

DATE: March 23, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-01169

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 26-year-old employee of a defense contractor who emigrated from the Republic of China (Taiwan) in 1992 with all members of her family except her father who came later and is now a U.S. citizen. She has aunts and uncles in Taiwan and a former pastor. Applicant traveled to Taiwan in 1995, 1998, 1999, 2000, 2001, and 2003. On the 2000 and 2001 trips Applicant used her Taiwan passport even though she had been issued a U.S. passport early in 2000. In 2002 her Taiwan passport was turned in. While her relatives and friend in Taiwan do not raise serious concerns, the frequency and recency of her travels especially when two were with use of a foreign passport do. Clearance is denied.

STATEMENT OF THE CASE

On August 10, 2004, the Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry* 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 which detailed reasons 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. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated October 4, 2004, Applicant responded to the allegations set forth in the SOR, and requested a hearing. The case was assigned to me on January 14, 2005, and a Notice of Hearing was issued the same day for a hearing held on February 9, 2005. The Government introduced seven exhibits at the hearing and the Applicant introduced five. All were accepted into evidence. The Applicant and one witness testified on her behalf. The transcript was received on February 22, 2005.

FINDINGS OF FACT

Applicant has denied one allegation and admitted in whole or in part all of the other factual allegations with explanatory

information. Those admissions are incorporated herein as findings of fact.. After a complete review of the evidence in the record and upon due consideration of the record the following additional findings of fact are made.

Applicant is a 26-year-old employee of a defense contractor working as an engineer. She emigrated from the Republic of China (Taiwan) in 1992 with all members of her family except her father who remained in Taiwan until 1996 when he was able to retire from his high school teaching position. The family emigrated so that Applicant and her brother could obtain a U.S. education and become citizens. Applicant has two bachelor's degrees from a U.S. university. Applicant became a citizen in 2000. Her father became a citizen in 2003.

Applicant has three uncles and aunts and one adult cousin in Taiwan. Other cousins are schoolchildren. She also has a good friend who was her pastor when she was growing up. She does not provide funds to any of them and communicates infrequently. She does visit them when she returns to Taiwan. None are agents of or employees of the Taiwan government.

Applicant traveled to Taiwan in 1995, 1998, 1999, 2000, 2001, and 2003. The 1995 trip was occasioned by the illness of her father before he emigrated. The 1998 and 1999 trips were to visit other family members. The 2000 and 2001 trips were within six months of each other and were primarily because of the illness of her grandmother who died soon thereafter. The 2003 trip was not alleged in the SOR and occurred after the investigation began. No reason was advanced for taking that trip.

Applicant obtained a U.S. passport in July 2000, but used only her Taiwan passport for her December 2000 trip. She used both her U.S. and Taiwan passports when she traveled there in 2001 (Exh. 4 and 5). In September 2002, upon the advice of a friend, she returned her Taiwan passport to a Taiwan government office and renounced her interest in Taiwan citizenship (Exh. 2). She has a general intent to visit Taiwan approximately every 18 months but has not done so since 2003 and has no present intent to go there.

Applicant is well regarded in her work by her supervisors and colleagues (Exhs A, B, and C). She is a volunteer in a program to interest young people to study science sponsored by her employer. Her management desires that she work on a classified project thus requiring the clearance at issue in this matter.

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.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the 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. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "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, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b).

"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 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. Having immediate family members who are citizens of, and residing in a foreign country, may raise a disqualifying security concern. Directive, ¶ E2.A2.1.2.1.

CONCLUSION

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 all allegations set forth in the SOR:

The applicable Guidelines concerning Foreign Influence-Guideline B provides as a Disqualifying Condition (DC) that a security risk may exist when an individual's foreign associates to whom she has close ties of affection or obligation are not citizens of the United States or may be subject to duress. (E2.A2.1.1.) Such facts could create the potential for foreign influence that could result in the compromise of classified information.

Conditions under Guideline B that could raise a security concern and may be disqualifying include an immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident in a foreign country. (E2.A2.1.2.1.) Possible mitigating conditions (MC) that might be applicable are a determination that the associates 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 U.S.(E2.A2.1.3.1.)

Based on the evidence of record, including Applicant's admissions, the Government established reasons to deny her a security clearance because of foreign influence. Having established such reasons, the Applicant had the burden to establish security suitability through evidence which refutes, mitigates, or extenuates the disqualification and demonstrates that it is clearly consistent with the national interest to grant a security clearance. ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

Applicant has shown that her father is now a citizen of the U.S. asserts that she does not have a close relationship with her aunts and uncles. She does have a close friendship with her pastor but this seems to be a benign relationship insofar as national security is concerned. None are in the Taiwan government or in a position to be exploited. However, the frequency of her trips particularly since her father came to the U.S., and the fact that she took another trip to Taiwan in 2003 after the investigation in this matter commenced but not alleged in the SOR, raises doubts about the applicability of the mitigating factor to this case.

The applicable guidelines for Foreign Preference Guideline C provide that an individual who acts in such a way as to indicate a preference for a foreign country over the United States 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 the exercise of dual citizenship (E2.A3.1.2.1.), and the possession and/or use of a foreign passport. Security concerns may be mitigated by a willingness to renounce dual citizenship (E2.A3.1.3.4.) and return or invalidation of a foreign passport.

Applicant has returned her passport to the appropriate authorities of the Taiwan government in compliance with the Money Memorandum but the fact that she used the Taiwan passport twice in 2000 and 2001 to enter Taiwan despite having a U.S. passport casts doubt on the applicability of the mitigating condition.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. The "whole person" concept recognizes that we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

Applicant is an impressive person who, at a young age, has a responsible position of trust and is doing a good job for her

company. She is socially responsible and accepted in her community. However, the frequency of her trips and the use of a foreign passport raises questions as to whether a clearance should be granted at this time. I conclude that it is premature to do so.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that it is not clearly consistent with the national interest to grant clearance to Applicant.

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: AGAINST APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Paragraph 2 Guideline C: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

DECISION

After full consideration of all the facts and documents presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Charles D. Ablard

Administrative Judge