

KEYWORD: Foreign Influence

DIGEST: Applicant, an engineer with a major defense contractor born in Taiwan and educated in the U.S. since high school, mitigated security concerns of foreign influence arising from her parents and brother who are citizens of Taiwan. Her parents have held U.S. green cards for five years. They have lived in the U.S. half of the year in five of the past six years and all of the past year to prepare to become U.S. citizens which they expect to obtain in a few months. Her brother works in a low level job for a privatized telephone company. Her parents hope to sponsor her brother and his wife and child to come to the U.S. as soon as the parents become citizens. Applicant is fully integrated into U.S. society and has little contact or interest in her country of birth. Applying the whole person analysis I conclude in her favor. Clearance is granted.

CASENO: 04-07704.h1

DATE: 06/30/2007

DATE: June 30, 2007

In Re:	)	
	)	
	)	
-----	)	ISCR Case No. 04-07704
SSN: -----	)	
	)	
Applicant for Security Clearance	)	
	)	

**DECISION OF ADMINISTRATIVE JUDGE  
CHARLES D. ABLARD**

**APPEARANCES**

**FOR GOVERNMENT**

Eric H. Borgstrom, Esq. , Department Counsel

**FOR APPLICANT**

Lawrence Lai, Personal Representative

## SYNOPSIS

Applicant, an engineer with a major defense contractor born in Taiwan and educated in the U.S. since high school, mitigated security concerns of foreign influence arising from her parents and brother who are citizens of Taiwan. Her parents have held U.S. green cards for five years. They have lived in the U.S. half of the year in five of the past six years and all of the past year to prepare to become U.S. citizens which they expect to obtain in a few months. Her brother works in a low level job for a privatized telephone company. Her parents hope to sponsor her brother and his wife and child to come to the U.S. as soon as the parents become citizens. Applicant is fully integrated into U.S. society and has little contact or interest in her country of birth. Applying the whole person analysis I conclude in her favor. Clearance is granted.

## STATEMENT OF THE CASE

On March 30, 2006, the Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry* 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 and modified, issued a Statement of Reasons (SOR) to 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 Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, received April 24, 2006, Applicant responded to the allegations set forth in the SOR, and requested a hearing. The case was assigned to me on February 12, 2007. A Notice of Hearing was issued April 11, 2007 for a hearing held on April 25, 2007. Applicant waived the 15 day notice requirement. The Government introduced two exhibits and Applicant introduced nine exhibits at the hearing. All offered exhibits were accepted into evidence. The government offered twelve official government documents for administrative notice. Three (Exhs. V, VI, and XII) were excluded from consideration and the rest were admitted. Applicant testified on her own behalf. The transcript was received on May 4, 2007.

The record was left open at the request of Applicant for 30 days for receipt of additional evidence. Applicant submitted additional evidence on in the form of four documents which were admitted without objection into the record.

## FINDINGS OF FACT

\_\_\_\_\_ Applicant admitted all allegations relating to her family under Foreign Influence-Guideline B with explanatory information. Those admissions are incorporated herein as findings of fact. After a complete review of the evidence in the record and upon due consideration of the record the following additional findings of fact are made:

Applicant is a 38-year-old employee of a major defense contractor working as an engineer since 1993. She was born in Taiwan, came to the U.S. to attend high school, and lived with an uncle during her high school years. She graduated with an engineering degree from a major U.S.

engineering school in 1992 when she also became a naturalized U.S. citizen.

Applicant was married in 1994 to another student she met at the university they attended. She had been hired after her graduation by the same defense contractor where her husband where her husband worked. Both of them work on the same program which involves one of many subsystems of a major weapons system of the Navy. Her annual salary is \$80,000 and she and her husband have a combined annual income of \$190,000. Each has a 401(k) valued at over \$100,000. They own their own home with no mortgage valued at approximately \$350,000. All their assets are in the U.S. They have little or no cultural interest in or contact with Taiwanese or Chinese culture or society.

Applicant traveled to Taiwan with her fiance who became her husband on three occasions. The first was in 1993 before she was employed and in 1997, and 2001 after her employment. The trips were on family matters. The company was advised of the two trips taken during her employment. She has held a security clearance since 1994 with no security violations.

