

DATE: June 30, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-05289

ECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Esq., Department Counsel

FOR APPLICANT

Ronald Keller, Esq.

SYNOPSIS

Applicant is 44 years old, married, and works for a defense contractor. She was born in Singapore, immigrated in 1978 to the U.S. for her college education, and became a U.S. citizen in 1990. Her retired parents and one brother with his family live in Singapore where they are citizens. She has title to an apartment in Singapore in which her parents live. Applicant mitigated the foreign preference and foreign influence security concerns. 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 April 13, 2005, DOHA issued a Statement of Reasons⁽¹⁾ (SOR) detailing the basis for its decision-security concerns raised under Guideline C (Foreign Preference) and Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing on May 17, 2005 and elected to have a hearing before an administrative judge. The case was assigned originally to me on August 4, 2005, then reassigned to another administrative judge, then reassigned back to me on November 1, 2005. On January 26, 2006, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government and the Applicant submitted exhibits that were admitted into evidence. DOHA received the hearing transcript (Tr.) on February 8, 2006.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated here as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 44 years old, married, and works in the computer and regulatory compliance area for a defense contractor. She had a security clearance in a prior employment and complied with all security requirements. She was born in the island nation of Singapore in 1962 when it was part of Malaysia. She immigrated to the U.S. in 1978 to obtain her

college degree. She obtained degrees in computer science and applied mathematics, with a minor in business. While working for defense contractors, she lived in Hong Kong from 1996 to 1998, and then in Singapore from 1998 to 1999. At all other times she lived in the U.S. since immigrating. From 1988 to 1993 she held a security clearance when she worked for a defense contractor and no security violations occurred on her record. (Tr. 63-70, 85, 88-98, 101)

Applicant and her husband married on July 3, 1986. They met in college. He is a major in the national guard and employed by a government contractor. He has served in the military reserves or national guard since 1984. Neither of them discuss with the other their work, keeping their business and private lives separate. She and her husband own their own home in the U.S. Applicant expressed a strong preference for the freedoms she experienced in the U.S. since 1978, especially the opportunity to study what subjects she wanted instead of studying what the Singapore government wanted her to study in 1978 if she had not immigrated. Applicant is considered by her managers and peers at her employer to be an honest, conscientious, and knowledgeable employee and co-worker. She has a professional demeanor at all times. She and her husband have saved and prudently invested their money in the U.S. so their net worth exceeds several million dollars. The Singapore apartment is about 17% of their net worth and not a burden on their net monthly cash flow from their salaries and investments to make the payments monthly to their sister-in-law. This apartment is the only real estate in Applicant's name outside the U.S. (Tr. 20-39, 41-46, 54, 63-67, 84, 85, 88; Exhibits 1 and 2, A-T)

Applicant is the oldest of three children. Her parents live in Singapore and are citizens of that country. Her father is a retired jeweler and her mother did not work outside her home. One brother, his wife, and their two children live in Singapore and are citizens of that country. He is an antiques dealer. Applicant's other brother lives in the U.S. and is a Singaporean citizen. Applicant and that brother have not had any contact in at least three years because of a family dispute. Applicant has other uncles and aunts who live throughout southeast Asia and Britain, but she has had little or no contact with them since 1992. Applicant has never discussed her work with her parents or brother, and they do not know what job she has. (Tr. 54, 56, 77-79, 94, 99; Exhibit 2)

Applicant travels annually to Singapore with her husband to visit her parents and brother. As the eldest child, she feels responsible for the care for her aging parents. She is the executor of their trust, and needs to be a Singaporean citizen to exercise that power. She speaks with her parents monthly, and often weekly as their health concerns grow. She is active in arranging health care for her parents in the Singapore health care system. To accomplish these goals, Applicant retains dual citizenship with the U.S. and Singapore. She became a U.S. citizen in 1990, but retained her Singapore citizenship and Singapore passport, even renewing her Singapore passport in 1996. She has a U.S. passport and uses it regularly when she travels outside the U.S. She used her Singaporean passport in 1998 when she took her mother to Malaysia from Singapore for a one day shopping trip. When she took that trip she notified the U.S. Embassy in Singapore that she was traveling to Malaysia. (Tr. 47, 48, 73, 74, 107; Exhibits 1-5)

In 2005 Applicant surrendered her Singaporean passport to the Singapore Embassy in Washington, D.C. She sent the passport to the embassy through her employer's security office. She retains her Singapore citizenship, but intends to relinquish it when her parents die. She needs that citizenship to act as their executor and to hold title to real estate, as she does for her parents' two bedroom apartment. Applicant borrowed \$450,000 from her brother and sister-in-law in Singapore to buy that senior living equipped apartment for her parents because she could not get a bank loan. She repays that loan at the rate of \$1,000 a month. Applicant attempted to obtain a mortgage from U.S. and Singapore banks, but for various business reasons none of these financial institutions would loan her the money for the purchase of her parent's apartment. Neither of her brothers volunteered to put the title in their names, so Applicant contributed \$50,000 in addition to the amount she borrowed in the intra-family transaction, and put the real estate in her name. When her parents die, she will sell the property and repay the loan from her sister-in-law. The \$50,000 of her own money Applicant contributed to the purchase price is 2% of her net assets. (Tr. 50, 51, 81-84, 92, 96-98, 102-104, 109, 110; Exhibits 1-5)

Singapore is a parliamentary democracy on an island in southeast Asia. It has low corruption in its government, a skilled workforce, 94% literacy rate, and is the 15th largest trading partner of the U.S. Its land mass is 264 square miles with a population of about four million people of several ethnic derivations. It is a stable country and highly developed economically. Its government has long-standing pro-business and pro-development policies. Its constitution and democracy respects human rights, though its practices may vary somewhat on certain practices from the U.S.; for example, its requirements for public speaking permits and mandatory ethnic balance in housing. Singapore has a career

military of 14,200 people, with another 40,800 in compulsory national service, and a reserve force of 225,000. The U.S. and Singapore have a Memorandum of Understanding since 1990 allowing U.S. naval vessels access to port facilities, and in October 2003, the two countries announced an agreement to expand their military cooperation. Singapore also has free trade agreement with the U.S. and is not known to conduct intelligence operations against the U.S. (Exhibits 6-8)

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 authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information with Industry*

§ 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required.

