

DATE: January 4, 2005

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In Re:

Applicant for Security Clearance

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ISCR Case No. 02-31145

**DECISION OF ADMINISTRATIVE JUDGE**

**BARRY M. SAX**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

This 29-year-old employee of a defense contractor was born in Taiwan, came to the U.S. in about 1992, and became a U.S. citizen in 1999. Her parents still reside in Taiwan. She has telephonic contact with them monthly and sees them several times a year when they come to the U.S. She has not been in Taiwan since 2001. She is married to an American and has made her life here. She retains her expired Taiwan passport and has no intention of renewing it. Her allegiance is to the U.S. Mitigation has been established. Clearance is granted.

**HISTORY OF THE CASE**

On January 23, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons

why DOHA could not make the preliminary affirmative finding required under the Directive that it

is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and

determine whether a clearance should be granted, denied or revoked.

On February 21, 2004, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge on the written record, i.e., without a hearing. Department Counsel issued a File of Relevant Material (FORM) on June 1, 2004. The Form instructed Applicant that any response to the FORM had to be submitted within 30 days of its receipt by Applicant. Any response was due by July 18, 2004. She timely responded to the FORM on July 6, 2004. The matter was assigned to me for resolution on July 22, 2004.

**FINDINGS OF FACT**

Applicant is a 29-year-old employee of a defense contractor. The January 23, 2004 SOR contains two allegations under Guideline C (Foreign Preference), and six allegations under Guideline B (Foreign Influence). In his February 21, 2004 Response to the SOR, Applicant *admits* all of the allegations in the SOR, some with explanations. The admitted

allegations are accepted and incorporated herein as Findings of Fact.

After considering the totality of the evidence derived from the FORM and its attachments, including Applicant's responses to the SOR and the FORM, I make the following additional FINDINGS OF FACT as to the status, past and present, of each SOR allegation:

#### Guideline C (Foreign Preference)

Applicant:

1.a. - continues to consider herself to be a dual citizen of the United States (U.S.) and the Republic of China (Taiwan) (Response to FORM).

1.b. - continues to possess a Taiwan passport that expired in March 2004. Applicant has not used the Taiwan passport since becoming a U.S. citizen in 1999. She is willing to give up the Taiwan passport but has not yet done so (Response to FORM).

#### Guideline B (Foreign Influence)

2.a. - Applicant's parents are citizens of Taiwan and reside in that country. Her father is a general manager of a privately owned electronics company in Taiwan. Her mother is a housewife (Response to FORM).

2.b. - Applicant has weekly telephone contact with her parents and personal contact about three times a year, when they visit the U.S. She does so out of her "care, concern, and love for them" (Response to FORM).

2.c. - Applicant's brother is a citizen of the U.S. and currently resides in the U.S.

2.d. - Applicant has had telephone and/or personal contact with her brother more than six times a year since he moved to the U.S.

2.e. - Applicant traveled to Taiwan and the People's Republic of China (PRC) in December 2001 and to Taiwan in November 2000, from December 1999 to January 2000, and from June 1999 to July 1999.

### **POLICIES**

Each adjudicative decision must also include an assessment of nine generic factors relevant

in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding

the conduct, to include knowing participation; (3) the frequency and recency of the conduct; (4) the

individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6)

the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation

for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood

of continuation or recurrence (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

Because each security case presents its own facts and circumstances, it should not be assumed

that the factors cited above exhaust the realm of human experience or that the factors apply equally

in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring

pattern of questionable financial judgment and conduct. Because Applicant chose to have this matter decided without a hearing and without submitting any additional information in response to the FORM, all credibility determinations and findings of fact are necessarily based entirely on the contents of the FORM and applicant's response.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of

whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. In reaching the fair and impartial overall common sense determination based on the "whole person" concept required by the Directive, the Administrative Judge is not permitted to speculate, but can only draw those inferences and conclusions that have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make

critical judgments as to the credibility of witnesses, here based solely on the written record.

In the defense industry, the security of classified information is entrusted to civilian workers

who must be counted on to safeguard classified information and material twenty-four hours a day.

The Government is therefore appropriately concerned where available information indicates that an

applicant for a security clearance, in his or her private life or connected to work, may be involved

in conduct that demonstrates poor judgment, untrustworthiness, or unreliability. These concerns include consideration of the potential, as well as the actual, risk that an applicant may deliberately

or inadvertently fail to properly safeguard classified information.

