

DATE: April 8, 2005

In re:

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SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-26992

**DECISION OF ADMINISTRATIVE JUDGE**

**MICHAEL J. BRESLIN**

**APPEARANCES**

**FOR GOVERNMENT**

Edward W. Loughran, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant was born in Taiwan, and came to the United States in 1984 to pursue higher education. She became a U.S. citizen in 1998. Applicant's mother is a citizen of Taiwan, but resides permanently in the United States. Applicant's brother-in-law is a citizen of China and lives in Hong Kong, but her contact with him is casual and infrequent. All of Applicant's remaining relatives are in the United States. Applicant has mitigated the security concerns arising from having relatives who are citizens or residents of foreign countries. Clearance is granted.

**STATEMENT OF THE CASE**

On December 3, 2001, Applicant submitted a security clearance application. The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (the "Directive"). On June 8, 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 answered the SOR in writing on July 1, 2004. Applicant elected to have a hearing before an administrative judge.

The case was initially assigned to another administrative judge, but was re-assigned to me on November 2, 2004. With the concurrence of the parties, I conducted the hearing on December 10, 2004. The government introduced six exhibits. Applicant presented Exhibits A through F, inclusive, and testified on her own behalf. DOHA received the hearing transcript (Tr.) on December 28, 2004.

**FINDINGS OF FACT**

Applicant denied the allegations in ¶¶ 1.a and 1.b of the SOR. (Tr. at 10.) She admitted the factual allegations in ¶¶ 1.c and 1.d of the SOR, with explanations. Applicant's Answer to SOR, dated July 1, 2004, at 1-2. 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 was born in Taiwan, the Republic of China, in 1959. Ex.1 at 1. She came to the United States in 1984 to pursue educational opportunities. Ex. 2 at 1. She attended graduate school in the U.S. between 1984 and 1986, and obtained a master's degree in Education Administration. Tr. at 31; Ex. F at 12. Applicant became a naturalized citizen of the United States in 1998. Ex. 1 at 1.

Applicant continued to live and work in the United States. She has worked as an insurance underwriter, an associate broker for a realty company, a software engineer, a networking research consultant, and a programmer. Ex. 1 at 3-4. Applicant traveled to Hong Kong and China with sightseeing tours in 1998 and 2000. Tr. at 12, 23.

She began working for her present employer in 2000 as a database analyst. *Id.* at 2. Applicant's co-workers, neighbors, and relatives praise her character, reliability, and trustworthiness. Exs. A, B, C, and D.

Applicant has been married since 1991, and has an eight-year-old son. Ex. 1 at 5. Her husband was born in Hong Kong and became a naturalized citizen of the United States in 1998. *Id.* at 12.

Applicant's parents were born in the Peoples Republic of China, and emigrated to Taiwan in about 1948. Ex. 2 at 2. Applicant's father is deceased. Ex. 1 at 5. When her father passed away in 1995, Applicant visited Taiwan to comfort her mother and make funeral arrangements. Tr. at 11-12.

Applicant's mother is 75 years old and retired. Tr. at 11. She worked as a homemaker for the last 50 years, and has no political or military connections. *Id.* At the time of the application for a security clearance, Applicant's mother was a citizen of Taiwan, living part of each year in Taiwan and the United States. Ex. 2 at 2. At the time of the hearing, Applicant's mother was living permanently in the U.S., and not in Taiwan. Tr. at 11. She would like to become a U.S. citizen, but fears the language test would be too great a barrier. Tr. at 25.

Applicant has a brother and a sister. Ex. 1 at 5-6. Both are citizens and residents of the U.S. *Id.* Applicant does not own any foreign property or hold any financial interests outside the U.S. Ex. 2 at 2; Tr. at 21-22. Applicant and her husband have substantial financial interests in the U.S. Tr. at 26-27.

Her husband's parents are also citizens and residents of the United States. Ex. 1 at 6. Applicant's brother-in-law is a citizen of the People's Republic of China, living in Hong Kong. Ex. 1 at 6; Tr. at 10. Applicant denies any close ties of affection or obligation with her brother-in-law. Tr. at 10. He has no connection to the military or the government of China. Tr. at 10, 23. Her brother-in-law has visited their home in the U.S. a few times, the last being in about 1998. Ex. 2 at 1. Applicant rarely speaks to her brother-in-law; their conversations consist of a brief greeting and exchange of pleasantries over the telephone a few times a year. Tr. at 10.

