



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



In the matter of: )  
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Applicant for Security Clearance )

ISCR Case No. 14-06809

**Appearances**

For Government: Aubrey De Angelis, Esquire, Department Counsel  
For Applicant: Garrett Stephen Payer, Personal Representative

05/18/2016

**Decision**

LYNCH, Noreen, Administrative Judge:

In 1961, Applicant was born in Taiwan. In 1986, he immigrated to the United States. In 1996, Applicant was naturalized as a U.S. citizen. His mother, spouse, brother-in-law, and two adult children are U.S. citizens. However, his mother-in-law and father-in-law live in Taiwan, but they are dual U.S. citizens who lived in the United States for many years. He has much stronger connections to the United States than to Taiwan. Foreign influence concerns are mitigated. Applicant mitigated the personal conduct concern. He did not falsify his security clearance questionnaire. Access to classified information is granted.

**Statement of the Case**

On May 12, 2014, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) version of a security clearance application (SF 86). (Government Exhibit (GE) 1) On August 27, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant, pursuant to Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG), which became effective on September 1, 2006.

The SOR alleged security concerns under Guideline B (foreign influence) and Guideline E (personal conduct). The SOR detailed reasons why the DOD CAF was unable to find that it is clearly consistent with national interest to grant or continue Applicant's access to classified information and recommended referral to an administrative judge to determine whether Applicant's clearance should be granted, continued, denied, or revoked.

On September 23, 2015, Applicant responded to the SOR allegations and requested a hearing. On December 2, 2015, the case was assigned to me. On February 26, 2016, the Defense Office of Hearings and Appeals (DOHA) issued a hearing notice setting the hearing for March 22, 2016. Applicant's hearing was held as scheduled. Department Counsel offered three exhibits into evidence, and Applicant presented one witness and offered two exhibits into evidence. (Applicant Exhibit (AE) A-B) All exhibits were admitted into evidence without objection. On March 30, 2016, DOHA received the transcript of the hearing.

### **Procedural Rulings**

At the hearing, Department Counsel requested administrative notice of facts concerning Taiwan. There were no objections, and I granted the administrative notice request and Memorandum. The document was marked as Hearing Exhibit (HE) 1 and admitted into the record. (Tr. 11)

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). Usually administrative notice at ISCR proceedings is accorded to facts that are either well known or from government reports. See Stein, *ADMINISTRATIVE LAW*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

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

In his SOR response, Applicant admitted that his brother, sister, mother-in-law and father-in-law are citizens and residents of Taiwan. His in-laws are dual citizens of Taiwan and the United States, who lived in the United States from 1979 and retired to Taiwan in 2005. He also provided extenuating and mitigating information. Applicant's admissions are accepted as findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

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<sup>1</sup>The facts in this decision do not specifically describe employment, names of witnesses or locations in order to protect Applicant and her family's privacy. The cited sources contain more specific information. Unless stated otherwise, the sources for the facts in this section are from Applicant's SF 86. (GE 1)

Applicant is a 54-year-old technical specialist who has worked for the same DOD contractor since 2014. (GE 1) His annual base salary is \$125,000. (Tr.79) He worked for a large company including DOD contractors since 2002. He has never held a security clearance, but he has held a public trust position. (Tr. 26)

In 1961, Applicant was born in Taiwan, and he received his education through undergraduate school in Taiwan. (GE 1) He served from 1983 to 1985, in the Taiwan Army as required under Taiwan law. (GE 3) In 1986, he immigrated to the United States. (Tr. 24) He received his master's degree in computer science at a U.S. university. In 1996, Applicant was naturalized as a U.S. citizen. (GE 1, AE A) He renounced his Taiwan citizenship. (AE B) He has never served in the U.S. military. (GE 1) He has current U.S. assets, including a home and investments. There is no derogatory information concerning Applicant's police or financial records. There is no evidence of record showing any U.S. arrests, illegal drug possession or use, or alcohol-related incidents.

Applicant married in 1990. (GE 1) His spouse was born in Taiwan, and she attended school through high school in Taiwan. She was naturalized as a U.S. citizen. (Tr. 39) She is a software engineer who lives with him in the United States. Applicant's son and daughter are U.S. citizens who live in the United States and attend a university. (GE 1) His spouse has a brother who is a U.S. citizen and lives in the United States and a brother who lives in Taiwan. Applicant considers the United States to be his home.

