

KEYWORD: Foreign Influence, Foreign Preference

DIGEST: Based on an assessment of her as a whole person, Applicant mitigated security concerns over foreign influence. She became a naturalized U.S. citizen in December 2003, is recommended for a security clearance by her corporate superiors, and is fully integrated into U.S. society. One sister is a naturalized U.S. citizen. Since 1997, all her immediate family members have had a Green Card. All are seeking U.S. citizenship except for her father and grandmother who are citizens of China and residents of Macao. I conclude it is improbable that foreign pressure on her relatives could create a situation that could result in the compromise of classified information as Applicant attests she would report any attempt to the appropriate U.S. official. Also, Applicant asked that her foreign passport be destroyed in 2006; so foreign preference concerns are similarly mitigated. Clearance is granted.

CASENO: 06-09150.h1

DATE: 07/19/2007

DATE: July 19, 2007

In Re:	)	
	)	
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SSN: -----	)	ISCR Case No. 06-09150
	)	
Applicant for Security Clearance	)	
	)	

**DECISION OF ADMINISTRATIVE JUDGE  
KATHRYN MOEN BRAEMAN**

**APPEARANCES**

**FOR GOVERNMENT**

Candace Le'i, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

## SYNOPSIS

Based on an assessment of her as a whole person, Applicant mitigated security concerns over foreign influence. She became a naturalized U.S. citizen in December 2003, is recommended for a security clearance by her corporate superiors, and is fully integrated into U.S. society. One sister is a naturalized U.S. citizen. Since 1997, all her immediate family members have had a Green Card. All are seeking U.S. citizenship except for her father and grandmother who are citizens of China and residents of Macao. I conclude it is improbable that foreign pressure on her relatives could create a situation that could result in the compromise of classified information as Applicant attests she would report any attempt to the appropriate U.S. official. Also, Applicant asked that her foreign passport be destroyed in 2006; so foreign preference concerns are similarly mitigated. Clearance is granted.

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## STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on October 18, 2006. The SOR detailed reasons why the Government could not make the preliminary positive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.<sup>1</sup> The SOR alleged specific concerns over foreign influence (Guideline B) in paragraph 1 and over foreign preference (Guideline C) in paragraph 2 based on the revised (“new”) Adjudicative Guidelines (AG)<sup>2</sup> issued on December 29, 2005, and implemented by the Department of Defense, effective September 1, 2006. Applicant replied to the SOR allegations in an Answer notarized on November 12, 2006 and again on December 7, 2006, when she requested a hearing.

On January 30, 2007, Department Counsel noted the case was ready to proceed. The matter was assigned to another judge on February 5, 2007. Subsequently, a Notice of Hearing, issued on February 22, 2007, set the matter for March 8, 2007, at a location near where Applicant works and lives. The case was re-assigned to me on March 5, 2007, because of the unavailability of the previous judge. A Stipulation was reached and signed by the Government on January 30, 2007, and by Applicant on February 19, 2007 that Government Exhibits 1 and 2 were admissible; consequently, they were admitted into evidence based on that stipulation. (Exhibits 1, 2; TR 9-10) In addition, Department Counsel offered into evidence a January 30, 2007, memorandum for Administrative Notice outlining concerns over China, Taiwan, Hong Kong, and Macau and attached sixteen additional Documents for Administrative Notice (AN): Exhibits I-XVI. The documents were accepted as Applicant offered no objection. (TR 10-12) Applicant testified and offered three exhibits which were admitted into evidence. (Exhibits A, B, C) At the close of the evidence, Department Counsel moved to amend the SOR to conform to the evidence as follows:

- SOR 1.c. “Your grandmother is a citizen of China and resides in Macao.”
- SOR 1.f. “You have a cousin who is a citizen of Canada and resides in Taiwan.”

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<sup>1</sup> This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.

<sup>2</sup> Applicant was sent a copy of the DoD Directive 5220.6 with her Statement of Reasons (SOR). As she did not bring a copy with her, I lent her my copy. (TR 52)

- SOR 1.g, “You have an uncle who is a citizen of Canada and resides in Hong Kong.”

(TR 50) Applicant did not object, so the motion to amend was granted. (TR 50-51) The transcript (TR) was received on March 15, 2007.

