

KEYWORD: Foreign Influence

DIGEST: Applicant is a 53-year-old naturalized citizen whose family members are citizen residents of Taiwan. Applicant has lived in the United States for 30 years, has worked for a defense contractor for 24 years, had held a security clearance for 17 years without incident, holds a passport only from the United States, and has no property in or financial ties to Taiwan. Under these circumstances, Applicant mitigated the security concerns arising from the foreign residence of her family members. Clearance is granted.

CASENO: 03-09073.h1

DATE: 07/29/2004

DATE: July 29, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-09073

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL J. BRESLIN

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 53-year-old naturalized citizen whose family members are citizen residents of Taiwan. Applicant has lived in the United States for 30 years, has worked for a defense contractor for 24 years, had held a security clearance for 17 years without incident, holds a passport only from the United States, and has no property in or financial ties to Taiwan. Under these circumstances, Applicant mitigated the security concerns arising from the foreign residence of her family members. Clearance is granted.

STATEMENT OF THE CASE

Pursuant to Executive Order 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 (the "Directive"), the Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On March 9, 2004, DOHA issued a Statement of Reasons (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 April 3, 2004, and admitted all the factual allegations. She elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on May 25, 2004. Department Counsel provided a complete copy of the file of relevant material (FORM) to Applicant, along with notice of her opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on June 18, 2004, but did not provide additional materials for consideration. The case was assigned to me on July 27, 2004.

FINDINGS OF FACT

Applicant admitted all of the factual allegations contained in the SOR. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant is 53 years old and unmarried. She seeks renewal of her security clearance.

Applicant was born in the Republic of China (Taiwan) of Taiwanese parents. Item 4, Security Clearance Application, dated December 10, 1999, at 1-2. She came to the United States in 1974 to obtain her Master's Degree (Item 5, Statement of Applicant, dated March 30, 2000, at 1), and was awarded her Masters of Science in 1979. Item 4, *supra*, at 2. Applicant then continued to work in the United States. Item 5, *supra*, at 1. She began working for a defense contractor in 1980. Item 4, *supra*, at 2. She became a naturalized citizen of the United States in 1985 (*id.* at 1), and was granted a security clearance in 1987. *Id.* at 8.

Applicant's father was a citizen of Taiwan, but is now deceased. Item 4, *supra*, at 3. Her mother became a naturalized U.S. citizen in 1999, and resides in the United States. *Id.* at 3-4.

Applicant has two brothers residing in Taiwan. Item 3, Applicant's Answer, dated April 3, 2004; Item 4, *supra*, at 3. Both are retired. Item 3, *supra*. Her eldest brother was born in China and is now a citizen of Taiwan. Item 4, *supra*, at 3. He is a retired manager of an airline. Item 5, *supra*, at 1. He has two sons: one is a computer engineer and the other is a career military member. *Id.* at 2.

Applicant's second brother is a retired electrical engineer. *Id.* at 2. He was born in Taiwan and is a citizen of that country. Item 4, *supra*, at 3. His wife is a technician, and their two sons are students. Item 5, *supra*, at 2. He applied for immigration to the United States in 1997, and Applicant agreed to sponsor his admission. Item 3, *supra*; Item 5, *supra*, at 4.

Applicant stated she travels to Taiwan to visit her family about every four years. Item 5, *supra*, at 2. She traveled to Taiwan for personal visits in 1994, 1998, 2002, and 2003. Item 3, *supra*; Item 4, *supra*, at 5. Her eldest brother visited her in the United States on three occasions. Item 5, *supra*, at 2. Her other brother and his family visited her in the United States on three or four occasions. *Id.* She calls her brothers on the telephone about every other month. Item 5, *supra* at 2. She speaks to her eldest brother's sons by telephone once or twice a year. *Id.* She does not talk to her second brother's sons by telephone. *Id.*

Applicant has no personal, property, or financial ties to Taiwan, other than her family members residing there. Item 4,

supra, at 4; Item 5, *supra*, at 3. She holds only a United States passport. Item 4, *supra*, at 1, 4. She has never held dual citizenship. *Id.* at 1.

Applicant has lived in the United States for about 30 years. Item 5, *supra*, at 1. She is buying a house in the United States, and all her financial interests are in this country. *Id.* at 3. She does not provide any financial assistance to any educational institution. *Id.* at 4. Applicant has worked for a defense contractor for about 24 years. Item 4, *supra*, at 2. She has held a security clearance since 1987, and has never had her clearance or access denied, suspended, or revoked. *Id.* at 8.