Applicant has a brother who is a citizen and resident of Taiwan. (SOR 1.a) He lives there with his wife and two children. He attended university in the United States. He returned to Taiwan in 2001. (Tr. 42) He is an associate professor at a university in Taiwan. He has no connections with the Taiwanese government. Applicant contacts his brother by phone either once a month or every other month. (Tr. 42) Applicant's spouse speaks to him by phone maybe once a year. Applicant's brother does not know the particulars of his work. Applicant believes he mentioned that he was working on a clearance. (Tr. 43) He listed his relatives on the security clearance application. That was the reason he told them they might be contacted.

Applicant's sister is currently living in Taiwan with her husband and two children. She came to the United States with her husband in 1988 and attended an American university. (SOR 1.b) She received her master's degree and returned to Taiwan in 1992. She has worked as a senior finance manager since 1997. (Tr. 47) Neither she nor her husband has any connection to the Taiwanese government. Her children are U.S. citizens. (Tr. 49) Applicant contacts his sister once or twice a year. (Tr. 50)

Applicant's mother-in-law and father-in-law are U.S. citizens. (SOR 1.c) They came to the United States in 1979 and 1983 respectively. After more than 20 years they returned to Taiwan to retire. They are dual citizens of Taiwan. They do not know anything about Applicant's work. Applicant's wife contacts them once a month. (Tr. 50); Applicant's brothers-in-law are citizens and residents of Taiwan. (Tr. 31) Her one brother is a U.S. citizen who lives in the United States. Applicant does not communicate with his brothers-in-law, except when he visits Taiwan. (Tr. 32) Applicant does not have

any property or financial investments in Taiwan. (Tr. 33) He does not believe any of his relatives living in Taiwan have employment with the Taiwan government. (Tr.57) In 2001, 1995, 1991, and 1987, he visited Taiwan. (Tr. 34) Applicant destroyed his Taiwan passport. (Tr. 15-16)

Applicant's mother was born in Taiwan and came to the United States in 1996. She became a naturalized citizen in 2011. (Tr. 40) She is not employed. Applicant's father died in 2005 while living in the United States. At the time, he was a permanent resident. (Tr. 41) She resides with Applicant and his spouse. (Tr. 41)

Applicant has not yet received security-related training. If Applicant is contacted by a foreign entity seeking information, he promised to immediately report the contact, and as much information about that contact as possible, to his security officer. (Tr. 35-36) Applicant has no contact with friends in Taiwan. (Tr.57)

Applicant completed a questionnaire of national security positions in 2000. (GX 2) The form was completed by hand. At the time, Applicant had been in the United States for about four years. He answered a question concerning military service in the United States with a "No." There is a second question which is totally illegible that the SOR alleges concerns other military service. There is a slash mark by the question. I cannot read the question on the form. He does not recall any instructions that he received. (Tr. 58) English is not Applicant's first language. He answered the question to the best of his ability. (Tr. 28) Applicant admitted that he misunderstood the question regarding military service and it was not a deliberate failure to disclose information.

When Applicant completed his 2014 security clearance application, he answered "No" to Section 15 because he believed that the question meant did you ever serve any intelligence service such as the CIA, or a foreign military militia like the Taliban. During his in-person interview with the investigator, he fully disclosed his service in the Taiwanese service, which is mandatory. Until the question was asked verbally and rephrased, he did not understand the nature of the questions. (Tr. 31) Each male has to serve two years. He did not understand the nature of the question. He did not intentionally falsify the question. He misinterpreted the question.

### **Character Evidence**

Applicant's graduate school classmate has known Applicant for 29 years (Tr. 18) He described Applicant as an upstanding citizen who is loyal to the United States. He is trustworthy, honest, and conscientious about following the rules, reliable, responsible, and responsive to requirements. He knows Applicant's family and attends family gatherings. He recommended approval of Applicant's security clearance. (Tr. 21)

### **Taiwan**

Taiwan is a multi-party democracy. The United States does not support Taiwan independence, in keeping with the “one China” policy, which was established in 1979. However, maintenance of unofficial relations with Taiwan is also a U.S. goal, and this relationship is consistent with furthering peace and stability in Asia. The United States supports Taiwan’s membership in appropriate international organizations where statehood is not a requirement for membership and encourages its meaningful participation in appropriate international organizations. Taiwan’s commercial ties with the United States have expanded since 1979. Taiwan is the United States’ tenth largest trading partner, and the United States is Taiwan’s largest foreign trading partner.

