

DATE: March 29, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-19565

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Esq., Department Counsel

FOR APPLICANT

James F. Moran, Esq.

OVERVIEW

When security concerns arose over Applicant's foreign preference because of her dual citizenship and use of a foreign passport in 1997 after she became a naturalized United States (US) citizen, she voluntarily chose to comply with the Department of Defense (DoD) policy requirements when she learned of them. Despite procedural difficulties, she relinquished her foreign passport in March 2002. Although she has relatives who are citizens of a foreign country, they do not have ties to the government. Her company also plans to end a business relationship with a foreign national. She has had a security clearance since 1981 without incident. Overall, she has mitigated the allegations of foreign preference and influence. Clearance is granted.

STATEMENT OF THE CASE

The Government could not reach the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant, ⁽¹⁾ so the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on September 20, 2001. The SOR detailed security concerns in paragraph 1 over foreign preference (Guideline C) and in paragraph 2 over foreign influence (Guideline B). Applicant received the SOR and replied to these SOR allegations in an Answer forwarded on October 3, 2001. She admitted all allegations except for 1.f, in part; 1.i.; 1.j.; 2.a.; and she requested a hearing. The case was assigned to Department Counsel who on November 28, 2001, attested it was Ready to Proceed, and advised that Applicant was now represented by counsel.

On November 28, 2001, the case was assigned to me. Subsequently, a mutually convenient date for hearing was agreed to and a Notice of Hearing was issued on January 3, 2002, which set the matter for January 24, 2002, at a location near where Applicant works and lives. On January 9, 2002, the hearing was rescheduled for the same date at a location closer to Applicant's place of work. At the hearing the Government introduced seven exhibits (Exhibits 1-7) which were admitted into evidence. Applicant testified herself; her counsel attempted to offer the three exhibits offered for her husband's case (Exhibits A through C in ISCR Case No. 01-10237). As Department Counsel object, these same exhibits

were not admitted into evidence as they contained no reference to her. Despite the Government's objection, counsel was allowed two weeks until COB February 7, 2002, to provide references. (TR 15-17) The transcript (TR) was received on February 1, 2002.

PROCEDURAL ISSUES

Clarification of Department of Defense Policy on Foreign Preference

The Department of Defense issued a policy memorandum on August 16, 2000. It clarified the policy on Foreign Preference, Guideline C and stated, in part:

The purpose of this memorandum is to clarify the application of Guideline C to cases involving an applicant's possession or use of a foreign passport. The Guideline specifically provides that "possession and/or use of a foreign passport" may be a disqualifying condition. It contains no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country. The only applicable mitigation factor addresses the official approval of the United States Government for the possession or use. The security concerns underlying this guideline are that possession and use of a foreign passport in preference to a U.S. passport raises doubt as to whether the person's allegiance to the United States is paramount and it could also facilitate foreign travel unverifiable by the United States. Therefore, consistent application of the 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 State Government. Modification of the Guideline is not required.

Applicant was allowed two additional weeks to submit additional evidence until Close of Business (COB) on February 7, 2002; the Government was granted three business days to review any documents and provide comments by COB on February 13, 2002. (TR 17) On February 11, 2002, Department Counsel forwarded Applicants Exhibits A and B with no objection. While the Government objected to Exhibit C, Exhibits A-C were admitted into evidence. The record closed on February 11, 2002.

Record Re-opened

On March 7, 2002, I was advised the Taiwan Economic and Cultural Affairs Office (TECO) had rejected the Applicant's attempt to surrender her passport. (See Exhibit 8, Department Counsel's March 7, 2002, response to Applicant's counsel's February 27, 2002, submission with attachments) On March 15, 2002, the Government moved that the record be re-opened to accept new evidence and requested a conference call with Applicant's counsel be scheduled for March 19, 2002. A March 18, 2002, Order granted the request for the conference call. At the conference call, I granted the Government's request that the record be re-opened. After discussion with no objection, I accepted into evidence Government's Exhibit 8. I also admitted into evidence with no objection Applicant's Exhibit's D & E, Applicant's counsel's February 27, 2002, submission with attachments, and TECO's response. Applicant was allowed one more day to submit any additional evidence. On March 20, 2002, Applicant's Counsel forwarded Exhibit F, to which the Government did not object, and Exhibit F, (a arch 20, 2002, letter to TECO which surrendered the Applicant's destroyed foreign passport) was admitted into evidence. The record then closed again on arch 20, 2002.

