

KEYWORD: Foreign Influence

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

CASENO: 02-14250.h1

DATE: 08/09/2004

DATE: August 9, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-14250

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL H. LEONARD

APPEARANCES

FOR GOVERNMENT

Nygina T. Mills, Esq., Department Counsel

FOR APPLICANT

SYNOPSIS

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

STATEMENT OF THE CASE

On November 10, 2003, 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. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleges a security concern under Guideline B for foreign influence based on Applicant's family members (mother, father, brother, and two sisters) who are citizen residents of Taiwan (a/k/a the Republic of China). Applicant answered the SOR on November 14, 2003, and requested a hearing.

Department Counsel indicated she was ready to proceed on March 18, 2004, and the case was initially assigned to me March 22, 2004. On March 23, 2004, a notice of hearing was issued scheduling the hearing for April 21, 2004. Applicant appeared without counsel and the hearing took place as scheduled. DOHA received the transcript May 4, 2004.

RULINGS ON PROCEDURE

Department Counsel moved to amend the SOR to conform to the record evidence so that subparagraph 1.d. would read as follows:

You traveled to Taiwan for 10 days in 1999, and for two weeks in 2001, and in July 2002. [\(2\)](#)

Applicant did not object, and the SOR was amended accordingly.

FINDINGS OF FACT

In her Answer, Applicant admitted two of the four SOR allegations (subparagraphs 1.a and 1.b.) She denied the remaining two allegations with explanation (subparagraphs 1.c and 1.d.) Her admissions are incorporated into my findings. After a thorough review of the record evidence, I make the following essential findings of fact:

Applicant testified during the hearing and I find her testimony credible. In making this finding, I note that English is not Applicant's native language and allowances have been made for potential communication problems.

Applicant is a 44-year-old married woman. She is seeking to obtain access to classified information for her employment with a defense contractor since March 2001. Her job title is programmer and she works as a webmaster developing and maintaining web sites.

Applicant was born and raised in Taiwan. She is one of six children consisting of five daughters and one son. Two sisters are citizen residents of Taiwan as is her brother. Her other two sisters are citizen residents of the U.S. Her parents obtained resident alien status in the U.S., but elected to return to Taiwan where they remain.

Applicant first entered the U.S. in 1984 on a student visa. She remained here for approximately two years until she earned her master's degree in economics at a large state university. She returned to Taiwan in 1986.

Applicant's husband was born in Taiwan in 1951. He immigrated to the U.S. and became a naturalized U.S. citizen in 1986. Applicant met her husband while he was in Taiwan visiting his family. They married in May 1989, and Applicant immigrated to the U.S. as a spouse of a U.S. citizen in 1990, and she has resided here continuously. Applicant and her husband have three children, ages 12, 11, and 8. All children are native-born U.S. citizens and attend public school. Applicant's mother-in-law and father-in-law are naturalized U.S. citizens who reside in the U.S.

Applicant became a naturalized U.S. citizen in December 1993 when she took the oath of citizenship. She obtained a U.S. passport the same month and has possessed and used it to the exclusion of any foreign passport.

Applicant started working for her current defense contractor employer in March 2001. On March 14, 2001, Applicant completed a security-clearance application (Exhibit 1) disclosing she was born in Taiwan, obtained U.S. citizenship in 1993, and had family members who are Taiwanese citizens residing in Taiwan. She also disclosed traveling to Taiwan. She has traveled to Taiwan in 1999 for about ten days, in 2001 for two weeks, and, most recently, in July 2002, for which she used her U.S. passport at all times. The trips were uneventful in that she experienced no difficulties with or unusual questioning by Taiwanese officials. The purpose of her trips was to visit family.

Other than traveling to Taiwan to visit her family, Applicant has no other significant connections to Taiwan. She has no financial interests, business connections, or real estate holdings in Taiwan. Nor does she belong to any business or professional organization in Taiwan related to her work.

Of Applicant's five siblings, three (two sisters and the brother) are citizen residents of Taiwan. Both sisters are married to Taiwanese citizens. Both sisters have children of various ages. One sister is employed as a sales manager for a private company. The other sister works in quality assurance for a private company. Applicant's brother is an accountant and is employed by the Taiwanese Department of Education. His job involves auditing schools. He is married to a Taiwanese citizen and has children.

Applicant's parents, both 75 years old, are retired. Her father worked as a civil engineer for a local governmental agency. Her mother was fully occupied with household duties taking care of six children. Applicant provides no financial support to her parents as they are able to support themselves. Applicant communicates with her parents by telephone two to three times per month.

