

DATE: September 16, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-15595

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

While Applicant failed to disclose her foreign passport on her security form, she did disclose she was a dual citizen and mitigated security concerns over personal conduct. As she never used her foreign passport after she became a naturalized United States (U.S.) citizen in September 1999 and voluntarily complied with the Department of Defense policy requirements by cancelling her Taiwanese passport and renouncing her foreign citizenship in May 2003, she mitigated foreign preference concerns. Although her husband was a dual citizen, he too relinquished his passport and renounced his foreign citizenship. While her mother and siblings are citizens of Taiwan, one sibling is a U.S. citizen, and one is a citizen of Taiwan who lives in Canada, none have any ties to the government. Applicant has also mitigated concerns over foreign influence. Clearance is granted.

STATEMENT OF THE CASE

The Government could not reach the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant, [\(1\)](#) so the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on April 30, 2003. The SOR detailed security concerns in paragraph 1 over foreign preference (Guideline C), in paragraph 2 over foreign influence (Guideline B), and in paragraph 3 over foreign personal conduct (Guideline E). Applicant received the SOR and replied to these SOR allegations in an Answer forwarded on May 24, 2003 with attachments and requested a hearing. The case was assigned to Department Counsel who on June 13, 2003, attested it was Ready to Proceed, and the case was assigned to Administrative Judge John Metz. On June 30, 2003 the case was re-assigned to me because of regional rotation.

Subsequently, a mutually convenient date for hearing was agreed to and a Notice of Hearing issued on July 10, 2003, set the matter for July 28, 2003, at a location near where Applicant works and lives. At the hearing the Government asked that I take Official Notice of two documents (ON I & II) and introduced one exhibit which were admitted into evidence (Exhibit 1). Applicant testified herself and called one witness; she offered twelve exhibits (Exhibits A-L) which were admitted into evidence. The transcript (TR) was received on August 5, 2003.

FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following Findings of Fact:

Applicant, who is 47 years old, has worked for Company #1 from April 2001 to present as an engineer in State #1. In May 2001 she was asked to obtain a security clearance and completed an Office of Personnel Management (OPM) Security Clearance Application (Standard Form 86) (SF 86) to seek a security clearance. Previously she was unemployed from March to April 2001 and worked as a database administrator for Company #2 from 2000 to 2001 in State #1. (Exhibit 1; Exhibit E; TR 49-50)

Applicant received her undergraduate degree in Taiwan in Western literature and linguistics. (TR 36) She received an M.S. degree from a State #1 university in December 1990. (Exhibit 1)

Applicant married her husband in March 1983 in State #1. They have two sons born in the U.S. who are U.S. citizens and are ages 19 and 11. (Exhibit 1; Exhibit E; TR 13)

Foreign Preference and Foreign Influence

Applicant was born in Taiwan, Republic of China, and the several family members are citizens of Taiwan and remain there: her mother, ⁽²⁾ two sisters, and one brother. Also she has one sister who is a citizen of the U.S. and lives in the U.S. and one sister who is a dual citizen of Taiwan and Canada who lives in Canada and is a housewife. None of her siblings have any ties to the government. Applicant's husband became a naturalized U.S. citizen in October 1999 and is no longer a dual citizen of the U.S. and Taiwan. (Exhibit 1; Exhibit L; TR 29-32, 42-43)

Her brother and her sisters have only visited once in the U.S., and she does not have frequent contact with them. (TR 43-44)

Before she became a U.S. citizen, Applicant only visited her family twice in 1983 and in 1993. After 1998, she has gone back yearly to visit her family; she visited her mother twice in 1999 when her mother was ill. She calls her once every two months or for special holidays. Her mother is 80 and has never worked outside the home except to support her husband's animal feeds business. (Exhibit I; TR 30; 41, 43-44, 46)

Applicant came to the U.S. for graduate study in 1982 to get a masters degree and originally studied in State #2; she moved to State #1 after one semester to marry her boyfriend whom she had known since she was in college. (Exhibit E; TR 13, 35-36, 45-46) Before she became a U.S. citizen, she possessed a Taiwanese passport issued in March 1998 and in effect until March 2004. However, Applicant has lived in the U.S. for a total of 21 years and became a naturalized U.S. Citizen in September 1999. She took the Oath of Allegiance to the U.S. and in her mind renounced her citizenship and allegiance to the Taiwanese government that day. After she became a U.S. citizen, she immediately applied for and received a U.S. passport in April 2000. She never used her foreign passport after she became a U.S. citizen. When she traveled to Taiwan in 2000 and 2002, she used her U.S. passport. After she learned there were security issues with her maintaining dual citizenship, she contacted her embassy and took formal steps to relinquish her Taiwan passport in May 2003 and to renounce the Taiwanese citizenship. ⁽⁴⁾ She herself wrote "cancel" on the passport and cut a corner to make clear that it was an invalid passport. She has no intent to use this foreign passport in the future. She votes and owns property in the U.S. (Exhibit 1; Exhibits A, G, H, I, J, K; TR 13, 20-23, 28-29, 37-41, 47-48)

