

KEYWORD: Foreign Influence

DIGEST: Applicant is a 41-year-old software engineer employed by a defense contractor. Both she and her husband were born in Taiwan, but are now naturalized U.S. citizens residing with their children in a major American metropolitan area. Applicant's mother-in-law, a citizen of Taiwan, resides with Applicant and her family. Applicant also keep regular contact with her own parents, who, like her brother and sister, reside in, and are citizens of, Taiwan. Applicant failed to introduce any mitigating or explanatory evidence with regard to her family members, her relationships with them, or their contact. Consequentially, Applicant failed to meet her burden. Clearance is denied.

CASENO: 03-15786.h1

DATE: 04/27/2005

DATE: April 27, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-15786

DECISION OF ADMINISTRATIVE JUDGE

ARTHUR E. MARSHALL, JR.

APPEARANCES

FOR GOVERNMENT

Sabrina Elaine Redd, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 41-year-old software engineer employed by a defense contractor. Both she and her husband were born in Taiwan, but are now naturalized U.S. citizens residing with their children in a major American metropolitan area. Applicant's mother-in-law, a citizen of Taiwan, resides with Applicant and her family. Applicant also keep regular contact with her own parents, who, like her brother and sister, reside in, and are citizens of, Taiwan. Applicant failed to introduce any mitigating or explanatory evidence with regard to her family members, her relationships with them, or their contact. Consequentially, Applicant failed to meet her burden. Clearance is denied.

STATEMENT OF THE CASE

On October 29, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, 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) detailing why, pursuant to Guideline B-Foreign Influence, it 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. In a written response dated November 20, 2004, Applicant, without additional comment, admitted to the four allegations contained in the SOR.

The Government's case was submitted, undated, and a complete copy of the file of relevant material (FORM) [\(1\)](#) was

provided to the Applicant. Applicant received a copy of the FORM on January 21, 2005, but submitted neither objections nor additional evidence in refutation, extenuation, or mitigation of the allegations contained therein. Applicant did, however, request a hearing on the record. Consequentially, DOHA recommended that this matter be referred to an Administrative Judge to determine whether a clearance should be granted. I was assigned this case on March 17, 2005.

FINDINGS OF FACT

Applicant has admitted the factual allegations pertaining to foreign influence under Guideline B. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 41-year-old software engineer who is employed by a defense contractor. Originally from Taiwan, she married a United States citizen in 1988, attended an American university graduate program from 1992 through 1994, received a Master of Information Science degree, commenced her current employment in September 1997, and became a naturalized United States citizen in 1998. Her current project deals with emergency preparedness. She and her husband reside with their three children, all of whom are United States citizens. Also living with her is her mother-in-law, a citizen of Taiwan currently residing in the United States as a resident alien. ⁽²⁾

Her parents, brother, and sister are all citizens of Taiwan and currently reside in Taiwan. She has returned to visit Taiwan on three occasions. The first trip, in 1988, followed her marriage and was funded by her parents in order to allow her to visit family and colleagues. The second trip was funded by her family to enable her to visit. The third trip to visit her family took place in the year Applicant became a naturalized U.S. citizen. No subsequent trips have been made. Current contact is maintained with her family via twice-monthly telephone calls to her parents.

Applicant has no apparent financial or political ties with Taiwan. Her passport from the Republic of China, issued on May 13, 1997, expired on May 13, 2000. She currently possesses a United States passport, which is current and which was issued in September 1998.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, these adjudicative guidelines are subdivided into those that may be considered in deciding whether to deny or revoke one's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to determine one could still be eligible for access to classified information (Mitigating Conditions).

In application, an Administrative Judge is not strictly bound by the adjudicative guidelines. As guidelines, they are part of an amalgam of elements for the Administrative Judge to consider in assessing an applicant in light of the circumstances giving rise to the SOR, as well as in assessing the applicant as a whole. The concept of the "whole person" means that all available, reliable information about the person - whether it is good or bad, present or past - should be considered in making a fair, impartial, and meaningful decision as to his or her suitability to hold a security clearance. To that end, Enclosure 2 also sets forth factors to be considered during this part of the adjudicative process, including: (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 of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guideline most pertinent to an evaluation of the facts of this case:

Guideline B-Foreign Influence. 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 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 or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure. ⁽³⁾

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns, pertaining to this adjudicative guideline are set forth and discussed in the next section.

After a full and thorough examination, however, the final assessment must comport with the considerable gravity of the final decision. There is no right to a security clearance⁽⁴⁾ and one seeking access to classified information must be prepared to enter into a fiduciary relationship with the United States Government that is inherently predicated on trust and confidence. Therefore, when the facts proven by the Government raise doubts about an applicant's judgment, reliability, or trustworthiness, the applicant has the heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽⁵⁾ Therefore, any doubts will be resolved in favor of the national security, not the applicant.

Finally, Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Therefore, nothing in this Decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty, or patriotism.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all legal precepts, factors, and conditions, including those described briefly above, I find the following with respect to the allegations set forth in the SOR:

With respect to Guideline B, the Government has established its case. Applicant has been demonstrated to be a person who vulnerable to foreign influence because her parents, brother, and sister are residents and citizens of Taiwan, and because her mother-in-law, who resides with her in the United States, remains a citizen of Taiwan. Her familial affinity has been demonstrated further by her regular telephonic contact with her parents and reference has been made to some bygone personal travel to Taiwan. Such contact further raises the potential for vulnerability to coercion, exploitation, or pressure, and the exercise of foreign influence that could result in the compromise of classified information. These facts, fully admitted to by the Applicant, raise Foreign Influence Disqualifying Condition (FI 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*).

