

DATE: October 30, 2007

In Re:)	
)	
-----)	ISCR Case No. 06-23898
SSN: -----)	
)	
Applicant for Security Clearance)	

**DECISION ON REMAND OF ADMINISTRATIVE JUDGE
MARTIN H. MOGUL**

APPEARANCES

FOR GOVERNMENT
Jeff Nagel, Esq., Department Counsel

FOR APPLICANT
Pro Se

SYNOPSIS

Applicant was born in the Republic of China (Taiwan) in 1980, and moved to the United States in 1995 with her parents and her sister. They all became naturalized United States citizens in 2003, and they all reside in the U.S. Applicant’s husband is a U.S. born citizen. Applicant’s family members, including her grandfather, both grandmothers, uncle, and cousin are citizens and residents of Taiwan. They do not constitute an unacceptable security risk, because Applicant has such deep and longstanding relationships and loyalties in the U.S., that she can be expected to resolve any conflict of interest in favor of the U.S. Mitigation has been shown. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865

(as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4), issued a Statement of Reasons (SOR), dated March 15, 2007, to the Applicant which 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 the Applicant. The SOR was based on Foreign Influence (Guideline B) concerns.

Applicant filed a notarized response, dated April 4, 2007, to the allegations set forth in the SOR, and requested a hearing before a DOHA Administrative Judge. On June 20, 2007, the case was assigned to another Administrative Judge to conduct a hearing, but on August 22, 2007, the case was reassigned to this Administrative Judge. Pursuant to formal notice, dated October 4, 2007, a hearing was held on October 17, 2007, in San Jose, California.

At the hearing, Department Counsel offered four documentary exhibits (Government Exhibits 1-4) and no witnesses were called. Applicant offered 1 documentary exhibit (Exhibit A) and offered her own testimony. The transcript was received on October 25, 2007.

FINDINGS OF FACT

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline B (Foreign Influence) of the Directive. The SOR contains nine allegations, i.e., through 1.i., under Guideline B. Applicant admitted all of the SOR allegations. The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the admitted documents, and the testimony of Applicant, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 27 years old. She is employed as a chemical engineer researcher, by a defense contractor, and she seeks a DoD security clearance in connection with her employment in the defense sector.

Applicant was born in Taiwan in 1980. She moved to the United States in 1995, with both of her parents and her sister, and she became naturalized United States citizen in 2003.

Applicant is married to a United States born citizen, and they have no children. She received a Bachelor of Science degree in Chemical Engineering from a United States university in 2004.

Guideline B (Foreign Influence)

Applicant's mother and father became naturalized United States citizens in 2003, and they continue to reside in the United States. Her mother was a financial manager of a company in Taiwan,

but she stopped working in 1990. Her father was a colonel in the Taiwanese army; he has been retired since 1995. In 2003 or 2004, her parents started an auto import business in the United States.

Applicant's sister is also a resident of the United States, and she has been a naturalized U.S. citizen since 2003. She is employed by a United States company.

Applicant's fraternal grandmother, who is 82 years old, is a citizen and resident of Taiwan. She has never been employed outside the home. Applicant speaks with her by telephone three or four times a year, and she last saw her in 2004.

Applicant's uncle is also a citizen and resident of Taiwan. He served in the Taiwanese marines, and he retired as a colonel in 1997. Applicant has no regular contact with her uncle.

Applicant's cousin is a citizen and resident of Taiwan. She is studying to be a prosecutor and eventually plans to become a judge. Applicant contacts her cousin online three or four times a year.

Applicant's maternal grandparents also are citizens and residents of Taiwan. They are both long retired, and Applicant contacts them three or four times a year.

Applicant visited Taiwan annually from 1998 through 2003, with her sister to see her family there.

Current Status of Taiwan and the People's Republic of China (PRC)

Since Applicant has family members who are citizens and residents of Taiwan, and because Taiwan may be considered part of the PRC, it is important to consider the status of Taiwan and the PRC.

Taiwan has an elected democratic government. It has the 17th largest economy that is a leading producer of high-technology goods. It engages in industrial and economic espionage. Proprietary information technology is high on the Taiwanese list of targeted information to be acquired by their agents from foreign governments and businesses. There are 23 million Taiwanese citizens. Their per capita income in 2005 was \$15,000, cited by their president in a speech that he presented as economic progress under his administration. Although the United States now recognizes Taiwan as part of the PRC as "one-China" it continues to maintain strong unofficial relations with Taiwan.