### **FINDINGS OF FACT**

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following additional Findings of Fact:

Applicant, a 27-year-old employee, began working as an engineer for a defense contractor (Employer #1) in State #1 in November 2004 and also completed a Security Clearance Application (Standard Form 86). In 2006 another company bought the company where she worked initially, so the name changed. But she is in the same job. (Exhibit 1; TR 21-22; 42)

Applicant was born in the Macao,<sup>3</sup> when it was a part of Portugal. Initially, Applicant and all her family had passports from Portugal as they lived in Macao. She emigrated to the U.S. in 1997 as her father got a Green Card<sup>4</sup> through a lottery in Macao and brought the entire family. Applicant received her education in the U.S. along with her younger sister. She became a naturalized U.S. citizen in May 2003 and was issued a U.S. passport. Applicant was granted a B.S. in engineering from a state university in June 2003. (Exhibit 1; TR 43-45)

### **Foreign Preference**

Before she became a naturalized U.S. citizen and had a U.S. passport, Applicant visited Macao from December 1998 to January 1999. In order to go again, in January 2002, she renewed her passport from Portugal in October 2002 to return to Macao and to visit her grandmother from December 2002 to January 2003. The passport did not expire until October 2007. However, she did not use it after she became a U.S. citizen in May 2003 and had a U.S. passport. Applicant had the security supervisor at her company destroy her passport from Portugal in November 2006 by shredding, an approved method. (Answer; Exhibit 1; TR 23-25; 28-29; Exhibit A)

While initially reluctant to surrender her Portuguese passport as she was not sure if she could stay in Macao with her U.S. passport, once that issue was clarified, she had no problem surrendering her passport to her security officer. (TR 44) She destroyed her foreign passport in order to meet the requirements for a U.S. security clearance. She no longer considers herself a citizen of Portugal. She has no intent to return to Macao, but has not formally renounced her citizenship. (TR 33)

### **Foreign Influence**

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<sup>3</sup> Macau, formerly a Chinese territory under Portuguese administration, became a Special Administrative Region (SAR) of the People’s Republic of China in December 1999 with a high degree of autonomy except in areas of defense and foreign policy as it retains its own currency, laws, and border controls. (AN XVI)

<sup>4</sup> A “Green Card” holder indicates an individual is a lawful permanent residence (LPR) of the U.S.

Applicant's mother, her brother, and her elder sister who were born in Macao and are citizens of Portugal now live in the U.S. They have Green Cards and have applied or are in the process of applying to become U.S. citizens. (Exhibit 1; TR 20-21; 25-26; 29-30)

- Her brother initially came to the U.S. in 1997 and got a Green Card, but he returned to Macao with his parents as he was too young to stay in the U.S. alone. He returned with the mother in 2001 and now attends school in the U.S. He last visited Macao in 2004. He is seeking U.S. citizenship. (TR 39; 45; 47-48)
- Born in Macao, her younger sister became a naturalized U.S. citizen in May 2003 and is a computer engineer. (Exhibit 1; TR 20-21; 25-26; 29-30; 35-36; 46)
- Her older sister was studying in England at the time the rest of the family immigrated to the U.S., but she has lived in the U.S. since 2000. She is a citizen of Portugal, but intends to become a U.S. citizen. She is married to a U.S. citizen and works in human resources for a U.S. company. (Exhibit 1; TR 20-21; 25-26; 29-30; 35-37; 45) She went to Macao in November 2006 to visit family and to renew her Green Card. (TR 38; 45)
- Her father was born in the People's Republic of China ("China"); he is a citizen of Portugal. Later after receiving his Green Card, her father returned to Macao in 1997 to live and work; he is the bank manager of a private bank and plans to remain in Macao until he retires. (Exhibit 1; TR 20-21; 25-26; 27-28; 29-30; 47) He visits the U.S. annually. (TR 39)
- Her grandmother is a citizen of China and resides in Macao. She visited the U.S. in 2004 for the older sister's wedding. (Exhibit 2; TR 39) Applicant's father and grandmother continue to live in a house he has owns in Macao. Applicant has no anticipation on inheriting the house as it would go to her mother. Her grandmother is 86 and was a housewife her entire life; she does not have a Green Card in the U.S. Applicant cannot sponsor her for one. Applicant talks to them about once a week and last visited them in Macao in 2004 on her U.S. passport. (TR 30-33) Since her grandmother and her father live in Macao, she once thought that she might have to go back to Macao to take care of them; but if she went to Macao, she would use her U.S. passport. (Exhibit 2; TR43-44)
- Her mother returned to Macao for a job in 2001, but Applicant and her sister stayed in the U.S. to study. Applicant now lives with her mother in the U.S. The mother works as a part-time tutor for a school. (Exhibit 1; TR 20-21; 25-26; 29-30.35) Her mother is in touch with her husband once a week by telephone and he sends her \$5,000 quarterly to pay school tuition for Applicant's brother. The mother last visited Macao in 2004. (TR 37-38)
- Applicant also disclosed cousins who have foreign citizenship. (Exhibit 2) She has a cousin who is a citizen of Canada and resides in Taiwan; she works as an engineer for a private company. (Answer; TR 40)
- She has an uncle, her father's brother, who is a citizen of Canada and resides in Hong Kong; however, she rarely has contact with him. (Answer; TR 41)

