



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:

SSN: -----

Applicant for Security Clearance

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ISCR Case No. 08-04227

Appearances

For Government: Melvin A. Howry, Department Counsel

For Applicant: *Pro Se*

January 9, 2008

Decision

LOKEY ANDERSON, Darlene, Administrative Judge:

Applicant submitted her Electronic Questionnaire For Investigations Processing on July 17, 2007. On July 22, 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 August 12, 2008, and she requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on September 25, 2008. A notice of hearing was issued on September 30, 2008, scheduling the hearing for November 18, 2008. At the hearing the Government presented four exhibits, referred to Government Exhibits 1 to 4. 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 November 26, 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. 26). 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 31 years of age and has a Bachelors of Science Degree in Electrical Engineering. She is employed as a Systems Engineer 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 Taiwan in 1977. She speaks Taiwanese and Mandarin. She is a dual citizen of Taiwan and the United States. In 1984, she moved to the United States with her parents when she was seven years old. She became a naturalized United States citizen in 2001, at the age of twenty-four. At that time, she destroyed her Taiwanese passport. She was offered a job with her present employer in 2003, after working as an intern for a year while in college.

Although the Applicant's parents and a sister are dual citizens of Taiwan and the United States, they reside in the United States and have no intent of ever returning to Taiwan. Her parents and sister have no contact with any of their family in Taiwan except the Applicant's grandmother, to check on her health. Applicant's parents own a house in the United States several miles from the Applicant's house and they live between both houses. Since the Applicant works long hours, they clean, cook and do laundry for her. (Tr. p. 53).

The Applicant's maternal grandparents are citizens and residents of Taiwan. They are both retired. The Applicant is not aware of their occupations before retirement. She also has nine uncles and aunts, twenty-nine cousins who are citizens and residents of Taiwan. She has a total of four nephews and nieces. The Applicant has no contact with any of her family in Taiwan.

She traveled to Taiwan for her cousin's wedding in 2005. Her only contact with her family in Taiwan since then was when a cousin and a niece came to visit in July or August 2008.

The Applicant has no assets in Taiwan. She and her sister own a house in the United States. Applicant's net worth in the United States is approximately \$600,000.00

including her house, a checking and savings account and a retirement account. Applicant's financial records substantiate this information. (Applicant's Exhibits B, C and D and Tr. p. 48).

Applicant provided a copy of the International Travelers Guide (Applicant's Exhibit E) and testified that if she is ever contacted or approached by anyone seeking classified, sensitive or protected information she will report it to the Embassy and to her company. (Tr. p. 49).

Two witnesses, including her current Manager and Project Lead, testified on behalf of the Applicant. They both consider her to be trustworthy, responsible, punctual and intelligent. She is in the top 1/3 of the Engineers in the department. Since working for the company she has received a promotion for her excellent work. (See Tr. pp. 58-65)

Letters of recommendation from her previous Manager and current Project Lead attest to her valuable engineering skills, professional attitude, intelligence and hard work. She is highly recommended for a position of trust. (Applicant's Exhibit A).

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 has many family members in Taiwan who are residents and citizens of Taiwan, the Applicant is not close to any of them, and except for her grandmother on rare occasions, she has no contact with them. There is no evidence of a close bond or strong evidence of affection. The Applicant's deep and abiding ties are here in the United States. She has grown up and lived in the United States since she was seven years old. She has worked hard to establish herself as a responsible, educated, productive United States citizen. Her employment with the DOD and her assets, that include her home, 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 at the age of seven 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).

Considering all the evidence, the Applicant has met the mitigating conditions of Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, she has met her ultimate burden of persuasion under Guideline B.

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
Subpara. 1.e.: For the Applicant
Subpara. 1.f.: For the Applicant
Subpara. 1.g.: For the Applicant
Subpara. 1.h.: For the Applicant

Subpara. 1.i.: 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