

DATE: October 15, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-16806

## **ECISION OF ADMINISTRATIVE JUDGE**

**THOMAS M. CREAN**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Jason Perry, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant is a 30-year-old naturalized U.S. citizen born in Taiwan working as an auditor associate for a defense contractor. Applicant has a grandmother, and an aunt and uncle in Taiwan and communicates with two friends living in Taiwan. Applicant has made two pleasure trips to Taiwan in the last eight years and resided there for approximately a year as an intern for her company. The substantial evidence establishes the Applicant has close ties of affection or obligation to the grandmother but not to the aunt and uncle and the two friends. The close ties of affection to the grandmother are mitigated because the grandmother is not an agent of or in a position to be exploited by a foreign power and the contacts are casual and infrequent. Clearance is granted.

### **STATEMENT OF THE CASE**

Applicant submitted a security clearance application on May 08, 2002. Under 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)*, the Defense office of Hearing and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On May 10, 2004, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under Guideline B (Foreign Influence) of the Directive.

Applicant acknowledged receipt of the SOR on May 18, 2004 and answered the SOR in writing on May 20, 2004. Applicant elected to have the matter decided on the written record in lieu of a hearing.

Department Counsel submitted the Government's written case on June 30, 2004. Department Counsel provided a complete copy of the file of relevant material (FORM) to Applicant on July 6, 2004. Applicant was informed she had an opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on August 5, 2004 and had 30 days until September 4, 2004 to submit any information. Applicant has not responded or submitted information as of September 24, 2004. The case was assigned to me on

September 24, 2004.

## FINDINGS OF FACT

Applicant admits to most of the factual allegations pertaining to Foreign Influence under Guideline B in the SOR. Her admissions are incorporated as findings of fact.

Applicant was born in Taipei, Taiwan in 1974 and became a naturalized United States citizen in 1996. She graduated from high school in the United States in 1993, received a Bachelor of Science degree from a college in the United States in 1997 and a Masters Degree from a college in the United States in 2000. After receiving her Masters Degree, Applicant was employed by an accounting firm in the United States. She subsequently went to work with the defense contractor. She has a United States passport. Applicants answered "NO" on her Security Clearance Application to the question if she was a dual citizen of the U.S. and another country. There is no evidence that she holds a foreign passport.

According to the information Applicant supplied on her Security Clearance Application, her mother, father, two sisters, and a brother were all born and reside in the United States. Applicant's grandmother and aunt and uncle are citizens of and reside in Taiwan. There is no evidence that these individuals are connected with the Taiwanese government or are in a position to be exploited by any country. Applicant has periodic telephone contact with her grandmother. She does not communicate with her grandmother by regular mail or e-mail because her grandmother is illiterate. She communicates with her aunt and uncle by telephone only. She communicates with her two friends who are citizens of and reside in Taiwan by mail and e-mail.

Applicant resided with her grandmother in Taiwan for approximately a year while an international intern for the accounting firm. She also traveled to Taiwan for pleasure twice for approximately two months. During one of these visits, she stayed with her grandmother.

Applicant had a boyfriend who is now a citizen and resident of Pakistan. He is no longer her boyfriend and she does not have contact with him.

## 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. The President has restricted eligibility for access to classified information 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 judgement, 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." Exec. Or. 12968, *Access to Classified Information* § 3.1 (b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6

"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: (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 applicant'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 of recurrence. Directive ¶¶ E2.2.1.1 through E2.2.1.9.

The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. 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.

Initially, the Government must establish, by substantial 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. "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* 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). "[S]ecurity clearance determination should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶¶ E2.2.2.

## CONCLUSIONS

Under Guideline B (Foreign Influence (FI)), a security risk may exist when an individual's immediate family, or other persons to whom she or he 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 are relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure. E 2.A2.1.1.

Immediate family members are *spouse, father, mother, sons, daughters, brothers and sister*. E2.A2.1.3.1. Grandmother, aunt and uncle, and friends are not immediate family members. Even though a grandmother, aunt and uncle, and friends are not immediate family members, there is still a foreign influence disqualifying condition if these are persons to whom the Applicant has close ties of affection or obligations and who are citizens of or resident or present in a foreign country. E2.A2.1.2.1 The government has the burden of establishing by substantial evidence Applicant's close ties of affection, influence, or obligation with citizens or residents of a foreign country. Applicant admits her grandmother, aunt and uncle, and two friends are citizens of and reside or are present in Taiwan. She admits to living with her grandmother four year ago for approximately one year while on an internship program for her employer and for two months eight years ago while on a pleasure trip to Taiwan. She admits to periodic telephone contacts with her grandmother. She admits to periodic contacts with her aunt and uncle by telephone. She admits to contact with her two friends in Taiwan by letter mail and e-mail.

The relationship of the Applicant to the grandmother, the aunt and uncle, and the friends brings the matter under the Foreign Influence Disqualifying Condition. (FI DC) E2.A2.1.1 (*Close ties of affection, influence, or obligation with a person not a citizen of the United States and residing in a foreign country*). The contacts and residing with her grandmother is substantial evidence to establish close ties of affection or influence or obligation. The available evidence establishes only infrequent and normal methods of contact with her aunt and uncle and friends and does not show close ties of affection, influence, or obligation.

Applicant's contact with her grandmother may be brought within Foreign Influence Mitigating Condition (FI MC) E2.A2.1.3.1 (*a determination that the associates of the Applicant 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 E2.A2.1.3.4 (*Contact and correspondence with foreign citizens are casual and infrequent*.) Since the grandmother is illiterate, she is not likely an agent of a foreign power and not in a position to be exploited by a foreign power. Applicant's contacts with her grandmother are casual and infrequent. While she lived with her grandmother in Taiwan, it was six years ago and during the time she was on an internship for her employer. The last time she visited her grandmother in Taiwan was four years ago. She has substantial ties to the United States and her immediate family lives and works in the United States. I conclude Applicant has met her heavy burden of establishing

conditions to mitigate the disqualifying condition concerning her grandmother.

Applicant denies any current contact with a former boyfriend in Pakistan. She is not in contact with him since he is no longer her boyfriend.

I carefully considered all of the circumstances in light of the "whole person" concept. I conclude Applicant is eligible for access to classified information.

### **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 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

Subparagraph 1.f. 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 granted.

Thomas M. Crean

Administrative Judge