

KEYWORD: Foreign Influence; Personal Conduct

DIGEST: Applicant was born in Taiwan in 1962. She came to the U.S. in 1978, at age 15. She became a U.S. citizen in 1986, married, and has two teenage children. She has worked with a DoD security clearance since 1986. She has a warm relationship with family and in-laws in Taiwan. Two in-laws are retired Captains in the Taiwan Navy. She recognizes her responsibilities in protecting classified information and strongly avers that she would promptly report any improper contacts from any source. Company officials agree that she is trustworthy, dedicated and loyal to the U.S. Mitigation has been established. Clearance is granted.

CASENO: 03-22707.h1

DATE: 07/19/2005

DATE: July 19, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-22707

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant was born in Taiwan in 1962. She came to the U.S. in 1978, at age 15. She became a U.S. citizen in 1986, married, and has two teenage children. She has worked with a DoD security clearance since 1986. She has a warm relationship with family and in-laws in Taiwan. Two in-laws are retired Captains in the Taiwan Navy. She recognizes her responsibilities in protecting classified information and strongly avers that she would promptly report any improper contacts from any source. Company officials agree that she is trustworthy, dedicated and loyal to the U.S. Mitigation has been established. Clearance is granted.

STATEMENT OF THE CASE

On December 21, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding required under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether a clearance should be granted, denied or revoked.

On January 14, 2005, Applicant submitted a response to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge after a hearing. The matter was assigned to me for resolution on March 25, 2005. After granting Applicant's Motion for a continuance on May 6, 2005, I issued an Amended Notice of Hearing, setting the hearing for May 24, 2005. At the hearing, the Government did not present any witnesses but offered six exhibits, which were marked for identification as Government Exhibits (GX) 1-6. Applicant testified, called five other witnesses, and offered five exhibits, which were marked as Applicant's Exhibits (AX) A-E). All exhibits were admitted without objection. The transcript (Tr) was received at DOHA on June 6, 2005.

FINDINGS OF FACT

Applicant is a 42-year-old software engineer. She was born in Taiwan (Republic of China) in 1962. She came to the United States in 1978, at 15, and became a U.S. citizen in 1984. She received a Master's Degree from a major U.S. university in 1986, and has been working for defense contractors for most of her career. She is married and has two children, 16 and 18. She first received a Top Secret DoD security clearance in 1986 (Tr at 22, 23). She regularly votes in all U.S. elections and has served as a juror (Tr at 24). Her "houses" are paid off and she has investments and "comfortable savings inside and outside a 401(k)" (Tr at 25). Her net worth is about \$1.6 or \$1.7 million. She has no assets in Taiwan or anywhere else outside the U.S. (Tr at 25, 26). The citizenship and residence status of all of the relatives cited in the SOR is the same as it was when she first obtained a security clearance and Applicant does not think any of them are agents of a foreign government or in a position to be exploited" (Tr at 26).

The SOR contains 12 allegations, 1.a. - 1.l., under Guideline B (Foreign Influence) and one allegation under Guideline E (Personal Conduct). Applicant *admits* all the allegations under Guideline B and *denies* the single allegation under Guideline E. Applicant's admissions are accepted and incorporated herein as Findings of Fact. After considering the totality of the evidence derived from the hearing testimony and all evidence of record, I make the following additional FINDINGS OF FACT as to each SOR allegation:

Guideline B (Foreign Influence)

1.a. - Applicant's father (in his 80s) and mother (in her 70s) are citizens and residents of Taiwan.

1.b. - Applicant maintains weekly telephone contact with her parents.

1.c - Applicant's parents immigrated to the U.S. in 1978, but then returned to Taiwan.

1.d. - Applicant's brother is a citizen of and resident in Taiwan.

1.e. - Applicant's sister is a citizen of and resident in Taiwan.

1.f. - Applicant maintains monthly e-mail contact with her sister.

1.g. - Applicant's father-in-law and mother-in-law are citizens of and resident in Taiwan.