Applicant has offered no evidence to support a determination that her parents, brother, and sister are not agents of a foreign power or that they are not in a position to be exploited by a foreign power. Indeed, she has offered no information whatsoever as to these family members or her relationships with them. Therefore, I am unable to find application of Foreign Influence Mitigating Condition (FI MC) 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*).

Moreover, Applicant has offered scant information with regard to her contact with her family. Her trips to Taiwan are dated, infrequent, negligible, and not, by themselves, disqualifying. Therefore, I find for Applicant with regard to paragraph 1, subparagraph d, of the SOR. Regular contact, however, is maintained telephonically with her parents via twice-monthly calls, and with her mother-in-law, presumably, through personal, daily contact. Standing by itself without any elaboration, comment, or explanation, such contact cannot be found to be infrequent or casual. Therefore, I cannot

find application of FI MC E2.A2.1.3.3 (*Contact and correspondence with foreign citizens are casual and infrequent*). None of the other mitigating conditions apply.

I have considered Applicant under the "whole person" concept based on the meager evidence in the record before me. She is a mature, married mother of three with a graduate degree. Applicant is a naturalized citizen and has lived at the same address for ten years. At work, she is a software engineer who has been entrusted to work on matters of emergency preparedness since 2000. Beyond that, however, the record evidence offers me as little insight into Applicant as it does into her relationship with her family members here and abroad.

In summary, based on the evidence of record, the Government has established a disqualifying condition to deny Applicant a security clearance because of foreign influence. Applicant's familial contacts with Taiwan are relevant to the extent that they make her potentially vulnerable to coercion, exploitation, or pressure through threats against those relatives. Although Taiwan is a stable democracy with a strong and well-developed economy,⁽⁶⁾ it has been cited by the National Counterintelligence Center as being one of the most active countries with regard to foreign economic collection and industrial espionage.⁽⁷⁾ Therefore, although contact with Taiwan may seem to be relatively innocuous, it cannot be dismissed without some degree of caution and scrutiny.

Because foreign influence raises a security concern with regard to the potential compromise of classified information, it is incumbent upon the Applicant to present evidence in rebuttal, extenuation, or mitigation sufficient to demonstrate that her family ties do not place her in a position of vulnerability and to demonstrate that it is clearly consistent with the national interest to grant or continue a security clearance for her.⁽⁸⁾ Despite her maturity, education, profession, and, consequentially, her cognizance of the responsibilities of those working within a security-driven environment, Applicant has declined to proffer any such information in response to the 2004 SOR allegations. Indeed, the sole allegation herein found in her favor was mitigated not by any evidence presented in response to the SOR, but by brief statements culled from a 2003 interrogatory. After considering the Enclosure 2 Adjudicative Process factors and the Adjudicative Guidelines, and given Applicant's failure to carry her burden in this process, I conclude that Applicant's foreign ties, left undefined and unmitigated, pose the risk of undue pressure. Therefore, I find that the foreign influence concerns raised have not been mitigated and find SOR paragraph 1 and subparagraphs 1.a through 1.c in the Government's favor.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.2.5 of Enclosure 3 of the Directive are:

Paragraph 1. Guideline B AGAINST THE APPLICANT

Subparagraph 1.a Against the Applicant

Subparagraph 1.b Against the Applicant

Subparagraph 1.c Against the Applicant

Subparagraph 1.d For the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Appellant. Clearance is denied.

Arthur E. Marshall, Jr.

Administrative Judge

1. The government submitted 12 items in support of its case. Item 6, Applicant's Response to DOHA Interrogatories, dated November 19, 2003, includes a notation at the end of page 6 that the answer is concluded on the reverse side ("see back"). A copy of that reverse content was not included in the copies of the FORM provided to Applicant or this tribunal. Applicant chose not to object to the FORM as provided. Moreover, after review of the few sentences on that reverse side, regarding her current employment, her commitment, and her affirmation that she would do nothing to hurt this country, I have assigned her comments the appropriate weight they deserve and also incorporate them into my consideration of Applicant as a "whole person."

2. Item 4 (Applicant's Security Clearance Application, SF-86, dated March 7, 2003), at 7.

3. ⁰ Directive, Enclosure 2, Attachment 2, Guideline B, ¶ E2.A2.1.1.

4. ⁰ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

5. ⁰ *Id.*, at 531.

6. Item 8 (U.S. Department of State, *Consular Information Sheet: Taiwan*, June 2004).

7. Item 9 (National Counterintelligence Center, *Annual Report to Congress on Foreign and Economic Collection and Industrial Espionage 2000*)

8. *See, e.g.*, ISCR Case No. 99-0424, 2001 (App. Bd. Feb. 8, 2001), at 9, (*mere possession of family ties with persons in a foreign country is not, as a matter of law, automatically disqualifying under Guideline B. However, the possession of such ties 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*) (emphasis added).