



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



In the matter of: )  
)  
) ADP Case No. 07-05322  
)  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: Ray T. Blank, Jr., Esquire, Department Counsel  
For Applicant: *Pro Se*

February 12, 2008

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**Decision**

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LOUGHRAN, Edward W., Administrative Judge:

On September 26, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the trustworthiness concerns under Guideline C, Foreign Preference and Guideline B, Foreign Influence. 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); Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended (Regulation), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on October 16, 2007, and requested a hearing before an Administrative Judge. The case was assigned to me on December 6, 2007. DOHA issued a notice of hearing on January 14, 2008, as amended on January 15, 2008. I convened the hearing as scheduled on January 29, 2008. DOHA received the transcript of the hearing (Tr.) on February 6, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to sensitive information is granted.

## Procedural and Evidentiary Rulings

### Notice

I advised Applicant of her right under ¶ E3.1.8 of the Directive to 15 days notice before the hearing. Applicant affirmatively waived her right to 15 days notice.

### Motion to Amend SOR

Department Counsel moved to amend the SOR by changing ¶ 2.a from “Your mother is a citizen and resident of Taiwan” to “Your mother is a citizen and resident of Hong Kong.” Applicant did not object and the motion was granted.

### Evidence and Administrative Notice

The government offered exhibits (GE) 1 through 3, which were admitted without objection.

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Taiwan, Hong Kong and the People’s Republic of China (PRC) as contained in Hearing Exhibits (HE) XIII and XIV. Applicant did not object. The source documents for the facts are U.S. Department of State, Background Note: Taiwan, dated October 2007 (HE I); Congressional Research Service, CRS Report for Congress, Taiwan: Recent Developments and U.S. Policy Choices, updated October 9, 2006 (HE II); National Counterintelligence Center, Annual Report to Congress on Foreign Economic Collection and Industrial Espionage - 2000 (HE III); Press release, U.S. Department of Justice, dated April 18, 2006 (HE IV); Press release, U.S. Department of Justice, dated January 22, 2007 (HE V); Statement of Facts, *United States v. Keyser* (HE VI); Interagency OPSEC Support Staff, Intelligence Threat Handbook, select pages (HE VII); U.S. Department of State, Background Note: China, dated October 2007 (HE VIII); 2006 Report to Congress of the U.S.-China Economic and Security Review Commission, select pages (HE IX); Office of the National Counterintelligence Executive, Annual Report to Congress on Foreign Economic Collection and Industrial Espionage - 2005 (HE X); U.S. Department of State, Country Reports on Human Rights Practices - 2006: China, dated March 6, 2007 (HE XI); U.S. Department of State, Consular Information Sheet: China, dated March 19, 2007 (HE XII); U.S. House of Representatives Select Committee Report on U.S. National Security and Military/Commercial Concerns with the People’s Republic of China, dated January 3, 1999, select pages (HE XV); U.S. Department of State, Background Note: Hong Kong, dated July 2007 (HE XVI); and U.S. Department of State, Consular Information Sheet: Hong Kong SAR, dated December 11, 2007 (HE XVII).

I took administrative notice of the facts contained in HE XIII and XIV. I did not take administrative notice of the source documents HE VI and VII. In accordance with ISCR Case No. 03-21434 (App. Bd. Feb. 20, 2007), those documents were remarked as GE 4 and 5, and admitted without objection as government exhibits.

The request for administrative notice of certain facts relating to Hong Kong (HE XIV) includes the facts, “[u]nder Chinese nationality law, persons who are of Chinese descent and who were born in the mainland of China or Hong Kong are citizens of China.” The request references the Consular Information Sheet on Hong Kong (HE XVII). The request references an earlier version of the Consular Information Sheet on Hong Kong than was submitted as a source document. The revised Consular Information Sheet submitted as HE XVII does not contain the requested information. Applicant’s dual citizenship is alleged in the SOR. Since the crux of the issue is whether Applicant is a Hong Kong citizen, I am taking administrative notice of the immigration laws of Hong Kong and the PRC. Information was obtained through the Government of Hong Kong Special Administrative Region Immigration Department web site at [www.immd.gov.hk/ehtml/topical-3.htm](http://www.immd.gov.hk/ehtml/topical-3.htm). A copy is included as HE XVIII. The requests for administrative notice and the attached source documents, with the exception of the two documents remarked GE 4 and 5, were not admitted into evidence but were included in the record as Hearing Exhibits. The facts administratively noticed are set out in the Findings of Fact, below.

