

DATE: September 29, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-02874

**ECISION OF ADMINISTRATIVE JUDGE**

**JOAN CATON ANTHONY**

**APPEARANCES**

**FOR GOVERNMENT**

Daniel F. Crowley, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant, who is 27 years old, has a close relationship with her paternal grandparents, who are citizens and residents of Taiwan. Between 1997 and 2004, she traveled six times to Taiwan and visited her grandparents. Some of Applicant's trips to Taiwan were gifts from her parents. Since establishing herself in her profession and marrying a U.S. citizen, Applicant's contacts with her grandparents have lessened, even though she continues to hold them in high regard. Guideline B security concerns are mitigated. Clearance is granted.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On June 12, 2006, under the applicable Executive Order <sup>(1)</sup> and Department of Defense Directive, <sup>(2)</sup> DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision-security concerns raised under Guideline B (Foreign Influence) of the Directive. DOHA received Applicant's written answer the SOR on July 14, 2006. Applicant elected to have a hearing before an administrative judge. On July 27, 2006, the case was assigned to me. I convened a hearing on August 17, 2006, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Applicant waived the 15-day notice provision at Enclosure 3, ¶ E3.1.8. of the Directive.

The Government called no witnesses, introduced two exhibits, and offered two documents for administrative notice. The Government's exhibits (Ex.) were numbered 1 and 2, and its documents offered for administrative notice were numbered I and II. Applicant called one witness and introduced six exhibits (Ex.), which were identified as Ex. A through F. All exhibits were admitted into evidence without objection. DOHA received the transcript (Tr.) of the proceeding August 28, 2006.

**FINDINGS OF FACT**

The SOR contains two allegations of disqualifying conduct charged under Guideline B, Foreign Influence. In her

answer to the SOR, Applicant admitted one allegation, and denied the other. In her denial, Applicant did not deny the underlying facts of the allegation, but she disputed the purpose attributed to the alleged conduct in the SOR. Her admissions are incorporated as findings of fact.

Applicant is 27 years old and employed as a test program manager for a defense contractor. (Ex. 1, at 1-2.) She holds bachelor of science and master of science degrees in electrical engineering from a U.S. university. As a graduate student, she designed a micromachined patch antenna with wireless applications and presented her findings at an international microwave conference held in Japan in November 2002. (Ex. A and Ex. B.)

Applicant was born in Taiwan. She immigrated to the U.S. with her father, mother, and younger sister in 1994, when she was 15 years old. With the exception of her paternal grandparents, who are citizens and residents of Taiwan, most of Applicant's immediate and extended family members are citizens and residents of the U.S. (3) (Tr. 61-62.) In 1997, when Applicant graduated from high school, her parents gave her a trip to Taiwan to visit her elderly paternal grandparents, who had been retired since before Applicant was born. Applicant visited her grandparents in Taiwan for about two weeks. ( Ex. 2; Tr. 50, 53-54.)

Applicant became a U.S. citizen in May 2000 and acquired a U.S. passport in June 2000. She received her bachelor of science degree in electrical engineering in August 2000. (Ex. 1; Ex. 2.) Her parents again gave her a graduation trip to visit her grandparents in Taiwan, and Applicant spent approximately 2 ½ weeks in the summer of 2000 visiting her grandparents in Taiwan. (Tr. 51.)

In the summer of 2002, Applicant again returned to Taiwan with her parents and other relatives to celebrate her paternal grandfather's 80<sup>th</sup> birthday. She was one of about 100 family members and friends who participated in honoring the grandfather. In November 2002, Applicant traveled to Japan to attend an international conference and to present a paper on her academic research. On her return trip to the U.S., she stopped in Taiwan briefly to visit her paternal grandparents. (Tr. 51.)

In January 2003, Applicant's maternal grandmother, a U.S. citizen, found it necessary to travel to Taiwan to conduct some family business. Because the grandmother was elderly and needed assistance, she could not travel alone. She asked Applicant to accompany her on the trip and to remain in Taiwan with her for approximately one week while she conducted her business. When the grandmother's business was finished, she and Applicant returned to the U.S. (Tr. 36, 52; Ex. C.)

In May 2004, Applicant married a U.S. citizen she met in college. Applicant's husband is also an engineer, and he has lived in the U.S. all his life. Applicant's husband's mother has relatives who are citizens and residents of Japan. After the wedding in the U.S., Applicant, her husband, and members of their families traveled to Japan and Taiwan. Applicant's parents gave the young couple a wedding reception in Taiwan, and Applicant's husband's family gave them a reception in Japan. Applicant and her husband were in Japan and Taiwan for approximately two weeks before returning to the U.S. (Tr. 44-45, 52-53, 60; Ex. D; Ex. F.)