There are significant economic ties between Taiwan and the PRC, which are attributable to their physical proximity and history. Because of its location and proximity to the PRC, Taiwan has a particular interest in information from the United States that could aid it in its own defense.

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

The United States is committed to assisting Taiwan with maintenance of Taiwan’s defensive capabilities. The United States has continued the sale of appropriate defensive military equipment to Taiwan in accordance with the Taiwan Relations Act, which provides for such sales and notes that peace and stability in the area are in U.S. interests.

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

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant

applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

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

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

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

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

## **Analysis**

## Foreign Influence

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

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

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

- (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;
- (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; and
- (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 was born and educated through high school in Taiwan. Applicant’s brother and sister, and one brother-in-law are citizens and residents of Taiwan. His spouse is a naturalized U.S. citizen. His two children are U.S. citizens. His mother-in-law and father-in-law are dual U.S. citizens who now have retired to Taiwan. Applicant has frequent contacts with his relatives living in Taiwan. He does not provide financial support to his in-laws. His spouse contacts them regularly.

Applicant lives with his spouse. Applicant provided some evidence of his spouse’s relationships with her brother and parents, who are residents and citizens of 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, and she is close to her parents. “[A]s a matter of common sense and human experience, there is [also] 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(d). Thus, an indirect, but important tie remains between Applicant and his in-laws living in Taiwan. Indirect influence from Applicant's in-laws living in Taiwan, through Applicant's spouse to Applicant, could result in a security concern. However, the in-laws are also U.S. citizens.

Applicant's relationships with residents of a foreign country create a concern about Applicant's "obligation to protect sensitive information or technology" and his desire to help his relatives, who live in those countries. For example, if intelligence agents or government officials in those countries wanted to expose Applicant to coercion, they could exert pressure on his relatives residing in those locations. Applicant would then be subject to coercion through his relatives and classified information could potentially be compromised.

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

The nature of a nation's government, its relationship with the United States, its history of intelligence gathering, 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 the burden of persuasion on Applicant to demonstrate that his and his spouse's relationships with family members living in those countries do not pose a security risk. Applicant should not be placed into a position where he might be forced to choose between loyalty to the United States and a desire to assist relatives living in foreign countries.

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

While there is no evidence that intelligence operatives from any foreign country seek or have sought classified or economic information from or through Applicant or his relatives living a foreign country, nevertheless, it is not possible to rule out such a possibility in the future. Applicant's and his spouse's relationships with family members living in foreign countries create a heightened risk of foreign influence and potential conflict of interest because these relationships are sufficiently close to raise a security concern about his desire to assist relatives in foreign countries by providing sensitive or classified information. Department Counsel produced substantial evidence of Applicant's and his spouse's contacts and relationships with family living in Taiwan. Department Counsel has raised the issue of potential foreign pressure or attempted exploitation; AG ¶¶ 7(a), 7(b), and 7(d) are established; and further inquiry is necessary about potential application of any mitigating conditions.

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

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

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

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

The 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 some applicability. Applicant's mother is a U.S. citizen living in the United States. His brother and sister live in Taiwan. His spouse's parents are now in Taiwan, although they are dual U.S. citizens. His loyalty and connections to family are positive character traits. However, for security clearance purposes, those same connections with relatives living in foreign countries negate the possibility of mitigation under AG ¶¶ 8(a) and 8(c), and Applicant failed to fully meet his burden of showing there is "little likelihood that [his relationships with his relatives who are living in foreign countries] could create a risk for foreign influence or exploitation."

AG ¶ 8(b) fully applies. A key factor in the AG ¶ 8(b) analysis is Applicant's "deep and longstanding relationships and loyalties in the U.S." Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationships with family living in foreign countries.

There is no evidence that the Taiwan government, or those conducting espionage have approached or threatened Applicant, his spouse, or their family to coerce Applicant for classified or sensitive information.<sup>2</sup> As such, there is a reduced possibility that Applicant or his family living in a foreign country would be specifically selected as targets for improper coercion or exploitation.

While the U.S. Government does not have any burden to prove the presence of such evidence, if such record evidence were present, Applicant would have a heavier evidentiary burden to mitigate foreign influence security concerns. It is important to be mindful of the United States' sizable financial and diplomatic investment in Taiwan. Applicant and his spouse's family living in foreign countries could become potential targets of intelligence agents because of Applicant's support for the United States, and Applicant's potential access to classified information could theoretically add some risk to Applicant's family living in foreign countries.

