

STATEMENT OF THE CASE

On March 29, 2005, Applicant submitted a security clearance application (SF 86).¹ On June 20, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, modified and revised.²

The SOR alleges security concerns under Guideline B (Foreign Influence). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest 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.

In an answer notarized on July 12, 2007, Applicant responded to the SOR allegations, and elected to have a hearing before an administrative judge. The case was assigned to me on August 9, 2007. On August 15, 2007, DOHA issued a notice of hearing scheduling the case to be heard on October 3, 2007. The hearing was held as scheduled.

The Government offered two documents, which were admitted without objections as Government Exhibit (GE) 1 and 2. The Applicant offered four documents, which were admitted without objections as Applicant Exhibits (AE) 1 through 4. I held the record open to afford Applicant an additional opportunity to submit additional material. Applicant timely submitted additional documents, which were admitted without objection as AE 5. DOHA received the transcript (Tr.) on October 10, 2007.

PROCEDURAL RULINGS

Administrative Notice

Department Counsel requested administrative notice of the facts in Exhibits (Exs.) I through X. Without objection from Applicant, I took administrative notice of the documents offered by Department Counsel, which primarily pertained to Taiwan. (Tr. 17-18).

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.

¹GE 1 (Security Clearance Application, bears the date of Mar. 29, 2005 on p. 1. The signature page bears the date of Mar. 31, 2005). For convenience, the security clearance application in this decision will be called an SF 86.

²On Aug. 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised Adjudicative Guideline to all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated Jan. 1987, as amended, in which the SOR was issued on or after Sep. 1, 2006. The revised Adjudicative Guidelines are applicable to Applicant's case.

02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004)); *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). The most common basis for administrative notice at ISCR proceedings, is to notice 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). Various facts pertaining to Taiwan were derived from Exs. I through X as indicated under subheading “Taiwan” of this decision.

FINDINGS OF FACT

In his response to the SOR, Applicant admitted all of the allegations in the SOR. His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is 49 years old. He was born in the Taiwan in 1958, where he was raised. He attended college in Taiwan and was awarded a bachelor of science degree majoring in electrical engineering in June 1980.

In August 1985, at age 27, Applicant emigrated to the U.S. to attend graduate school and in December 1986, he was awarded a master’s degree in electrical engineering. In March 1989, he was granted permanent resident alien status (green card), and in August 1994, he became a naturalized U.S. citizen. His current U.S. passport was issued to him in August 2004. He married his wife in September 1991. She like him was born and raised in Taiwan. Applicant and his wife have two U.S. born children, a 14-year-old daughter and a 10-year-old son. Applicant’s wife is an accountant by profession, but currently is a homemaker. She became a naturalized U.S. citizen in June 2000.

Since March 2005, Applicant has worked for a defense contractor and is currently employed as a principal software engineer. He seeks a security clearance in conjunction with his employment.

Applicant’s mother, two brothers and two sisters are residents and citizens of Taiwan. His father is deceased and his mother is an 81-year-old retired homemaker. His late father worked for a private commercial shipping company as a radioman. Applicant’s mother lives in a senior citizen’s apartment community and derives her income primarily from savings and to a lesser extent from social security.

Applicant is the youngest of three brothers. His oldest brother is a 56-year-old mechanical engineer, who works for a state-owned company that is undergoing privatization. He is married, his wife is a homemaker, and his only child is a college student. Tr. 23-26, 44-47, AE 3 and 5. His other brother is a 55-year-old retired technician, who worked for a private railroad company. He is married, his wife owns a home-based cosmetic business, and they have two adult children, a son and daughter. The daughter works with her mother in the family-owned cosmetic business and the son is an electrical engineer, who is employed by a private company. Tr. 27-29. Applicant and his two brothers all served two years of mandatory military service in Taiwan. Tr. 29-31.