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 Findings of Fact:

Applicant, 63 years old, from 1978 to present has been the president and co-owner with her husband (the subject of another proceeding) of a company (Company #1). She completed an Office of Personnel Management (OPM) Security Clearance Application (Standard Form 86) (SF 86) in April 1998. (Exhibits 1, 2; TR 20-21) Applicant (and her husband) each have had a security clearance at the Secret level since February 1981 when the company did research for a federal agency in the 1980's and 1990's. Although they have not done any classified work since May 1993, another federal agency asked them to obtain a Top Secret security clearance to take advantage of a Company #1 product. (Answer; TR 21, 43-44)

Applicant received her MA in August 1967 from a university in State #1. (Exhibit 1; TR 19) Applicant married her husband (Mr. X) in July 1967; they have two children born in 1968 and 1972, respectively, in the US. (Exhibit 1)

Foreign Preference

Applicant is a dual citizen of Taiwan (Republic of China) (ROC), as she was born there, and of the United States (U.S.), as she became a naturalized U.S. citizen in May 1974. She left the ROC in 1963 to come to the U.S. to continue her education. Since coming to the U.S., she has not voted in any ROC elections and does not own property there. After she became a U.S. citizen, she subsequently obtained a U.S. passport; her most recent passport was issued in ay1991, which was valid until May 2001. (Answer, Exhibits 1, 2, 3, 6; TR 28) On her first trip to ROC in 1979 she used her U.S. passport and again used it in 1991 when she returned for a reunion. ⁽²⁾ (TR 30-32)

According to the ROC government, she is a citizen of her country of birth "for life." In October 2001 after receiving the SOR Applicant stated that she was willing to formally renounce Taiwanese citizenship without reservation if requested. (Answer; Exhibit 2)

In 1993 Applicant's husband, who is vice-president of Company #1, was invited to Taiwan to explore prospects of manufacturing and marketing Taiwanese computer software and accepted ROC payment of her hotel costs; she traveled with him and also attended the briefing. In 1997 while in Taiwan for his father's funeral her husband provided a briefing on software at the invitation of the ROC government. As he has an export license for the software, he provided the briefing; but he did not provide the ROC with a copy of the software as he had left it in a bank vault in the U.S. For safekeeping. (Answer; Exhibits 1, 2, 3)

Subsequently, Applicant's husband marketed the software to the Taiwanese Government in 1998 and 1999. By verbal agreement their company have a business representative in Taiwan who is a citizen of the ROC who accompanied a ROC delegation to the company's office in State #1 in 1999 to see a demonstration of the software. Applicant handled the paperwork. However, Applicant and the company have no business contract with the ROC. (Answer, Exhibits 3, 4; TR 36, 39-41)

In March 1999 her husband with others was paid to serve as an "external evaluator" for a university program in Taiwan; she played no part and visited her family. (Answer; Exhibit 2; TR 23-24, 38-39)

Use and Surrender of Taiwanese Passport

In 1991 Applicant applied to obtained a ROC passport to make it easier to enter and leave the country as with a U.S. passport she found she had to register with the police when visiting Taiwan. She re-applied for a new ROC passport to change the adverse designation on her initial ROC passport. ⁽³⁾ She did not know when she obtained the ROC passport of any U.S. security policy against having a foreign passport. Applicant used the ROC passport in 1997 as she exited the country and may have used it one other time. She has subsequently exclusively used her U.S. passport for foreign travel. A new ROC passport was issued in 1998, valid until May 2004. She was unaware of any U.S. policy that would raise any doubt about her U.S. allegiance from holding a foreign passport. The issue arose when a DSS investigator reviewed her security clearance application; at the time she offered to surrender her passport to resolve the issue should it be necessary for access to classified information. (Answer; Exhibits 1, 2, TR 22-23, 25, 32-34, 43)

However, Applicant did not attempt the actual surrender of her ROC passport until the day after her security clearance hearing in January 2002 when she asked her counsel to return her passport to the Tepei Economic and Cultural Office (TECO) as the counsel had been advised that was the proper place to return the ROC passport. Applicant has no intent to use her ROC passport in the future. (Exhibits A & B; TR 26)

At the suggestion of TECO in February 2002 Applicant requested a confirmation from the ROC Ministry of Foreign Affairs that he and his wife had returned their ROC passports as the TECO official was not authorized to provide the requested confirmation. (Exhibits D & F)

