

KEYWORD: Foreign Influence

DIGEST: Applicant has successfully mitigated the security concern of foreign influence raised by her connections to Taiwan. Clearance is granted.

CASENO: 02-30026.h1

DATE: 01/26/2005

DATE: January 26, 2005

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-30026

**DECISION OF ADMINISTRATIVE JUDGE**

**MICHAEL H. LEONARD**

**APPEARANCES**

**FOR GOVERNMENT**

Braden M. Murphy, Esq., Department Counsel

Erin C. Hogan, Esq., Deputy Chief Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant has successfully mitigated the security concern of foreign influence raised by her connections to Taiwan. Clearance is granted.

### **STATEMENT OF THE CASE**

On January 10, 2004, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating the reasons why DOHA proposed to deny or revoke access to classified information for Applicant.<sup>(1)</sup> The SOR, which is in essence the administrative complaint, alleges a security concern under Guideline B for foreign influence due to Applicant's connections to Taiwan (Republic of China). Applicant answered the SOR on March 11, 2004, and requested a hearing.

Department Counsel indicated they were ready to proceed on June 21, 2004, and the case was assigned to me June 28, 2004. On July 13, 2004, a notice of hearing was issued scheduling the hearing for August 10, 2004. Applicant appeared without counsel, the hearing took place as scheduled, and I received the transcript on August 24, 2004. Issuing a decision was delayed due to a heavy caseload.

### **FINDINGS OF FACT**

In her Answer, Applicant admitted the allegations in SOR subparagraphs 1.a - 1.f, and she provided a full explanation. Her admissions are incorporated into my findings. After a thorough review of the record evidence, I make the following findings of fact:

Applicant is a 47-year-old married woman who was born in Taiwan in 1957. She became a naturalized U.S. citizen in 1992. She is employed as a senior professional staff member for a not-for-profit research and development organization that is part of a major university. She is seeking to obtain a security clearance in conjunction with her employment. Applicant's professional duties consist primarily of software engineering wherein she works in the development and application of software to understand and interpret space physics data.

Applicant was raised and educated in Taiwan until 1983 when she entered the U.S. on a student visa to pursue a graduate degree at a state university. She earned a master's degree in physics. In 1991, she earned a second master's degree in electrical engineering from a different university.

In 1984, while a graduate student, Applicant met and married her husband who is also a native-born citizen of Taiwan. He obtained U.S. citizenship in 1992, the same year as Applicant. They have one child, a son, who is a native-born U.S. citizen and is now a college student at a prestigious U.S. university. Applicant's husband is employed as a scientist working in the field of molecular biology.

Applicant has family members who are citizens of and residents in Taiwan. Her mother passed away sometime in the 1970s when Applicant was a high-school student. As a result, Applicant's father left military service to care for Applicant and her two siblings. Applicant's father has had no affiliation with the Taiwanese military since leaving, nor has he been employed in other jobs. Her father is now 77 years old and lives with Applicant's brother. Her father is blind in one eye and has poor vision in the other. As a result, he is very isolated and essentially housebound. Applicant is quite close to her father--she has an enormous amount of respect for him--and, since international telephone rates have decreased in price, she calls him frequently, sometimes on a daily basis, to check on him. The calls are relatively brief, five to ten minutes, and consist primarily of Applicant asking her father how he is feeling and inquiring about any other family business. Applicant describes her father as an ordinary person who has not been involved with political or criminal activity.

Applicant has two siblings. Her brother is 50 years old, divorced, and the father of two children. He is employed at a county tax office. Applicant's sister is 43 years old and is a stay-at-home mom. She is married and has three children. As far as Applicant knows, her sister's husband is self-employed and runs a small family-owned convenience store. Applicant maintains occasional contact with her siblings, and their telephone conversations center on family business. Applicant describes both her brother and sister as quiet, modest, well behaved, and respectful people.

Based on her marriage, Applicant has in-laws who are citizens of and residents in Taiwan. She has only met them a few times since her marriage in 1984. The meetings took place during family gatherings. Given the limited contact, along with a language barrier (Applicant speaks Mandarin Chinese and they speak Taiwanese), Applicant does not have a close relationship with her parents-in-law. Applicant believes they are approximately 82 and 78 years old, retired, and her father-in-law has been in poor health for some time. Applicant describes them as quiet, reserved, and ordinary people.

Applicant's husband has four siblings who are citizens of and residents in Taiwan. Like her parents-in-laws, Applicant is not close to these extended family members. She has met them only a few times since her marriage. Applicant believes her husband's two older sisters are both stay-at-home moms. Applicant also believes her husband's brother and younger sister work for commercial companies.

Applicant has a childhood friend who is a citizen of and a resident in Taiwan. The friend is a stay-at-home mother and wife who is married to a doctor and has two college-aged children. Applicant describes her contact with her friend as infrequent and centers on their respective families.

Applicant traveled to Taiwan in 1997, 2000, and 2001 to visit her family. Applicant fully disclosed these trips on her security-clearance application (Exhibit 1). She used her U.S. passport for these trips, and she experienced no difficulties or problems with Taiwanese officials during any of the trips. In addition, Applicant has no financial interests, business connections, or real estate holdings in Taiwan.

Administrative notice was taken of certain facts concerning Taiwan as specified by Department Counsel in Exhibits 3 and 4 as follows: (1) Taiwan is one of the most active collectors of economic espionage; and (2) Taiwan is one of several countries that have significant intelligence operations targeting the U.S.