Applicant has an older and younger sister. His older sister is a 51-year-old registered nurse, who works at her husband's private clinic. Her husband is an obstetrician. They have two adult children, a son, who is currently serving his mandatory military service and a daughter, who is in college. Tr. 31-33. Applicant's younger sister is a 46-year-old homemaker, who formerly taught school. Her husband is a dentist, who owns his own clinic. They have three daughters at home. Tr. 33, AE 3. SOR Para. 1.a. Applicant's mother and four siblings each executed a statement stating they will not try to acquire job-related information from Applicant. AE 3.

Applicant's contact with his relatives in Taiwan varies, which he described below:

Referring to his contact with his mother: "I manage to call her [] every other week. And I try to see her once [] every four years." Tr. 33.

Applicant's contact with his four siblings in Taiwan beginning with his 56-year-old brother: "It really varies. I [have] contact with my oldest brother the most. It's [on] average, one phone call every month. It varies. Sometimes we haven't talked to each other for months. Sometimes he may call me, either he call me once, more than once in a month. But we may never talk to each other for four – five months. . . . My average is [] once, every month." Tr. 58.

Referring to his contact with his 55-year-old brother: "[o]nce every four to six months. We don't talk to each other [a] lot." Tr. 60.

Referring to his contact with his 51-year-old sister: "It's less than once a month. I would think about one, once a month, once every other month. Kind of like that. It really varies. Sometimes, when something happen[s] to my mom or some other issue would come, she would call me more often. And sometimes we haven't talked to each other - - " Tr. 59-60.

Referring to his contact with his 46-year-old sister: "It's the same thing (referring to the amount of contact he has with his 55-year-old brother). [I]t was every four months or so. She's very busy." Tr. 61.

Applicant also exchanges occasional e-mails with his older brother. Tr. 58-59.

Applicant's mother-in-law and father-in-law are resident citizens of Taiwan. They are both retired. His father-in-law was a chef and his mother-in-law was a homemaker. His in-laws have "green cards" and divide their time between Taiwan and the U.S. Tr. 35-36. SOR Para. 1.b. Applicant's in-laws visit him annually in the summer when they take up residence in the U.S. with Applicant's brother-in-law. Tr. 62-63.

Applicant's wife is one of four children. She has a brother and sister, who live in the U.S. and one brother, who lives in Taiwan. Her brother, who lives in the U.S. is a U.S. citizen and her sister, who lives in the U.S. has a green card and will soon be eligible for U.S. citizenship. Applicant's brother-in-law (wife's brother), who lives in the U.S. owns a personal computer retail business. Applicant's sister-in-law (wife's sister) lives in the U.S. and is employed as an accountant. Applicant's brother-in-law (wife's brother) in Taiwan is married and is a school

teacher. Applicant “rarely” communicates with his in-laws, however, his wife “talks to them mostly.” Tr. 36-37, 55-57.

Applicant and his family traveled to Taiwan in March 1998, February 1999, and December 2002. Applicant stated during these visits he was never contacted by any Taiwanese government official attempting to elicit information from him. AE 3. SOR Para. 1.c. Although not alleged, Applicant traveled to Taiwan “seven to eight” times since he emigrated to the U.S. in 1985, which includes the three trips alleged in the SOR. His most recent trip was in August 2006. Tr. 33, 40-44.

Applicant is financially responsible as evidenced by his credit score of 928 and his overall favorable credit report. He and his family enjoy a comfortable middle class suburban life. Applicant estimates his net worth which includes his home, 401Ks, checking and savings accounts at “between a million and 1.5 million.” Tr. 64. He regularly votes and enjoys all rights and privileges of U.S. citizenship. He professed his loyalty to the U.S. and is very proud to be a U.S. citizen. He regularly attends his local church and volunteers in church-sponsored activities. His work performance evaluation reflects above average performance and it is clear that he is a valued employee. He has also taken advantage of the extensive in house training offered by his employer. AE 1 and 2.

