

DATE: May 22, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-31403

**ECISION OF ADMINISTRATIVE JUDGE**

**WILFORD H. ROSS**

**APPEARANCES**

**FOR GOVERNMENT**

Candace L. Le'i, Esquire, Department Counsel

Jennifer I. Campbell, Esquire, Department Counsel

**FOR APPLICANT**

Thomas M. Abbott, Esquire

McKenna, Long & Aldridge

**SYNOPSIS**

The Applicant's admitted foreign connections have been mitigated by a strong showing of connections to the United States. Clearance is granted.

**STATEMENT OF THE CASE**

On January 24, 2005, 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 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. [\(U\)](#)

The Applicant responded to the SOR in writing on February 14, 2005, and requested a hearing. The case was received by the undersigned on July 13, 2005, and a Notice of Hearing was issued on September 28, 2005.

A hearing was held on November 7, 2005, at which the Government presented 13 documentary exhibits. Testimony was taken from the Applicant, who called one additional witness and also submitted 21 exhibits. The transcript was received on November 22, 2005.

**FINDINGS OF FACT**

The Applicant is 47, married and has a Master's degree in Business Administration. She is the majority shareholder,

Chief Executive Officer and Treasurer of a defense contractor (Company A), and she seeks to obtain a Secret-level DoD security clearance in connection with her employment in the defense sector.

The Government opposes the Applicant's request for a security clearance, based upon the allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR. They are based on the Applicant's Answer to the SOR, the exhibits and the live testimony.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant may have foreign connections which potentially make her vulnerable to coercion, exploitation or pressure.

The Applicant was born in the Republic of China (Taiwan) in 1958. She emigrated from Taiwan in 1974, when she was 16, in order to continue her studies in the United States. She attended high school, college and graduate school in the United States. The Applicant became a naturalized American citizen in January 1981. Her husband was also born in Taiwan, and he became a naturalized American citizen in August 1985. They were married in 1981, and have one American born son and three American born daughters. (Government Exhibit 1, Transcript at 18-22.)

As stated above, the Applicant is the majority shareholder of Company A. The other shareholders are her husband and their children. The Applicant's husband is the President and Chief Technology Officer of Company A. The primary clients for Company A are various Federal entities, both military and non-military. Company A was founded in 1987, currently has 200 employees and for the year 2005 has an estimated revenue of \$17,000,000. (Transcript at 37, Applicant's Exhibits O, P and Q.) The Applicant's home is worth approximately \$2,200,000. In addition to their house, the Applicant and her husband have a net worth of about \$3,500,000. (Transcript at 39.)

Since becoming an American citizen in 1981, the Applicant has traveled fewer than ten times to Taiwan. She traveled to Taiwan four times between 1990 and 2004.

The Applicant has an older brother who is a resident and citizen of Australia. She has two sisters who are residents and citizens of the United States. (Transcript at 131-134.) Her husband has one brother who is a resident and citizen of the United States. He also has another brother and sister who are resident in and citizens of Taiwan. (Transcript at 22-27.) The Applicant's husband contacts his sister once or twice a year. (Government Exhibit 4 at 3.) Due to a business dispute, the Applicant's husband has no current contact with his brother. (Transcript at 119-120.)

The Applicant's parents are residents and citizens of Taiwan. Her father is 79, her mother is 77. The Applicant's father is a retired banker. When he was younger, he worked at the World Bank in Washington, D.C. He then returned to Taiwan and helped start the first private bank in that country. After a career which included stints as president and a member of the board of directors, he retired several years ago. (Transcript at 126-127.) The Applicant's mother is a retired physician and acupuncturist. She also lived and worked in the United States. Her mother and father last visited the Applicant and her family in the United States in 1999. The Applicant's parents have a home in Australia, in addition to their house in Taiwan. To her knowledge, neither of the Applicant's parents have been approached by the Taiwan government for information on the Applicant or her husband. (Transcript at 140.)

While the Applicant's mother was practicing medicine in Taiwan in the 1970s, one of her patients was a Taiwanese politician. He later became president of Taiwan. This politician attended the Applicant's wedding in 1981. This was the only time the Applicant or her husband ever saw this person. The Applicant's parents have never asked her about her work. (Transcript at 137-138, Applicant's Exhibit D.)

The Applicant was asked what she would do if she was approached by members of her family to obtain defense information. She stated in no uncertain terms that she is a proud American and would not respond to any attempt. (Transcript at 139-140.)

#### Mitigation.

The Applicant has been an important part of the company she helped form for almost 20 years. (Applicant's Exhibit R.) She has also helped raise a typical American family. Her oldest child and only son volunteered for the United States Marine Corps after September 11, 2001, and participated in the invasion of Iraq. (Applicant's Exhibit E.) The Applicant

and her husband are active in their community, as shown by the declaration of the County Executive of the county where they live and have their company. (Applicant's Exhibit F.) Other exhibits show that Company A is a very good corporate citizen. (Applicant's Exhibits G through L.)

Applicant's Exhibit A is a statement from the President of a wholly-owned subsidiary of Company A, Company B. Company B was formed in approximately 2003, "[Company B] is organizationally separate from [Company A] so that we can maintain our facility clearance and personnel security clearances and operate at a higher classified level than that of the parent corporation." (Applicant's Exhibit A at 2.) This person goes on to describe the Applicant as, "a typical corporate executive."