Applicant was asked to complete her SF 86 to seek a security clearance but was busy learning the job and did not focus on the application until two days before she was to fly to Taiwan to see her family for two weeks. She did not consult with anyone in the security office to clarify any question and misunderstood Question 15 on the SF 86. (TR 21-22, 27-28, 34, 37; 51-53; Exhibit 1; Exhibits F, G) While she failed to disclose on the SF 86 in response to Question 15 that she had an active passport issue by a foreign government, she did state she was a dual citizen with Taiwan. I conclude she had no intent "to hide" that she had a valid Taiwanese passport as she immediately disclosed it to the Special Agent of the Defense Security Service at the time of her interview. (Exhibit 1; TR 33, 34)

Applicant is trusted by her company to handle the entire payroll system and has been commended for her work. (TR 33)

Given Applicant's commitment to report any attempt to influence her, any risk of foreign duress or influence on Applicant and/or her immediate family would appear to be slight and clearly manageable as her family has no ties to the government. (TR 44-45)

References

Applicant's program manager testified that she is a "top employee" and recommended her for a security clearance. He had known her when she worked for the corporation in the 1996-98 period and urged her to reapply after she became a U.S. citizen. Once she re-joined the company she did the work of two other people who had been laid off. (Exhibit F; TR 53-56, 59)

Applicant received a Certificate of Appreciation from an executive vice-president of Company #1. He strongly recommended her for a security clearance as known her for over five years and she has worked on projects with great success. (Exhibits B, C ; TR 56)

Another vice-president gave her an "Employee of the Quarter" award. He highly recommended her as one of "the very brightest and energetic software engineers with the company." She has produced outstanding results in the two years she has worked for Company #1. (Exhibits B, D; TR 57)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. The mere presence or absence of any given adjudication policy condition is not decisive.

Based on a consideration of the evidence as a whole in evaluating this case, I weighed the following relevant Adjudication Guidelines:

Guideline C - Foreign Preference⁽⁴⁾

The Concern: 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:

- (1) the exercise of dual citizenship;
- (2) possession and/or use of a foreign passport⁽⁵⁾;

Conditions that could mitigate security concerns include:

- (1) Dual citizenship is based solely on parents' citizenship or birth in a foreign country;
- (4) Individual has expressed a willingness to renounce dual citizenship.

Guideline B - Foreign Influence

The concern: A security risk 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: (1) not citizens of the United States or (2) 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:

(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

Conditions that could mitigate security concerns include:

(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;

Guideline E - Personal Conduct

Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Conditions that could raise a security concern and may be disqualifying also include:

(2) The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

Conditions that could mitigate security concerns include:

(2) The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily;

(4) Omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided;

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order

to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance.

Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may only draw those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Guideline C - Foreign Preference

Applicant mitigated security concerns over her possible preference for a foreign country over the United States. At the time she applied for a security clearance she did hold a Taiwanese passport which raised security concerns: (1) the exercise of dual citizenship; (2) possession and/or use of a foreign passport as DoD policy clarification of August 16,

(6)

2000 explains that "possession and/or use of a foreign passport" may be a disqualifying condition. To mitigate an Applicant must surrender the foreign passport or obtain official approval for its use. While dual citizenship is not prohibited *per se*, any conduct indicating possible foreign preference does raise a security concern where such action would increase the risk of an individual being influenced by the needs, desires, or aims of a foreign nation. While Applicant possessed a foreign passport, after she became a naturalized citizen in September 1999, she applied for a U.S. passport and has used it exclusively for her travels. Applicant meets the mitigation guidelines as under MC (1), her dual citizenship was based solely on parents' citizenship or birth in a foreign country. To her credit, Applicant voluntarily complied with DoD guidance soon after she became aware of the proper way for individuals to take corrective avenue to mitigate this security concern: Applicant surrendered her foreign passport and voluntarily renounced her foreign citizenship in 2003. She maintain that her principal preference is for the U.S. She falls within MC 4 as she not only expressed willingness to renounce her dual citizenship, she backed up this statement with actions to fully complied with DoD policy guidance on foreign passports.

After reviewing all of the evidence in the record and considering all of the security policies, including the August 16, 2000, policy clarification memorandum, I conclude she has mitigated the concerns and has indicated her clear preference for the United States. Security clearance decisions are predictive judgments about an applicant's security eligibility in light of the applicant's past conduct and present circumstances. *Department of Navy v. Egan*, 484 U.S. 518, 528-29 (1988). Acts indicative of foreign preference warrant careful scrutiny. Hence, I decide SOR paragraph 1 and subparagraphs 1.a. and 1.b. for Applicant.

Guideline B - Foreign Influence

The Government also expressed security concerns over Applicant's possible foreign influence raised by her close ties of affection to citizens of a foreign country: she has a husband who she reported was a dual citizen of the U.S. and Taiwan (7) and her parents and several siblings at the time she applied for a security clearance were citizens of Taiwan and several resided there. The security concern under Guideline B, Foreign Influence, is that a security risk may exist when an individual's immediate family. . . and other persons to whom he or she may be bound by affection, influence, or obligation are: (1) not citizens of the United States or (2) 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: (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.