However, on February 27, Applicant's counsel advised Department Counsel that the ROC passport had been returned to

his office. He forwarded the passports to Department Counsel to show their "continuing commitment to surrender" and authorized their destruction in any manner that would satisfy the DoD policy requirements. (Exhibit D) Applicant's counsel attempted to get further clarification from TECO on the proper procedures to surrender the ROC passport, but received none. (Exhibit F)

Since the Government is not authorized to take custody of a foreign passport, Department Counsel returned the passport on March 7, 2002. She provided guidance from the DOHA Appeal Board and a DOHA trial judge on alternative means of surrender that would be acceptable. (Exhibit 8)

On March 20, 2002, Applicant's counsel advised that he had destroyed the ROC passport for Applicant and provided a copy of the destroyed passports which were again returned to TECO. (Exhibit F)

Foreign Influence

Applicant and her company have a business representative in Taiwan who is a citizen of the ROC and a professor, but Applicant has not talked with him for one year. They have no formal written agreement. If it is U.S. policy not to use a ROC citizen as her business representative, Applicant will find another representative. (Answer; Exhibit 2; TR 27)

Applicant is the youngest of ten children, but has limited contact with her siblings, two brothers and five sisters (two are deceased) who are ROC citizens and reside in Taiwan; however none work with the ROC government. (Answer, Exhibits 1, 2, TR 25, 41-42) Given the absence of any visible links of Applicant's siblings to the ROC, any risk of foreign duress or influence on Applicant and/or her immediate family would appear to be slight and clearly manageable.

References

A professional colleague, who is also an officer in the U.S. military reserves and a defense contractor, has known Applicant for thirty years and attested to her good character. He reported Applicant's "hope that her software program will be a helpful tool in ensuring the national defense of the United States." He evaluated Applicant as being an individual who is committed to maintaining security and as someone who is not under any financial or emotional pressures. He does not suspect Applicant of having any allegiance to the government of Taiwan. He stated that he was "confident" that Applicant would "never knowingly engage in conduct adverse to the legitimate interests of the United States." (Exhibit C)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility 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. 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 the following relevant Adjudication Guidelines:

Guideline C - Foreign Preference⁽⁴⁾

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

Conditions that could raise a security concern and may be disqualifying include:

- (1) the exercise of dual citizenship;
- (2) possession and/or use of a foreign passport⁽⁵⁾;
- (6) using foreign citizenship to protect financial or business interests in another country;

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.

Guideline B - Foreign Influence

The concern: A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are: (1) not citizens of the United States or (2) may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Conditions that could raise a security concern and may be disqualifying include:

- (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

Conditions 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;

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 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 only draw those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS**Guideline C - Foreign Preference**

If an individual acts in such a way as to indicate a preference for a foreign country over the United States, this conduct raises a security concern under Guideline C, Foreign Preference, as the individual may be prone to provide information or make decisions that are harmful to the interests of the United States. Conditions that could raise a security concern and may be disqualifying include: (1) the exercise of dual citizenship; (2) possession and/or use of a foreign passport; and (6) using foreign citizenship to protect financial or business interests in another country. Further, DoD policy clarification of August 16, 2000, interprets and states that "possession and/or use of a foreign passport" may be a disqualifying⁽⁶⁾ condition and to mitigate an Applicant must surrender his foreign passport or obtain official approval for its use. Security concerns over Applicant's possible foreign preference arose from her active exercise of dual citizenship: she maintained her citizenship in ROC even after she became a naturalized US citizen in 1974. While dual citizenship is not prohibited *per se* (and in that sense is sanctioned by policies of the United States), any conduct indicating possible foreign preference does raise a security concern where such action would increase the risk of an individual being influenced by the needs, desires, or aims of a foreign nation. Also, Applicant in 1991 obtained a foreign passport and used it once in 1997 after she became a naturalized citizen of the US and after her U.S. passport was issued

to her. Another ROC passport was issued in 1998. Applicant chose to obtain a foreign passport for reasons of convenience and pride, including a concern over removing a character on the initial passport that showed her to be an "unwelcome" visitor because of her past political statements. She did not know at the time that to hold and use a ROC passport would raise U.S. security concerns.

While Applicant and her husband have explored marketing the company #1 software in Taiwan on numerous trips to the ROC and have hosted ROC officials at the business in 1999 to see a demonstration of the software, the company does not as yet have any business relationship in the ROC. Also, Applicant merely accompanied her husband and visited her ROC family while her husband evaluated an academic department of a ROC university in 1999 for which he was paid. Thus, I conclude the company's business development efforts do not rise to a level of security concern as they were intermittent and so far unsuccessful. Further, while in ROC she and her husband showed concern over security. This commitment and allegiance to the U.S. is also supported by a favorable reference, a professional colleague, that she is an individual who is committed to maintaining the security of the U.S. This professional associate is "confident" that Applicant would "never knowingly engage in conduct adverse to the legitimate interests of the United States."

