

DATE: December 6, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-15928

## **ECISION OF ADMINISTRATIVE JUDGE**

**CAROL G. RICCIARDELLO**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Edward Loughran, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant was born in the United States to Taiwanese parents. Her parents moved back to Taiwan when she was six and she returned to the United States, permanently when she graduated from high school. Applicant does not have any relationship with or affection for her father, and has minimal contact with him. Applicant has a strained relationship with her mother. Her father has permanent resident status with the U.S., and her mother is a dual national. Her parents are now divorced. Applicant has renounced her Taiwanese citizenship and she intends never to return to Taiwan, regardless of the circumstances. All of Applicant's family, that she knows, live in the U.S., except for her parents. Applicant has no financial ties to Taiwan. Clearance is granted.

### **STATEMENT OF THE CASE**

On April 26, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating they were unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline B, foreign influence. Applicant submitted a response to the SOR, dated July 1, 2004, and requested a hearing. In her SOR response, Applicant denied some allegations contained in the SOR, and admitted others while providing explanations in an effort to extenuate and mitigate the security concerns raised by the allegations.

The case was assigned to me on October 12, 2004. A notice of hearing was issued on October 18, 2004, scheduling the hearing for November 3, 2004. The hearing was conducted as scheduled. The government submitted three documentary exhibits that were marked as Government Exhibits (GE) 1-3. They were admitted without objection into the record. The Applicant testified, on her own behalf, and submitted three documentary exhibits that were marked as Applicant's Exhibits (AE) 1-3. All of Applicant's exhibits were admitted without objection. The transcript was received on November 22, 2004.

### **FINDINGS OF FACT**

Applicant's admissions to the allegations contained in the SOR are incorporated herein. In addition, after a thorough review of the pleadings and exhibits, I make the following findings of fact:

Applicant is a 24-year-old woman who is employed by a defense contractor as a software engineer. She has worked for a defense contractor since July 2002. Applicant was born in the United States to Taiwanese parents. Her father and mother were both attending school in the United States. In 1986, Applicant's father was unable to find employment and he and Applicant moved back to Taiwan, where he could get a job. Her mother remained in United States, for another two years, until she completed her education and then moved back to Taiwan. Applicant only spoke English at the time, and had difficulty learning Chinese. She was an outcast at her school due to the language barrier. She did not attend school for the 3<sup>rd</sup> and part of the 4<sup>th</sup> grade due to this problem. When Applicant's mother returned to Taiwan she found a job close to an international style school so Applicant could attend and assimilate. She attended boarding school in Taiwan from the 7<sup>th</sup> grade through high school. Applicant's father was totally uninvolved and uninterested in Applicant's life. He never attended any school functions, did not visit her, and most people did not know he even had a child. Applicant would return to the United States twice a year while in school and occasionally for spring break. She would stay with her aunt and uncle, who are both U.S. citizens. Three days after graduating from high school in 1998, Applicant left Taiwan, to attend college in the United States. She has never returned to Taiwan and has no plans to ever return, regardless of the circumstances.

Applicant does not own any property or have any financial interests in Taiwan. She did not want to return to Taiwan in 1986, but had no choice due to her age. As soon as she was old enough she left Taiwan. Applicant had a Taiwanese passport because she had to travel with her parents. It has expired and she has not renewed it. She has renounced her Taiwanese citizenship. Applicant does not keep in contact with anyone in Taiwan. Except for her physical characteristics, Applicant's total identity is as an American.

Applicant has no relationship with her father. She does not know where he lives or where he works, or what his job entails. Her father has a degree in molecular biology. She believes he might work for a university. Applicant's father has permanent residency status in the United States and holds a green card, but lives in Taiwan. He will infrequently send her an email and she will respond, but she does not initiate contact. The last time she heard from her father was over a year ago. He does not call or acknowledge her birthday or other holidays. Applicant has no interest in staying in contact with her father and he has shown no real interest in staying in contact with his daughter. Applicant may see her father once every three years for approximately fifteen minutes, if he is in the United States. Applicant views her father from strictly a biological prospective. Applicant does not know any of her relatives on her father's side of the family.

Applicant's mother became a naturalized U.S. citizen in 2001, and lives in Taiwan. She returned to Taiwan to find employment to support herself. Applicant's parents are divorced and have had limited contact with each other since Applicant was eleven. Applicant's mother does not fit in with Taiwan society because of her foreign education background. Applicant believes that her mother's contacts do not even know she has a daughter. Applicant's mother works for a private environmental foundation that has a subcontract with the Taiwanese equivalent of the Environmental Protection Agency(EPA). Her mother is compensated through the foundation and not a government agency. She does research on air quality issues and has does not deal with any defense related work. Applicant's mother plans on retiring in the United States. Applicant speaks with her mother approximately 3-4 times a year. They never discuss work and Applicant believes her mother's only interests are that Applicant has a good job and marries a Catholic man. Applicant's mother returns to the United States approximately once a year and she and her daughter will visit with each other for a short period of time. Applicant's relationship with her mother is strained.

