

KEYWORD: Foreign Influence

DIGEST: Applicant, a 58 year old employee of a defense contractor, born in Taiwan, emigrated to the U.S. from Canada in 1980 and became a citizen in 1994. She has been an employee of the same corporation since 1984 holding a security clearance since she became a U.S. citizen. She mitigated security concerns based on her 80-year-old mother and three siblings who live in Taiwan by demonstrating her strong ties in the U.S. including her two children who are professionals with U.S. education and her long and outstanding record with her company. Clearance is granted.

CASENO: 06-20226.h1

DATE: 05/24/2007

DATE: May 24, 2007

In Re:)	
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SSN: -----)	ISCR Case No. 06-20226
)	
Applicant for Security Clearance)	
)	

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

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

_____Applicant, a 58 year old employee of a defense contractor, born in Taiwan, emigrated to the U.S. from Canada in 1980 and became a citizen in 1994. She has been an employee of the same corporation since 1984 holding a security clearance since she became a U.S. citizen. She mitigated security concerns based on her 80-year-old mother and three siblings who live in Taiwan by demonstrating her strong ties in the U.S. including her two children who are professionals with U.S. education and her long and outstanding record with her company. Clearance is granted.

STATEMENT OF THE CASE

On October 23, 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, dated November 16, 2006, Applicant responded to the allegations set forth in the SOR, and requested a hearing. The case was assigned to me on January 8, 2007. A Notice of Hearing was issued March 2, 2007 for a hearing held on March 21, 2007. At the hearing, the Government introduced three exhibits, and Applicant introduced four. All were admitted into evidence. The Government offered eleven documents for administrative notice. The Applicant testified on her own behalf. The transcript was received on March 30, 2007.

FINDINGS OF FACT

_____Applicant admitted all of the specific security concerns under Foreign Influence Guideline B regarding her mother and three siblings who are citizens of and live in Taiwan. The 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 58-year-old employee of a major defense contractor who works as a senior computer systems analyst on a naval electronics system (Exh. B). She was born in Taiwan and received a college degree in literature and philosophy. She was married in Taiwan in 1972 and emigrated to Canada with her husband in 1973. Their two children were born in Canada. They emigrated to the U.S. in 1980 and were divorced in 1984. Since she had no work related skills and needed to support a family as a single parent, she took computer courses at a local college and obtained the employment she continues to perform for her company. She has steadily advanced in positions with her company (Exh. A). She became a U.S. citizen in 1994 and renounced her Canadian citizenship in 2006 (Exh. 3). She visited Taiwan in 2006, the first time in 19 years since she attended her father's funeral in 1987.

Applicant has worked in the same installation for the same company and its predecessor owners for 22 years. She has held a security clearance for 13 years just five months after becoming a citizen. She is highly regarded by her company and her supervisor who submitted a statement for her in which he notes her excellent work ethic and solid performance that led to receipt of an award for outstanding performance and contributions to Navy programs (Exh. A).

Her need for a clearance is based primarily on a job requirement for access to databases for parts to determine delivery dates, and for access to military facilities where she may be assigned. She has never had a security violation or negative security comment in regard to security policies or practices in her 22 years with her company (Exh. A).

Applicant has two adult children. Her daughter has an MBA from a major east coast university and works for a prominent U.S. film producer. Her son is a medical doctor. Because her children were born in Canada, they have dual citizenship with the U.S. and Canada. Both children visited Taiwan when very young but only her daughter has visited as an adult when she went with Applicant in 2006.

Applicant's mother is 80 years old. She telephones her approximately every two weeks. Her mother came to the U.S. on two occasions over ten years ago when she went on two tours on the West Coast. Since Applicant lives on the East Coast they did not visit. She saw her mother in Taiwan in 2006 and 1987.

Applicant's siblings consist of a sister who now writes children's books and was a nurse's aide. Their mother lives with her in Taiwan. She also does web sites for books (Exh. C). One brother is with a private company living near their mother. A second brother is an interior designer for private homes for the past five years. He travels to the PRC frequently in his work since there are more homes and apartments being built there than in Taiwan. He is allowed to enter the PRC to work, but must have a permit to do so. He came to the U.S. in 2003. That was the last time she saw him as she did not see him on her trip to Taiwan in 2006.

Applicant regards herself and her family as completely American and considers her ancestry as only Taiwanese. She has no interest in returning to Taiwan and as all her ties are in the U.S. She has lived in the same apartment for 20 years since 1987. She enjoys U.S. cultural life and spends most of her time outside of work reading and traveling in the U.S. to visit her children (Tr. 47). She has voted in all three presidential elections since becoming a U.S. citizen.

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.

"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 Guideline B that could raise a security concern and may be disqualifying include 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 (AG ¶ 7a). Based on the evidence of record, including Applicant's acknowledgment of family members living abroad, the Government established a basis for concern over foreign influence. 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).

By virtue of the relationships of the foreign family members, Applicant's contacts, though infrequent, cannot be deemed casual. Mitigating conditions (MC) that might be applicable are a determination that the nature of the relationships with foreign persons, the country in which the persons are located, or the positions or activities of those persons in that country are such that is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual group or government and the interests of the U.S. (AG ¶ 8a). The other relevant MC is that the individual has such deep and longstanding relationships and loyalties in the US., that

she can be expected to resolve any conflict of interest in favor of the U.S. (AG ¶ 8b). I find that both are applicable.

While Applicant's mother lives in Taiwan, she is an octogenarian whose only contacts with her daughter are by telephone. They have had very little personal interaction over the past 20 years except for Applicant's one visit to Taiwan in 2006. Even when visiting the U.S. she came on tours to the opposite side of the country and did not see Applicant.

Applicant's sister and two brothers are in commercial activities totally unrelated to the government of Taiwan. The department counsel acknowledged that the brother who travels to the PRC is the most problematic member of her family. But he does interior design work, and is not employed by either the government of Taiwan or the government of the PRC. He is required to obtain a permit to enter the PRC but that appears to be a routine practice for persons doing commercial work.

The most important mitigating factor is Applicant herself and her total commitment to the U.S. through her long employment and excellent record with a major defense contractor and the lengthy period she has held a security clearance without problems. She has lived in the same place for over 20 years and has children who are well educated in the U.S. and hold professional positions in their fields.

While Taiwan, as do other countries, engages in industrial espionage (Exh. XI), none of her relatives living in Taiwan pose a potential security threat or are in a position likely to be influenced by the Taiwan or PRC governments. None of them work for the Taiwan government or are involved in work that might create security issues for the U.S. Any potential security concerns relating to possible future trips to Taiwan are minimal considering the infrequency of her past travels to Taiwan and knowledge of security requirements. Applicant can be relied upon to take whatever steps are necessary to eliminate any possible risk.

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.

Looking at her as a whole person, Applicant presents a highly credible case that she would not be influenced by anything contrary to the best interests of the U.S. Her strong ties to the U.S. contrast with her minimal ties to Taiwan. Her residence in the U.S. for over a quarter of a century and career record as a trusted employee of major U.S. corporations for 22 years effectively refute the risk that she would now take any action that would jeopardize U.S. security interests. She has assimilated into U.S. customs and culture, and has become a model employee of a major defense contractor working on an important national defense program.

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

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