

KEYWORD: Foreign Influence

DIGEST: Applicant is 49 years old, married with two college-age sons, and works for a defense contractor. She has family members in Taiwan. Applicant mitigated the foreign influence security concern. Clearance is granted.

CASENO: 06-12193.h1

DATE: 09/14/2007

DATE: September 14, 2007

In re:)	
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SSN: -----)	ISCR Case No. 06-12193
)	
Applicant for Security Clearance)	

**DECISION OF ADMINISTRATIVE JUDGE
PHILIP S. HOWE**

APPEARANCES

FOR GOVERNMENT

D. Michael Lyles, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 49 years old, married with two college-age sons, and works for a defense contractor. She has family members in Taiwan. Applicant mitigated the foreign influence security concern. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On December 8, 2006, DOHA issued a Statement of Reasons¹ (SOR) detailing the basis for its decision—security concerns raised under Guideline B (Foreign Influence) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006. Applicant answered the SOR in writing on December 15, 2006, and elected to have a hearing before an administrative judge. The case was assigned to me on May 9, 2007. On June 5, 2007, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government and the Applicant submitted exhibits that were admitted into evidence. DOHA received the hearing transcript (Tr.) on June 21, 2007.

FINDINGS OF FACT

Applicant's admissions to all the SOR allegations are incorporated here as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 49 years old, married, and has two sons in college. Both children were born in the U.S. She and her husband came to the U.S. in 1985 from Taiwan to pursue additional education. Her husband obtained a Ph.D. in computer engineering in the U.S.. Applicant obtained bachelor's and master's degrees in Taiwan before she came to the U.S.. She worked in Taiwan for the Ministry of Justice as a probation officer from September 1983 to June 1985, and then immigrated to the U.S. Applicant obtained a bachelor's degree in computer science after she came to the U.S. She has worked for the same employer for the past eight years. Applicant is a database administrator for a government contractor. Her husband has been a college professor in computer engineering for 19 years. She and her husband became naturalized U.S. citizens. Her husband was naturalized on February 20, 1997. Applicant was naturalized on May 1, 1997. They own their own home. Applicant was involved in her son's school activities when they were in elementary and high school. (Tr. 52, 77-88; Exhibits 1 and 2)

Applicant obtained a U.S. passport in 1998 after she became a U.S. citizen. The Taiwanese passport she had before she became a U.S. citizen expired October 23, 2001. She turned in the passport while on a trip to Taiwan, and requested her name be stricken from that government's list of household members in her family on Taiwan. These actions she took on her own initiative to renounce her Taiwanese citizenship in accordance with that country's procedures. (Tr. 67-70, 74; Exhibits 2-6)

Applicant's family are all living and working in Taiwan, except for her immediate family. They are all citizens of Taiwan. Applicant's father is a retired chief accountant for the Taiwan provincial government. Applicant has two brothers and four sisters in Taiwan. Her oldest sister is an instructor and dormitory supervisor at a private college. Her second oldest sister is dying from

¹Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).

cancer. The third sister works as a cook for a local government. The fourth sister is a housewife. One brother is self-employed, installing various types of equipment in houses and apartments. Applicant has not talked to this brother in a long time. The other brother is employed by a company owned by the Taiwanese government and by a private company. Applicant sends emails to her parents inquiring about her sister's health, or telephones them about once a month. She sends her parents small sums of money periodically to help them. (Tr. 71-76; Exhibits 1, 2, 6)

Applicant's mother-in-law and father-in-law are residents and citizens of Taiwan. Her brother-in-law works for the Taiwan Department of Water and Waste Management, and another is employed by the Port Engineering Office. Another brother-in-law works for a company partly owned by the Taiwanese Government. Applicant's husband has a brother who lives in the U.S. and is a naturalized U.S. citizen. (Tr. 71-76; Exhibits 1, 2, 6, Answer)

Applicant traveled to Taiwan in 1992, 1995, December 1998, December 2000, December 2003, November 2005, and January 2007. The last visit was to see her dying sister. Applicant remained two weeks for that visit. (Tr. 84, 85; Exhibits 3-5, Answer)

Applicant has four friends whom she visited when she went to her class reunion. She does not speak to them regularly. She may send them periodic emails. One friend works for a private consultant. Another works for the Ministry of Economics in Taiwan. A third friend works in the Taipei (the capital city of Taiwan) as an assistant to a judge. The fourth friend works as a clerk in a high school in Taiwan. (Tr. 73; Exhibit 6, Answer)

Applicant is well-regarded by her employers, the company security officer, and co-workers. They consider her as having an excellent work ethic, being flexible in the workplace, competent, not able to be manipulated or intimidated, and gets along well with the other employees. The company security officer considers Applicant to be very conscientious and an employee who always turns in post-trip reports when she travels to Taiwan to visit her family. (Tr. 37-59)

