 20, 2017, DOHA received the hearing transcript.

The Director of National Intelligence (DNI) issued Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), which he made applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position on or after June 8, 2017. The new AGs supersede the previous AGs, and I have evaluated Applicant's security clearance eligibility under the new AGs.¹

Procedural Issues

Department Counsel requested administrative notice of facts concerning the Taiwan. Tr. 15-16; HE 4 (Administrative Notice Request). I have also taken administrative notice of two documents from the U.S. State Department website: *U.S. Bilateral Relations Fact Sheets, U.S. Relations With Taiwan* (Sept. 13, 2016), and *Background Note Taiwan* (Feb. 8, 2012) <https://2009-2017.state.gov/outofdate/bgn/taiwan/196574.htm>. Tr. 15-16; HE 4 (Item 1); HE 5. There were no objections to the administrative notice documents, and administrative notice of these documents is approved. Tr. 15-16.

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 in 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). See the Taiwan section of the Findings of Fact of this decision, *infra*, for the administratively noticed facts concerning Taiwan.

¹ Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case. The new AGs are available at http://ogc.osd.mil/doha/SEAD4_20170608.pdf.

Findings of Fact²

Applicant admitted the allegations in SOR ¶¶ 1.a and 1.b. HE 3. He also provided extenuating and mitigating information. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is a 33-year-old information technology analyst, and a DOD contractor has employed him since October 2015. Tr. 24, 34; GE 1. From June 2005 to August 2015, Applicant worked for 16 different employers. GE 1. He was educated in the United States. In 2003, he graduated from high school. Tr. 34. He completed about one year of college. Tr. 35. He served in the U.S. Navy from 2003 to 2005; he received a general discharge under honorable conditions; and he was a seaman apprentice (E-2) when he left active duty. Tr. 24. He did not serve overseas. Tr. 7. He does not have any children. Tr. 40. Applicant's net financial worth in the United States is between \$50,000 and \$100,000. Tr. 42. His annual salary is about \$80,000. Tr. 42. His parents are citizens and residents of the United States. Tr. 42.

When Applicant was in the Navy, he received nonjudicial punishment (NJP) twice for driving under the influence of alcohol (DUI). Tr. 35; GE 2. He said he did not remember the breathalyzer result or blood alcohol content (BAC) when he was arrested for the first DUI. Tr. 35-36. In June 2006, he was arrested for his second DUI, and he said his BAC was only .08 percent. Tr. 37; GE 2. He pleaded guilty to reckless driving. GE 2. Applicant did not have any memory of the events leading up to his third DUI arrest in August 2013. Tr. 37-39; GE 2. He was driving 100 miles per hour; the police stopped his vehicle; and his BAC was "pretty high," but he did not remember it. Tr. 38; GE 2. He pleaded guilty to DUI and speeding. GE 2. He attended an alcohol-education course. GE 2. After the third DUI, he stopped consuming alcohol for one year. Tr. 38. He was unsure whether he was still on probation. Tr. 39. When he drinks alcohol, he drinks responsibly. Tr. 39. He uses public transport when he has been drinking. Tr. 39.

In September 2015, Applicant married. Tr. 25. Applicant met his future spouse on the Internet in 2014. Tr. 22, 31. Applicant has not visited Taiwan, and his parents-in-law have not visited Applicant. Tr. 26. His parents-in-law speak limited English. Tr. 26. His parents-in-law are mostly retired from their employment in a privately-owned electronics business. Tr. 28, 50, 62. His father-in-law's goal is to resume the private business; however, it may not be possible because of foreign competition. Tr. 50-52. Applicant's communications with his parents-in-law are limited to one letter he sent to them and sporadic electronic communications. Tr. 22-26. His spouse communicates with her parents and her brother, who are citizens and residents of Taiwan, on a weekly basis. Tr. 26, 60. Applicant's spouse's brother, who is single, is employed in communications. Tr. 26-27. Applicant has never met his brother-in-law. Tr. 27.