Taiwan³

In 1949, two million refugees fled from a civil war in mainland China to the island of Taiwan and established a separate, provisional capital for a government under Chiang Kai-shek. That same year, Communists in mainland China established the People’s Republic of China (PRC or China). The PRC does not recognize Taiwan’s independence, and insists that there is only “one China.”

Since in 1949, trade, human rights, and regional issues have dominated U.S.-Sino relations, with particular disagreement on the status of Taiwan. Although the United States has long recognized Taiwan’s independence, on January 1, 1979, the U.S. formally recognized the government of the PRC as the sole legal government of China. The U.S. does not support independence for Taiwan and is committed to a “one-China policy,” under the Taiwan Relations Act, signed into law on April 10, 1979.

China has an authoritarian government, dominated by the Chinese Communist Party, and possesses a large and increasingly sophisticated military, including strategic nuclear weapons and missiles. The Intelligence Threat Handbook notes that “[t]he United States is a primary intelligence target of China because of the U.S. role as a global superpower; its substantial military, political, and economic presence in the Pacific Rim and Asia; its role as a developer of advanced technology that China requires for economic growth; and the large number of Americans of Chinese ancestry, who are considered prime intelligence targets by the PRC.” The U.S.-China Economic and Security Review Commission made the following “Key Finding” in its 2006 report to Congress (Ex. IX):

³ The contents of the Taiwan section are from Exs. I through X.

China makes a concerted effort to modernize its military by obtaining military-related systems and technologies from other countries, particularly Russia. China uses legal and illegal means, including espionage, to obtain such technologies from the United States.

The PRC's Military Intelligence Department, First Bureau, is responsible for collecting military information about the United States and Taiwan. The PRC's Ministry of State Security is the "preeminent civilian intelligence collection agency in China," and it maintains intelligence operations in Hong Kong, Macau, and **Taiwan**, through a bureau utilizing PRC nationals with Hong Kong, Macau, or **Taiwan** connections (emphasis added).

Taiwan is a multi-party democracy that has significant economic contacts with mainland China, and it has developed a strong economy since its separation from the PRC. However, Taiwan's own national security remains under constant threat from the PRC, prompting the development of Taiwan's large military establishment.

Taiwan, also, is an active collector of U.S. economic intelligence. The 2000 Annual Report to Congress on Foreign Economic Collection and Industrial Espionage, prepared by National Counterintelligence Center (NACIC), lists Taiwan – as well as China – as being among the most active collectors of U.S. economic and proprietary information. This report highlights specific incidents wherein Taiwan stole proprietary information and engaged in attempts to acquire export-restricted products.

These collection activities are ongoing, as evidenced by the January 2006 conviction and four-year prison sentence of Jonathan C. Sanders on charges related to the theft of sensitive and proprietary information by and for Taiwan companies. Additionally, in December 2005, Donald Keyser, the Principal Deputy Assistant Secretary of State for East Asian and Pacific Affairs, pled guilty to illegally removing classified materials and to providing false statements to the U.S. Government. Mr. Keyser was engaged in a personal relationship with an intelligence officer employed by the National Intelligence Bureau, the foreign intelligence agency of the government of Taiwan, and he regularly communicated with her by telephone, by email, and in person.

POLICIES

In an evaluation of an applicant's security or trustworthiness suitability, an administrative judge must consider the "Adjudicative Guidelines for Determining Eligibility For Access to Classified Information" (AG(s)). The AGs include brief introductory explanations for each AG, and provide specific disqualifying conditions and mitigating conditions.

These Guidelines are not inflexible ironclad rules of law. Instead, recognizing the complexities of human behavior, an administrative judge should apply these guidelines in conjunction with the factors listed in the adjudicative process. AG ¶ 2. An administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person

concept,” an administrative judge should consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. AG ¶ 2(c).

Specifically, an administrative judge should consider the nine adjudicative process factors listed at AGs ¶ 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.”

