



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



In the matter of:)
)
) ISCR Case No. 07-00723
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: *Pro Se*

January 28, 2008

Decision

LOUGHRAN, Edward W., Administrative Judge:

On June 14, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B, Foreign Influence and Guideline C, Foreign Preference. 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), 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 July 3, 2007, and requested a hearing before an Administrative Judge. The case was assigned to another Administrative Judge on November 1, 2007, and reassigned to me on November 28, 2007. DOHA issued a notice of hearing on November 28, 2007, and I convened the hearing as scheduled on December 19, 2007, at Woodland Hills, California. DOHA received the transcript of the hearing (Tr.) on January 10, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Procedural and Evidentiary Rulings

Department Counsel and Applicant stipulated to the admissibility of government exhibits (GE) 1 through 3, and the exhibits were admitted. The stipulation was marked Hearing Exhibit (HE) XIV.

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Taiwan and the People's Republic of China as contained in HE XIII. 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 August 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); and U.S. Department of State, Consular Information Sheet: China, dated March 16, 2007 (HE XII).

I took administrative notice of the facts contained in HE I, II, IV, V, and VIII though XII. I did not take administrative notice of the facts contained in HE III, VI, and VII. In accordance with ISCR Case No. 03-21434 (App. Bd. Feb. 20, 2007), those documents were remarked as GE 4 through 6, and admitted as government exhibits.

Applicant testified on her own behalf and submitted exhibits (AE) A through C, without objection. I granted Applicant's request to keep the record open to submit additional matters. She submitted her letter dated December 29, 2007, and four letters marked as AE D through H, without objection. Department Counsel's memo forwarding the documents is marked HE XV.

Findings of Fact

Applicant is a 26-year-old engineer for a defense contractor. She was born in the United States, and is a U.S. citizen. Her parents were citizens of the Republic of China (Taiwan), and were attending an American university at the time. Because her parents were Taiwanese, she was also a citizen of Taiwan. They returned to Taiwan with Applicant when she was three years old. She returned to the U.S. for a year when she was in the third grade. She returned to the U.S. again when she was 16 years old. She attended high school, college, and graduate school in the United States, and has a Bachelor of Science degree and is working on a Master of Arts and Science degree. She is single with no children.¹

¹ Tr. at 28, 32-35, 62-65; GE 1-3.

Applicant's mother passed away in 2000. Her father is a scientist and college professor in Taiwan. He has no direct connection to the Taiwanese government. He obtained permanent residence status in the U.S., but is living in Taiwan. He is described by a colleague as a man of kindness, honesty, and integrity. Applicant and her father work in different fields. Her work has no correlation to his work. He wrote a letter in which he stated he would not request technical information from Applicant. He described her as a responsible person and quite independent of him. Applicant does not believe her father would ever ask her to divulge proprietary or classified information, and she would not do so if asked. Applicant speaks with her father about every month or every other month. They also exchange e-mails. He regularly visits the U.S.²

Applicant's younger brother was born in Taiwan. He came to the U.S. with Applicant in about 1997. He is a student and lives with Applicant. He became a U.S. citizen in 2005. He does not plan on returning to Taiwan after he graduates.³

Applicant's parents applied for a Taiwanese passport on her behalf when she was a child. She renewed her Taiwanese passport in 2002. It was good for ten years and was not scheduled to expire until 2012. She also has a U.S. passport. She used her U.S. passport on all her travel, including her trips to Taiwan in 1998, 1999, 2000, 2001, 2003, and 2005. Applicant realized that possession of a foreign passport could be a concern. She provided the passport to her security officer who destroyed it on November 16, 2007. She sent a letter to the Taipei Economics and Cultural Office in Los Angeles on November 26, 2007, formally renouncing her Taiwanese citizenship.⁴

Applicant has never voted in Taiwan. She has voted in U.S. elections. She has no foreign assets. She has U.S. assets consistent with her background as a 26-year-old engineer.⁵ Applicant's evaluations have been excellent. Character letters describe her as a woman of integrity with good moral fiber, mature, responsible, honest, diligent, and ethical. She is recommended for a security clearance.⁶

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."