Further, Applicant meets one prong of the mitigation guidelines as under MC (1), her dual citizenship was based solely on her parents' citizenship or birth in a foreign country. While there are no mitigating factors for an applicant's use of a foreign passport for reasons of convenience and pride, to her credit Applicant voluntarily complied with DoD guidance after she became aware of the proper avenue for individuals to take corrective action to mitigate this security concern. Not only did she maintain that her principal preference is for the US, but she also backed up her statements with repeated attempts to surrender her ROC passport. Finally, Applicant surrendered her foreign passport in March 2002 by destroying it and returning it to the ROC. I conclude that despite the delay in surrendering her passport, she now falls within MC 4 as she not only expressed her willingness to renounce her dual citizenship, she surrendered her ROC passport to fully comply with DoD policy guidance which prohibits use of foreign passports.

In this case, after reviewing all of the evidence in the record and considering all of the security policies, including the August 16, 2000, policy clarification memorandum, I conclude Applicant has met the DoD mitigation sufficiently to indicate her clear preference for the United States. 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). In this case I also considered the fact that Applicant personally and the facility have had security clearances for over twenty years with no reported violations. While acts indicative of foreign preference warrant careful scrutiny, I conclude SOR paragraph 1 and subparagraphs 1.a. through 1.k. for Applicant.

Guideline B - Foreign Influence

The Government also expressed security concerns over Applicant's possible foreign influence raised by her close ties of affection to citizens of a foreign country: she has siblings in ROC who are citizens there. The security concern under Guideline B, Foreign Influence, is that 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: (1) not citizens of the United States or (2) may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure. Conditions that could raise a security concern and may be disqualifying include: (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. Further, concern is raised by the business relationship with an ROC citizen to market software.

On the other hand, 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. Applicant has relatively infrequent contacts with her family in ROC with respect to visits there; further, these security concerns are mitigated by the fact that Applicant's relatives have no ties to their foreign government; nor is there any substantial likelihood that they would exercise foreign influence over Applicant. Merely because of these family ties Applicant is not vulnerable to duress. Given her history of responsible conduct, I think it improbable that his any of her family members would create a situation that could result in the compromise of classified information.

Given Applicant's clear ties to the U.S. over a long period of time, any risk of foreign duress or influence on Applicant and/or her immediate family would appear to be slight and clearly manageable as her family has no ties to the government. Further she and her husband have promised to end their informal business relationship with the ROC citizen. After considering the Enclosure 2 Adjudicative Process factors and the Adjudicative Guidelines, here I conclude these ties are not of such a nature as to create any tangible risks of undue pressure, so do not invoke foreign influence concerns. In this case I also considered the fact that Applicant personally and the facility have had security clearances for over twenty years with no reported violations or attempts to pressure her by the ROC government. (Indeed her independence from the ROC is shown by the fact that she was known to be a critic of earlier governmental tactics.) Thus, I resolve SOR paragraph 2 and subparagraphs 2.a. through 2.b. in Applicant's favor.

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 C: 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

Subparagraph 1.h.: For Applicant

Subparagraph 1.i.: For Applicant

Subparagraph 1.j.: For Applicant

Subparagraph 1.k.: For Applicant

Paragraph 2. Guideline B: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: 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 or continue a security clearance for the Applicant.

Kathryn Moen Braeman

Administrative Judge

1. 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.
2. In closing argument the Government withdrew SOR 1.d. as attending her class reunion at her university is not a disqualifying factor for Applicant. (TR 47)
3. Applicant explained the designation on her initial ROC passport was "unwelcome" as she and her husband had spoken out in the U.S. since 1970 against the ROC Government leaders during years of martial law. This "blacklisted" designation caused a delay at the time of her arrival in Taiwan. After democratic elections were held she wanted to have this adverse designation changed which was done in 1998. (Answer; Exhibits 1, 2, 3, 5)
4. See also the DoD August 16, 2000, Policy Clarification Memorandum, quoted above.
5. DoD policy clarification of Guideline C issued in August 2000 made clear that "any clearance [must] be denied or revoked unless the applicant surrenders the foreign passport"
6. The policy contains no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country.