POLICIES

In Executive Order 12968, *Access to Classified Information* § 3.1(b) (August 4, 1995), the President provided that eligibility for access to classified information shall be granted only 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." A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

In order to be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are:

Guideline B - Foreign Influence: 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.

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to these adjudicative guidelines, are set forth and discussed in the conclusions below.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." Directive, ¶ E2.2.1. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. *Id.* An administrative judge should consider the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable 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. *Id.* Initially, the Government must establish, by substantial evidence, conditions which disqualify or may disqualify the applicant from being eligible for access to classified information. Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. 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 (App. Bd. Dec. 19, 2002). "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.

CONCLUSIONS

I considered carefully all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

The Government's documentary matters and Applicant's admissions constitute substantial evidence of two disqualifying conditions under Guideline B of the Directive. Paragraph E2.A2.1.2.1, provides that it may be a disqualifying condition if "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." Applicant's brothers are close family members, and sister-in-law and nephews are persons to whom she has close ties of affection. All reside in Taiwan presently, although her eldest brother has applied to emigrate to the United States. The substantial evidence is sufficient to raise security concerns under ¶ E2.A2.1.2.1.

The substantial evidence also presents a disqualifying condition under ¶ E2.A2.1.2.3, which arises when "relatives . . . are connected with any foreign government." Applicant indicated that one of her nephews is a career soldier. Item 5, *supra*, at 2.

These factual circumstances "could create the potential for foreign influence that could result in the compromise of classified information." Directive, ¶ E2.A2.1.1. 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 ** 33-34 (App. Bd. Feb. 8, 2001). Where there is a potential for foreign influence, security concerns can be mitigated where it is determined that the immediate family members or associates in question are not agents of a foreign power, and they 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 the person involved and the United States. Directive, ¶ E2.A2.1.3.1.

Paragraph E2.A2.1.3.1. defines "immediate family members" to include a spouse, father, mother, sons, daughters, brothers and sisters. The evidence indicates that none of Applicant's immediate family members are agents of a foreign power. Her brothers living in Taiwan are retired, and there is no indication they work for or are associated with a foreign government. This aspect of the mitigating condition applies to all her relatives in Taiwan, except her nephew who is a soldier. Item 5, *supra*, at 2. Although there is no information indicating the nephew's position within the armed forces, he meets the definition of an "agent of a foreign power" under ¶ E2.A2.2.1.3.1.

In determining whether relatives are vulnerable to exploitation, a judge should consider several factors, including the character of the government of the relevant foreign country. Department Counsel submitted Item 6, the National Counterintelligence Executive Office's Annual Report to Congress on Foreign Economic Collection and Industrial Espionage for 2000. The report includes a summary of a survey of a dozen Fortune 500 companies that indicated Taiwan is one of the most active collectors of foreign economic information or industrial espionage. At the same time, one must recognize that Taiwan is a democracy, and its political system has made dramatic advances recently in protecting human rights and personal freedoms. Taiwan has a long history of friendly relations with the United States, including substantial levels of foreign trade.

Another significant factor to be considered is the Applicant's vulnerability to duress. Applicant's contact with her brothers in Taiwan is limited to telephone calls approximately every other month, and personal visits about every four years. Her contact with her nephew who is a service member is limited to infrequent telephone calls and her personal visits. While this shows regular and continuing contact, it does not appear to be especially close. Applicant's closest relative-her mother-resides in the United States. It is also significant that Applicant has lived in the United States for 30 years, has become a naturalized citizen, and has all her personal and property interests in this country. Moreover, Applicant has held a security clearance for 15 years without adverse incident. There is no evidence that Applicant has engaged in any illegal or conspicuous action while visiting Taiwan that would make her especially vulnerable to foreign influence. These circumstances indicate Applicant is not vulnerable to duress.

It is also a mitigating condition that foreign financial interests are minimal and not sufficient to affect the individual's

security responsibilities. Directive, ¶ E2.A2.1.3.5. In this case, it appears that Applicant has no financial interests in Taiwan. To the contrary, all her financial interests, including her employment, her real property, her personal property, and her financial resources are within the United States. The significant nature of these contacts reduce the likelihood that a person so situated would engaged in conduct threatening to the security of the United States.

Considering all these circumstances and weighing the various factors in light of the "whole person concept," I find Applicant has mitigated the security concerns arising from having family members residing in Taiwan. For these reasons, I find that Applicant is eligible for access to classified information.

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

Subparagraph 1.d: For Applicant

Subparagraph 1.e: 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.

Michael J. Breslin
Administrative Judge