Applicant testified on her own behalf and submitted exhibits (AE) A through E, which were admitted without objection.

### **Findings of Fact**

Applicant is a 42-year-old Registered Nurse. She was born in Hong Kong and attended nursing school there. She came to the United States in the late 1980s and became a U.S. citizen in 1995. She is married with two children, eleven and nine years old. Both her children were born in the U.S.<sup>1</sup>

Applicant’s father fled from China to Hong Kong before the Communist revolution. He passed away when Applicant was a young child. Her mother is in her late 60s. She was born in Hong Kong and still resides there. She was a midwife but retired about ten years ago. Applicant’s brother lives in a country in the British Commonwealth. Her sister is a resident of Hong Kong and works in the health care industry. Applicant’s mother remarried after the death of her husband. She had two more children with her new husband. Applicant’s half brothers are residents of Hong Kong. She is estranged from her youngest half brother and does not know how he is employed. She is unsure of what her other half brother does for a living as he has changed jobs on a few occasions. The last job she knew about he was working in the private sector. Applicant speaks with her mother about every two weeks and her sister about every three months.<sup>2</sup>

Applicant’s husband was born in Taiwan. He came to the U.S. in the early 1990s. He became a U.S. citizen about four or five years ago. His father is deceased. His mother is a citizen and resident of the Republic of China (Taiwan). She worked in the medical industry but retired a few years ago. His brother is a citizen and resident of

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<sup>1</sup> Tr. at 37, 59; GE 1-3.

<sup>2</sup> Tr. at 35-36, 40-52; Applicant’s response to SOR; GE 1, 3.

Taiwan. He works in law enforcement. Applicant is not close to her in-laws. Her husband only talked to his brother on the telephone a few times in the ten plus years he has been married. Her mother-in-law has visited them in the U.S. on about three occasions. Applicant has no assets in Hong Kong. Her mother-in-law's home in Taiwan is in Applicant's husband's name.<sup>3</sup>

Applicant traveled to Hong Kong, Taiwan, and the PRC in 2002; Hong Kong and Taiwan in 2005; and last year she traveled to Hong Kong. She has possessed a Hong Kong permanent identity card since she was about 12 years old. The only passport Applicant possesses is her U.S. passport. The identification card provides her with the right of abode (ROA) in Hong Kong. She has used the identification card to enter Hong Kong. She was able to use it in conjunction with her U.S. passport, or on its own when she entered Hong Kong. There is no Hong Kong immigration stamp on her U.S. passport from when she traveled to Hong Kong in 2005. The identification card cannot be used to enter the PRC or any other country. She used her U.S. passport for all her other international travel.<sup>4</sup>

Applicant has stated in the past that she was a dual citizen of the U.S. and Hong Kong. She also stated that her family members were citizens of Hong Kong. At the hearing she admitted she was ignorant of the law in this regard.<sup>5</sup> Applicant and her family were citizens of the British colony, Hong Kong, before it reverted to the PRC in 1997. Applicant became a U.S. citizen before the reversion. Under Chinese nationality law, persons of Chinese descent who were born on the Chinese mainland or Hong Kong are considered citizens of the PRC. It appears her family members are technically citizens of the PRC, but residents of Hong Kong. It is unclear whether they remain British citizens or have any other citizenship. Under the above Chinese nationality law, Applicant would be considered a Chinese citizen by the PRC, except for a different provision of the Chinese nationality law. The PRC does not recognize dual nationality.<sup>6</sup> Under the Chinese nationality law:

Any Chinese national who has settled abroad and who has been naturalized as a foreign national or has acquired foreign nationality of his own free will shall automatically lose Chinese nationality.<sup>7</sup>

Applicant has the right of abode in Hong Kong, but she lost any claim to Chinese citizenship when she became a U.S. citizen. Applicant testified she now thinks of herself as only a U.S. citizen. She left Hong Kong 19 years ago when it was a British colony.