Since the protection of the national security is the paramount consideration, the final decision in each case is arrived at by applying the standard that “[a]ny doubt concerning personnel being considered for access to classified [or sensitive] information will be resolved in favor of national security.” AG ¶ 2(b). 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.

In the decision-making process, the Government has the initial burden of establishing controverted facts by “substantial evidence,”⁴ demonstrating, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant’s access to classified information. Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to produce evidence “to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15. 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).⁵

A person seeking access to classified or 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. It is because of this special relationship the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to such information. Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified or sensitive information. Such decisions entail a certain degree

⁴ “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge’s] finding from being supported by substantial evidence.” *Consolo v. Federal Maritime Comm’n*, 383 U.S. 607, 620 (1966). “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).

⁵The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant’s past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15.” ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

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

The scope of an administrative judge's decision is limited. 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 as to Applicant's allegiance, loyalty, or patriotism. Executive Order 10865, § 7.

CONCLUSIONS

Guideline B (Foreign Influence)

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to the allegations set forth in the SOR:

AGs ¶ 6 explains the Government's concern about "foreign contacts and interests" stating, "if 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."

AGs ¶ 7 indicates conditions that could raise a security concern and may be disqualifying in this case, including:

- (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and,
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country, and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. *See* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001). Applicant has frequent contacts with his mother and siblings, who are resident citizens of Taiwan. Applicant visited his family "seven to eight times" since he emigrated to the U.S. in 1985. His wife also has frequent contacts with her parents and sibling in

Taiwan. Applicant's close relationship with his immediate family creates a significant risk of foreign pressure or attempted exploitation because Taiwan has an active collection program.

The Government produced substantial evidence of these two disqualifying conditions as it pertains to Applicant's family, and the burden shifted to Applicant to produce evidence and prove a mitigating condition. As previously indicated, the burden of disproving a mitigating condition never shifts to the Government.

Three Foreign Influence Mitigating Conditions under AGs ¶ 8 are potentially applicable to these disqualifying conditions:

(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.

AGs ¶¶ 8(a) and 8(c) do not apply to his relationships with his parents and four siblings in Taiwan. Applicant maintains frequent contact with these immediate relatives, some more than others, and this frequent contact supports the conclusion his relationship with them is close. He has also visited his family seven to eight times since he emigrated to the U.S. in 1985. These facts are indicia of the nature of his relationship with these family members, and that such contact is not casual and infrequent.

Applicant did not establish "it is unlikely [he] will be placed in a position of having to choose between the interests of [his immediate family members] and the interests of the U.S." His frequent contacts with them could potentially force him to choose between the United States and Taiwan. He did not meet his burden of showing there is "little likelihood that [his relationship with his immediate family members] could create a risk for foreign influence or exploitation."

AGs ¶ 8(b) partially applies because Appellant has developed a significant relationship and loyalty to the U.S. He has continuously lived in the United States since 1985. He and his wife are U.S. citizens. His two children are U.S. born citizens. He received a graduate degree in the U.S. He is heavily vested in the U.S., financially and emotionally.

“Whole Person” Analysis

In addition to the enumerated disqualifying and mitigating conditions as discussed previously, I have considered the general adjudicative guidelines related to the whole person concept under Directive ¶ E2.2.1. “Under the whole person concept, the Administrative Judge must not consider and weigh incidents in an applicant’s life separately, in a piecemeal manner. Rather, the Judge must evaluate an applicant’s security eligibility by considering the totality of an applicant’s conduct and circumstances.”⁶ The directive lists nine adjudicative process factors (APF) which are used for “whole person” analysis. Because foreign influence does not involve misconduct, voluntariness of participation, rehabilitation and behavior changes, etc., the eighth APF, “the potential for pressure, coercion, exploitation, or duress,” Directive ¶ E2.2.1.8, is the most relevant of the nine APFs to this adjudication.⁷ In addition to the eighth APF, other “[a]vailable, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.” Directive ¶ E2.2.1. Ultimately, the clearance decision is “an overall common sense determination.” Directive ¶ E2.2.3.