I take administrative notice of the island of Taiwan being the Republic of China, and not the PRC, which is located on the mainland of China. The PRC regards itself as the legitimate government of all of China, including Taiwan. Since 1979, the U.S. has recognized the PRC as the legal government of China under the "one China" policy, and does not have formal diplomatic relations with Taiwan pursuant to the Taiwan Relations Act of 1979. The U.S. sells weapons to Taiwan and has trade relations with Taiwan. Taiwan and the PRC engage in industrial and military espionage designed to collect proprietary and classified information. The greater bulk of the information presented in the administrative notice documents pertains to the PRC activities in industrial and military espionage. Industrial espionage is intelligence gathering by a foreign country or a foreign company with its government's help against a private U.S. company to obtain commercial secrets. Taiwan collects primarily industrial information for commercial purposes. The administrative notice exhibit included two examples of Taiwan collecting, in one case, classified government data, and in the other collecting commercial information to enable one of its manufacturing companies to compete directly with a U.S. company. The U.S. has formal diplomatic relations with the PRC, but since 1979 has not had formal diplomatic relations with Taiwan. The U.S. sells Taiwan military equipment and does billions of dollars of trade with Taiwan annually. It also does billions of dollars of trade with the PRC annually. Taiwan is a multi-party democracy of 22 million people, with an elected president and legislature. The Taiwanese government does not coerce its citizens, but is building a viable democracy based on its constitution, and does not have

a history of human rights abuses. On the other side of the Straits of Formosa is the PRC, a one-party authoritarian government which has a long record of human rights abuses and espionage. (Exhibit 7)

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. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information with Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3.

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. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required.

In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. Those assessments include: (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). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being

eligible for access to classified information. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. See Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "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 Exec. Or. 12968 § 3.1(b).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guideline most pertinent to an evaluation of the facts of this case:

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

CONCLUSIONS

Foreign Influence: The condition that could raise a security concern and may be disqualifying applicable here is ¶7.a (contact with a foreign family member 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).

Applicant has family members in Taiwan, consisting of her parents and siblings. Brothers-in-law also live and work on Taiwan. Their jobs for the Taiwan governments are all low-level positions. Her father had an accountant's position from which he retired. She visits her family about every three years. Her latest visit was in January 2007, to visit her cancer-stricken sister. She speaks with her parents monthly.

After the Government raised a disqualification, the burden shifted to Applicant to mitigate or rebut the allegations. Two mitigating conditions apply: ¶8.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 the foreign individual and the interests of the U.S.), and ¶8.b (there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person 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. interests). Applicant has only familial relations with her family, not business relations. Taiwan engages in industrial espionage, but it is a parliamentary democracy under a constitution. Her relatives, including her in-laws, work for private companies or government agencies, but not in policy making or espionage/intelligence positions. They have low-level positions, including clerical and cooking. The same type of positions are held by her personal friends in Taiwan. Therefore, there is unlikely she will be placed in a position of having to choose between those persons she knows on Taiwan and the interests of the U.S.

There is no conflict of interest in Applicant's situation because of her deep and longstanding relationships and loyalties to the U.S. There are many positive attributes to Applicant's life as a U.S. citizen that weigh in favor of granting her a security clearance. She has extensive and long-term contacts with the U.S. She has lived here since 1985, obtained a college degree here, and been a citizen since 1997. Her husband also became a U.S. citizen in 1997, and has been employed by the same university for 19 years as a professor. She has worked for the same employer for eight years. She owns a home in the U.S., and has no property or financial interests in any other country. Her sons were born in the U.S., and she is very dedicated to them and active in their education. She is a loyal American committed to her family and job in the U.S., and would resolve any conflict of interest in favor of the U.S. After every trip to Taiwan, she filed trip reports with her company security officer disclosing her activity on those trips. On one trip she took the initiative to renounce her Taiwanese citizenship and remove herself from that government's list of citizens and her family members. I give her history in the U.S. and her compliance with company security requirements great weight.

Whole Person Analysis

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." AG ¶ 2(a). "Each security clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy." Directive ¶ 6.3. "Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination." AG ¶ 2(a). In evaluating Applicant's case, I have considered the adjudicative process factors listed in the AG ¶ 2(a). However, because foreign influence does not involve misconduct, only the eighth factor (the potential for pressure, coercion, exploitation or duress) is relevant.

Applicant's history of living and working in the U.S., and her dedication to her immediate family in the U.S. is significant. It is contrasted with the periodic schedule of visits to Taiwan, and lack of regular and consistent contact in the interim with any family members other than her parents. All these factors show that there is no potential for pressure, coercion, exploitation, or duress upon Applicant. I give great weight to the testimony from her co-workers, security officer, and supervisor about her work ethic over the past eight years, and dedication to her job and security requirements. I also conclude Applicant is credible in her explanations of her familial relationships and strong preference for the U.S.

In addition to the above facts, security determinations are predictive judgments and the best predictor of future performance is past performance. Based on a review of her history and

substantial ties to the United States, I conclude Applicant's potential for exploitation by Taiwan, a democratic ally of the United States, appears low and unlikely to occur.

Therefore, I conclude the foreign influence security concern for Applicant. I also conclude the "whole person" concept for Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraphs 1.a to 1.m: For Applicant

DECISION

In light of all of 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. Clearance is granted.

Philip S. Howe
Administrative Judge