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<sup>3</sup> Tr. at 37, 48-52, 89-90; Applicant's response to SOR; GE 1, 3.

<sup>4</sup> Tr. at 41-43, 50-58; Applicant's response to SOR; GE 1-3; HE XIV, XVIII.

<sup>5</sup> Tr. at 46, 55-56, 60-65; Applicant's response to SOR; GE 1, 3.

<sup>6</sup> HE XVIII.

<sup>7</sup> *Id.*

She does not feel a current connection to Hong Kong. She stated that if Hong Kong considered her a citizen, that she would be willing to renounce that citizenship.<sup>8</sup>

Applicant is very highly regarded by her employer and in her community. Character letters describe her as a woman of integrity, honest, trustworthy, efficient, an outstanding citizen who values our nation's principles, and someone who cares deeply about her nation and her role serving the military customer. Her supervisor wrote that she is extremely dedicated, loyal, and customer focused and truly cares about the treatment of their military customers. Her work ethic, adherence to policy mandates, caution concerning the privacy and confidentiality of her patients, and general performance of her duties are above reproach. Thirty-four co-workers signed a joint letter stating they believe Applicant is a trustworthy person and they hope that she will be granted eligibility for a Public Trust Position.<sup>9</sup>

## **Taiwan and PRC**

In 1949, Taiwan was populated by refugees fleeing a civil war in China. That same year, Communists in mainland China established the People's Republic of China (PRC), and a separate, independent government was established in Taiwan. The PRC does not recognize Taiwan, and insists there is only "one China."

Taiwan is a multi-part democracy. Through nearly five decades of hard work and sound economic management, Taiwan has transformed itself from an underdeveloped, agricultural island to an economic power that is a leading producer of high-technology goods. On January 1, 1979, the United States formally recognized the PRC as the sole legal government of China. The U.S. also announced that it would maintain cultural, commercial, and other unofficial relations with the people on Taiwan. The Taiwan Relations Act (TRA) signed into law on April 10, 1979, created the legal authority for the conduct of unofficial relations with Taiwan. The American Institute in Taiwan, a private nonprofit corporation with offices in Taiwan, is authorized to issue visas, accept passport applications, and provide assistance to U.S. citizens in Taiwan. A counterpart organization was established by Taiwan. It has multiple offices in the U.S.

Maintaining strong, unofficial relations with Taiwan is a major U.S. goal. The U.S. does not support Taiwan independence, but it does support Taiwan's membership in appropriate international organizations such as the World Trade Organization (WTO), which it joined in 2002, Asia-Pacific Economic Cooperation (APEC) forum, and the Asian Development Bank. In addition, the U.S. supports appropriate opportunities for Taiwan's voice to be heard in organizations where its membership is not possible.

The TRA enshrines the U.S. commitment to help Taiwan maintain its defensive capability. The U.S. continues to sell appropriate defensive military equipment to Taiwan, in accordance with the TRA. President Bush publicly stated in 2001 that the

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<sup>8</sup> Tr. at 64-65.

<sup>9</sup> AE A-E.

United States would do “whatever it takes” to help Taiwan’s defense and approved a substantial sale of U.S. weapons to Taiwan, including destroyers, anti-submarine aircraft, and diesel submarines. The White House also was more accommodating to visits from Taiwan’s officials than previous U.S. Administrations, and permitted visits from Taiwan’s president in 2001 and 2003, and Taiwan’s vice president and defense minister in 2002.

Since then, there have been changes in U.S.-Taiwan relations. Taiwan’s new president disavowed key concepts long embraced by the opposing party - the “status quo” that there is only one China and Taiwan is part of it - and instead has adopted the more provocative position that Taiwan already “is an independent, sovereign country,” a “status quo” he promises to maintain. There was also a series of recent corruption scandals.