Applicant's maternal grandmother is a citizen of Taiwan and lives in the United States. Her maternal grandfather has been a naturalized citizen of the United States since 1997. They immigrated to the United States in 1993, where all of their family reside, except for Applicant's mother. Applicant's grandmother has not become a citizen because she is ninety years old with memory problems and is unable to speak English. Applicant visits her grandmother in the United States approximately every six weeks. Applicant's aunt and uncle primarily took interest in Applicant's well-being and hosted her when she visited the United States while growing up

## **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline B, pertaining to foreign influence, with its respective DC and MC, applies in this case.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>(2)</sup> The government has the burden of proving controverted facts.<sup>(3)</sup> The burden of proof is something less than a preponderance of evidence,<sup>(4)</sup> although the government is required to present substantial evidence to meet its burden of proof.<sup>(5)</sup> Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.<sup>(6)</sup> Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.<sup>(7)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(8)</sup>

No one has a right to a security clearance<sup>(9)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(10)</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>(11)</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.<sup>(12)</sup> It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

### CONCLUSION

Under Guideline B, 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 obligations 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 interest in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Based on the allegations in the SOR, DC 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*, must be evaluated in determining whether it is clearly consistent with the national interest to grant a security clearance to Applicant under Guideline B. DC 1 applies in this case because Applicant's father is a citizen of Taiwan, her mother resides in Taiwan, and her grandmother is a citizen of Taiwan, living in the United States.

Taiwan is an ally and conducts trade with the United States. The following information about Taiwan was provided in GE 2 and 3. Taiwan is a stable democracy and it has a strong and well-developed economy. It is open for tourism and has a relatively low violent crime rate. In 2000, Taiwan was one of the eight most active collectors of foreign economic information and industrial espionage in the world. No other evidence was presented to show that Taiwan exploits, harasses or pressures its citizens in an attempt to garner economic or industrial information.

The following mitigating conditions must be evaluated in determining whether it is clearly consistent with the national interest to grant a security clearance to Applicant under Guideline B, MC 1: *A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitants, 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, and MC 3: Contact and correspondence with foreign citizens are casual and infrequent.*

There is no evidence to suggest that any of Applicant's family members are, or ever have been agents for the Taiwanese Government. Applicant's mother works for a foundation that researches air quality. The foundation receives funding through the Taiwanese environmental agency, but is not a government agency. Due to strained relationship Applicant has with her father, it is unclear where or for whom he works. There was no evidence to show a nexus that Applicant's mother is in a position that could in some way be exploited by Taiwan in a way that could force Applicant to choose between loyalty to her mother and the United States. Taiwan is a country that the United States has diplomatic relations with. It conducts friendly trade with Taiwan. It is not a country hostile to the United States. There was no evidence presented to indicate that Taiwan has attempted to exploit any residents for the purpose of compromising a security clearance holder within the United States. More specific to the facts of this case, Applicant is a U.S. citizen by birth and identifies with being an American and except for her physical characteristic has no identity with Taiwan. Applicant's father resides in Taiwan and her contact and relationship with him is casual and infrequent. Applicant has little interest in maintaining any relationship with her father and does not know where he lives or works. Applicant has a strained relationship with her mother, but does maintain casual and infrequent contact with her. All of Applicant's relatives she knows, except her father and mother, live in the United States. Her close family ties are with her aunt and uncle who cared for her when she came to the U.S.

Taiwan is not a hostile government to the United States. However, Applicant has the burden of persuasion to demonstrate that her family ties with her parents living in Taiwan do not pose a security risk. To that end, she has credibly testified as to the distant relationships she has with her parents and the infrequency of their contact. She has credibly testified that she has no affection toward her father and her relationship to him is strictly biological. Applicant has some contact with her mother, but it is also infrequent and strained. Applicant's mother lives in Taiwan, does not work for a government agency, nor is there any evidence that she is in a position to be exploited. Applicant's mother plans to retire in the United States. Applicant has renounced her Taiwanese citizenship, has no interest in ever returning to the island, regardless of the circumstances, and no financial interests in Taiwan. Applicant's grandmother is a citizen of Taiwan living in the United States, and it is highly unlikely, considering her advanced age and the fact that her husband is a naturalized U.S. citizen, she will return to Taiwan.

I have considered all the evidence, including Applicant's credibility in this case, and considered her under the "whole person" concept. Accordingly, I find Applicant has succeeded in demonstrating that both MC 1 and MC 3 apply.

In all adjudications the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes we should view a person by the totality of their acts, omissions, motivations and various other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I am satisfied that Applicant has presented sufficient evidence of refutation, extenuation, and mitigation to overcome the case against her. Accordingly, Guideline B is decided for Applicant.

### **FORMAL FINDINGS**

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline B 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

**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. Clearance is granted.

Carol G. Ricciardello

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
3. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Section E3.1.14.
4. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
5. ISCR Case No. 01-20700 (December 19, 2002) at p.3 (citations omitted).
6. ISCR Case No. 98-0761 (December 27, 1999) at p.2.
7. ISCR Case No. 94-1075 (August 10, 1995) at pp.3-4; Directive, Enclosure 3, Section E3.1.15.
8. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Section E3.1.15.
9. *Egan*, 484 U.S. at 528, 531.
10. *Id.* at 531.
11. *Egan*, Executive Order 10865, and the Directive.
12. Executive Order. 10865. § 7.