Applicant stated she has no relationship with China: at the time she lived in Macao it was a

part of Portugal. While Macao was a colony of Portugal, at no time did she travel to Portugal. (TR 20-21; 25-26; 29-30) When she visited Macao and Hong Kong in December 2002 and Macao in 2004 she was never approach by anyone from a foreign government or military organization for information. (TR 29) None of her relatives have ever been approached by anyone seeking information about Applicant. If she were every approached, she would contact the FBI. (TR 41-42)

### **References**

The engineer analysis supervisor who has known Applicant for two years assessed her as “a dedicated, honest, responsible and professional acting individual.” He recommended and supported her application for a security clearance. (Exhibit B)

Another corporate official who has known Applicant for two and one half years declared that Applicant provides modeling and simulation support to his structural design team. He assessed her as always displaying “a high degree of integrity, dependability, and ethics.” He recommended her for a security clearance. (Exhibit C)

### **Is the foreign country known to target United States citizens to obtain protected information?**

The Government provided for Administrative Notice several documents regarding China including a State Department Background Note on China, a Consular Information Sheet, a country report on human rights practices from 2005, a Select Committee of the U.S. House of Representatives report, an annual report on foreign economic collection and industrial espionage, and an *Intelligence Threat Handbook* that included a section on China (“Threat Handbook”). (AN I to VII) The *Threat Handbook* observed, “There is no evidence that the PRC considers Chinese-Americans to be more vulnerable to approach than any other group.” The PRC uses “whatever feelings of obligation the targeted individual may have toward China, family members in China, old friends in China, etc.” PRC’s approach is “not to try to exploit a perceived vulnerability but to appeal to an individual’s desire to help China out in some way.” (AN VII at 21) She also provided a Background Note on Taiwan, a Congressional Research Service (CRS) issues brief on Taiwan, and press releases from U.S. Attorney’s office on a Taiwan related prosecution. (AN VIII to XII) She also provided a Background Note on Hong Kong, a Consular Information Sheet (AN XIII to XIV) She also provided a Background Note on Macau as well as a Consular Information Sheet. (AN XV & XVI)

Department Counsel argued that security concerns exist because of Macao’s relationship with China and China’s poor human rights records, its possession of strategic nuclear weapons and missiles, and its having actively targeted the U.S. with legal and illegal intelligence-gathering programs for economic intelligence. (TR 53-54)

### **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below:

### **Guideline B - Foreign Influence**

6. *The concern:* 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 to whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

### **Guideline C: Foreign Preference**

9. *The Concern.* When an individual acts in such a way as to indicate a preference for a foreign country over the United States, he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

## **CONCLUSIONS**

### **Foreign Influence**

Applicant mitigated the Government's security concerns over possible foreign influence raised by Applicant's close ties of affection to citizens of China who live in Macao, her father, her grandmother, her cousin who lives in Taiwan, and her uncle who lives in Hong Kong as well as her sister, brother, and mother who all have Green Cards and live in the U.S. One sister has already become a naturalized U.S. citizen in 2003. The security concern under Guideline B, Foreign

Influence, requires an assessment under disqualifying condition (DC) 7.(a.) of the security risk<sup>5</sup> that may exist when an individual's family member “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.” Applicant has visited her relatives in Macao, but only on a limited and infrequent basis. She never experienced any pressure that raised a security concern. Given the fact that her father works for a private sector bank and her grandmother is a housewife, they seem an unlikely target of the government of China. Applicant has limited contact with her cousin in Taiwan and her uncle in Hong Kong. While she lives with her mother and has frequent contact with her sister and brother who live in the U.S., they are all Green Card holders and similarly pose a unlikely risk. Applicant reported they have never been pressured for information about Applicant. Applicant’s father does own his own home in Macao which could raise a security concern under AG (7. e.) *A substantial business, financial, or property interest in a foreign country. . . .which could subject the individual to heightened risk of foreign influence or exploitation.* On the other hand, Applicant has no anticipation of inheriting it as it would go to her mother.