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. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 (See Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

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. 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. ay 2, 1996). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 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. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Exec.

Or. 12968 § 3.1(b).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

Guideline C: Foreign Preference: *The Concern*: When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States. E2.A3.1.1

Guideline B: Foreign Influence: *The Concern*: 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 are relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure. E2.A2.1.1

CONCLUSIONS

The SOR alleged Applicant has a foreign preference for Singapore because of having a Singaporean passport and dual citizenship. It also alleged she is subject to foreign influence because of some of her family members residing in Singapore and the home she helped finance for her aged parents.

Regarding the foreign preference security concern, Disqualifying Conditions (DC) 1 (The exercise of dual citizenship E2.A3.1.2.1) and DC 2 (Possession and/or use of a foreign passport E2.A3.1.2.2) apply. Applicant maintains her citizenship in Singapore even after becoming a U.S. citizen. Until 2005 she also had a Singapore passport which she renewed after she became a U.S. citizen and used to travel to Malaysia in 1996.

Two Mitigating Conditions (MC) apply here. MC 1 (Dual citizenship is based solely on parent's citizenship or birth in a foreign country E2.A3.1.3.1) and MC 4 (Individual has expressed a willingness to renounce dual citizenship. E2.A3.1.3.4). Applicant was born in Singapore, where her parents are citizens. She expressed a willingness to renounce her Singapore citizenship when her parents die. She has already surrendered her Singapore passport to the Singapore Embassy through her company's security office. She only used that passport once for travel, and that was a day trip with her mother from Singapore into Malaysia after she notified the U.S. Embassy that she was making that trip as a U.S. citizen. Applicant has a greater interest in the U.S. because she owns a house in the U.S. and her other assets are in the U.S. Her preference is clearly for the U.S. based on her financial status resulting from her employment since 1988, 18 years residence in the U.S., marriage to a U.S. citizen who is a military member, a strong preference for the U.S. freedoms and economic opportunities, and her taking U.S. citizenship. Her remaining connection to Singapore is only from her sense of obligation as the first-born child to help her aged parents with their health problems. Her siblings could have taken the initiative to help their parents, but did not do so, so Applicant stepped in to help. Examining Applicant's whole person, finances, and history in the U.S. shows she has a U.S. preference and I conclude this guideline for Applicant.

Regarding the foreign influence security concern, 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. E2.A2.1.2.1) and DC 8 (A substantial financial interest in a country. E2.A2.1.2.8) apply. Applicant's parents and one brother with his family are in Singapore, living there all their lives. Applicant has title to an apartment in which her parents live, valued at approximately \$500,000, and she borrowed \$450,000 from her sister-in-law to purchase the property.

MC 1 (A determination that the immediate family members, (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, 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 E2.A2.1.3.1) and MC 5 (Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities. E2.A2.1.3.5) apply.

The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the U.S. Applicant's parents are retired from private business. Her brother is a private businessman. No one is employed by the Singapore government. They are not agents of the Singapore government. Nor are they in a position to be exploited by the Singapore government. Singapore is a democratic society with strong trading relationships to the U.S. and is not known to conduct intelligence operations against the U.S. (I think this is correct, but you need to check) Applicant owns the apartment in which her parents live, and it was her money and her sister-in-law's money that purchased it, so no Singapore bank or government-owned lender is involved. Applicant's family members are either retired or in private business involving only the antiques trade, with no government connection. Her family does not know what Applicant does for a living in the U.S. because she has not discussed it with them. Their lives are separate. There is no motivation or likelihood Singapore would seek out Applicant's relatives to exploit them because Singapore is a small nation with a small military establishment not able to project any power outside its territorial boundaries, and dependent on trade with the U.S. and other countries to survive economically. Industrial or political espionage would do more harm to Singapore than to Applicant. Applicant held a security clearance for five years without incident under the same circumstances.

While a \$500,000 apartment may seem expensive, it is not uncommon in the U.S. in certain areas, and may not be uncommon on an island with four million people squeezed into 264 square miles. Furthermore, Applicant financed the purchase with an intra-family loan and her own \$50,000 contribution. The total amount is only about 17% of Applicant's net worth, and her \$50,000 contribution is a negligible percentage of her monetary assets in the U.S., and an amount she could afford to forfeit if the Singapore government suddenly seized all private property, an unlikely prospect given its history of respect for private property and business promotion. Her direct investment is minimal, and her sister-in-law has the largest part of the investment. For all these reasons, coupled with the duration of Applicant's residence in the U.S. and her U.S. citizenship, the magnitude of her financial investment in the U.S. with her husband, her strong connection to the U.S. through her marriage, and her professional demeanor and conduct, I conclude this guideline for Applicant under the whole person concept of the Directive.

FORMAL FINDINGS

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

Paragraph 1. Guideline C: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Paragraph 2. Guideline B: FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For Applicant

Subparagraph 2.c: For Applicant

Subparagraph 2.d: For Applicant

Subparagraph 2.e: For Applicant

Subparagraph 2.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 is granted.

Philip S. Howe

Administrative Judge

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