



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 08-00727  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff Nagel, Department Counsel  
For Applicant: *Pro Se*

January 16, 2009

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**Decision**

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LOKEY ANDERSON, Darlene, Administrative Judge:

Applicant submitted her Electronic Questionnaire For Investigations Processing on October 16, 2006. On August 11, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline B for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

The Applicant responded to the SOR on September 16, 2008, and she requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on October 16, 2008. A notice of hearing was issued on October 30, 2008, scheduling the hearing for December 11, 2008. At the hearing the Government presented two exhibits, referred to Government Exhibits 1 and 2. The Applicant presented six exhibits, referred to as Applicant's Exhibits A through F, and testified on her own behalf. The official transcript (Tr.) was received on December 23, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

## **Request for Administrative Notice**

Department Counsel submitted a formal request that I take administrative notice of certain facts concerning the current political conditions in Taiwan. Applicant had no objection. (Tr. p. 16). The request and the attached documents were not admitted into evidence but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

### **FINDINGS OF FACT**

The following Findings of Fact are based on Applicant's Answer to the SOR, the testimony and the exhibits. The Applicant is 45 years of age and has a Masters Degree in Computer Science. She is employed as a NT Administrator for a defense contractor. She seeks a security clearance in connection with her employment in the defense industry.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because she has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant was born in Taipei, Taiwan in 1963. She moved to the United States in 1988 to pursue higher education. After obtaining her Masters Degree and learning that she loved the American culture, she decided to make the United States her permanent home. In 1995, she married a United States citizen. They have two children who are native born American citizens. She established friends, neighbors, and assets in the United States. In 2000, she became a United States citizen and obtained a United States passport. On June 24, 2008, she physically destroyed her Taiwanese passport in front of her Facility Security Officer. (Applicant's Exhibit E). She does not consider herself a dual citizen, only a citizen of the United States. She attends church and volunteers in her community by visiting the elderly in convalescent homes and helping the homeless. She and her husband are currently going through a divorce. (Government Exhibit 2).

The Applicant's mother and father were born in and are citizens and residents of Taiwan. Her mother is and always has been a homemaker. Her father is a retired businessman who was in the import/export business. Other than her father's two year mandatory military service, he has had no other associations with the Government of Taiwan. The Applicant communicates with her parents in Taiwan about twice a month or so. The Applicant's parents are financially self-sufficient and the Applicant provides them with no financial support. Her parents own a house in Taiwan that upon their death will be inherited by the Applicant's brother.

The Applicant's brother, who is 43 years old and self-employed as an interior designer, is a dual citizen of Taiwan and Canada. He currently resides in Taiwan. The Applicant's only contact with him is about three times a year. He is not affiliated with the Taiwanese Government in any capacity.

In November 1999, November 2003 and March 2004, the Applicant traveled to Taiwan for a vacation and to visit her parents. On two of those occasions, she took her children with her to allow them the opportunity to visit their grandparents. During her visit in March 2004, the Applicant's parents asked her if she wanted to vote and so she did. During these visits the Applicant has never been approached by anyone seeking protected or sensitive information from her. In the event that she is ever confronted with this situation, she testified that she will report it to her company's security department.

The Applicant's mother purchased two properties in Taiwan and placed them in the Applicant's name when she was a child. One of the properties was an apartment, the other was a resort room in a resort hotel. Applicant explained that she has never seen the properties and this was done simply to avoid taxes in Taiwan. Applicant has since transferred these properties back into her mother's name, since she is the true owner. (Applicant's Exhibit A).

The Applicant has no assets in Taiwan. Applicant's financial records indicate that she owns a house in the United States worth approximately \$870,000.00, with approximately \$670,000.00 in equity, several IRA's, with almost \$100,00.00, and a checking and savings account with approximately \$28,000.00. (Applicant's Exhibit C).

Applicant has received numerous certificates for her contributions to the work environment, including Excellence in Action awards with monetary compensation, and for courses she has successfully completed. A Performance Review of the Applicant dated August 26, 2008 reflects "exceptional performance" in the implementation and successful execution of a system upgrade. (Applicant's Exhibit B).

Letters of recommendation from the Applicant's Direct Manager, her fourth level Manager, a coworker, and a friend, attest to her competency, conscientiousness, professionalism and hard working attitude. She is considered to be responsible, mature and trustworthy. She consistently exhibits good judgment, is well organized, extremely efficient and willing to do whatever task is needed to get the job done. (Applicant's Exhibit D).

I have taken official notice of the following facts concerning the Taiwan. Taiwan is a multi-party democracy with a population of about 23 million. It is one of the most active collectors of sensitive United States information and technology. Numerous individuals and companies have been subjected to civil penalties and or prosecuted for illegally exporting, or attempting to illegally export, sensitive United States technology to Taiwan. One United States official was recently convicted of crimes relating to his improper relationship with a Taiwanese intelligence official.

## **POLICIES**

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the

conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

### Foreign Influence

6. *The Concern.* Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

#### Condition that could raise a security concern:

7. (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.

#### Conditions that could mitigate security concerns:

8. (a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;

8. (c) Contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct

- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is “clearly consistent with the national interest” to grant an Applicant’s request for access to classified information.

The DoD Directive states, “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. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, “Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned.”

The Government must make out a case under Guideline B (foreign influence) that establishes doubt about a person’s judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant’s adverse conduct and her ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates a foreign influence and has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The mere possession of a foreign passport raises legitimate questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

## CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR.

Under Foreign Influence, Disqualifying Condition 7(a) *contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion* applies. However, Mitigating Conditions 8(a) *the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.*, and 8(c) *Contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation* also apply.

Although the Applicant's parents and brother are residents and citizens of Taiwan, the Applicant has limited contact with them. There is no evidence of a close bond or strong evidence of affection. She may speak with her parents twice a month but the conversation is casual. She only communicates with her brother three times a year. Clearly, the Applicant's deep and abiding ties are here in the United States. She has lived in the United States for the past twenty years. Although she is going currently going through a divorce, she has two young children that she is responsible for. She has worked hard to establish herself as a responsible, educated, productive United States citizen. Her employment with the DOD and her significant assets, that include her home, a checking and saving account and retirement account, are all in the United States. The Applicant essentially cut all ties from Taiwan when she moved to the United States in 1988, and made it her permanent home.

It is noted that the current political situation in Taiwan elevates the cause for concern in this case. However, the evidence shows that the Applicant has no bond and affection with her foreign family members or to any foreign individual or to Taiwan in any way that could potentially cause the Applicant to become subject to foreign exploitation, inducement, manipulation, pressure, or coercion. Therefore, there is no possibility of foreign influence that exists that could create the potential for conduct resulting in the compromise of classified information. I find that the Applicant is not vulnerable to foreign influence. Accordingly, I find for the Applicant under Guideline B (Foreign Influence).

## **FORMAL FINDINGS**

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.  
Subpara. 1.a.: For the Applicant  
Subpara. 1.b.: For the Applicant  
Subpara. 1.c.: For the Applicant  
Subpara. 1.d.: For the Applicant

## **DECISION**

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson  
Administrative Judge