Applicant's parents and a brother are citizens of Taiwan. Her father retired from an electric power company where he worked as an accountant. He received a lump sum on retirement and gets nothing further from the company. Her mother has never worked except as a homemaker. Her parents visited in the U.S. with Applicant and her husband for several weeks each year during the first years of their marriage. Since 2002 they have spent half of each year in the U.S. as they were applying for citizenship. Each has had a green card for the past five years. They have lived with Applicant and her husband in the U.S. permanently for the past year as they prepare to take the examination for citizenship (Exhs. I and J). Her parents own a condo in Taiwan where they lived and also own a house in the U.S. which they purchased to provide rental income for Applicant while she was in school. The property is still rented.

Applicant's brother lives in Taiwan and works as a lineman for a telephone company which has been privatized. The government still holds a minority interest in the company with most of the stock held by commercial financial entities (Exh. J 1-3). He served a mandatory two year military duty as required by the Taiwan government. He visited Applicant and her husband in the U.S. once in 2006 for a sight-seeing trip. She talks to him only once a year and exchanges cards on significant days. He is married with a young son. As soon as Applicant's parents-in-law become citizens they intend to sponsor the family to come to the U.S. (Tr. 167).

Applicant is highly regarded for her work in her job by her supervisors and colleagues who submitted statements on her behalf. She has an excellent reputation for honesty, work ethic and her technical engineering skills are superb. She carefully adheres to the rules of the company for all matters and knows the security rules and requirements. She receives annual security briefings and knows that any possible breach would require immediate reporting to security officers (Exhs. A-G).

### POLICIES

“[N]o 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 occupy a position that will give that person access to such information.” *Id.* at 527

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (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 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. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b).

"A security risk may exist when an individual's immediate family and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information." Directive, ¶ E2.A2.1.1. Having immediate family members who are citizens of, and residing in a foreign country, may raise a disqualifying security concern. Directive, ¶ E2.A2.1.2.1.

## CONCLUSION

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

\_\_\_\_\_ Conditions under Foreign Influence Guideline B that could raise a security concern and may be disqualifying include an immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident in a foreign country. (E2.A2.1.2.1.) Based on the evidence of record, including Applicant's admissions, the Government established reasons to raise security concerns because of foreign influence. Having established such reasons, the Applicant had the burden to establish security suitability through evidence which refutes, mitigates, or extenuates the disqualification and demonstrates that it is clearly consistent with the national interest to grant a security clearance. ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

Possible mitigating conditions that might be applicable to allegations relating to her family are a determination that the individuals in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the persons involved and the U.S.(E2.A2.1.3.1.), and contacts and correspondence with foreign citizens are casual and infrequent. (E2.A2.1.3.3.) By definition parents and siblings are persons with

close ties of affection. Thus, the specific mitigating conditions are not applicable.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. The "whole person" concept recognizes that we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

Applicant is a person of substance and veracity who has a responsible position of trust and is doing and has done a good job for her company for 13 years. She provided sincere and credible testimony as to her family, motivations, and loyalty to the U.S. She is totally integrated into U.S. culture, and divorced from any cultural contact with her country of origin. The status of her parents in becoming U.S. citizens certainly lessens any likelihood of coercion or pressure from them adversely affecting security interests. Her brother has a low level job with a privatized company in Taiwan. She communicates with him infrequently and he may become a U.S. citizen if sponsorship by their parents becomes possible.

While there is evidence that Taiwan has engaged in economic and military espionage, and that the PRC may use it as a source of information as stated in official documents (Exhs. IV, and XI), the U.S. consistently has supported Taiwan for its democratically elected government (Exh. II). Applicant shows no loyalty to Taiwan or the PRC and is a competent professional who has demonstrated that she knows how to deal with any pressures that might be brought against her by an agent of a foreign government.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that it is clearly consistent with the national interest to grant clearance to Applicant.

### **FORMAL FINDINGS**

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

\_\_\_\_\_ Paragraph 1 Guideline B:      FOR APPLICANT

   Subparagraph 1.a.:      For Applicant

   Subparagraph 1.b.:      For Applicant

   Subparagraph 1.c.:      For Applicant

### **DECISION**

After full consideration of all the facts and documents presented by the record in this case,

it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Charles D. Ablard  
Administrative Judge