

DATE: December 27, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-30180

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Nyginia T. Mills, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant mitigated security concerns over foreign influence raised because her parents are citizens of Taiwan (Republic of China) who reside in the U.S., over her brothers who were born in Taiwan but who are now naturalized U.S. citizens, and over her distant relatives who are citizens of and residents of Taiwan but who have no ties to the Government of Taiwan. It is improbable that foreign pressure on her parents in the U.S. or these other relatives in Taiwan would create a situation that could result in the compromise of classified information. Applicant attests she would not be subject to duress as her loyalty is exclusively to the U.S. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on November 21, 2003. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. ⁽¹⁾ The SOR alleges specific concerns over foreign influence (Guideline B) in paragraph 1. Applicant replied to the SOR allegations in an Answer notarized on December 10, 2003, and requested a decision without a hearing.

The case was assigned to Department Counsel prepared a File of Relevant Material (FORM) on April 1, 2004, which was forwarded to Applicant. She received it on April 12, 2004, but submitted no response within the thirty day deadline. On May 20, 2004, the case was assigned to me.

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 additional Findings of Fact:

Applicant, a 29-year-old employee, began working for a defense contractor (Employer #1) in State #1 in June 2001 to

present. Previously, she worked for another federal contractor from 1998 to May 2001. In June 2001 she completed a Security Clearance Application (Standard Form 86) and requested a security clearance. (Exhibits 4, 5)

She received a BA from a university in State #1 in 1998. (Exhibits 4, 5)

Applicant immigrated to the U.S. in 1985 from Taiwan (Republic of China) when her family joined her father who was living in State #2. The family subsequently moved to State #1 in August 1986. Applicant became a naturalized U.S. citizen in August 1998, and was issued a U.S. passport in September 1998. Although she had a valid Taiwanese passport, she did not use it after she became a U.S. citizen. Her Taiwanese passport expired in 2003; and she had no plans to renew it. She is single. (Answer; Exhibits 4, 5)

Foreign Influence

When Applicant completed her SF 86 forms, she disclosed that her parents are citizens of Taiwan who are permanent residents of the U.S. Her father inherited his parents home in Taiwan in the late 1990's; and his sisters rent out the property. Her parents travel to Taiwan on a yearly basis to visit relatives but none of the relatives have any ties to the government. Her father works in State #1 in food services and her mother is retired. (Exhibits 4, 5) Her parents have lived in the U.S. as Permanent Residents for over 14 years and are eligible to apply to be U.S. citizens; they have not done so as they are waiting to qualify for a waiver of the English proficiency requirement. (Answer)

In June 2001 on her SF 86 Applicant explained the status of her siblings: Applicant's brother #1 (born in 1966) is a citizen of Taiwan who lives in State #1; brother #2 (born in 1968) is a naturalized citizen of the U.S. who lives in State #3; brother #3 (born in 1972) is a naturalized citizen of the U.S. who lives in State #1; her half-sister (born in 1971) is a citizen of Taiwan who lives in State #3. (Exhibit 4) Applicant has a sister-in-law who lives in the U.S. as a permanent resident who will qualify to be a U.S. citizen next year. (Answer) When interviewed by the Defense Security Service (DSS) in August 2002, Applicant stated that all of her brothers were then U.S. naturalized citizens, living in the U.S. (Exhibit 5) She has the following relatives who are citizens of Taiwan and reside there: her maternal grandmother who is retired, her maternal step-grandfather who is retired, her maternal step-aunt, her maternal step-uncle who is a transportation worker, her maternal uncle who is a citizen of Taiwan and who resides in the U.S., and her paternal aunts who are both homemakers. Another paternal uncle is retired, resides in the U.S., and is a naturalized U.S. citizen. Applicant has a friend from 1994 with whom she communicates once a quarter by telephone. (Exhibit 5) She only contacts her relatives in Taiwan once or twice a year for holidays. (Answer)

Between 1994 and 2000 Applicant made several trips to Taiwan to visit relatives and one trip to Hong Kong. Before she became a naturalized U.S. citizen, she used her passport from Taiwan for these travels; she renewed her passport in 1997 which was to expire in 2003. However, she now exclusively uses her U.S. passport for any foreign travel. (Exhibit 5) Her trips to Taiwan were for pleasure except for the one in 2000 for her grandmother's funeral. (Answer)

Applicant attested that she could not be blackmailed or coerced into revealing classified information because of her relatives ties to Taiwan as "nothing leaves me vulnerable to pressure or coercion by a foreign government." (Exhibit 5)

The U.S. Department of State Country Reports on Human Rights Practices 2002 reports that Taiwan is a multiparty democracy with a dynamic, export-oriented free market economy. While authorities generally respect human rights of citizens, there were problems in some areas. (Exhibit 6)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are 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. But 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 relevant Adjudication Guidelines as set forth below:

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;

3. Contact and correspondence with foreign citizens are casual and infrequent;

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

CONCLUSIONS

Foreign Influence

Applicant has mitigated the Government's security concerns over possible foreign influence raised by Applicant's close ties of affection to citizens of a foreign country. 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 may be bound by affection, influence, or obligation are: (1) not citizens of the United States. While I have considered these concerns, I conclude Applicant has presented evidence to meet the burden⁽²⁾ those circumstances presents. These security concerns are mitigated by the fact that Applicant's only family ties to Taiwan are her elderly parents who are permanent residents of the U.S. Her brothers are also naturalized U.S. citizens who live in the U.S. Her distant relatives who live in Taiwan and who are citizens of Taiwan have no ties to the government. She has limited contacts with her friend and relatives based in Taiwan. Thus, any risk of foreign duress or influence on Applicant and/or her immediate family would appear to be slight and clearly manageable. oreover, Applicant made evident that she does not believe that there would be any coercion or pressure on herself. Thus, I find there is no substantial likelihood that she would be subject to duress merely because of these family ties. She states her loyalty is exclusively to the U.S.

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). 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. Acts indicative of foreign influence warrant careful scrutiny. After considering the Adjudicative Process factors and the Adjudicative Guidelines, I conclude these ties are not of such a nature as to create any tangible risks of undue pressure on Applicant, so foreign influence security concerns are mitigated. Thus, I resolve SOR paragraph 1 and subparagraphs 1.a. through 1.d. 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 B FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d.: 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. The Government presented no evidence of the hostile nature of the relationship between the U.S. and Taiwan. While there is evidence of some human rights concerns, that alone does not establish a hostile relationship.