

KEYWORD: Foreign Influence

DIGEST: Applicant's parents and brother are citizens and residents of Taiwan. Applicant's father is holding an unknown number of stock certificates in Applicant's name for transmittal to her at a future date. Applicant's close and familial ties to her family members in Taiwan raise serious security concerns because they could result in the compromise of classified information. Clearance is denied.

CASENO: 05-04234.h1

DATE: 04/20/2006

DATE: April 20, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-04234

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Kathryn D. MacKinnon, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's parents and brother are citizens and residents of Taiwan. Applicant's father is holding an unknown number of stock certificates in Applicant's name for transmittal to her at a future date. Applicant's close and familial ties to her family members in Taiwan raise serious security concerns because they could result in the compromise of classified information. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On July 11, 2005, under the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ DOHA issued a Statement of Reasons (SOR) and specified the basis for its decision-security concerns raised under Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing August 6, 2005, and elected to have a hearing before an administrative judge. The case was assigned to me on November 28, 2005. I convened a hearing on January 25, 2006, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses, introduced three exhibits, and offered four documents for administrative notice. Applicant called no witnesses and introduced seven exhibits (Ex.), which were identified as Ex. A through G. The Government's exhibits (Ex.) were numbered 1 through 3, and its documents offered for administrative notice were numbered I through IV. All exhibits were admitted into evidence without objection. The four documents identified for administrative notice were included in the record without objection. At the close of the proceeding, with the agreement of both parties, I left the record open until February 8, 2006, so that Applicant could submit additional documentation supplementing her Ex. B. On January 31, 2006, Applicant filed four documents pertaining to her Ex. B. Department Counsel did not object to the admission of these documents. Accordingly, I marked the documents as Applicant's Exs. B-1, B-2, B-3, and B-4 and admitted them to the administrative record of this case. DOHA received the transcript (Tr.) of the proceeding February 6, 2006.

FINDINGS OF FACT

The SOR contains three allegations of disqualifying conduct charged under Guideline B, Foreign Influence. In her answer to the SOR, Applicant admitted the three Guideline B allegations. Her admissions are incorporated as findings of fact.

Applicant is 41 years old and employed as a principal consultant with expertise in computer programming and database design by a defense contractor. In 1988, she immigrated to the U.S. from the Republic of China (Taiwan), where she was born and where she received her undergraduate education. In 1990, she received a master's degree in information systems from a U.S. university. (Tr. 73.) She has been married since 1991. Applicant's husband was born in Taiwan and is also employed as a computer programmer by a government contractor. Applicant and her husband became U.S. citizens in 1998. They are the parents of two children, ages eight and ten. Both children were born in the U.S. (Ex. 1.) Applicant's children are learning to read and write Mandarin Chinese in an extracurricular program. (Tr. 80-81.)

Applicant is the youngest of three children. Her parents are citizens and residents of Taiwan. Applicant's mother is 65 years old and has always been a homemaker. Applicant's father, who is 67 years old, is retired. Neither parent speaks English. Applicant's older brother, the first born son, is also a citizen and resident of Taiwan. He is married and the father of two children. (Tr. 42-44; 47; 49; 76.) Applicant's second brother, from whom she is estranged, is a U.S. citizen and employed as a computer programmer in the U.S. (Tr. 52.)

Before his retirement, Applicant's father was president of a privately-owned commercial shipping company. Applicant believes her parents to be financially secure. (Tr. 66.) Applicant's grandfather and her older brother also worked in the company. (Tr. 40;43-44.) Applicant is not sure if her older brother works at the present time for the shipping company. (Tr.50; 74-75.) She knows he does some kind of administrative work for a company. (Tr. 49.)

Approximately 30 years ago, Applicant's father and grandfather purchased stock options in the private commercial transportation company that Applicant's father served as president. Applicant's father made out a certain number of the stock option certificates in Applicant's name and in the names of her two brothers. While Applicant has not seen the stock option certificates and does not know their monetary value, she is reasonably sure her name is on some of them and her father will hand them over to her at some time in the future. (Ex. 3 at 2; Tr. 52-53; 55.)

Applicant is close to her family in Taiwan. She speaks with her parents and her brother by telephone every other week. (Tr. 40;49.) She also communicates with them regularly by e-mail or by voice over the Internet. (Tr. 46; 50; 76-77.) She has a home computer with Chinese language capacity but does not use it very often. (Tr. 77.)

In 1999, Applicant's parents visited her in the U.S. for three weeks. (Ex. 3 at 1.) In 1997, before becoming a U.S. citizen, Applicant traveled to Taiwan to visit her family. She used her Taiwan passport for that trip. In 2004, Applicant traveled to Taiwan to visit her family. She used her U.S. passport. (Ex. E; Tr. 60-61) She did not use her Taiwan passport to visit Taiwan or any other country after she received her U.S. passport in 1999. (Tr. 58.)

