

KEYWORD: Foreign Influence

DIGEST: Applicant was born in Taiwan and immigrated to the U.S. in 1973. She has been a U.S. citizen for over 20 years and has held a security clearance for 14 years. Applicant mitigated foreign influence security concerns raised because of her immediate family members who are citizen residents of Taiwan. Clearance is granted.

CASENO: 02-20868.h1

DATE: 07/16/2004

DATE: July 16, 2004

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-20868

**DECISION OF ADMINISTRATIVE JUDGE**

**JAMES A. YOUNG**

**APPEARANCES**

**FOR GOVERNMENT**

Francisco J. Mendez, Esq., Department Counsel

**FOR APPLICANT**

### **SYNOPSIS**

Applicant was born in Taiwan and immigrated to the U.S. in 1973. She has been a U.S. citizen for over 20 years and has held a security clearance for 14 years. Applicant mitigated foreign influence security concerns raised because of her immediate family members who are citizen residents of Taiwan. Clearance is granted.

### **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 16 October 2003, DOHA issued a Statement of Reasons [\(1\)](#) (SOR) detailing the basis for its decision-security concerns raised under Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing on 28 October 2003 and elected not to have a hearing before an administrative judge. She notified DOHA on 10 February 2003 that she had changed her mind and wanted a hearing before an administrative judge. The case was assigned to me on 22 March 2004. The scheduling of the case was delayed while her attorney performed 30 days of reserve duty in the U.S. Army. On 12 May 2004, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on 21 May 2004.

### **FINDINGS OF FACT**

Applicant is a 49-year-old quality assurance engineer for a defense contractor. She is married to a native-born U.S. citizen.

Applicant was born in Taiwan of Taiwanese citizens. In 1973, Applicant immigrated to the U.S. as the wife of a U.S. serviceman. She became a U.S. citizen in 1982. She is currently married to her third husband who is a retired member of the U.S. military.

Applicant's parents, brother, and three sisters are citizen residents of Taiwan. None of Applicant's immediate family members are agents of a foreign power. Her father and brother served their mandatory military service commitments in Taiwan. Applicant's parents are retired. Her father owned a construction business and her mother helped him. Her brother is a firefighter. Her sisters are an accountant, an operating technician at a hospital, and a drug store owner. Applicant telephones her parents twice a month and on special occasions. She speaks on the telephone to some of her siblings monthly and others about twice a year. Applicant normally visits her family in Taiwan every other year, but returned to Taiwan last year when her mother was ill. The Taiwanese passport on which she immigrated to the U.S. in 1973 expired in 1978. She now travels exclusively on her U.S. passport.

Applicant does not support her family in Taiwan, nor does she receive such support from them. She has no foreign financial interests.

Applicant has worked for her current employer since 1988. She has held a secret security clearance since 1990. Her supervisors and corporate management report that Applicant is honest, trustworthy, reliable, and hardworking. They know of no impediment to her possessing a security clearance. She has had no security violations or adverse security incidents.

## **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 judgment, 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* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

## CONCLUSIONS

In the SOR, DOHA alleged Applicant's parents (¶ 1.a.) and four siblings (¶ 1.b.) were citizen residents of Taiwan. A security risk may exist when an applicant's immediate family, or other persons to whom he 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. Directive ¶ E2.A2.1.1.

The Government established by substantial evidence and Applicant's admissions each of the allegations in the SOR. Applicant has immediate family members who are citizen residents of a foreign country. DC E2.A2.1.2.1. While the

mere possession of family ties with persons in a foreign country is not, as a matter of law, automatically disqualifying . . . [it] does raise a prima facie security concern sufficient to require an applicant to present evidence of rebuttal, extenuation or mitigation sufficient to meet the applicant's burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for the applicant.

ISCR Case No. 99-0424, 2001 DOHA LEXIS 59 (Feb. 8 2001) at 33-34. It is a mitigating condition if the immediate family members are not agents of a foreign power and are not in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to her family members and loyalty to the U.S. MC E2.A2.1.3.1.

In determining whether the family members are vulnerable to exploitation, a judge should consider, among other things,

the character of the government and foreign country involved. The parties disagree on the character of Taiwan. The Government claims Taiwan poses a threat to national security because, in the past, it was one of the countries most actively engaged in industrial espionage and the collection of foreign economic information. Ex. 3. On the other hand, Applicant established that Taiwan poses less of a threat today because it has friendly relations with the U.S., has a democratic political system, has made dramatic steps toward improving its respect for human rights, has ended restrictions on freedom of the press and the formation of new political parties, and has relaxed restrictions on personal freedoms. Ex. C.

The Appeal Board has cautioned judges against making "overly simplistic distinctions between 'friendly' nations and 'hostile' nations" when deciding foreign influence cases. ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at \*\*15-16 (App. Bd. Mar. 29, 2002). Relations between nations often change, even friendly nations may have "profound disagreements" with the U.S. over some issues affecting their national security, and not all cases of espionage against the U.S. involve nations hostile to the U.S. *Id.* "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). The claims of the parties are not irreconcilable. Taiwan can still be an ally and friend and pose a threat to obtaining national security information.

Security clearance decisions are not an exact science. Instead, they are predictive judgments about a person's security suitability in light of that person's past conduct and present circumstances. *Egan*, 484 U.S. at 528-529. In this particular case, we have a woman who has been in the U.S. over 30 years, has been a U.S. citizen over 20 years, and has held a security clearance for the past 14 years without adverse incident, but has immediate family members who are citizen residents of Taiwan. The government is not estopped from making an adverse clearance decision when there have been prior favorable adjudications. ISCR Case No. 01-24504 at 3 (App. Bd. Feb. 11, 2003). At the same time, one should not minimize the importance of an applicant's past conduct, under the same conditions, in reaching a security suitability determination.

After carefully evaluating the evidence in this case, including the recent significant changes in the character of the Taiwanese government, the lack of evidence of terrorism in the country, the unlikelihood of the government or other foreign organizations attempting to exploit her parents, Applicant's long-term ties to the U.S., her job performance and security clearance history, and the whole person concept, I conclude Applicant has mitigated the foreign influence security concerns raised by her family members in Taiwan.

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

**DECISION**

In light of all of 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.

**James A. Young**

**Administrative Judge**

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).