

DATE: June 30, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-15023

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Robert Tuider, Esq,

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 29-year-old employee of a defense contractor who is a native of Taiwan. She emigrated to the U.S. with her family in 1985 and became a citizen in 1993. She traveled to Taiwan in 1996 to live with her aging grandmother and work in private enterprise using her Taiwan passport to travel. One member of the family continues to live in Taiwan and some others live in the U.S. retaining Taiwanese citizenship. Applicant has unequivocally expressed her preference for the U.S. and her family pose no security threat or likelihood of providing pressure on her. Clearance is granted.

STATEMENT OF THE CASE

On March 24, 2003, the Defense Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, *Safeguarding Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to 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 Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated April 1, 2003, Applicant responded to the allegations set forth in the SOR, and requested a hearing. The case was assigned to another administrative judge who could not hold the hearing because of illness and it was re-assigned to me on May 21, 2003. A hearing was held on June 4, 2003. The Government introduced three exhibits at the hearing. The Applicant introduced six exhibits. All exhibits were accepted into evidence. The transcript was received on June 12, 2003.

FINDINGS OF FACT

Applicant has admitted all of the specific factual allegations in the SOR pertaining to the citizenship of her relatives and those pertaining to Applicant's citizenship and use of her passport. Those admissions are incorporated herein as findings

of fact. Applicant denied the general allegations in both paragraphs as to the implications and effect of the admissions on her ability to hold a security clearance

After a complete review of the evidence in the record and upon due consideration of the record the following additional findings of fact are made:

Applicant was born in Taiwan in 1974. Her maternal grandfather emigrated to the U.S. many years ago and became a U.S. citizen. To find a better life, Applicant's immediate family comprising her mother, father, brother, and sister came to the U.S. in 1985 through the sponsorship of her grandfather. They lived in one state for three years and subsequently moved to another where her father was a chef. Applicant became a citizen in July 1993 and obtained a U.S. passport six weeks later.(Tr. p. 16-18)

Applicant kept her Taiwan passport and renewed it in 1996 when she went back to Taiwan to stay with and care for her paternal grandmother. To support herself she worked as a computer programmer for an optical company making contact lenses for 18 months. Her Taiwan passport expired in 2002.(Tr. p.11)

Her paternal grandmother is now deceased. The only relative now living in Taiwan is an uncle who has no government connections.(Tr. p 23) Another uncle lives in the U.S. where he works as a chef but retains Taiwanese citizenship.

When Applicant returned to the U.S. in 1998 she worked for an information systems firm, a mortgage banker, and her present employer as a software programmer. She has a college degree in math and statistics.(Tr. p. 32)

Applicant supports her mother since her mother and father have been separated for many years. Applicant, her sister and their mother maintain a family home over 200 miles from Applicant's place of employment to which she commutes on most weekends. Applicant pays the mortgage on the home. Her sister works in a restaurant. Her maternal grandmother and aunt also live in the same city.(Tr. p.30)

Lack of language proficiency has prevented the older members of the family from obtaining citizenship. (Tr. p. 10)

Her father lives on the west coast and she has no contact with him or her brother.(Tr. p.31)

In addition to her principal job, Applicant works evenings and some weekends in a supermarket as a cashier.

Applicant is highly regarded for her abilities and her loyalty by both of her employers and has been recommended for promotion by her principal employer. (Exhibits A-F)

POLICIES

[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position that will give that person access to such information." *Id.* at 527.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the Applicant's clearance. "Any

doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b)

"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 make decisions that are harmful to the interests of the United States." Directive, ¶E2.A3.1. 1. The possession of a foreign passport is a strong indicator of such a preference.

The applicable Guidelines cited in the SOR concern the following Disqualifying Conditions (DC):

1. Foreign Preference, Guideline C

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

Conditions that could raise a security concern and may be disqualifying include the exercise of dual citizenship or possession and/or use of a foreign passport.

2. Foreign Influence, Guideline B

A security risk may exist when an individual's immediate family, including co-habitants, and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the United States 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.

Conditions that could raise a security concern and may be disqualifying include the fact that 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.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors and conditions above, I conclude the following with respect to all allegations set forth in the SOR.

Based on the evidence of record, including Applicant's admissions, the Government has stated reasons to deny her a security clearance because of foreign influence and foreign preference. Having established such reasons, the Applicant has the burden to establish security suitability through evidence which refutes, mitigates, or extenuates the disqualification and demonstrates that it is clearly consistent with the national interest to grant a security clearance. ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001) Mitigating factors are applicable and evidence was offered in mitigation to both admitted and denied allegations.

Applicant's family does not create any security problems under Foreign Influence Disqualifying Condition (DC) Guideline B. The only family member still in Taiwan is an uncle who is not a government employee and the relatives in the U.S do not present any likelihood of coercion or pressure against the Applicant. The family is apolitical and regard the U.S. as their true home maintaining very minimal contact with relatives still living in Taiwan.

Mitigating Condition (MC) 1 applies in that immediate family members are not agents of a foreign power or in a position to be exploited by a foreign power and thus do not constitute an unacceptable security risk.(E2.A2.1.3.1.)

Use of a foreign passport raises questions under foreign preference Guideline C. Although Applicant used her Taiwan passport to return there after becoming a citizen, she did so with no intent to practice dual citizenship or in any way disparage her U.S. citizenship. She made no effort to renew it when it expired in 2002.

Mitigating Condition (MC) 4 is applicable in that Applicant has renounced dual citizenship and expressed her strong

view against holding dual citizenship.

Applicant's record of employment in the U.S. is exemplary and she is highly regarded by her employers. She demonstrates great family loyalty and responsibility to her mother and grandparents.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude it is clearly consistent with the national interest to grant clearance to Applicant.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

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

Paragraph 1 Guideline C: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

DECISION

In light of all the circumstances and facts presented by the record in this case, it is clearly consistent with the national interest to grant a security clearance for Applicant.

Charles D. Ablard

Administrative Judge