

DATE: May 15, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-12250

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR GOVERNMENT

Martin H. Mogul, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has revoked her Taiwanese citizenship and surrendered her passport. Her family connections are not of a type that would make her vulnerable to coercion or pressure. Adverse inference is overcome. Clearance is granted.

STATEMENT OF THE CASE

On October 9, 2001, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) 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 and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on October 26, 2001, and requested that the case be decided without a hearing. The Government submitted its File of Relevant Material (FORM) to the Applicant on December 19, 2001. The Applicant was given 30 days from receipt of the FORM to submit any documents in rebuttal, extenuation or mitigation. The Applicant received the FORM on January 2, 2002, and submitted a response on January 3, 2002 (Applicant's Exhibit O). The Department Counsel did not object to the admissibility of the additional material. The case was received by the undersigned on February 7, 2002.

FINDINGS OF FACT

The Applicant is 31, married and has a Bachelor of Science degree. She is employed by a defense contractor, and she seeks to obtain or retain a DoD security clearance in connection with her employment in the defense sector.

The Government opposes the Applicant's request for a security clearance, based upon the allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and criterion in the SOR.

They are based on the Applicant's Answer to the SOR, the exhibits and the live testimony.

Paragraph 1 (Guideline C - Foreign preference). The Government alleges in this paragraph that the Applicant is ineligible for clearance because she has acted in such a way as to show a preference for another country over the United States.

The Applicant was born in Taiwan in 1971. She moved to the United States to attend school in approximately 1991. The Applicant became a naturalized American citizen on July 26, 1996. (Government Exhibit 4 at 1.)

In her Security Clearance Application (Government Exhibit 4), the Applicant stated "Yes" to question 3 where it asks "Are you now or were you a dual citizen of the U.S. and another country?" The Applicant also possessed a Taiwanese passport at the time of the issuance of the SOR. (Applicant's Exhibit B.) At the time of the issuance of the Taiwanese passport the Applicant was not working in the defense sector. The Applicant has never traveled on the Taiwanese passport. (Government Exhibit 3 at 1-2.)

The Applicant stated in her Answer to the SOR that she was taking steps to renounce her Taiwanese citizenship. Applicant's Exhibit E is a copy of her application to renounce that citizenship. It is in Chinese. Applicant's Exhibit O consists of a letter from the Applicant, as well as a photocopy of a Certificate on Permission to Renounce Nationality from Taiwan and a notarized English translation. The translation indicates that, on November 16, 2001, the Domestic Affairs Administration of the Republic of China (Taiwan) granted permission for the Applicant to renounce her citizenship. In her letter of January 3, 2002, the Applicant states, "I returned my Taiwanese passport to the Taiwanese Government before it issued me this Certificate of Permission to Renounce Nationality."

Paragraph 2 (Guideline B - Foreign influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because she has immediate family members or people to whom she may be bound by affection or obligation who are not citizens of the United States, or may be subject to duress.

The Applicant's father is the member of her family to whom she is closest. Her father was a permanent resident of the United States from 1996 to 1999. (Government Exhibit 5 at 2.) He returned to Taiwan for medical treatment. (Applicant's Exhibit G.) The Applicant made arrangements for her father to return to the United States in December 2001. (Government Exhibit 3 at 2; Applicant's Exhibit H.) The Applicant is not close to her mother and brother, but she is beginning to make arrangements for them to join her in the United States. (Government Exhibit 3 at 2; Government Exhibit 5 at 2; Applicant's Exhibit N.) She last visited Taiwan in December 1994-January 1995. None of her family members work for the Taiwanese government.

The Applicant is now married. Her husband has submitted his application for adjustment of his status to that of lawful permanent resident. (Applicant Exhibits I and J.)

Mitigation.

The Applicant submitted documentation to show that she is an active American citizen. (Applicant's Exhibits C and D.) She stated, "I never fulfilled any duties to Taiwanese government as a citizen; but I have been a law-biding citizen of the U.S. since my naturalization." (Government Exhibit 3 at 1.)

In her sworn statement the Applicant says, "I consider myself to be a U.S. citizen. I like being in the U.S. [T]here are more opportunities for women in the U.S. I have lived here a long time, my home is here and I would consider it immoral to act against the best interest of the U.S. I am willing to defend the constitution. I would not use my position of trust to serve the interests of Taiwan or any other country." (Government Exhibit 5 at 4.)

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's

reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm

of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Guideline B (Foreign influence)

Condition that could raise a security concern:

(1) An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country;

Condition that could mitigate security concerns include:

(1) A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) 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 person(s) involved and the United States;

Guideline C (Foreign preference)

Condition that could raise a security concern:

(2) Possession and/or use of a foreign passport;

Conditions that could mitigate security concerns include:

(1) Dual citizenship is based solely on parents' citizenship or birth in a foreign country;

(4) Individual has expressed a willingness to renounce dual citizenship.

Additional policy guidance regarding the possession of a foreign passport is also found in the August 16, 2000, Memorandum from the Assistant Secretary of Defense for Command, Control, Communications and Intelligence entitled "Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Adjudicative Guideline." (Money Memorandum.) (Government Exhibit 7.) In pertinent part the Memorandum states, "[C]onsistent application of the [Foreign Preference] guideline requires that any clearance be denied or revoked unless the applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United States Government."

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes

- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence."

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be a dual citizen or have foreign connections that demonstrates untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the granting or continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant has foreign connections, that she was a dual citizen of Taiwan and the United States, and that she possessed a Taiwanese passport after she became an American citizen.

The Applicant, on the other hand, has introduced persuasive evidence in rebuttal, explanation and mitigation, which is sufficient to overcome the Government's case against her.

The evidence shows that the Applicant has successfully revoked her Taiwanese citizenship effective November 16, 2001. Before the revocation could take effect the Applicant had to return her Taiwanese passport. Accordingly, she has more than fulfilled the requirements of the Money Memorandum. In addition, other than her possession of a passport, there is no evidence that the Applicant ever exercised dual citizenship with Taiwan. Guideline C is found for the Applicant.

Turning to Guideline B, one finds that the Applicant is now married to her fiancé, and he has applied for permanent residency in the United States. Her father is once again living in the United States. The evidence is clear that her mother and brother, who currently reside in Taiwan but will soon relocate to the United States, are not agents of a foreign government or in a position to be influenced by that government. A common sense evaluation of the overall facts and circumstances of the Applicant's family ties persuasively shows that the Applicant is not in a position to be vulnerable to foreign influence. Guideline B is found for the Applicant.

On balance, it is concluded that the Applicant has successfully overcome the Government's case opposing her request

for a DoD security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the Government's Statement of Reasons.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1: For the Applicant.

Subparagraphs 1.a. through 1.c.: For the Applicant.

Paragraph 2: For the Applicant.

Subparagraphs 2.a. through 2.c.: For the 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 the Applicant.

Wilford H. Ross

Administrative Judge