She calls her two sisters and one brother occasionally, but a few times per year. She believes she last spoke to her eldest sister two years ago. (3) She is closer to her other sister in Taiwan and probably speaks to her five times per year. (4) She believes she last spoke to her brother by phone one or two years ago. (5) Applicant speaks to her two sisters in the U.S. approximately once per week. (6)

Consistent with her decision to marry a U.S. citizen and move here at the age of 30, Applicant considers the U.S. her home. Although she has family members in Taiwan, Applicant points to her husband and children as her highest concern. When asked what her response would be if her family ties to Taiwan were used against her in an attempt to obtain classified information, Applicant replied:

My country, United States, my family is here, I don't - yeah, I don't have - yes, it's an animal instinct, you have to

protect your nest, you have to protect your family.

Yes, I have to protect my children, yes, my [prosperity] is here, our families [prosperity] is here. And, my country is the United States. I don't have any preference for Taiwan over United States.⁽⁷⁾

As requested by Department Counsel and without an objection by Applicant, I took official or administrative notice of the following facts: Taiwanese authorities generally respect the human rights of citizens, but there are some problem areas. Principal problems included police abuse of detainees, allegations of judicial corruption, violence and discrimination against women, child prostitution and abuse, restrictions on workers' freedom of association and on their ability to strike, and some instances of trafficking in women and children. (Exhibit 2).

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. Considering the record evidence as a whole, the following security guideline is most pertinent here: Guideline B for foreign influence.⁽⁸⁾

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.⁽⁹⁾ There is no presumption in favor of granting or continuing access to classified information.⁽¹⁰⁾ The government has the burden of proving controverted facts.⁽¹¹⁾ The U.S. Supreme Court has said the burden of proof in a security-clearance case is less than a preponderance of the evidence.⁽¹²⁾ The DOHA Appeal Board has followed the Court's reasoning on this issue establishing a substantial-evidence standard.⁽¹³⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽¹⁴⁾ 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.⁽¹⁵⁾ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹⁶⁾

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."⁽¹⁷⁾ 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 has established its case under Guideline B. The concern here is Applicant's family members in Taiwan. First, DC 1⁽¹⁸⁾ applies because Applicant has immediate family members who are citizens of and residents in Taiwan. Second, DC 3⁽¹⁹⁾ applies because of her brother's employment as an accountant with the Taiwanese Education Department. The brother's status as a government employee is sufficient to establish a connection to a foreign government. These circumstances may create the potential for foreign influence. The remaining disqualifying conditions do not apply given the record evidence.

I have reviewed the mitigating conditions under Guideline B and conclude that MC 1⁽²⁰⁾ applies. The record evidence shows Applicant's family members are not agents of the Taiwanese government. Although Applicant's brother is a Taiwanese government employee, his job as an accountant auditing schools does not fall within the meaning of "agent of a foreign power" in a national security context.⁽²¹⁾ The brother is a white-collar government worker whose auditing duties are confined to matters within the Taiwanese Education Department and do not involve contacts or interaction with the U.S. Government or any other foreign government. This situation is vastly different from a military officer or a governmental official involved in Taiwanese national defense, security, intelligence, or diplomatic matters. All her family members have rather ordinary, work-a-day lives (her parents are retired, her two sisters work for private, commercial firms, and her brother is a white-collar government worker) 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, it is most unlikely her family ties to Taiwan might be exploited.

Security clearance decisions are not an exact science, but are predictive judgments about a person's security suitability in light of the person's past conduct and present circumstances. ⁽²²⁾ Here, we have a woman who has lived in the U.S. since 1990, has been a law-abiding U.S. citizen since 1993, but has immediate family members who are citizen residents of Taiwan. Although the presence of her family ties to Taiwan may create the potential for foreign influence, it's clear her family ties are strongest to her immediate family in the U.S.; namely, her husband and her three native-born U.S. citizen children. Her testimony about responding with an "animal instinct" to "protect her nest" is powerful, convincing evidence of where her loyalties lie. Based on the totality of the facts and circumstances--and the whole-person concept--I conclude Applicant has mitigated the foreign influence security concern raised by her family ties to Taiwan. Accordingly, Guideline B is decided for Applicant.

FORMAL FINDINGS

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

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. Transcript at pp. 22-24, and 73.
3. Transcript at p. 59.
4. Transcript at p. 60.
5. Transcript at p. 63.
6. Transcript at p. 64.
7. Transcript at pp. 84-85.
8. Directive, Enclosure 2, Attachment 2, at pp. 21-22.
9. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
10. ISCR Case No. 02-18663 (March 23, 2004) at p. 5.
11. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
12. *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).
13. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
14. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
15. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
16. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.
17. *Egan*, 484 U.S. at 528, 531.
18. 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.
19. E2.A2.1.2.3. Relatives, cohabitants, or associates who are connected with any foreign government.
20. 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.
21. *See* 50 U.S.C. § 1801(b).
22. *Egan*, 484 U.S. at 528-529.