

DATE: October 31, 2005

In Re:

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SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-02878

## DECISION OF ADMINISTRATIVE JUDGE

**KATHRYN MOEN BRAEMAN**

### APPEARANCES

#### FOR GOVERNMENT

Eric H. Borgstrom, Esquire, Department Counsel

#### FOR APPLICANT

Andrew W. Dyer, Jr., Esquire

### SYNOPSIS

Under a whole person analysis Applicant mitigated foreign influence security concerns over her ties to her parents, mother-in-law, and siblings who are citizens of the Republic of China (Taiwan) and reside there. Applicant is a senior engineer with strong ties to the U.S. as she has been a resident here for twenty years and a naturalized citizen for seven. Applicant's assurances that she would contact appropriate U.S. officials if any pressure were attempted are credible and are bolstered by her supervisors' positive assessment. Her work is exemplary and her supervisors and co-worker assess her as very loyal and trustworthy person. Clearance is granted.

### STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) <sup>(1)</sup> to the Applicant on September 2, 2004. The SOR detailed reasons why the Government could not find that it is clearly consistent with the national interest to grant her access to classified information. The SOR alleges specific concerns in paragraph 1 over foreign influence (Guideline B). Applicant replied to the SOR allegations in an Answer notarized on September 17, 2004, where she requested a hearing.

After Department Counsel stated the case was ready to proceed, the case was assigned to me on January 31, 2005. On March 7, 2005, DOHA issued a Notice of Hearing and set this case to be heard on March 29, 2005, in a city near where Applicant lives and works. On March 14, 2005, Applicant retained new counsel who entered his appearance to replace her previous counsel. At the hearing the government presented two exhibits (Exhibits 1-2) which were admitted into evidence without objection.

Department Counsel's request that administrative notice (AN) be taken of the information contained in Exhibits I - III & VII was granted as Applicant did not object. (AN I-III, VII; TR 13-17; 26-27) Applicant's counsel objected to Department Counsel's request that administrative notice be taken of the information contained in Exhibits IV-VI. Applicant's counsel objected to the relevance of AN IV which listed targeted technologies as there was no reference to Taiwan in it; Department Counsel argued that the nexus was to her occupation. I overruled counsel's objection and took

administrative notice of AN IV. (TR 17-21) Applicant's counsel objected to the relevance of AN V which listed Taiwan as an active collector based on a survey of Fortune 500 companies views; Department Counsel argued that the report was reliable. I overruled counsel's objection and took administrative notice of AN V. (TR 21-24) Applicant's counsel objected to the relevance of AN VI which detailed actions of a private company in Taiwan to obtain information; Department Counsel argued that the relevance was that both private and public Taiwan entities were spying on the U.S. I sustained counsel's objection as to lack of relevance and did not take administrative notice of AN VI. (TR 24-26)

Applicant's counsel called three witness and offered nine exhibits (Exhibits A-I). (TR 44-61) Department Counsel did not object to A-F, so Exhibits A-F were admitted into evidence. (TR 44-61) Applicant's counsel offered Exhibit G as part of his argument which was a Memorandum of Authorities; Department Counsel did not object for that purpose. (TR 101-102) Applicant's counsel offered Exhibit H, the Taiwan Relations Act passed in 1978 for administrative notice; Department Counsel did not object, so Exhibit H was accepted into evidence. (TR 95-97) He also offered Exhibit I, an opinion of a U.S. member of Congress and conceded it was not necessarily U.S. policy; Department Counsel objected. I overruled Department Counsel's objection and took administrative notice of Exhibit I. (TR 98-100, 103) The transcript (TR) was received on April 8, 2005.

### **FINDINGS OF FACT**

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following additional Findings of Fact:

Applicant, 46 years old, has worked for a defense contractor (Employer #1) in State #1 since August 2001 as a senior engineer. On August 24, 2001 she completed a Security Clearance Application (Standard Form 86). (Answer; Exhibit 1; Exhibits A, B; TR 29-30, 42-44; 50) She was granted an interim security clearance in September 2001 which was terminated in September 2004. (Exhibit C; TR 53-54) She received a Center of Excellence Award in June 2004 with a \$500 cash award. (Exhibits D, E; TR 55-58)

Applicant received a BA and MA in Taiwan and then came to the U.S. in 1984 for further education. She initially studied in State #2 where she had a teaching assistantship; she completed her course work but did not get her Ph.D.; instead she got a masters degree in civil engineering. She met her husband there and got married and had two children, now 17 and 15, who were born in the U.S. Later she moved with her husband to a new state in 1989. She later received an MS degree in June 1993 from a U.S. university in State #3. (Exhibit 1; TR 45-50; 74; 76)

### **Foreign Influence**

Applicant was born in Taiwan and became a naturalized U.S. citizen in December 1998. Her husband, also born in Taiwan and a naturalized U.S. citizen, has a security clearance. (Answer; Exhibits 1, 2; TR 62-63) Her primary relationship is to her immediate family in the U.S. (TR 94)

