

DATE: November 30, 2004

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 02-20800

**DECISION OF ADMINISTRATIVE JUDGE**

**ROBERT J. TUIDER**

**APPEARANCES**

**FOR GOVERNMENT**

Edward W. Loughran, Esq., Department Counsel

**FOR APPLICANT**

Laverne R. Close, Personal Representative

**SYNOPSIS**

Although her family ties to Taiwan raise a security concern, Applicant has successfully mitigated the concern because of the totality of the circumstances show her family ties do not pose an unacceptable risk or concern of foreign influence. Additionally, Applicant has worked in the defense industry since 1982 and held a security clearance in excess of 20 years without incident. Applicant also successfully mitigated a security concern about her inadvertent omission of certain family members on her security clearance application. 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 September 24, 2003, DOHA issued a Statement of Reasons (SOR) <sup>(1)</sup> detailing the basis for its decision-security concerns raised under Guideline B (Foreign Influence), and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on October 21, 2003 and elected to have a hearing before an administrative judge. The case was assigned to me on January 7, 2004. On January 20, 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.

At the hearing, the Government presented eight exhibits, which were marked as Government Exhibits (GE) 1 through 8, without objection. Applicant presented two exhibits, which were marked as Applicant Exhibits (AE) A and B, without objection. DOHA received the transcript (Tr.) of the proceeding on January 30, 2004.

**FINDINGS OF FACT**

Applicant is a 51-year-old software engineer for a defense contractor. She was born and raised in the Republic of China (Taiwan). She attended a university in Taiwan from September 1973 to June 1977 and was awarded a bachelor of arts degree. In May 1977, she married her husband in Taiwan and they immigrated to the United States in September 1977. Applicant attended two universities after arriving in the United States, the first from September 1979 to June 1980, and the second from September 1980 to May 1982. She was awarded a bachelor of science degree in computer science from

the second university.

Applicant and her husband have three sons all born in the United States, ages 26, 22, and 17. Her first son has graduated from college, her second son is in college, and her third son is in high school. All three sons are resident citizens in the United States. Applicant became a naturalized citizen in May 1983 and her husband became a naturalized citizen in April 1982. Applicant has worked in the defense industry since 1982 and has held a secret clearance in excess of 20 years. Applicant's husband is employed as an engineer.

Applicant's parents are resident citizens of Taiwan. In 1948, they emigrated from the Peoples Republic of China (China) to Taiwan after the Communist takeover and still live there. Her father is 85 years old and her mother is 80 years old. Her father retired from the Taiwanese military as an officer and receives a pension from the Taiwanese government for his military service. He has no contact with the Taiwanese government. He currently is employed part-time as a manager for a taxi company. Applicant's mother has been a housewife her entire life. Applicant visits her parents annually and communicates with them by telephone approximately two times per month.

Applicant has one brother, who is a resident citizen of China and is not employed. Her brother remained in China when the family immigrated to Taiwan before she was born. Since her parents left China, she has only seen him once in December 1994 on a visit to see her parents in Taiwan. During that visit, her father requested her to see her brother and she agreed. Applicant and her parents traveled from Taiwan to Hong Kong, where a five-day visit took place between Applicant, her brother, and her parents. Since then, she has not seen him nor has she communicated with him.

Applicant has two sisters, who are resident citizens of Taiwan. One sister holds a United States green card, but is with her husband in Taiwan, who is employed by a United States company. Neither sister nor her brothers-in law are employed by the Taiwanese government

Applicant's father-in-law and mother-in-law are from Taiwan and are naturalized citizen residents of the United States. Applicant's husband is one of seven children, all of whom were born in Taiwan. Of those seven siblings, five are naturalized resident citizens of the United States, including Applicant's husband, one sibling is a non-citizen resident of the United States, who holds a green card, and one sibling is a citizen resident of Taiwan.

Applicant was cited in her SOR for falsifying her security clearance application, dated November 30, 1999, for failing to list her brother, who is a resident citizen of China, her two sisters, who are resident citizens of Taiwan, and extended family members who are resident citizens of Taiwan. Applicant responded in her Answer to the SOR and testified at hearing that her failure to list the above family members was an unintentional omission. Applicant had provided this information on two previous security clearance applications, dated September 30, 1983 and March 21, 1990. GE 2 and GE 3. She further disclosed these family members and their status to the Defense Security Service in two signed, sworn statements dated December 5, 1983 and December 4, 2001. GE 4 and GE 5.

Applicant and her husband own a home and rental property in the United States. She is registered to vote, maintains bank accounts in the United States, and exercises all rights of citizenship. Applicant expressed great affection and loyalty for the United States. She has a demonstrated history of being a trusted and valued employee with no security breaches during the 20 plus years she has held a security clearance.

### 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

### **Guideline B-Foreign Influence**

In the SOR, DOHA alleged Applicant's parents, sisters, and extended family members are resident citizens of Taiwan; (¶ 1.a); that Applicant's brother is a resident citizen of China (¶ 1.b); and that Applicant travels annually to Taiwan to visit her parents (¶ 1.c). 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 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. 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 at \*\*33-34 (App. Bd. Feb 8, 2001). It is a mitigating condition if the immediate family members or associates 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 his family members and loyalty to the United States. MC E2.A2.1.3.1.

Security clearance decisions are not an exact science. Instead, they are predictive judgments about an Applicant's security suitability in light of that person's past conduct and *present circumstances*. *Egan*, 484 U.S. at 528-29. Applicant is a loyal United States citizen, and has strong ties of affection or obligation to her family members, in particular her aging parents, who are resident citizens of Taiwan. Applicant's primary purpose in traveling to Taiwan has been to visit her aging parents and to check on their well being. None of Applicant's relatives are agents of a foreign power. Although Applicant's father retired from the Taiwanese military as an officer and receives a pension, he has no contact with Taiwanese government officials and is employed in the private sector as a part-time manager of a taxi company.

Applicant has only seen her brother, who is a resident citizen of China, one time and that was ten years ago in 1994 in Hong Kong at the request of her father. Since that visit, Applicant has not seen her brother nor does she maintain contact with him. Applicant has three children born in the United States. She and her husband are naturalized United States

citizen. Most significantly and persuasively, Appellant has worked in the defense industry since 1982 and has held a security clearance for over 20 years without incident. She has a proven track record of loyalty and trust to her employer and the United States. Under the totality of circumstances, I find for Applicant.

### **Guideline E-Personal Conduct**

In the SOR, DOHA alleged Applicant falsified material facts on her security clearance application dated November 30, 1999 by failing to list her brother, sisters and extended family members (¶ 2.a). A security risk may exist by 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. Directive ¶ E2.A5.1.2.2.

While Applicant could reasonably have been expected to be more diligent about ensuring her security clearance application was complete with regard to her family members, her judgment lapses are not enough to impute knowing and willful falsification under Guideline E.

Applicant previously listed all of the omitted family members on two previous security clearance applications submitted in September 1983 and March 1990. She also discussed her family members in written statements previously submitted in December 1983 and December 2001. Applicant's explanations of her omissions due to oversight, her previous submission of this information, and credible testimony in this regard are persuasive enough to avert inferences of knowing and wilful omission. There being no misconduct substantiated, no need to show extenuation or mitigation arises. *Cf.* ISCR Case No. 02-13568 (February 13, 2004.).

### **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

Subparagraph 1.c.: For Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a.: 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.

**Robert J. Tuider**

**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.