1.h. - Applicant's father-in-law and mother-in-law resided with her in the United States from approximately 1987 to 1997, before returning to Taiwan.

1.i. - Applicant's father-in-law was a Captain in the Taiwan Navy. He retired more than 20 years ago.

1.j. - Applicant's brother-in-law retired as Captain in the Taiwan Navy in about 2003. He was sometimes away at sea but she does not know what he did (Tr at 59).

1.k. - Applicant traveled to Taiwan during the summers of 1985, 1986, 1990, 1995, and 2002.

She used her Taiwan passport on only one occasion, in 1995, because using her American passport would have required many hours of travel and waiting time to have her visa extended while in Taiwan. All other trips were shorter and did not require a visa extension. On all of these trips, she used her U.S. passport.

1.l. - Years ago, Applicant's parents purchased an apartment for Applicant in Taiwan. She does not use it, and has no idea what will happen to the apartment in the future. Its value is minimal in comparison with her assets in the U.S. (Tr at 51-53).

Overall, I find that Applicant has established an unequivocal preference for the United States over Taiwan.

Guideline E (Personal Conduct)

2.a. - Applicant did not intentionally falsify material facts on her security clearance application (GX 1), dated December 10, 2002, when she responded to Question **15. Your Foreign Activities - Passport** -In the last seven years, have you had an *active* passport issued by a foreign government? by answering "No," and failing to disclose that she had renewed her Taiwan passport in May 1995 (GX 4, at last page1). She did not understand the word *active* to mean *valid*. Instead, she understood *active* to ask whether she had done anything with the passport in the previous seven years, which she had not. In any case, seven years prior to the December 2002 signing of the SF 86 would be December 1995, so May 1995 would be outside the seven-year reporting period. Consequently, Applicant was not required to answer "Yes" to this question.

POLICIES

Each adjudicative decision must include an assessment of nine generic factors relevant in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowing participation; (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 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 (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons.

If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

CONCLUSIONS

In all DOHA decisions, the facts and circumstances, viewed under the Directive's Guidelines, determine the outcome. The 12 admitted Guideline B allegations are supported by the evidence of record, and have a logical connection or "nexus" to the issue of Applicant's eligibility to hold a DoD security clearance. The remaining question is whether Applicant has adequately mitigated or extenuated the Government's concerns under Guideline B. As stated above under Findings of Fact, the Government has not established that Applicant acted improperly under Guideline E.

The *Guideline B* allegations are based on the facts that (1) Applicant has relationships with specific members of her own family and those of her husband, who are citizens and residents of Taiwan. That country is considered friendly to the United States, but is known to the U.S. Government to be actively involved in industrial espionage.

The Concern - A security risk may exist when an individual's immediate family [members] . . . 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 . . . are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Applicant clearly has close personal ties to numerous individuals who are citizens and residents of Taiwan. I have considered the number of such foreign relatives, the closeness of the significant relationships, and the status of at least two relatives, specifically her father-in-law and brother-in-law, both of whom are retired Captains in the Taiwan Navy.

The nature and amount of contact with foreign relatives are always factors that must be considered. Applicant has weekly phone contact with her elderly mother and father, who immigrated to the United States in 1978, and returned to Taiwan in 1979. She has a brother and sister still in Taiwan and has monthly e-mail contact with the sister. She has traveled to Taiwan six times since 1985, the last time being in 2002. Her parents purchased an apartment for her in Taiwan about 15 years ago.

The major concerns inherent in all Guideline B cases are threefold as to family members in a foreign country: (1) whether an applicant's relatives are agents of a foreign government; (2) whether such relatives may be at risk of being pressured to use their influence on an applicant to divulge classified information; and (3) whether an applicant may be forced to choose between loyalty to the family members and loyalty to the United States. All applicants with family, relatives, and close friends in foreign countries face these concerns, and each case must be decided on the basis of its specific facts and circumstances.