The PRC, the most populous country in the world, is economically powerful, and is an important trading partner of the United States. It is run by the Communist Party which controls all aspects of the PRC government. It has strong military forces, and has its own foreign-policy. Although there has been some cooperation, there has been much more conflict with the United States in the past. The PRC has an extremely large army, a sophisticated defense establishment, and space capability. The PRC has launched satellites, has ballistic missiles, has nuclear arms, and nuclear bombs. Its diplomatic and military dispute with the Republic of China (Taiwan), foreshadows a possible military conflict, which the United States opposes as a resolution of the conflict. The PRC has an abysmal human rights record, which includes arbitrary killings; detention or incarceration

without notice in mental facilities; torture; arbitrary arrest, detention or exile; no right to a public, fair trial; a politically controlled judiciary; lack of due process; restrictions on free speech, on religious freedom, on freedom of travel, on freedom of assembly; and no rights of privacy - family, home or correspondence.

The PRC engages in espionage against the United States through an extensive network of businesses, personnel, and specific programs designed to acquire advanced U.S. military technology. One approach is to covertly conduct espionage by personnel from government ministries, commissions, institutes, and military industries, independently of the PRC intelligence services. This is believed to be the major method of PRC intelligence activity in the United States. It also tries to identify ethnic Chinese in the United States who have access to sensitive information, and sometimes is able to enlist their cooperation in illegal technology information transfers.

Mitigation

Applicant submitted three letters from individuals who know her in different positions in her professional capacity (Exhibit A). These letters all discussed Applicant in extremely positive terms as a hard working, conscientious and trustworthy individual.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines that must be carefully considered in evaluating an individual's security eligibility and making the overall common sense determination required. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, etc.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk.

Each adjudicative decision must also include an assessment of: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent 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 (*See* Directive, Section E2.2.1. of Enclosure 2).

BURDEN OF PROOF

Initially, the Government must prove controverted facts alleged in the Statement of Reasons.

If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance. Assessment of an applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of rehabilitation.

A person who seeks access to classified information enters into a fiduciary relationship with the U.S. Government that is predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability, or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

CONCLUSIONS

Under Guideline B, a security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom she is bound by affection, influence or obligation, are not citizens of the United States or may be subject to duress. Based on the evidence of record, the Government has established an initial reason to deny Applicant a security clearance because of Guideline B (Foreign Influence).

As stated above, I have considered the country involved in this case in making my decision. Taiwan, a country that may be considered part of the PRC, and which engages in industrial and economic espionage, must be scrutinized in great detail. Applicant has family member who are citizens and residents of Taiwan. The Taiwanese citizenship and residency of Applicant's family create the potential for foreign influence that could result in the compromise of classified information because it makes Applicant potentially vulnerable to coercion, exploitation, or pressure. The possession of such ties raises a security concern sufficient to require Applicant to present evidence in rebuttal, extenuation, or mitigation sufficient to meet her burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for her. This Applicant has done.

The evidence of Applicant's family, who are citizens and residents of Taiwan, comes within Disqualifying Condition (DC) 7. (a) contact with foreign family members, who are citizens and residents in a foreign country, if that contact creates heightened risk of foreign exploitation, pressure or coercion.

The primary factors in mitigation that I have considered under both the Mitigating Conditions (MC) of the Directive and the "whole person concept" include: Applicant's history since coming to the United States in 1990 when she was 10 years old (living in the U.S. for 17 of her 27 years);

becoming a U. S. citizen along with her mother, father and sister in 2003; receiving a Bachelor of Science degree in Chemical Engineering from a United States university in 2004; being married to a United States born citizen; her devotion to her family in the United States; the three very positive character letters entered into evidence on Applicant's behalf; and finally her strong feelings for the United States.

Based on the nature of the overall record and the totality of the evidence, I have determined that Applicant's family in Taiwan does not constitute an unacceptable security risk, and Mitigating Condition (MC) 8. (b) applies, there is no conflict of interest because Applicant has such deep and longstanding relationships and loyalties in the U.S., that she can be expected to resolve any conflict of interest in favor of the U.S.

After considering all of the evidence of record on these issues, I conclude that the mitigating evidence substantially outweighs the evidence supporting the SOR and even in the unlikely event pressure was exerted upon Applicant to compromise classified information, she would resist it and would report the incident to the proper authorities.

On balance, it is concluded that Applicant has overcome the Government's evidence opposing her request for a security clearance.

FORMAL FINDINGS

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraph 1.a.: For Applicant
Subparagraph 1.b.: For Applicant
Subparagraph 1.c.: For Applicant
Subparagraph 1.d.: For Applicant
Subparagraph 1.e.: For Applicant
Subparagraph 1.f.: For Applicant
Subparagraph 1.g.: For Applicant
Subparagraph 1.h.: For Applicant
Subparagraph 1.i.: For Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Martin H. Mogul

Administrative Judge