While I have considered these security concerns, I conclude Applicant has presented evidence to meet the burden of mitigating<sup>6</sup> those circumstances either under the mitigating conditions (MC) outlined in the revised guidelines or by a whole person analysis. Applicant's family ties to China which present the largest concern are her father and grandmother in Macao with whom she has intermittent visits and conversations. One notable element is assessing these security concerns is the fact that Applicant’s father and other members of her immediate family (except for her grandmother) have had Green Cards since her father won the lottery in 1997. While her mother has frequent contacts with her husband in Macao, Applicant reported no evidence of any foreign duress or influence on Applicant and/or her immediate family in Macao, Taiwan, or Hong Kong. On balance, Applicant is not dependent on the money her father sends her mother as it is used for her brother’s tuition, not for her benefit.

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<sup>5</sup> **7. Conditions that could raise a security concern and may be disqualifying include:**

(a.) contact with a foreign family member, business or professional associate, friend, or a 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; (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; (e.) a substantial business, financial, or property interest in a foreign country. . . .which could subject the individual to heightened risk of foreign influence or exploitation.

<sup>6</sup> **8. Conditions that could mitigate security concerns include:**

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

Thus, despite the concerns over China's economic espionage and human rights record, I conclude any risk would appear to be slight and clearly manageable under MC (a.). Applicant is a U.S. citizen who was educated here. Her family members who live here have Green Cards as does her father who lives in Macao. Notably, the *Threat Handbook* indicates that PRC's approach is "not to try to exploit a perceived vulnerability but to appeal to an individual's desire to help China out in some way." (AN VII at 21) Given Applicant's deep ties to the U.S., there is no evidence that she would have any motivation to "help China out" by her efforts. Moreover, Applicant made evident that at any hint of any coercion or pressure on herself or his family, she would immediately report such coercion to the FBI. Thus, I find there is no substantial likelihood that she would be subject to duress merely because of these family ties.

Also I have evaluated her under the whole person adjudicative process guidelines:

(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 voluntariness of the 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. (AG 2. Adjudication Process)

Significantly, Applicant is recommended for a security clearance by corporate officials who have known her for over two years. The engineer analysis supervisor assessed her as "a dedicated, honest, responsible and professional acting individual." Another corporate official stated that Applicant has always displayed "a high degree of integrity, dependability, and ethics."

Looking at all of these circumstances, I conclude Applicant has overcome foreign influence security concerns. Given her strong and lengthy ties to the U.S. since she has lived in the U.S. since 1997 and became a U.S. naturalized citizen in 2003, there is limited potential for coercion, exploitation or duress. Since Applicant came to the U.S., she has seen no indicators that the government of China has tried to exploit her relationship with her relatives in Macao, Taiwan or Hong Kong. If she did, she would report any attempts to U.S. officials. After review all of the evidence I conclude, there is little potential for pressure, coercion, exploitation, or duress on Applicant or her family members.

Security clearance decisions are predictive judgments about an applicant's security eligibility in light of the applicant's past conduct and present circumstances. *Department of Navy v. Egan*, 484 U.S. 518, 528-29 (1988). Contacts with citizens of other countries are relevant to security determinations only if they make an individual potentially vulnerable to coercion, exploitation, or pressure through threats against those foreign relatives. Acts indicative of foreign influence warrant careful scrutiny. After considering the Adjudicative Process factors and the Adjudicative Guidelines, I conclude these ties are not of such a nature as to create any tangible risks of undue pressure on Applicant, so foreign influence security concerns are mitigated. Thus, I resolve SOR paragraph 1 and subparagraphs 1.a. and 1.g. in Applicant's favor.

### **Foreign Preference**



Under Guideline C, foreign preference security concerns are raised when an individual acts in such a way as to indicate a preference for a foreign country over the United States: he or she may be prone to provide information or make decisions that are harmful to the interests of the United States. In this case, Applicant renewed her passport from Portugal in January 2002 before she became a U.S. citizen and traveled to Macau to visit. Raising security concerns is the fact that she continued to possess it after she became a U.S. citizen in 2003. These actions raised concerns under AG 10 (a.) exercise of any right, privilege or obligation of foreign citizenship after become a U.S. citizen: (1) Possession of a current foreign passport. However, once she became a naturalized U.S. citizen in 2003 and got a U.S. passport, she used her U.S. passport for travel.

Ultimately, understanding the security significance of having a foreign passport, she voluntarily had her foreign passport shredded by a security official in November 2006. Consequently, she fell within the mitigating condition AG 11 (e): the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's intent or state of mind at the time she renewed her passport. Based on Applicant's credible testimony and review of her as a whole person, I conclude that Guideline C, allegation 2.a., in favor of Applicant.

### **FORMAL FINDINGS**

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following 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
Paragraph 2. Guideline C	FOR APPLICANT
Subparagraph 2.a.:	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 a security clearance to the Applicant.

Kathryn Moen Braeman

## Administrative Judge