Applicant called two character witnesses who vouched for her security suitability. The first was a retired federal employee who worked for a governmental space agency for 40 years as an engineer and project scientist. He supervised Applicant for approximately ten years, and he describes Applicant as completely honest, ethical, trustworthy, reliable, responsible, and loyal. He believes Applicant makes good decisions, is highly motivated and technically competent, has an outstanding reputation, and is an extremely valuable asset to this country. The second was Applicant's past and current supervisor who has known Applicant for about ten years. He has no doubts about Applicant's character and believes she is a completely trustworthy employee.

## **POLICIES**

The Directive sets forth adjudicative guidelines to consider when evaluating a person's security-clearance eligibility, including disqualifying conditions (DC) and mitigating conditions (MC) for each applicable guideline. In addition, each clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and

circumstances, the whole-person concept, and the factors listed in ¶ 6.3.1. through ¶ 6.3.6. of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

## BURDEN OF PROOF

The only purpose of a security-clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>(2)</sup> There is no presumption in favor of granting or continuing access to classified information.<sup>(3)</sup> The government has the burden of proving controverted facts.<sup>(4)</sup> The U.S. Supreme Court has said the burden of proof in a security-clearance case is less than a preponderance of the evidence.<sup>(5)</sup> The DOHA Appeal Board has followed the Court's reasoning on this issue establishing a substantial-evidence standard.<sup>(6)</sup> "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."<sup>(7)</sup> Once the government meets its burden, an applicant has the burden of presenting evidence of refutation, extenuation, or mitigation sufficient to overcome the case against him.<sup>(8)</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(9)</sup>

As noted by the Court in *Egan*, "it should be obvious that no one has a 'right' to a security clearance," and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(10)</sup> Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

## CONCLUSIONS

Under Guideline B for foreign influence, a security concern 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 not citizens of the U.S. or 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. Common sense suggests that the stronger the ties of affection or obligation, the more vulnerable a person is to being manipulated if the relative, cohabitant, or close associate is brought under control or used as a hostage by a foreign intelligence or security service.

Here, based on the record evidence as a whole, the government established its case under Guideline B. The concern here is Applicant's immediate family members in Taiwan. DC 1-(11) applies because Applicant has immediate family members (her father and two siblings) who are citizens of and residents in Taiwan. She is close to her father, brother, and sister, as evidenced by her trips to visit them as well as her regular telephone calls. Also, DC 1 applies because of Applicant's relationship with her childhood friend. I am not persuaded, however, that DC 1 applies to Applicant's parents-in-law and extended family members. Applicant has rebutted the presumption that she has close ties of affection or obligation to her husband's family members in Taiwan given the particular circumstances here (met a few times and language barrier). Accordingly, SOR subparagraphs 1.c and 1.e are concluded for Applicant. The remaining DC do not apply given the record evidence.

I have reviewed the mitigating conditions under Guideline B and conclude that MC 1-(12) applies. The record evidence shows Applicant's immediate family members are not agents of the Taiwanese government. (13) Her immediate family members have rather ordinary lives (her father has been retired since the 1970s, her brother is a white-collar worker for a county tax office, and her sister is a housewife) that make it most unlikely they would have an undue interest in Applicant's work or that they would come to the attention of Taiwanese authorities. Given these circumstances, her immediate family members are not in a position to be exploited by a foreign power. Second, MC 3-(14) applies to Applicant's relationship with her childhood friend. Her friend is a housewife and their conversations are about their families. Although Applicant maintains an emotional connection to her friend, the contact between the two is both infrequent and casual. Third, MC 5-(15) applies because Applicant's financial interests are all located in the U.S. and she has no financial interests in Taiwan or any other foreign country.

Applicant also receives credit in mitigation for reasons not specified in the formal mitigating conditions. Here, we have a woman who has lived in the U.S. since 1983, and has been a law-abiding U.S. citizen since 1992. She has earned two master's degrees in the U.S., and she has worked in her field of expertise in the U.S. She is a respected member of her employer's professional staff and she is described as a trustworthy, honest, and reliable person. Her husband is a naturalized U.S. citizen and her son is a native-born U.S. citizen. It's plain her family and professional lives are firmly rooted in the U.S. Cumulatively, these matters further mitigate the foreign influence security concern.

To conclude, Applicant has met her burden of presenting evidence of refutation, extenuation, or mitigation sufficient to overcome the case against her and her burden of persuasion to obtain a favorable clearance decision. In reaching my decision, I have considered the record evidence as a whole, the whole-person concept, the clearly-consistent standard, and the appropriate factors and guidelines in the Directive.

## FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

SOR ¶ 1-Guideline B: For the Applicant

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: For the Applicant

Subparagraph d: For the Applicant

Subparagraph e: For the Applicant

Subparagraph f: 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 Applicant. Clearance is granted.

Michael H. Leonard

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
3. ISCR Case No. 02-18663 (March 23, 2004) at p. 5.
4. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.

5. *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).

6. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

7. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

8. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

9. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.

10. *Egan*, 484 U.S. at 528, 531.

11. E2.A2.1.2.1. 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.

12. E2.A2.1.3.1. 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.

13. *See* 50 U.S.C. § 1801(b).

14. E2.A2.1.3.3. Contact and correspondence with foreign citizens are casual and infrequent.

15. E2.A2.1.3.5. Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.