The People's Republic of China is an authoritarian state controlled by the Chinese Communist Party. It has a poor record of protecting human rights. Ex. 4 at 11-12. Historically, its interests were hostile to the United States. Since 2001, relations between the United States and China have enjoyed a new sense of optimism and stability. Ex. 4 at 2.

Hong Kong has been a special administrative region of China since 1997. It has enjoyed a high degree of autonomy, except in defense and foreign affairs, although the future of democratization in Hong Kong is in dispute. Ex. 4 at 21. Hong Kong remains a free society, and its citizens have rights protected by law. The government of Hong Kong generally respects the human rights of its residents.

## POLICIES

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." *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

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 individual's immediate family, including cohabitants, 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. 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. 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 present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. Directive, ¶ E3.1.14. Thereafter, the applicant is responsible for presenting evidence 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.

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 a determination as to the loyalty of the applicant. Exec. Ord. 10865, § 7. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

## 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.

Paragraph E2.A2.1.2.1 of the Directive 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." Paragraph E2.A2.1.3.1 defines "immediate family members" to include a spouse, father, mother, sons, daughters, brothers, and sisters. Applicant's brother-in-law is a citizen of the People's Republic of China and a resident of Hong Kong. He is not an "immediate family member" as defined by the Directive, and Applicant denies that she has close ties of affection or obligation with her brother-in-law. However, Applicant's mother is a citizen of Taiwan, although she resides permanently in the United States. Thus, this potentially disqualifying condition applies.

Under ¶ E2.A2.1.2.2 of the Directive, it may be disqualifying where an applicant is, "[s]haring living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists." Applicant's husband lives with her in the United States. His brother is a citizen and resident of Hong Kong. I find this potentially disqualifying condition applies.

Under the Directive, these potentially disqualifying conditions can be mitigated under certain conditions. It is potentially mitigating where the "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 involved and the United States." Directive, ¶ E2.A2.1.3.1.

None of Applicant's relatives are members of the military forces or the government of Taiwan or China. The evidence indicates none of them is an "agent of a foreign power" as defined by 50 U.S.C.A. § 1801(b).

In assessing whether an applicant is vulnerable to exploitation through relatives or associates in a foreign country, it is helpful to consider several factors, including the character of the government of the relevant foreign country. China is a communist country with significant interests opposed to those of the United States. China has a poor record of protecting human rights. Under the circumstances, it is possible that a "foreign power" in China would attempt to exploit or pressure Applicant's relatives to force Applicant to act adversely to the interests of the United States.

It is important to consider the vulnerability to duress of Applicant's relatives and associates in China. Applicant's brother-in-law lives and works in Hong Kong. Also, it appears he has the means to travel outside China; he has visited the U.S. several times. Although he may be at some risk for adverse influence, it is substantially less than a Chinese resident who does not live in Hong Kong. Applicant's mother is not unusually vulnerable to duress from a foreign power in China, because she is a permanent resident of the United States.

Another significant factor is Applicant's vulnerability to pressure or duress applied indirectly through her relatives. Applicant is a U.S. citizen by choice, and has lived in this country most of her adult life. Most of her relatives are U.S. citizens or residents. She has little contact with her brother-in-law in Hong Kong. All Applicant's assets are in this country. Under the circumstances, Applicant is not especially vulnerable to pressure or duress applied through her relatives. I conclude the mitigating condition set out in ¶ E2.A2.1.3.1 of the Directive does apply.

Under ¶ E2.A2.1.3.3 of the Directive, it may also be mitigating where "[c]ontact and correspondence with foreign citizens are casual and infrequent." Applicant does not stay in close or continuing contact with her brother-in-law in Hong Kong. This potentially mitigating condition applies to that relationship. Applicant's relationship with her mother is not casual or infrequent.

I considered carefully all the potentially disqualifying and mitigating conditions in this case in light of the "whole person" concept, keeping in mind that any doubt as to whether access to classified information is clearly consistent with national security must be resolved in favor of the national security. I conclude Applicant has mitigated the potential security concerns arising from Applicant's personal ties to relatives in foreign countries.

### **FORMAL FINDINGS**

My conclusions as to each allegation in the SOR 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

### **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