An applicant's admission of the information in specific allegations relieves the Government

of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons. If the Government meets its burden (either

by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence

of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

A person seeking access to classified information enters into a fiduciary relationship with the

Government based upon trust and confidence. As required by DoD Directive 5220.6, as amended,

at E2.2.2., "any doubt as to whether access to classified information is clearly consistent with the interests of national security will be resolved in favor of the nation's security."

### CONCLUSIONS

Since this matter is being decided without a hearing, my evaluation is necessarily limited to the contents of the various documents that are found in the case file, the latest of which is Applicant's response to the FORM.

Guideline C (Foreign Preference)

Applicant is 29 years old. She was born in Taiwan in 1975, came to the U.S. in August 1992, became a naturalized U.S.

citizen in May 1999, and obtained a U.S. passport in June 1999. She recently married a naturalized U.S. citizen (born in Malaysia) (Item 3, attachment). She and her husband "purchased a real estate property last year because we do plan to settle down in the United States and have our home here" (Response to FORM). At various points in the record, Applicant has viewed herself as being only a citizen of the U.S. *and* as a dual citizen of the U.S. and Taiwan (*see*, e.g., Items 4, 5, and Response to SOR and FORM). Her most recent statement is that she views herself as a dual citizen of the two countries (Response to the FORM). At the same time, there is no evidence of her exercise of her Taiwanese citizenship in any way.

The record shows that she retained her Taiwan passport after becoming a U.S. citizen in 1999, but that she did not renew it when it expired in March 2004 and is willing to give it up. She did receive the Money Memorandum (Item 5), but has not cited it in her responses to the SOR and FORM. It is not clear from the limited record whether she has not surrendered it because it was expired and she thought she didn't have to do so, or for some other reason. Based on her other statements, I conclude that she would have surrendered it if she understood the possible significance.

### Disqualifying and Mitigating Conditions

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 may make decisions that are harmful to the interests of the United States.

### Disqualifying Conditions (DC)

1. The exercise of dual citizenship. Limited to her status only, since there is no evidence of any conduct similar to that shown in DC 2 - 9, or other similar conduct.

### Mitigating Conditions (MC)

1. Dual citizenship is based solely on parents' citizenship or birth in a foreign country.

### *Guideline B* (Foreign Influence)

Applicant maintains close contact with her Taiwanese parents by weekly telephone calls and by personal contact during their periodic visits to the U.S. (SOR 2.a and 2.b.). Her brother, who is a U.S. citizen, has returned from Taiwan and is again residing in the U.S. (SOR 2.c. and 2.d.). There is no evidence of any travel to Taiwan by Applicant since December 2001, some four years ago (SOR 2.e.). She no longer has a savings account in Taiwan (SOR 2.f.).

The current state of the record is that the only ongoing concerns deal with her relationship with her parents. While any relatives in a foreign country may present a risk, the Directive does not make this factor an automatic bar to holding a Secret or Top Secret clearance. Fairness and commonsense require an analysis of the entire record and an overall commonsense determination.

Taiwan is cited in an official Government documents (Item 7) as a country involved in economic espionage in the United States, but the same document does not indicate the use of pressure against individuals with relatives in Taiwan.

The lack of any improper contacts in the past is not evidence establishing that it will not happen in the future, but it is a positive factor that should be considered along with all other evidence, including, but not limited to, Applicant's statement that her allegiance is to the United States. Based on the totality of the record, I conclude (1) that she has done nothing to suggest any preference for Taiwan, and (2) there is minimal risk that Applicant's parents will be pressured into contacting Applicant for improper purposes and even less risk that Applicant would respond to any such contact by agreeing to act against U.S. interests.

A security risk may exist when an individual's immediate family . . . are (1) not citizens of the United States or (2) may be subject to duress. These situations may create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of foreign countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Disqualifying Condition

1. An immediate family member . . . is a citizen of, or resident or present in, a foreign country.

Mitigating Condition

1. A determination that the immediate family member(s) . . . in question would not constitute an unacceptable security risk.

**FORMAL FINDINGS**

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Guideline C (Foreign Preference) For the Applicant

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

Guideline B (Foreign Influence) For the Applicant

Subparagraph 2.a. For the Applicant

Subparagraph 2.b. For the Applicant

Subparagraph 2.c. For the Applicant

Subparagraph 2.d. For the Applicant

Subparagraph 2.e. For the Applicant

Subparagraph 2.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.

Barry M. Sax

Administrative Judge