In response to Taiwan’s political developments, the Administration appears to have dialed back its earlier enthusiasm for supporting Taiwan’s initiatives. While still pursuing a close relationship with Taiwan, U.S. officials now appear to be balancing criticisms of the PRC military buildup opposite Taiwan with periodic cautions and warnings to the effect that U.S. support for Taiwan is not unconditional, but has limits.

The PRC is a large and economically powerful country, with a population of over a billion people and an economy growing at about 10% per year. The PRC has an authoritarian government, dominated by the Chinese Communist Party. The PRC has a poor record with respect to human rights, suppresses political dissent, and its practices include arbitrary arrest and detention, forced confessions, torture, and mistreatment of prisoners.

Both the PRC and Taiwan are known to be active collectors of U.S. economic intelligence. The PRC also maintains intelligence operations in Taiwan and Hong Kong.

## **Hong Kong**

Hong Kong has been a Special Administrative Region of the PRC since July 1, 1997, ending more than 150 years of British colonial rule. Hong Kong has a high degree of autonomy, except in the areas of defense and foreign policy, which are the responsibility of the PRC. The Hong Kong Special Administrative Region is headed by a Chief Executive voted on by an Election Committee made up of approximately 800 Hong Kong residents from four constituency groups, including the PRC’s National People’s Congress. Under Chinese nationality law, persons of Chinese descent who were born on the Chinese mainland or Hong Kong are considered citizens of the PRC.

While Hong Kong remains a free and open society where human rights are respected, courts are independent, and there is a well-established respect for the rule of law, concerns include limitations on residents’ ability to change their government, the legislature’s limited power to affect government policies, self-censorship, violence and discrimination against women, and restrictions on worker’s rights to organize and bargain collectively.

## Policies

Positions designated as ADP I and ADP II are classified as “sensitive positions.” (See Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.) “The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person’s loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security.” (See Regulation ¶ C6.1.1.1.) The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004, indicates trustworthiness adjudications will apply to cases forwarded to DOHA by the Defense Security Service and Office of Personnel Management. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made. (See Regulation ¶ C8.2.1.)

When evaluating an Applicant’s suitability for a public trust position, the Administrative Judge must consider the disqualifying and mitigating conditions in the AG. 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 over-arching adjudicative goal is a fair, impartial and common sense 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 [sensitive] 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 as to obtaining a favorable trustworthiness decision.

A person who seeks access to sensitive 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 sensitive information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard sensitive information. Such decisions entail a certain degree of legally

permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

Section 7 of Executive Order (EO) 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 C, Foreign Preference**

The security concern relating to the guideline for Foreign Preference is set out in AG ¶ 9:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

The guideline notes several conditions that could raise security concerns under AG ¶ 10. Two are potentially applicable in this case:

- (a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member;
- (b) action to acquire or obtain recognition of a foreign citizenship by an American citizen.

Applicant possesses a Hong Kong permanent identity card. This is not an exercise of foreign citizenship as Applicant forfeited any right to Chinese, and by extension Hong Kong, citizenship when she became a U.S. citizen. Hong Kong is a very unique place since the reversion. It is no longer a British colony, but it is also not totally the PRC. There are special rules in place to address all the former British citizens. The Hong Kong permanent identity card grants Applicant the right of abode in Hong Kong, much in the same way that a U.S. “green card” reflects permanent residence status in the U.S. for foreign nationals. In this case, possession and use of the Hong Kong permanent identity card is no more an exercise of Hong Kong citizenship than possession of a U.S. green card is an exercise of U.S. citizenship. No Foreign Preference disqualifying condition has been established.

Conditions that could mitigate Foreign Preference security concerns are provided under AG ¶ 11, including:

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

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

Applicant was born in Hong Kong. If she was considered a dual citizen, it would be because of her birth in Hong Kong. She has expressed a willingness to renounce any dual citizenship. AG ¶¶ 11(a) and (b) are applicable to any remaining Foreign Preference concerns.

