

DATE: February 27, 2004

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-18921

## **DECISION OF ADMINISTRATIVE JUDGE**

**PHILIP S. HOWE**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Jennifer I. Campbell, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant immigrated to the United States when she was 13 years old, and has lived here for the past 30 years, obtaining an education here, marrying, and raising a family. Applicant has no relationship with her half-siblings in Taiwan, but does remain in close contact with her aged father, who is ill. Applicant mitigated the foreign influence concerns. Clearance is granted.

### **STATEMENT OF THE CASE**

On August 11, 2003, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, 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. The SOR detailed reasons under the personnel security Guideline B (Foreign Influence) 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. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

In a signed and sworn statement, dated September 17, 2003, Applicant responded to the SOR allegations. She requested a hearing. This case was originally assigned to another Administrative Judge. The case was reassigned to me on November 15, 2003 due to caseload considerations. A Notice of Hearing was issued on November 15, 2003, setting the hearing for December 5, 2003. On that date, I convened the hearing to consider whether it is clearly consistent with the national interest to grant Applicant's security clearance. The Government presented three exhibits which were admitted into evidence. Applicant appeared and testified. Applicant submitted 14 exhibits into evidence. The Government moved to amend the SOR to strike the word "Peoples" in subparagraph 1.a. because the evidence would show Applicant's father was a citizen of the Nationalist Republic of China on Taiwan, not the communist Peoples Republic of China, thereby conforming that paragraph's allegations to the remaining allegations in the SOR. Applicant had no objection and

I granted the motion. I received the transcript (Tr.) of the hearing on December 22, 2003.

### FINDINGS OF FACT

Applicant admitted four of the allegations contained in the SOR (subparagraphs 1.b., 1.c., 1.d., and 1.e.). Those admissions are incorporated herein as findings of fact. Applicant denied the allegation in subparagraph 1.a. as originally alleged. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is employed part-time by a defense contractor, and has been for several years. She is married and has two children born in the United States. She has had a security clearance for 20 years, and would report any attempts by anyone to approach her for classified information. Applicant considers the United States her country, and her children's country and would not do anything to harm its interests. (Tr. 24, 35)

Applicant is a naturalized United States citizen. She was naturalized in 1979. Applicant immigrated from Taiwan when she was 13 years old. She immigrated with her mother after her parents were divorced in 1975. Applicant attended middle school, high school, and college in the United States. Applicant has a master's degree in computer science. (Tr. 16, 19, 26, 27; Applicant's Exhibit A)

Applicant visited her father who remained living in Taiwan only once or twice while she was growing up. She and her mother did not have much money to spend on airfare to Taiwan. Applicant spoke with her father during that time once a month by telephone. (Tr. 27)

Applicant's father had two children, a boy and a girl, by his second marriage. Applicant and her half-siblings do not know each other very well. Her half-siblings are at least 13 years younger than Applicant is, and lived in Taiwan all the while Applicant lived in the United States. Applicant speaks with her half-sister once a year. Her half-sister is studying in a Ph.D. program in a Taiwanese university. Her half-brother is employed in a company on Taiwan in the computer science field. Applicant does not communicate with her half-brother because she does not know him at all. (Tr. 27, 32, 33)

After Applicant's mother died, Applicant became closer to her father, especially after he was diagnosed with cancer. Applicant calls her father every week or every other week to check up on him. Applicant married a man born and raised in the United States. She does not have any extended family in the United States. (Tr. 28)

Applicant's father worked in and retired from the Taiwanese Ministry of Economic Affairs, which was involved in economic development in Taiwan. He worked in an administrative capacity with that agency. He is paid a pension by the Taiwanese government. Applicant is not certain about the kind of work her father did for that agency, but is certain he was only an employee, and not a policy-making official. Applicant's father retired in 1990. He is 79 years old. Applicant does not supply him with any funds, because he has his pension and investments. He would like to immigrate to the United States someday. (Tr. 28 to 30, 33)

Applicant is a person of good character, and is well respected in her community. (Applicant's Exhibits F through I).

### 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. The president has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgement, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* Section 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicted upon the applicant meeting the security guidelines contained in the Directive.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines that must be carefully considered according to the pertinent Guideline in making the overall common sense determination required.

Each adjudicative decision must also include an assessment of: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 (See Directive, ¶ E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

Initially, the Government must establish, by substantial 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. All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at \*\*6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. See Directive Para E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "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 Para. E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see Exec. Or. 12968 Section 3.1(b).

Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

### **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 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. Directive ¶ E2.A2.1.1.

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. Directive ¶ E2.A2.1.2.1.

Conditions that could mitigate security concerns include:

(1) A determination that the immediate family members 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 persons involved and the United States. Directive ¶ E2.A2.1.3.1

### **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 each allegation set forth in the SOR:

Applicant has close ties with her aged father, who is ill with cancer and living in Taiwan. Applicant speaks with her father at least twice per month by telephone. The Government proved that Disqualifying Condition (DC) 1 applies.

Applicant showed by her documentary evidence and testimony that she has very close ties of affection to the United States, having lived here since she was 13 years old. Applicant is now 43 years old, so the vast majority of her life has been in the United States. Her children were born and are being raised here. Applicant is close to her father, but not to her half-siblings, the issue of her father's second marriage. In effect, she has no relationship with them. Applicant demonstrated she is not vulnerable to exploitation by her family, and that they are not in a position to be exploited by the Taiwanese government, forcing Applicant to choose between loyalty to her father and half-siblings and the United States. Her father's age, nearly 14 years of retirement, and independent income do not impose obligations on Applicant. Mitigating Condition (MC) 1 applies. I find for Applicant on this Guideline B.

### **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 the Applicant

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: For the 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 or continue a security clearance for Applicant. Clearance is granted.

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Philip S. Howe

Administrative Judge