Applicant did not surrender her Taiwan passport when she became a U.S. citizen. In a signed sworn statement to a special agent of the Defense Security Service in April 2002, she stated she kept her Taiwan passport to use when she traveled to Taiwan to visit her family there. (Ex. 2 at 1.) In a signed, sworn statement to a special agent of the Defense Security Service in June 2002, Applicant stated she would relinquish her Taiwan passport, if necessary. She also stated she would let the passport expire and would not renew it. (Ex. 3 at 2.) Applicant's Taiwan passport expired in February 2003. (Ex. D.) During her security investigation interviews, Applicant was not provided with a copy of the Money memorandum and was not informed that, absent official approval, she could not have a security clearance if she possessed and/or used a foreign passport. ⁽³⁾ (Tr. 70-71.)

Applicant presented evidence to show she was a careful and responsible U.S. citizen who had no criminal record, paid her debts on time, enjoyed a positive credit rating, and was a careful and responsible driver. (Exs. A, B, and C.) Additionally, Applicant presented two letters of character reference from co-workers who attested to her excellent personal and professional conduct, her strong work ethic, and her honorable character. (Exs. F and G.)

I take administrative notice that Taiwan is a multiparty democracy which enables its approximately 23 million citizens to enjoy a high standard of living in an atmosphere 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. (Country Reports on Human Rights Practices - 2003: China (Taiwan only), Released by the Bureau of Democracy, Human Rights, and Labor, February 25, 2004, U.S. Department of State, Government Document I for Administrative Notice; President Chen's New Year Message, published January 1, 2006, by Office of the President, Republic of China (Taiwan), <http://www.gio.gov.tw/taiwan-website/4-0a/20060101/2006010101.html>, Government Document IV for Administrative Notice.) 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 II 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 mother, father, and brother are citizens and residents of Taiwan (¶¶ 1.a.; 1.b.); and that Applicant's father possesses stock certificates, in Applicant's name, in a Taiwanese company from which he retired as president. (¶ 1.c)

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 and the PRC are engaged in an on-going struggle 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 with immediate family members who are citizens or residents of Taiwan could be vulnerable to coercion, exploitation, or pressure.

Applicant admits the three allegations under Guideline B. Her admissions raise security concerns under Disqualifying Conditions (DC) E2.A2.1.2.1 and E2.A2.1.2.8. Applicant's father, mother, and brother are citizens and residents of Taiwan. The presence of these immediate family members in Taiwan raises security concerns under E2.A2.1.2.1. of Guideline B. Approximately 30 years ago, Applicant's father, the president of a commercial shipping company, purchased stock certificates in Applicant's name, which he holds for her. While the monetary value of the certificates is not known, Applicant's interest in this foreign-owned and operated business could make her vulnerable to foreign influence, thus raising a concern under DC E2.A2.1.2.8. Additionally, Applicant's vulnerability could be exploited 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 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. While the evidence does not establish that Applicant's father, mother, and brother are agents of a foreign power, they are citizens of a country with an uncertain political future where groups engaged in industrial espionage or illegal data collection are not constrained from acting against U.S. interests. Applicant offered no evidence to rebut the Government's assertion that her family members in Taiwan could be exploited by these groups 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 family members who are citizens and residents of Taiwan are based on ties of familial affection or obligation. Applicant's frequent telephone contacts and occasional Internet and e-mail contacts with her parents and brother are based on close ties of affection and obligation. She speaks with her parents and brother by telephone every other week. Those contacts reflect familial closeness and concern and are not casual. Accordingly, mitigating condition E2.A2.1.3.3. does not apply to Applicant's

relationships with her father, mother, and brother, all of whom are citizens and residents of Taiwan.

Additionally, since Applicant failed to show that her foreign financial interests in the company her father presided over were minimal and not sufficient to affect her security responsibilities, MC E2.A2.1.3.5. is inapplicable. Accordingly, the allegations in subparagraphs 1.a. through 1.c. under Guideline B of the SOR are concluded against the Applicant.

Nothing in Applicant's answers to the Guideline B allegations in the SOR suggested she was not a loyal American citizen and a credit to her adopted country. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Therefore, nothing in this decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty, or patriotism.

FORMAL FINDINGS

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

Paragraph 1. Guideline B: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

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. Guideline C (Foreign Preference) security concerns were not alleged in the SOR. See Memorandum, dated August 16, 2000, from Assistant Secretary of Defense Arthur L. Money, clarifying the application of the foreign preference adjudicative guideline.