Applicant's spouse moved to the United States in 2010. Tr. 60. She visited Taiwan three or four times after 2010. Tr. 61. Her parents visited the United States in 2014. Tr.

²The facts in this decision do not specifically describe employment, names of witnesses or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information.

64. She was educated through the bachelor's degree level in Taiwan. Tr. 30. In December 2014, she received a Ph.D. from a U.S. university. Tr. 30, 64. Applicant's spouse owes about \$70,000 in student loans to a bank in Taiwan.³ Tr. 30, 62-63. Her parents are making most of the payments on her student loan. Tr. 43. She was making some payments until recently when she became unemployed. Tr. 63. She views the People's Republic of China (PRC) as separate from Taiwan. Tr. 46. She loves the United States, and she has greater professional opportunities in the United States than in Taiwan. Tr. 46. She intends to permanently remain in the United States. Tr. 47. She intends to start a business in the United States. Tr. 48. She has visited Taiwan once since 2014. Tr. 32. She stayed in Taiwan on that visit for about six weeks. Tr. 32. If her parents become ill, she intends to return to Taiwan to visit them. Tr. 58-59.

Applicant's spouse has applied to be a permanent U.S. resident. Tr. 33. On December 1, 2015, Applicant's spouse was sworn for her enlistment in the U.S. Army Reserve. Tr. 30-31, 53-54, 69; AE A. She takes her enlistment oath seriously and would fight on behalf of the United States. Tr. 55-56. She was unable to go to Army basic training because she is not a U.S. citizen. Tr. 31, 56-57. On June 21, 2017, the Office of the Secretary of Defense for Personnel and Readiness removed an impediment for active duty service for persons such as Applicant's spouse, who were enlisted in the Military Accessions Vital to the National Interest (MAVNI) Pilot Program. SOR response. His spouse has a U.S. driver's license and a Common Access Card (CAC) for her Army Reserve unit. Tr. 34, 71. If someone puts pressure on her parents for classified information, she will seek help from the authorities. Tr. 59.

Character Evidence

A coworker who knows Applicant professionally and socially indicated Applicant is trustworthy and reliable. Tr. 74-76. He was aware of Applicant's history of alcohol consumption and of the foreign influence security concerns. Tr. 76. He is not aware of any reason to question Applicant's worthiness for a security clearance. Tr. 76.

³ Applicant's SOR does not allege that Applicant's spouse has any financial connections to Taiwan or that Applicant was arrested three times for driving while under the influence of alcohol (DUI). In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

- (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

Id. (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). *See also* ISCR Case No. 12-09719 at 3 (App. Bd. April 6, 2016) (citing ISCR Case No. 14-00151 at 3, n. 1 (App. Bd. Sept. 12, 2014); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)). These allegations will not be considered except for the five purposes listed above.

Applicant's spouse's friend has known her since 2013. Tr. 78. Applicant and his spouse are respectful of each other's views. Tr. 80. She does not believe Applicant's spouse would compromise U.S. national security. Tr. 80-81.

Taiwan

Taiwan is a multi-party democracy shared with power shared between the Executive, Legislative, Judicial, Control, and Examination. Taiwan's population is 23.2 million (December 2011). Taiwan and the United States maintain a robust unofficial relationship. In 1979, the United States switched recognition from Taiwan to the PRC. The United States maintains cultural, commercial, other unofficial relations with Taiwan. The PRC insists that there is "one China" with the PRC contending that Taiwan is part of the PRC and not independent.

The PRC is Taiwan's largest trading partner and the United States is Taiwan's second largest trading partner. The PRC and Taiwan are collectors of U.S. economic and proprietary information. In the past ten years, these activities on behalf of Taiwan have resulted in criminal and civil charges in the United States. The PRC seeks to acquire intelligence through multiple sources, including through illegal means.

The 1979 Taiwan Relations Act includes the United States' commitment to assist Taiwan in the maintenance of its defensive capability. Companies in Taiwan employ more than 12,000 workers in the United States.