Security clearance decisions are predictive judgments about an applicant's security eligibility in light of the applicant's past conduct and present circumstances. *Department of Navy v. Egan*, 484 U.S. 518, 528-29 (1988). Acts indicative of foreign influence warrant careful scrutiny. These security concerns are mitigated by the fact that Applicant's relatives have no ties to the foreign government; nor is there any substantial likelihood that they would exercise foreign influence over Applicant. Merely because of these family ties Applicant is not vulnerable to duress. Given her history of responsible conduct in the U.S., I think it improbable that any of her family members would create a situation that could result in the compromise of classified information. Contacts with citizens of other countries are relevant to security determinations only if they make an individual potentially vulnerable to coercion, exploitation, or pressure through threats against those foreign relatives. Given Applicant's clear commitment to report any attempt to influence her, any risk of foreign duress or influence on Applicant and/or her immediate family would appear to be slight and clearly manageable. She is highly regarded by the managers at her company who have recommended her for a security clearance.

After considering the Adjudicative Process factors and the Adjudicative Guidelines, I conclude these ties are not of such a nature as to create any tangible risks of undue pressure, so do not invoke such foreign influence concerns. Thus, I resolve SOR paragraph 2 and subparagraphs 2.a. through 2.e. in Applicant's favor.

Personal Conduct

The Government advanced security concerns over personal conduct issues: Applicant had an opportunity on the security

form to disclose her active passport from Taiwan in answering question 15 which raised concerns over Applicant's behavior reflecting questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations and could indicate that she may not properly safeguard classified information. While Applicant conceded her mistake in failing to disclose her foreign passport, she rebutted and overcome the Government's concerns by demonstrating that she has mitigated⁽⁸⁾ this conduct under Mitigating Conditions (MC) (2), the falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily; and under MC (4), omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided. In her subsequent DSS interview she fully disclosed her foreign passport and had disclosed in answer to another question of the SF 86 that she was a "dual citizen" of Taiwan. She completed the form when she was under pressure and failed to ask for clarification on the form. She did not intend to falsify. Her program manager confirmed that work pressures and her failure to ask for clarification contributed to the omission on the form. In general, she is highly regarded at Company #1:

- Applicant's program manager testified that she is a "top employee" and recommended her for a security clearance. He had know her when she worked for the corporation in the 1996-98 period and urged her to reapply after she became a U.S. citizen. Once she re-joined the company she did the work of two other people who had been laid off.
- Applicant received a Certificate of Appreciation from an executive vice-president of Company #1. He strongly recommended her for a security clearance as he has known her for over five years and she worked on projects with great success.
- Another vice-president gave her an "Employee of the Quarter" award and highly recommended her as one of "the very brightest and energetic software engineers with the company." She has produced outstanding results in the two years she has worked for Company #1.

Hence, I consider her omission isolated and unintentional in light of her excellent reputation in her work environment. After considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraph 3.a. under SOR Paragraph 3.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1.Guideline C: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Paragraph 2. Guideline B: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

Subparagraph 2.d.: For Applicant

Subparagraph 2.e.: For Applicant

Paragraph 3. Guideline E: FOR APPLICANT

Subparagraph 3.a.: For 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.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.
2. Applicant's father died in May 2003. (SOR 2.b.) (TR 12; 30-31, 41)
3. When she completed the security form, she thought that having a valid passport from Taiwan made her a dual citizen. Her supervisor testified that he did not know she did not understand the questions on the form and that he had pressured her to complete it quickly. (TR 29-30; 52-55; Exhibit 1)
4. See also the DoD August 16, 2000, **Clarification of Department of Defense Policy on Foreign Preference** which clarified the policy on Foreign Preference, Guideline C and stated, in part:

The purpose of this memorandum is to clarify the application of Guideline C to cases involving an applicant's possession or use of a foreign passport. The Guideline specifically provides that "possession and/or use of a foreign passport" may be a disqualifying condition. It contains no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country. The only applicable mitigation factor addresses the official approval of the United States Government for the possession or use. The security concerns underlying this guideline are that possession and use of a foreign passport in preference to a U.S. passport raises doubt as to whether the person's allegiance to the United States is paramount and it could also facilitate foreign travel unverifiable by the United States. Therefore, consistent application of the guideline requires that any clearance be denied or revoked unless the applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United State Government. Modification of the Guideline is not required.
5. DoD policy clarification of Guideline C issued in August 2000 made clear that "any clearance [must] be denied or revoked unless the applicant surrenders the foreign passport"
6. The policy contains no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country.
7. Taiwan is a country that engages in economic espionage against the United States. (ON I & II)
8. **Conditions that could mitigate security concerns include:** 1. The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability; 2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily; 3. The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts; 4. Omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided; 5. The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress; 6. A refusal to cooperate was based on advice from legal counsel or other officials that the individual was not required to comply with security processing requirements and, upon being made aware of the requirement, fully and truthfully provided the requested information; 7. Association with persons involved in criminal activities has ceased.