### **Guideline B, Foreign Influence**

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 7:

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 guideline notes several conditions that could raise security concerns under AG ¶ 7. Three are potentially applicable in this case:

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

(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;

(d) sharing 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's mother, sister, and half brothers are residents of Hong Kong. They are also considered to be Chinese citizens. The PRC has an authoritarian government, dominated by the Communist Party, with a poor human rights record, and targets the U.S. for espionage. Her husband's mother and brother are citizens and residents of Taiwan, a country known to be an active collector of U.S. economic intelligence. This

creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. It also creates a potential conflict of interest. AG ¶¶ 7(a), (b) and (d) have been raised by the evidence.

AG ¶ 8 provides conditions that could mitigate security concerns:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

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

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

Applicant was born in Hong Kong while it was still a British colony. She came to the U.S. and became a citizen before it reverted to the PRC in 1997. British culture and capitalism influenced her as a youth, not the Chinese mainland dominated by the Communist Party. She has family in Hong Kong and her husband has family in Taiwan. The PRC and Taiwan both collect U.S. intelligence. She has lived in the U.S. for many years and has been a citizen for more than 12 years. Her husband is a U.S. citizen and her children were born in the U.S. Applicant is a respected, highly regarded Registered Nurse. She was lauded for maintaining patient privacy and confidentiality. I find there is no conflict of interest, because Applicant has such deep and longstanding relationships and loyalties in America that she can be expected to resolve any conflict of interest in favor of the United States. AG ¶ 8(b) is applicable. No other mitigating condition is fully applicable.

## Whole Person Concept

Under the whole person concept, the Administrative Judge must evaluate an Applicant's eligibility for a public trust position by considering the totality of the Applicant's conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a): "(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) 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 public trust position must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant was born in Hong Kong when it was a British colony. She came to the U.S. as a young woman about 19 years ago. She became a U.S. citizen in 1995. She has never lived in Hong Kong after it reverted in 1997. Her husband is from Taiwan, but he is also a U.S. citizen. They have two children born in the U.S. She is now a fully assimilated American, and a highly regarded Registered Nurse with a proven record of maintaining patient privacy and confidentiality. She does not consider herself a Hong Kong or Chinese citizen. If Hong Kong did consider her one of its citizens, she would be willing to renounce that citizenship.

I considered the totality of Applicant's family ties to Hong Kong and Taiwan. Hong Kong is no longer a British colony. Hong Kong remains a free and open society where human rights are generally respected. It has some autonomy but is closely connected to the PRC. The PRC has an authoritarian government, a bad human rights record, and has a very aggressive espionage program. The PRC conducts intelligence operations in Hong Kong and Taiwan.

Taiwan is an ally of the United States. However, Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified [or sensitive] 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."<sup>10</sup> The distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly.

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,

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<sup>10</sup> ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

especially in the economic, scientific, and technical fields. Nevertheless, the nature of a nation's government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable 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 upon the government, or the country is known to conduct intelligence operations against the U.S.

The U.S. officially supports the "one China" policy. However, to treat the PRC and Taiwan the same is to ignore reality. They currently function as separate entities. Taiwan is a democracy, does not have a poor human rights record, and is dependent upon the United States for arms, as well as its defense against the PRC. Taiwan is known to conduct intelligence operations against the United States, but there is no indication that Taiwan utilizes coercion against its citizens for espionage purposes.

In the unlikely event that Applicant's family in Hong Kong, or her husband's family in Taiwan, were subjected to coercion or duress from either government in an attempt to obtain sensitive information, I find that because of her deep and longstanding relationships and loyalties in the U.S., that Applicant would resolve any attempt to exert pressure, coercion, exploitation, or duress in favor of the United States.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant has mitigated the trustworthiness concerns arising from her Foreign Preference and Foreign Influence.

### **Formal Findings**

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

Paragraph 1, Guideline C:	FOR APPLICANT
Subparagraphs 1.a:	For Applicant
Subparagraphs 1.b:	For Applicant
Subparagraphs 1.c:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a:	For Applicant
Subparagraphs 2.b:	For Applicant
Subparagraphs 2.c:	For Applicant
Subparagraphs 2.d:	For Applicant
Subparagraphs 2.e:	For Applicant

## **Conclusion**

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

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EDWARD W. LOUGHRAN  
Administrative Judge