The Appeal Board requires the whole person analysis address “evidence of an applicant’s personal loyalties; the nature and extent of an applicant’s family’s ties to the U.S. relative to his [or her] ties to a foreign country; his or her ties social ties within the U.S.; and many others raised by the facts of a given case.” ISCR Case No. 04-00540 at 7 (App. Bd. Jan. 5, 2007).

Substantial mitigating evidence weighs towards grant of Applicant’s security clearance. Applicant has lived in the United States for 22 years, and he has been a naturalized citizen for 13 years. When he became a U.S. citizen, he swore allegiance to the United States. His wife is also a naturalized U.S. citizen and his two children are U.S. born citizens. He has emphasized his loyalty to the U.S. and how much he values and enjoys his life in the U.S. There is no evidence he has ever taken any action which could cause potential harm to the U.S. He takes his loyalty to the U.S. very seriously, and he has worked diligently for a defense contractor for two years. All his financial ties are in the U.S. No derogatory evidence was developed against him. The evidence points to the fact that Applicant is a decent, honest, loyal and productive member of society.

Four circumstances weigh against Applicant in the whole person analysis. First, PRC’s government is a rival of the U.S. *See* discussion under “Taiwan.” More importantly for security purposes, PRC and Taiwan actively seek classified and industrial/economic information. PRC and/or Taiwan may attempt to use his immediate relatives who live in Taiwan to obtain such information. This may occur notwithstanding his family members’ assertion that they would

⁶ ISCR Case No. 03-04147 at 3 (App. Bd. Nov. 4, 2005) (quoting ISCR Case No. 02-01093 at 4 (App. Bd. Dec. 11, 2003)); ISCR Case No. 05-02833 at 2 (App. Bd. Mar. 19, 2007) (citing *Raffone v. Adams*, 468 F.2d 860 (2nd Cir. 1972) (taken together, separate events may have a significance that is missing when each event is viewed in isolation).

⁷ *See* ISCR Case No. 02-24566 at 3 (App. Bd. July 17, 2006) (stating that an analysis under the eighth APF apparently without discussion of the other APFs was sustainable); ISCR Case No. 03-10954 at 5 (App. Bd. Mar. 8, 2006) (sole APF mentioned is eighth APF); ISCR Case No. 03-17620 at 4 (App. Bd. Apr. 17, 2006) (remanding grant of clearance because Judge did not assess “the realistic potential for exploitation”), *but see* ISCR Case No. 04-00540 at 6 (App. Bd. Jan. 5, 2007) (rejecting contention that eighth APF is exclusive circumstance in whole person analysis in foreign influence cases).

resist such overtures. Second, Applicant had significant connections to Taiwan before he emigrated to the U.S. in 1985 at age 27. He was born there and spent his formative years there. Third, he has immediate family members consisting of his mother and four siblings and in-laws, who are residents and citizens of Taiwan. Fourth, Applicant has frequent and non-casual contact with his immediate relatives as evidenced by his frequent telephone and e-mail contact as well as his seven to eight visits to Taiwan since 1985. These contacts are manifestations of his strong affection and regard for his immediate family members, especially his mother.

“Because of the extreme sensitivity of security matters, there is a strong presumption against granting a security clearance. Whenever any doubt is raised . . . it is deemed best to err on the side of the government’s compelling interest in security by denying or revoking [a] clearance.” *Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir. 1990). After weighing the disqualifying and mitigating conditions, all the facts and circumstances, in the context of the whole person, I conclude Applicant has not mitigated the security concerns pertaining to foreign influence. This is a close case, but ultimately the evidence leaves me with doubts as to Applicant’s security eligibility and suitability.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my “careful consideration of the whole person factors”⁸ and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has mitigated or overcome the government’s case. For the reasons stated, I conclude he is not eligible for access to classified information.

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. – c.:	Against Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Robert J. Tuider
Administrative Judge

⁸See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).