Since her marriage, Applicant has not traveled to Taiwan. In May 2006, Applicant's younger sister was married in the U.S. to a U.S. citizen. Prior to the wedding, in February 2006, Applicant's parents gave Applicant's sister an engagement party in Taiwan. Applicant's sister, her fiancé, the fiancé's parents, Applicant's parents, and Applicant's maternal grandmother traveled from the U.S. to Taiwan to attend the engagement party. Applicant and her husband did not go to Taiwan for the party. (Tr. 64-66.)

Applicant communicates with her grandparents in Taiwan approximately twice a year by telephone on their birthdays and on Chinese New Year. She said her parents remind her to make these annual calls to her grandparents. She denied any other contacts with citizens and residents of Taiwan. (Tr.45, 49, 74.)

Applicant asserted her paramount loyalty to the U.S. and noted that her immediate family members were all U.S. citizens and living in the U.S. She observed that her family ties and loyalties in the U.S. were much stronger than those in Taiwan. (Tr. 55-56, 74-75.)

Applicant has received training from her employer regarding the protection of classified information and what to do if approached by unauthorized individuals seeking access to classified information. (Tr. 58-59.)

I take administrative notice that Taiwan is a multi-party democracy and friendly to the U.S. Since the end of World War II, Taiwan has developed a strong position as a major international trading power and has become the world's 17<sup>th</sup> largest economy. Since acceding to the World Trade Organization in 2002, Taiwan has expanded its trade opportunities and further strengthened its standing in the global economy. Taiwan enjoys considerable economic and social stability as a consequence of its high level of prosperity. (Background Note: Taiwan, April 2006; prepared by the Bureau of East Asian and Pacific Affairs, U.S. Department of State: Government Document for Administrative Notice II.)

I also take administrative notice of on-going tensions between Taiwan and the People's Republic of China (PRC). Taiwan seeks to become an independent State, an aspiration which is strongly opposed by the PRC, which sees Taiwan as a province of the PRC. (*Id.*, at 7, 10.) Additionally, I take administrative notice of Taiwan's active and historic roles as collector of competitive information and perpetrator of industrial espionage against U.S. companies producing militarily critical technologies such as information systems, sensors and lasers, and electronics. (Annual Report to Congress on Foreign Economic Collection and Industrial Espionage: 2000: Government Document I for Administrative Notice.)

## **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 judgment, 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.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. 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, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

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.

## **CONCLUSIONS**

### **Guideline B - Foreign Influence**

In the SOR, DOHA alleged, under Guideline B of the Directive, that Applicant's paternal grandparents are citizens and residents of Taiwan (§ 1.a.); and that Applicant had traveled to Taiwan in at least 1997, 2000, twice in 2002, 2003 and 2004 to visit her paternal grandparents (§ 1.b.).

A Guideline B security concern exists when an individual seeking clearance is bound by ties of affection, influence, or obligation to immediate family, close friends, or professional associates in a foreign country, or to persons in the United States whose first loyalties are to a foreign country. A person who places a high value on family obligations or fidelity to relationships in another country may be vulnerable to duress by the intelligence service of the foreign country or by agents from that country engaged in industrial espionage, terrorism or other criminal activity. The more faithful an individual is to family ties and obligations, the more likely the chance that the ties might be exploited to the detriment of the United States.

Applicant's case requires the recognition that Taiwan, a democratically-governed country and a friend of the U.S., is engaged in an on-going struggle with the PRC regarding Taiwan's political and economic autonomy and identity. In their efforts to gain strategic or economic advantage, some individuals and groups in Taiwan seek to obtain, through illegal methods, militarily critical technologies from companies doing business as government contractors in the United States. These actions threaten U.S. security interests. American citizens who have close ties with persons who are citizens or residents of Taiwan could be vulnerable to coercion, exploitation, or pressure.

Applicant admits one of the two allegations under Guideline B. She admits the actions alleged in the second allegation but denies DOHA's contention that her six trips to Taiwan suggested close ties of affection or obligation that would raise a security concern. On their face, Applicant's admissions raise security concerns under Disqualifying Condition (DC) E2.A2.1.2.1.

While Applicant's paternal grandparents are citizens and residents of a foreign country, they are not immediate family members as defined by Guideline B of the Directive.<sup>(4)</sup> However, the grandparents are individuals with whom Applicant has had close ties of affection and their presence in Taiwan raises security concerns under E2.A2.1.2.1 of Guideline B. Applicant's six trips to Taiwan between 1997 and 2004 suggest a closeness to her relatives in Taiwan that could also make her vulnerable under DC E2.A2.1.2.1. of Guideline B to coercion, exploitation, or pressure by individuals or groups seeking militarily critical technologies to be used by the government of Taiwan.