When Applicant became a U.S. citizen she renounced<sup>(2)</sup> her citizenship in Taiwan. (TR 79-80) Since she has been a U.S. citizen she has only traveled on her U.S. passport. (TR 90-91, 93)

Applicant's father, mother, three sisters, and one brother are citizens of Taiwan and live there. The parents have a small business where they sell fruit which they have owned for 30 years. Her father previously worked as an elementary school teacher. She speaks with her parents two to three times a month to discuss their health. Her mother-in-law, who is a citizen of Taiwan and lives there, is 73 and is a housewife. Applicant does not talk with her on a regular basis. (Exhibit 1; TR 65-68; 75, 78, 82-83; 91-92) Applicant's mother came to visit the U.S. once in 1989. Her elder sister also visited once in 1999. (TR 87) Her relationship to her family in Taiwan is dutiful. (TR 93)

Her husband has two sisters<sup>(3)</sup> who are citizens of Taiwan and live there; one is an accountant and the other is a housewife. (Exhibit 1; TR 84-86)

Applicant also has a sister who became a naturalized U.S. citizen in 1992 and lives in the U.S.; she has a Ph.D. in chemistry. (Exhibit 1; TR 64; 78-79) Her oldest sister used to work for a U.S. corporation and is retired. Her younger

sister works as a buy for a small local firm; her youngest sister works for the telephone company. Her brother works for a construction company. She speaks to her siblings about four times a year. None of her family works for the Taiwanese government, the military, or any intelligence agency. (Exhibit I; TR 68-70; 76-77, 82) She visits her family approximately once a year for two to three weeks, so her children can know their grandparents. (TR 70-71) Her last visit to Taiwan was in August 2004 (TR 80-81) Applicant has no assets in Taiwan. In the U.S. she owns a home and she and her husband have investment accounts and stocks. Her U.S. investments total approximately \$840,000. (TR 71; 87)

Friends of her husband's who were on sabbatical in the U.S. from Taiwan where they are citizens visited Applicant and her husband in 2003 for one night on a sight-seeing trip; the visit was social. They asked no questions of Applicant concerning her job. There was a similar visit in 2004. (TR 73-74; 88-89)

Applicant admits she traveled to Taiwan in 2001 and because of a delayed flight had a one night layover in Japan; she has no relatives there. (TR 72) She has never been approached and asked questions regarding her job on any of her visit to Taiwan. If that were to occur she would contact her facility security officer. (TR 72)

Taiwan is an active collector of economic espionage. (AN I, II, III, IV, V, VII) "In considering the security risk associated with foreign interests, it is important to distinguish between susceptibility to recruitment and vulnerability to being targeted for recruitment. Foreign interests do not make one more susceptible (less loyal), but they do make one more vulnerable." (AN VII at 7) However, Applicant credibly established that even if someone were pressuring her family, she would not surrender to that kind of pressure. As her family have no ties to the government, it is less likely that there is any identified risk associated with her family in Taiwan. Also, Applicant and her supervisors established her trustworthiness and loyalty to the United States. Given Applicant's extensive ties to the U.S. with her immediate family in the U.S. and her entire financial assets in the U.S., I conclude it is unlikely she would yield to pressure if any of these relatives were coerced by the government of Taiwan. Further, it is unlikely that Taiwan, a close U.S. ally which is highly dependent on the U.S. for its defense would risk threatening this relationship by threatening its private citizens for the purpose of forcing a U.S. citizen to betray the U.S. As the State Department emphasized in legislative testimony, under the Taiwan Relations Act, the U.S. has built a "strong unofficial relationship with Taiwan that emanates from a foundation of shared values and mutual interests." (Exhibit H)

### **References**

Applicant's supervisor, a senior manager, testified that he had hired her in 2001 and subsequently supervised Applicant. (TR 29, 31) Applicant is a senior member of the engineering staff whose performance is excellent; she is an outstanding employee. He would recommend her for a position of trust within the company and believes she is capable of safeguarding classified information. (Exhibit A; TR 30-33)

A systems design manager has known Applicant for two years since she joined his project testified on her behalf. She was a key team member on a major project. He now works with Applicant on a second project and sees her daily. He relies on Applicant as she was one of two key players in project #1. Because of her excellent performance, he selected her for project #2. He finds her reliable and would recommend her for a position of trust. He recommends her for access to classified information. She did not need access to classified information for the first project, but they operated in a classified facility; she followed all the rules and procedures. (TR 35-39; 40-41)

Applicant's co-worker who has known her for five years submitted an endorsement of Applicant for a security clearance because of her contributions to projects. He recommended her for a security clearance as she is a loyal U.S. citizen and an individual who cherishes U.S. democratic institutions. She has demonstrated her trustworthiness and loyalty to the U.S. in the workplace. She would never succumb to pressure to disclose or abuse classified information. (Exhibit F; TR 61)

### **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a

consideration of the evidence as a whole in evaluating this case, I weighed relevant adjudication guidelines as set forth below :