² Tr. at 34, 38-39, 42, 45, 73-74; GE 1, 3; AE C, H.

³ Tr. at 37; GE 1, 3.

⁴ Tr. at 28-29, 46-49; Applicant's response to SOR; GE 1-3; AE A, B.

⁵ Tr. at 51, 61.

⁶ AE C-H.

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 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.

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's 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 classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. 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 security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the

applicant concerned.” See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

The security concern relating to the guideline for Foreign Influence is 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(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” is potentially disqualifying. Similarly under AG ¶ 7(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” may raise security concerns. Applicant's father is a citizen and resident 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) and (b) 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 the U.S., but spent much of her childhood in Taiwan. She has lived here since she was 16 years old. She graduated from high school and college in the United States, and is attending graduate school. Her younger brother has also been here since 1997. He was not born in the U.S., but became a citizen in 2005. Applicant renounced her Taiwanese citizenship. Her life, career, brother, and assets all lie in the United States. Her father lives in Taiwan. He is a college professor with no direct connection to the Taiwanese government. He is an honest loving father and works in a completely different field than Applicant. Taiwan collects U.S. intelligence, as does other U.S. allies. It does not have a poor human rights record and there is no indication that it uses coercion in its intelligence operations. I find it unlikely that Applicant would ever be placed in a position of having to choose between the interests of Taiwan or her father and the interests of the U.S. I further 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(a) and (b) are applicable. No other mitigating condition is applicable.

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. This includes but is not limited to:

(1) possession of a current foreign passport;

(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen.

Applicant possessed a Taiwanese passport while a U.S. citizen. AG ¶ 10(a) applied at one point. The renewal of her Taiwanese passport while a U.S. citizen could raise concerns under AG ¶ 10(b), as an action to obtain recognition of her Taiwanese citizenship.

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

(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;

(c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;

(d) use of a foreign passport is approved by the cognizant security authority.

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated; and,

(f) the vote in a foreign election was encouraged by the United States Government.

Applicant was considered a Taiwanese citizen because her parents were citizens of Taiwan. She actively exercised her Taiwanese citizenship by renewing a Taiwanese passport that she never used. The passport was destroyed and Applicant formally applied to renounce her Taiwanese citizenship. AG ¶¶ 11(b) and (e) are applicable.

Whole Person Concept

Under the whole person concept, the Administrative Judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(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 security clearance must be an overall common sense 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 the U.S. to Taiwanese parents. Her parents took her to Taiwan when she was three years old. She spent much of her youth in Taiwan. She returned with her younger brother to the U.S. when she was 16. He became a U.S. citizen in 2005. He is a student and lives with Applicant. She was educated here and her career is here. She is now a highly regarded engineer doing important work for a defense contractor.

I considered the totality of Applicant's family ties to 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 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."⁷ 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, 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.

⁷ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

The PRC has an authoritarian government, a bad human rights record, and has a very aggressive espionage program. 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. That is not to say that the PRC is irrelevant to this case. The PRC conducts intelligence operations in Taiwan. The threat to Taiwan from the PRC is real. It is this threat that is the impetus to Taiwan’s defense spending. It also provides motivation for Taiwan’s intelligence gathering. The threat from the PRC also provides motivation for Taiwan to keep the U.S. as a friend, as it is dependent on the U.S. for its arms and defense.

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. Many of our allies conduct intelligence gathering against the U.S. Taiwan would be risking a great deal by raising the stakes, and attempting to use duress against one of its citizens in an attempt to coerce a U.S. citizen to commit espionage. Applicant’s father is also not a good candidate for coercion as he is not dependent upon the government of Taiwan.

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

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

EDWARD W. LOUGHRAN
Administrative Judge