

KEYWORD: Foreign Influence

DIGEST: Applicant has lived in the U.S. since 1982, and became a naturalized U.S. citizen in 1988. Her parents and only sister are also naturalized U.S. citizens. Her only brother immigrated to the U.S. from the Republic of China (Taiwan) in 2005, and has been granted permanent resident alien status. She no longer has any relatives residing in a foreign country. Applicant has mitigated the foreign influence security concern alleged in the Statement of Reasons. Clearance is granted.

CASE NO: 03-25617.h1

DATE: 02/13/2006

DATE: February 13, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-25617

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has lived in the U.S. since 1982, and became a naturalized U.S. citizen in 1988. Her parents and only sister are also naturalized U.S. citizens. Her only brother immigrated to the U.S. from the Republic of China (Taiwan) in 2005, and has been granted permanent resident alien status. She no longer has any relatives residing in a foreign country. Applicant has mitigated the foreign influence security concern alleged in the Statement of Reasons. Clearance is granted.

STATEMENT OF THE CASE

On December 27, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was 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 a security concern under Guideline B (foreign influence). Applicant submitted an answer to the SOR that was received by DOHA on January 13, 2005, admitted all SOR allegations, and requested a decision without a hearing. By letter, dated July 24, 2005, Applicant notified DOHA she had changed her mind and was requesting a hearing. (Appellate Exhibit I)

The case was assigned to me on August 15, 2005. A notice of hearing was issued on September 15, 2005, scheduling the hearing for October 20, 2005. The hearing was conducted as scheduled. The government submitted two documentary exhibits that were marked as Government Exhibits (GE) 1 and 2. GE 1 was admitted into the record and administrative notice was taken of the information contained in GE 2 without objection. Applicant testified and submitted one documentary exhibit that was marked as Applicant Exhibit (AE) 1, and admitted into the record without objection. The transcript was received on November 18, 2005.

FINDINGS OF FACT

After a thorough review of the pleadings, testimony, and exhibits, I make the following findings of fact:

Applicant is a 40-year-old woman who immigrated to the United States from the Republic of China (Taiwan) in 1982 with her parents and only sister. Her only brother was not permitted to emigrate at that time because he was subject to compulsory military service in Taiwan. Applicant became a naturalized U.S. citizen in 1988. Her parents and sister became naturalized U.S. citizens between 1988 and 1990. Applicant's assets in the U.S. include a house, bank accounts, stocks, and other investments. She does not own any property in Taiwan.

Applicant completed high school and attended a small private college in the U.S. She was awarded a bachelor of science degree in computer science in 1987. She was married in the U.S. in November 1989, and that marriage ended in divorce in July 1997. Applicant has twin children, a boy and a girl, who were born in February 2001. She has been employed as a principal systems engineer by a defense contractor since November 2002. She was previously self-employed from May 1997 until November 2002. Applicant has never held a security clearance.

Applicant's brother was allowed to immigrate to the U.S. in either 1988 or 1989, after Applicant's parents became U.S. citizens and were able to sponsor his entry into this country. He was granted permanent resident alien status at that time, but after a few years decided he wanted to return to live in Taiwan. He thereafter worked as a human resource specialist in a manufacturing plant in Taiwan for a number of years until he was laid off because of a business downturn. His resident status in the U.S. lapsed following his return to Taiwan.

Unable to find acceptable work in Taiwan, and wishing to be reunited with his family, the brother decided he wanted to return to the U.S. to reside sometime around March 2001. He was finally able to complete all the necessary requirements to immigrate to this country and again obtain permanent resident alien status in April 2005. Applicant's brother now lives in the same state as her parents and she believes he intends to apply for U.S. citizenship when he is eligible.

Applicant has traveled extensively to foreign countries, including to Taiwan and the People's Republic of China (China), for both work and pleasure. She visited Taiwan in 1990, 1996, 1997, and 2004. The 1990 and 1996 trips were for the purpose of visiting childhood friends and family members who still resided in Taiwan. The 1997 trip was to visit her seriously ill grandmother. The 2004 trip was to pay her respects at her grandmother's grave. She no longer has any family members residing in Taiwan, and has not had any contact with her old friends for approximately five years.

Applicant visited China in 1999 on a vacation. She again visited China in 2002 at the request of a consulting firm she was working with at the time to attend a trade show and explore the emerging Asian market. There is no indication that anything of a security concern occurred during either trip to China.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. 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, is most relevant in this case.

BURDEN OF PROOF

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

No one has a right to a security clearance⁽⁹⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹⁰⁾ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.⁽¹¹⁾

CONCLUSIONS

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.

The only potentially disqualifying condition that applies in this case is Disqualifying Condition (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 based upon Applicant's brother's citizenship status. She has no other relatives in Taiwan, has not had any contact with her old friend(s) in Taiwan for about five years, and has no plans to travel to that country in the future.

Applicant's brother is now a U.S. permanent resident alien residing in the U.S. She had little contact with her brother while he was living in Taiwan, and her present contact with him is limited to when she visits or calls her parents. Mitigating Condition (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 clearly applies.*

Despite the presumed close ties of affection Applicant has to her brother, the many years of separation they experienced after she immigrated to the U.S. in 1982, coupled with the infrequent contact they have had since, entitle her to application of MC 3: *Contact and correspondence with foreign citizens are casual and infrequent.* Further, she has accumulated a variety of assets of unknown value in the U.S. and has no assets in Taiwan, thus entitling her to application of C: 5: *Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.* Her foreign travel does not create any independent security concern.

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 trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of their acts and omissions. 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

SOR ¶ 1-Guideline B: For Applicant

Subparagraph a: For Applicant

Subparagraph b: For Applicant

Subparagraph 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 Applicant. Clearance is granted.

Henry Lazzaro

Administrative Judge

1. This action was taken under Executive Order 10865 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, Item 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, Item E3.1.15.
8. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
9. *Egan*, 484 U.S. at 528, 531.
10. *Id* at 531.
11. *Egan*, Executive Order 10865, and the Directive.