In the security clearance process the ultimate burden of proof as to eligibility is on the applicant. Guideline B places applicants in a difficult, but not impossible, position; i.e., to prove a negative, that there is no risk involved. The fact that pressure has not been applied in the past does not automatically mean it will not happen in the future, but it is a factor that must be considered in the context of all the evidence of record. It is certainly significant that Applicant's father-in-law and brother-in-law are retired captains in the Taiwan Navy, the former retired 20 years ago and the latter retired in 2003. Applicant has no idea what they did in the Navy. She is not close with her in-laws and has minimal contact with them.

Whether there is a risk that improper pressure may be applied to Applicant is an important issue to be considered, but even more important is how an applicant is likely to respond. Applicant began working for her present employer in 1986. According to her company's security manager, there is no record of any security violations (Tr at 62). Applicant has complied with company rules about reporting foreign travel (Tr at 67).

Applicant's "mentor and technical advisor" for the past 15 years holds a DoD security clearance. This witness thinks very highly of Applicant and sees her as very reliable and trustworthy, "loyal and above reproach" (Tr at 72). A second witness, Applicant's direct supervisor, has known her for more than two years and views her as "very responsible" when it comes to handling classified material" (Tr at 75). A third witness is Applicant's Office Manager and has known Applicant for about 12 years. She views Applicant as "extremely responsible and very competent" (Tr at 80). A fourth witness and a letter writer offered similar opinions about Applicant (Tr at 83 and AX B). Her Facility Security Officer has worked with Applicant for 14 years, during which time Applicant worked on "classified collateral, SAP, and SAR programs" with no security violations (AX A). All of the witnesses hold security clearances, and all are aware of Applicant's family situation.

I have carefully considered Department Counsel's statements about how the U.S. Government views Taiwan in the context of economic espionage (Tr at 88 and GX 5 and GX 6). There is no question that Taiwan is active in this area. At the same time, that fact is not an automatic bar to being granted a security clearance, but only one factor, albeit an important factor, in making an overall determination. In the present case, there is an overwhelming weight of the evidence establishing Applicant's ties and commitment to the U.S. She has been in the U.S. most of her life and her husband and children are Americans. She has deep involvement in American society, and has worked in the U.S. defense industry for almost 20 years. This uncontradicted evidence demonstrates that Applicant considers herself to be an American, and has a record of acting in defense of U.S. security interests. Nothing in the evidence comes close to suggesting that she would even hesitate before acting as she says she will, to immediately report the improper contact. Overall,

I conclude that she has overcome the impact of the evidence supporting the Government's concerns about her family and her in-laws under Guideline B.

Guideline B (Foreign Influence) - Condition that could raise a security concern and may be disqualifying:

1. An immediate family member . . . is a citizen of, or resident or present in, a foreign country.

None of the other disqualifying conditions are established by the record.

Condition that could mitigate security concerns:

1. A determination that the immediate family member(s) . . . in question would not constitute an unacceptable risk.
3. Contacts with [her father-in-law and brother-in-law] are casual and infrequent.

Guideline E (Personal Conduct) - Condition that could raise a security concern and may be disqualifying:

None that are established by the record.

By long residence in the United States and dedicated service to the U.S. defense effort, Applicant has established both her unequivocal loyalty to the U.S. and her willingness and ability to protect U.S. security interests. I conclude from this that any risk is minimal, if not nonexistent, and that she can be relied upon to act properly when it comes to protecting classified information and material

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Guideline B (Foreign Influence) 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

Subparagraph 1.f. For the Applicant.

Subparagraph 1.g. For the Applicant

Subparagraph 1.h. For the Applicant

Subparagraph 1.i. For the Applicant

Subparagraph 1.j. For the Applicant.

Subparagraph 1.k. For the Applicant

Subparagraph 1.l. For the Applicant

Guideline E (Personal Conduct) For the Applicant

Subparagraph 2.a. For the 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 Applicant.

BARRY M. SAX
ADMINISTRATIVE JUDGE