An applicant may mitigate foreign influence security concerns by demonstrating that immediate family members or close associates are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force an applicant to choose between loyalty to the foreign associates and loyalty to the U.S. Mitigating Condition (MC) E2.A2.1.3.1. The evidence does not establish that Applicant's paternal grandfather and grandmother are agents of a foreign power. Applicant testified her grandparents were elderly and had been retired for some time before she was born. However, she offered no evidence to rebut the Government's assertion that her family members in Taiwan could be exploited by groups or individuals engaged in industrial espionage or illegal data collection in a way that could force her to choose between loyalty to her family and the security interests of the United States. (ISCR Case No. 03-15485, at 4-6 (App. Bd. June 2, 2005). Accordingly, MC E2.A2.1.3.1. does not apply to Applicant's case.

An applicant may also mitigate foreign influence security concerns if she shows her contacts and correspondence with foreign citizens are casual and infrequent. MC E2.A2.1.3.3. Applicant's contacts with her paternal grandparents who are citizens and residents of Taiwan were frequent and familial during her adolescent and student years and were supported, financed, and encouraged by her parents, who themselves had close ties of affection and obligation to the grandparents. I note that Applicant's first trip to Taiwan occurred in 1997, when she was not yet a U.S. citizen, and the trip was a gift from her parents, as were Applicant's trips to Taiwan in the summer of 2000 and the summer of 2002. In January 2003, Applicant's elderly maternal grandmother requested that Applicant accompany her to Taiwan so that the grandmother could conduct some family business there. Applicant complied with her maternal grandmother's request. In May 2004, Applicant's parents financed a wedding reception for Applicant and her husband in Taiwan. It would appear that Applicant's brief private visit to Taiwan before returning to the U.S. after a business trip to Japan in the fall of 2002 was the only one of the six trips that Applicant organized and paid for on her own.

As she matured and established her own personal and professional life, Applicant's contacts with her grandparents in

Taiwan became less frequent. Her trips to Taiwan, as recited in the SOR, document Applicant's participation in a familial relationship that has necessarily changed and modified as she has become an adult with her own commitments to a husband, a career, and citizenship in a new country. When her parents feted her younger sister with an engagement party in Taiwan in February 2006, Applicant and her husband did not attend. Now, her contacts with her grandparents in Taiwan are infrequent but still respectful: she telephones them twice a year on their birthdays and at Chinese New Year, often in response to reminders from her parents. While Applicant's relationship with her grandparents in Taiwan cannot be characterized as casual, clearly her contacts with them now are infrequent. Accordingly, I find mitigating condition E2.A2.1.3.3. applies in part to Applicant's relationships with her paternal grandparents who are citizens and residents of Taiwan.

In order to determine whether a person is eligible for a security clearance, an adjudicator must carefully examine a sufficient period of the individual's life and weigh the person's conduct in light of the whole person concept. This is especially true for young people, whose familial roles change as they mature and make their own life commitments. The adjudicative process, as defined at E2.2. of the Directive, is "the careful weighing of a number of variables known as the whole person concept" and further requires the consideration of reliable information, favorable and unfavorable, about a person's past and present conduct. The following factors should be considered in evaluating the relevance of an individual's conduct under the whole person concept: "the nature, extent and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the voluntariness of participation; the presence or absence of rehabilitation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; and the likelihood of continuation or recurrence." (See Directive, E2.2.1.1 to E2.2.1.9.)

I have carefully reviewed the administrative record, Applicant's testimony, and the allegations in the SOR. I have weighed the disqualifying and mitigating conditions of Guideline B, and I have evaluated Applicant's conduct over the past nine years in light of the whole person concept identified at ¶ E2.2 of Enclosure 2 of the Directive. I have especially taken note of Applicant's age and maturity and the circumstances and voluntariness surrounding her visits to her grandparents in Taiwan. I have also assessed Applicant's credibility and have found her statements about her present relationships with her grandparents to be believable and consistent with her current state in life. I conclude the Guideline B allegations of the SOR for the Applicant.

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: 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.

Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.

3. Applicant has two uncles who are citizens and residents of Taiwan. One uncle lives with her paternal grandparents; the other uncle, on her mother's side, is in the process of immigrating to the U.S. (Tr. 49; 61-62.)

4. Mitigating Condition E2.A2.1.3.1. of Guideline B defines immediate family members as "spouse, father, mother, sons, daughters, brothers, sisters...."