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

**E2.A2.1.1. 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: (1) not citizens of the United States or (2) 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.**

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching a fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

### **CONCLUSIONS**

Because of Applicant's family ties in Taiwan, the government raised foreign influence concerns under disqualifying conditions (DC): E2.A2.1.2. 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; and E2.A2.1.2.6. Conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government. Applicant has parents, a mother-in-law, and four siblings who are citizens of Taiwan and currently reside in Taiwan. Security concerns were not established over allegation (SOR 1.b.) where she had personal contact in 2003 and 2004 with a couple on sabbatical from Taiwan, her contact with them was minimal as they are friends of her husband. Security concerns were not established over allegation (SOR 1.c.) where she traveled to Taiwan in 2000 and 2001 and spent one-night in Japan in 2001 because of a flight delay.

While I have seriously considered these security concerns and the documents submitted for administrative notice which raises security concerns over Taiwan's industrial espionage, I conclude Applicant has presented sufficient evidence to meet the burden these circumstances present. Applicant mitigated<sup>(4)</sup>

the Government's security concerns over possible foreign influence. In evaluating the relevance of his conduct, I considered the following Adjudication Process factors:

E.2.21.1. The nature, extent, and seriousness of the conduct; E2.2.1.2. The circumstances surrounding the conduct, to include knowledgeable participation; E2.2.1.3. The frequency and recency of the conduct; E2.2.1.4. The individual's age and maturity at the time of the conduct; E2.2.1.5. The voluntariness of the participation; E2.2.1.6. The presence or absence of rehabilitation and other pertinent behavioral changes; E2.2.1.7. The motivation for the conduct; E2.2.1.8. The potential for pressure, coercion, exploitation, or duress; and E2.2.1.9. The likelihood of continuation or recurrence. (E.2.2. Adjudication Process)

Looking at all of these circumstances, I conclude Applicant has overcome foreign influence security concerns. Given her strong ties to the U.S. with her immediate family and one sister are in the U.S. and all her assets in the U.S. and with her limited contact with her family in Taiwan, there is limited potential for coercion, exploitation or duress. (E.2.2.1.8. The potential for pressure, coercion, exploitation, or duress.) While her birth family remain citizens and residents of Taiwan, they have no ties to the government. Her ties to her family are dutiful. Applicant has been a naturalized U.S. citizen for seven years and has been a resident of the U.S. for twenty years where she pursued and received two academic degrees. She has had limited visits with her family in Taiwan. Her contact is limited to phone calls to her

parents to check on their health. In addition, she put her interests in the U.S. ahead of any loyalty to her birth family as she exclusively has used her U.S. passport for visits since she became a naturalized U.S. citizen. Further, it is unlikely that Taiwan, a close U.S. ally which is highly dependent on the U.S. for its defense would risk threatening this relationship by threatening its private citizens for the purpose of forcing a U.S. citizen to betray the U.S.

As Applicant's supervisors and co-worker established, Applicant has a substantial history with her employer since 2001 and is viewed as trustworthy. Applicant is a senior engineer whose work is always excellent; indeed she received a major performance award from her company. All recommended her for access to classified information.

Thus, I conclude that it is unlikely that she could be exploited by coercive or non-coercive means by the government in Taiwan in a way that could force Applicant to choose between loyalty to her family in Taiwan and her loyalty to the United States. Should any such attempt be made Applicant testified credibly she would contact her FSO. Thus, any risk of either coercive or non-coercive foreign duress or influence on Applicant and/or her immediate family would appear to be slight and clearly manageable. Contacts with citizens of other countries are relevant to security determinations only if they make an individual potentially vulnerable to coercion, exploitation, or pressure through threats against those foreign relatives. In reaching my conclusion, I have considered the totality of those ties and contacts, not just each one in isolation as the Appeal Board has mandated in the Appeal Board Decision and Reversal Order in ISCR Case No. 02-22461 (October 27, 2005) at 6.

After considering the Adjudicative Process factors and the Adjudicative Guidelines, I conclude these circumscribed family ties are not of such a nature as to create any tangible risks of undue pressure on Applicant. Thus, foreign influence security concerns are mitigated under a whole person analysis. Thus, I resolve SOR paragraph 1 and subparagraphs 1.a. through 1.c. in Applicant's favor.

### **FORMAL FINDINGS**

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline B FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For 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 the Applicant.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by DoD Directive 5200.6, dated January 2, 1992 (Directive).
2. Although Department Counsel argued in his closing argument that Applicant was a dual citizen, the SOR made no Criterion C allegation. (TR 118-119)
3. Applicant's counsel objected to government's questions about the Applicant's husband's siblings who were disclosed in the SF 86, but not alleged as security concerns in the SOR. However, I permitted the questions. (TR 840-85)
4. E2.A2.1.3 Conditions that could mitigate security concerns include: E2.A2.1.3.1. A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) 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 person(s) involved and the United States; E2.A2.1.3.3. Contact and correspondence with foreign citizens are casual and infrequent.