The United States and Taiwan have had a close military and diplomatic relationship for more than 60 years. Taiwan's armed forces are equipped with weapons obtained primarily from the United States. In January 2010, the Barack Obama administration notified Congress of its intent to sell Taiwan \$6.4 billion worth of various defensive weapons, including Blackhawk helicopters and Patriot missiles, and authorized an additional \$5.8 billion in September 2011, which included a retrofit of Taiwan's F-16 A/B fleet. Taiwan adheres to the principles of the nuclear Non-Proliferation Treaty and has stated that it does not intend to produce nuclear weapons.

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.

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. Thus, nothing in this decision should be construed to suggest that it is based, 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, Secretary of Defense, and DNI 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 (4th 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

Foreign Influence

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

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they

create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

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

(a) contact, regardless of method, 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;

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology; and

(e) shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

Applicant is close to his spouse, who is a citizen of Taiwan, and not a citizen or permanent resident of the United States. Applicant's spouse has frequent contacts⁴ with her relatives who are citizens and residents of Taiwan. Foreign influence security concerns arise because of Applicant's spouse's relationships with her family in Taiwan. There is a rebuttable presumption that a person has ties of affection for, or obligation to, their immediate family members. See *generally* ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at *8 (App. Bd. Feb. 20, 2002). Applicant has ties of affection and obligation to his spouse. "[A]s a matter of common sense and human experience, there is a rebuttable presumption that a person has ties of affection for, or obligation to, the immediate family members of the person's spouse." ISCR Case No. 07-17673 at 3 (App. Bd. Apr. 2, 2009) (citing ISCR Case No. 01-03120 at 4 (App. Bd. Feb. 20, 2002)). This concept is the basis of AG ¶ 7(e).

Applicant's spouse's relationships with her family in Taiwan are sufficient to create "a heightened risk of foreign exploitation, inducement, manipulation, pressure, or

⁴ The Appeal Board has concluded that contact every two months or more frequently constitutes "frequent contact" under AG ¶¶ 7 and 8. ISCR Case No. 14-05986 at 3-4 (App. Bd. Oct. 14, 2016). See *also* ISCR Case No. 04-09541 at 2-3 (App. Bd. Sep. 26, 2006) (finding contacts with applicant's siblings once every four or five months not casual and infrequent).

coercion.” These relationships create a concern about Applicant’s “obligation to protect sensitive information or technology.” For example, if entities in Taiwan wanted to expose Applicant to coercion, they could approach Applicant’s spouse’s family in Taiwan. In turn, she could ask Applicant to compromise national security.

The mere possession of ties with family in Taiwan is not, as a matter of law, disqualifying under Guideline B. However, if an applicant or his spouse has such a relationship, 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).

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).

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 burden of persuasion on Applicant to demonstrate that his spouse’s relationships with her family in Taiwan do not pose a security risk. Applicant should not be placed in a position where he might be forced to choose between loyalty to the United States and a desire to assist his spouse.

While there is no evidence that intelligence operatives, terrorists, or other entities from Taiwan seek or have sought classified or economic information from or through Applicant, or his spouse, it is not possible to rule out such a possibility in the future. Applicant’s spouse’s communications and visits with her family in Taiwan are sufficient to raise a security concern about potential foreign influence. Department Counsel produced substantial evidence to raise the issue of potential foreign pressure or attempted exploitation. AG ¶¶ 7(a), 7(b), and 7(e) 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 United States;
- (b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, 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 agency head or designee;
- (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.

The DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

AG ¶¶ 8(a) and 8(c) have limited applicability. Nevertheless because of Applicant's spouse's contacts with her family in Taiwan, Applicant is not able to fully meet his burden of showing there is "little likelihood that [his spouse's relationships with her relatives who are residents of Taiwan] could create a risk for foreign influence or exploitation."

Applicant's spouse owes \$70,000 to a bank in Taiwan, which she received while she was attending post-graduate education in the United States. Her parents are making the payments on this debt. Applicant and his spouse's net worth in the United States is about \$75,000. This debt to a Taiwan bank is of sufficient magnitude in relation to Applicant's net worth to reduce mitigation under the foreign influence guideline.