Applicant has significant connections to the United States and much more limited connections to Taiwan. In 1986, he immigrated to the United States. In 1996, Applicant was naturalized as a U.S. citizen. He took an oath and swore allegiance to the United States. His spouse, two children, mother, and in-laws are U.S. citizens. He renounced his Taiwan citizenship, and he surrendered his Taiwan passport. He supports the U.S. Government as a contractor. Over the past 25 years, he has been a resident of the United States, and he has manifested his patriotism, loyalty, and fidelity to the United States over all other countries.

In sum, Applicant and his spouse's connections to family living in Taiwan are significant. Applicant frequently communicates with parents in Taiwan about her health. In 2001, he visited Taiwan, and in 1995, 1991, and 1987. Security concerns are not

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<sup>2</sup>There would be little reason for U.S. enemies to seek classified information from an applicant before that applicant has access to such information or before they learn of such access.

analyzed in a piecemeal assessment. Instead, the overall situation must be considered. Applicant's 25 years of U.S. residence, his U.S. financial investments, and his family living in the United States constitute much stronger connections to the United States than to Taiwan. I am confident that if foreign elements seek information from Applicant, he will immediately report that contact and request to security officials. Foreign influence security concerns under Guideline B are mitigated. Even if they were not mitigated under Guideline B, they would be mitigated under the whole-person concept, *infra*.

### **Guideline E, Personal Conduct**

The security concern for personal conduct is set out in AG ¶ 15:

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

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

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

In the process of completing a 2000 and a 2014 security clearance application, Applicant misunderstood questions concerning his required military service in Taiwan for two years. Applicant is not a native English speaker. He misunderstood the phrasing of the question. When he heard the question verbally, he had no difficulty answering. The 2000 form is substantially different from the 2014 form. He omitted information but had no intention to falsify his security clearance application. I find that he did not falsify his application.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

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

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Even assuming that Applicant intentionally omitted the information, he disclosed it to the investigator and the 2000 form was totally illegible. He had only been in the United States for a short time. He did not understand the nature of the question. It is common knowledge that military service is mandatory for males in Taiwan.

### **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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

There are some facts supporting denial or revocation of Applicant's access to classified information. Applicant's sister, brother, and one brother-in-law are citizens and residents of Taiwan. His spouse's parents are dual U.S. and Taiwanese citizens who now reside in Taiwan. He and his spouse maintain contact with them. Applicant visited Taiwan.

A Guideline B decision concerning a foreign country must take into consideration the geopolitical situation and dangers in that country including from intelligence agents.<sup>3</sup> Taiwan has a history of espionage targeting U.S. military and industrial secrets.

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

The weight of the evidence supporting grant or continuation of Applicant's access to classified information is greater than the evidence against grant of continuation of his security clearance. Applicant immigrated to the United States 25 years ago, and in 1996, Applicant was naturalized as a U.S. citizen. His spouse, mother, in-laws, and two children are U.S. citizens. A colleague from his college testified to his trustworthiness and reliability. He earned his master's degrees in the United States. He owns a home in the United States; his employment is with a DOD contractor; he has a U.S. passport; and he has no financial interest in Taiwan. He renounced his Taiwan citizenship.

There is no derogatory information concerning Applicant's police or financial records. There is no evidence of record showing any U.S. arrests, illegal drug possession or use, or alcohol-related incidents. He considers the United States to be his home. Applicant's demeanor, sincerity, honesty, and statements about his connections to the United States and limited connections to Taiwan at his hearing are important factors militating towards approval or continuation of his access to classified information.

Applicant did not falsify his 2000 or his 2014 security clearance applications. He was credible in his explanations as to misunderstanding the questions concerning the military service. It is common knowledge that every male in Taiwan is required to serve in the military for two years. English is his second language. He answered correctly when the question was rephrased by the investigator. The older 2000 form is substantially different from the 2014 form. I accept his testimony that the incorrect information he put on the forms was due to a lack of understanding of the questions.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude Applicant has mitigated the foreign influence security concerns.

### **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:	FOR APPLICANT
Subparagraphs 1.a through 1.c:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a and 2.b:	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 security clearance. Eligibility for access to classified information is granted.

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Noreen A. Lynch  
Administrative Judge