

DATE: May 19, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-29485

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Department Counsel

**FOR APPLICANT**

Thomas M. Abbott, Attorney At Law

**SYNOPSIS**

Applicant's foreign family ties have been mitigated and do not raise a security concern. Clearance is granted.

**STATEMENT OF THE CASE**

On October 20, 2003, 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 the 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 November 12, 2003, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on January 27, 2004. A notice of hearing was issued on February 3, 2004, scheduling the hearing for March 3, 2004. At the hearing the Government presented three exhibits. The Applicant presented eighteen exhibits and she testified on her own behalf. The record was left open to allow the Applicant an opportunity to submit additional evidence. The Applicant submitted one Post-Hearing Exhibit consisting of thirteen pages. The official transcript (Tr.) was received on March 15, 2004.

**FINDINGS OF FACT**

The following Findings of Fact are based on Applicant's Answer to the SOR, the exhibits and the testimony. The Applicant is 40 years of age. She holds a Bachelor's degree in Computer Science and a Masters of Business Administration. She is employed as a Software Engineer for a defense contractor. She seeks a security clearance in connection with her employment in the defense industry.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible

for clearance because she has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant was born in Taiwan in 1963. Her father was employed by the Taiwanese Ministry of Economic Affairs. At the age of twelve, her father's job transferred them to Germany where they lived for several years. When the Applicant was seventeen years old, her family was transferred back to Taiwan. At that time, the Applicant moved to the United States to obtain her education and make it her home. She initially lived with one of her brothers, who at that time was attending a University. After graduating from high school, the Applicant entered the same University and obtained her Bachelor's degree. During her undergraduate studies, the Applicant met her husband, a United States citizen. They were married in 1993, and they have one child who was born in the United States. She became employed with a defense contractor, and later obtained her Master's degree. In 1985, she became a naturalized United States citizen.

The Applicant has significant assets in the United States. She owns a home worth approximately \$600,00.00 and has bank and retirement accounts. (See Applicant's Exhibits G, H, I and J).

The Applicant's father worked for the Taiwanese Government for twenty- five years. From 1980 until 1991, he was employed as the Director General for the Taiwanese Medium and Small Business Administration, Ministry of Economic Affairs, Republic of China. From 1992 until 1994, he was employed as the Director General for the Industrial Development Bureau, Ministry of Economic Affairs, Republic of China. He also held positions as Chairman of the Senior Expert Development Association, Republic of China, and as a Consultant for the Ministry of Economic Affairs, Republic of China. (See Applicant's Exhibit O).

Since 1994, the Applicant's father has worked as a consultant with the Taiwan SME Development Corporation, a private corporation that tries to arrange financial assistance to small businesses and other development efforts for business in Taiwan. (See Applicant's Exhibit O).

The Applicant's mother held a clerical position with the Taiwanese garment industry union at some point in her career. She is now retired.

The Applicant has traveled to Taiwan on three occasions since she moved to the United States.

Except for her parents and a younger brother, her entire family, that includes many aunts and uncles on both sides of her family, reside in the United States. The Applicant's father, who is 76 years old, retired from his Taiwanese government position over ten years ago. The Applicant's mother, who is 70 years old, was at one time employed by the garment industry union in Taiwan. She is also retired. The Applicant contacts her parents by telephone about once or twice a month. Her father is a very quiet person with whom she rarely talks. Her mother discusses the family and how the Applicant's four year old is doing. (Tr. p. 33). Her parents come to the United States to visit about once a year. Her parents own a home in the United States that they stay at during their visits. The Applicant's parents are financially well off and their resources and assets are not subject to control by the Taiwanese Government. The Applicant's father has absolutely no knowledge of the Applicant's work.

None of her other family members have ever been employed for or associated with the Taiwanese Government.

The Applicant indicated that if any agent of the Government in Taiwan were to attempt any approach to her, even if there were implicit threats to her parents, she would report the act for she knows that the only hope of protecting herself and her family is to report the conduct to the proper authorities.

### Mitigation.

Numerous affidavits from the Applicant's family, friends, coworkers and professional colleagues indicate that the Applicant well respected, responsible, a person of high integrity and an excellent engineer. She is also considered to be a person of good judgment and character and is extremely trustworthy. (Applicant's Exhibits A, B, C, E, F, K, L, M, N and O).

## **POLICIES**

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; 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 conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. 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:

### Foreign Influence

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.

#### 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;

#### Conditions that could mitigate security concerns:

1. A determination that immediate family member(s), spouse, father, mother, sons daughters, brothers, sisters), cohabitant, or associates(s) in questions 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) and the United States;
3. Contact and correspondence with foreign citizens are casual and infrequent.

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 general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- 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, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "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. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have 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."

The Government must make out a case under Guideline B (Foreign Influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and her ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates a foreign preference and has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

## CONCLUSIONS

Having considered the evidence in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR, and that Applicant's foreign influence has a direct and negative impact on her suitability for access to classified information.

This 40 year old Applicant came to the United States as a teenager and has lived in the United States for 23 years. She is a United States citizen. She has extensive family in the United States. She obtained her advanced education, established her family, and made the United States her home. Although her immediate family, including her mother, father and younger brother, are citizens of and reside in Taiwan, the rest of her very large family reside in the United States. The Applicant is married to a United States citizen and has a four year old child who was born in the United States. Her father, who at one time was employed with for the Taiwanese Government, is now retired. He has been retired for over ten years, and is no longer affiliated in any way with the Taiwanese government. None of the Applicant's other family members in Taiwan or in the United States have ever been affiliated with, employed for, or agents of, the Taiwanese Government. Therefore, mitigating condition 1 applies.

In addition, the Applicant's contact with her parents and younger brother in Taiwan is casual and infrequent. Mitigating condition 3 applies. The Applicant has significant assets in the United States and none in Taiwan. Other than with her parents, the Applicant has, for the most part, cut all of her ties with Taiwan. The Applicant credibly testified that there is no situation that could ever occur that would force her to reveal classified information to any unauthorized individual no matter what their relationship to the Applicant. She has no foreign ties or contacts that could potentially influence her. Therefore, I find that there is no situation that could create the potential for foreign influence that could result in her compromise of classified information. Accordingly, the Applicant's request for a security clearance must be granted under Guideline B.

Considering all the evidence, the Applicant has met the mitigating conditions of Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, she has met her ultimate burden of persuasion under Guideline B.

## **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.

Subparas. 1.a.: For the Applicant

1.b.: For the Applicant

## **DECISION**

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson

Administrative Judge