Applicant has "deep and longstanding relationships and loyalties in the U.S." He has strong family connections to the United States. Applicant, his parents, and his other family members are citizens and residents of the United States. He was educated in the United States, and he served under honorable conditions in the Navy for two years. His spouse has primarily lived in the United States since 2010, and she joined the U.S. Army Reserve. Applicant has never visited Taiwan.

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his spouse's relationships with her family in Taiwan, the \$70,000 debt to a Taiwan bank, and her visits to Taiwan. There is no evidence that terrorists, criminals, the Taiwan Government, or those conducting espionage have approached or threatened Applicant or his spouse for classified or sensitive information. While the Government does not have any burden to prove the presence of such evidence, if such record evidence was present, Applicant would have a heavy evidentiary burden to overcome to mitigate foreign influence security concerns. It is important to be mindful of the United States' positive relationship with Taiwan.

While there is no evidence that the Taiwan Government or industrial entities have engaged in coercion of former Taiwan citizens to obtain sensitive or classified U.S. information, some individuals from Taiwan have violated U.S. law and engaged in industrial espionage. Because of Applicant's spouse's close and ongoing connections to Taiwan, foreign influence security concerns are not fully 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(d):

- (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), “[t]he ultimate determination” of whether to grant a security clearance “must be an overall commonsense judgment based upon careful consideration” of the guidelines and the whole-person concept. My comments under Guideline B are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is a 33-year-old information technology analyst who has been employed by a DOD contractor since October 2015. He has about one year of college. He served in the U.S. Navy from 2003 to 2005; he received a general discharge under honorable conditions. He does not have children. His net financial worth in the United States is between \$50,000 and \$100,000, and his annual salary is about \$80,000. His parents and family are citizens and residents of the United States. He has never visited Taiwan or met his Taiwan in-laws.

When Applicant was in the Navy, he received two NJPs for DUIs. In August 2013, he was arrested the third time for DUI. He pleaded guilty to the DUI in August 2013, and he attended an alcohol-education course. GE 2. When he drinks alcohol, he said he drinks responsibly. He uses public transport when he has been drinking. His history of excessive alcohol consumption was not alleged in the SOR, and this issue may not have been fully developed at his hearing. See note 3, *supra*.

In September 2015, Applicant married a citizen of Taiwan. She is not a U.S. permanent resident or U.S. citizen. She joined the U.S. Army Reserve; however, she has been unable to attend basic training because of her citizenship status and delays in the MAVNI program. She received a Ph.D. from a prominent U.S. university. She has frequent contacts with her family in Taiwan. She visited Taiwan several times since 2010. She owes \$70,000 to a Taiwan Bank. The \$70,000 debt to a Taiwan bank was not alleged in the SOR. See note 3, *supra*.

A Guideline B decision concerning Taiwan must take into consideration the geopolitical situation and dangers there.⁵ Some Taiwan citizens have engaged in economic espionage against the United States. Balanced against this illegal behavior is Taiwan’s lengthy history of a positive military and diplomatic relationship with the United States. Over the last 10 years, the United States has sold billions of dollars of advanced military equipment to Taiwan. There is no evidence that the Taiwan Government has coerced any Taiwan citizens or former citizens living in the United States to betray the United States.

It is well settled that once a concern arises regarding an applicant’s security clearance eligibility, there is a strong presumption against the granting a security clearance. See *Dorfmont*, 913 F. 2d at 1401. Unmitigated foreign influence security

⁵ 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).

concerns lead me to conclude that grant of a security clearance to Applicant is not warranted at this time. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more mitigating evidence, he may be able to demonstrate persuasive evidence of his security clearance worthiness.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude that foreign influence security concerns are not mitigated. It is not clearly consistent with the interests of national security to grant Applicant security clearance eligibility.

Formal Findings

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

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant

Conclusion

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

MARK HARVEY
Administrative Judge