Concerning security in particular, the President states that Company B has had no incidents during his time as president. He also discussed the system for proprietary and sensitive information in use at both Company A and Company B. "We have a very tight program and have passed all of our inspections." (Applicant's Exhibit A at 2.)

Finally, he states, "[The Applicant and her husband] have never attempted to get any information out of this subsidiary that they were not entitled and authorized to have. They want information on what we are doing in contract performance, and how we are performing as a business, but nothing more. [Company A] has never breached any security protocol when asking for information from [Company B]." (Applicant's Exhibit A at 3.)

The General Counsel for Company A submitted a statement on behalf of the Applicant. (Applicant's Exhibit B.) The Applicant is described as a person of "modesty and humility." The General Counsel, who is also the facility security officer, states, "There is nothing in the security files for [the Applicant or her husband] which would indicate any reason for government concern." (Applicant's Exhibit B at 2.) She concludes by saying, "[The Applicant and her husband] set the standard for integrity at [Company A]; they are very honest and hard working people. . . . If anything, I believe [the Applicant and her husband] to be more patriotic and loyal than the typical native-born American, who takes this country's privileges for granted." (Applicant's Exhibit B at 3.)

Appellant's Exhibit C is a statement from a Site Manager for Company A. He states:

I have also observed [the Applicant and her husband] to be of the highest ethics. [Company A] has established numerous rules and procedures for the safeguarding of classified or otherwise sensitive information, as well as, ethical rules of conduct. Further, [the Applicant and her husband] encourage all employees to take an active role in reviewing and improving of [Company A's] policies and procedures. Employees are encouraged to identify any holes in existing procedures and to bring forward solutions to more effectively safeguard sensitive information. (Applicant's Exhibit C at 2.)

### **POLICIES**

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. 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 will be set forth under CONCLUSIONS, below.

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 factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- 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 guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may have foreign connections that could lead to the exercise of poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a 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."

### CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the granting of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant has foreign connections which could cause a security concern (Guideline B).

The Applicant, on the other hand, has successfully mitigated the Government's case. The Applicant has been an American citizen for 25 years, more than half of her life. She and her husband, who is also a long-time American citizen, have deep roots in the United States. They have established a very successful firm that provides important services to the Federal government. The Applicant's children and two sisters are American citizens, in fact her son is a Marine veteran of Operation Iraqi Freedom. She and her husband, in addition to their closely held corporation, have significant financial assets in the United States. From all the evidence, she is a successful professional woman and fine corporate citizen.

The evidence from the President, General Counsel and Site Manager (Applicant's Exhibits A, B and C), confirm that the Applicant and her husband work hard at protecting sensitive and proprietary information. The Applicant held an interim

Secret clearance in the past, and there is no information that she misused it.

The Applicant's parents continue to live in Taiwan, which despite being a democracy has a history of attempting to wrongfully appropriate technology. (Government Exhibits 10, 11, 12 and 13, Applicant's Exhibit T.) In contrast to the specific examples set forth in Government Exhibit 13, the Congressional Research Service stated in 2003 that the Taiwanese government, "responded to U.S. complaints by taking stronger measures to protect U.S. copyrights and other intellectual property rights." (Government Exhibit 11 at 11.) As owners of a business that deals in computer software and other technical material, the Applicant and her husband are very aware of this potential for wrongful technology transfer or infringement. In his testimony, concerning an unrelated company to Companies A or B, the Applicant's husband discussed his concerns with that problem with Taiwan. (Transcript at 45-46.)

That being said, there is little or no information that the Taiwanese government has threatened or attempted to intimidate its citizens to force Americans to reveal such information. Her parents, as well as the other relatives mentioned in the SOR, are not agents of the Taiwanese government. Her father and mother are successful professional people. It would not be appropriate in this case to hold their personal success against their daughter. As for the Applicant's mother's connection to a former president of Taiwan, the available evidence shows that the relationship was strictly that of doctor and patient, and occurred over 25 years ago. There is no current security significance to the relationship.

Disqualifying Condition 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*) is the only one which applies on its face. Under the particular facts of this case, the following Mitigating Condition applies: 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*).

In addition, the Applicant is also eligible for clearance under the relevant General Factor h. "The potential for pressure, coercion, exploitation or duress." Assuming, for sake of argument, that the position of the Applicant's foreign family members is significant and precludes application of Mitigating Condition E2.A2.1.3.1., the totality of this Applicant's conduct and circumstances, as set forth at length above, including the virtually non-existent potential for exploitation, still warrants a favorable finding under the whole person standard.

The record shows that she has been an American citizen for many years, her substantial financial assets are in the United States, as are almost all of her immediate family (especially her husband and children), she has favorable character references, and she is now alert to the security concerns presented by her particular circumstances and the responsibilities incumbent upon her.

The evidence shows that the Applicant is a patriotic American citizen. The Applicant eloquently testified about the importance of her family in the United States, and her pride in being an American citizen and owner of a defense industry. She is knowledgeable about security and understands her responsibility. Using any standard, the Applicant has mitigated the security significance of her foreign connections and is eligible for a security clearance.

On balance, it is concluded that the Applicant has successfully overcome the Government's case opposing her request for a DoD security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

### **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.

Subparagraphs 1.a. through 1f.: 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 the Applicant.

Wilford H. Ross

Administrative Judge

1. The Applicant's case was heard in conjunction with that of her husband, ISCR Case. No. 02-29005. The Decision in that case was also issued on May 22, 2006.