



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



In the matter of:)
)
-----) ISCR Case No. 08-05258
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: D. Michael Lyles, Esquire, Department Counsel

For Applicant: Ronald C. Sykstus, Esquire

February 27, 2009

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant certified Electronic Questionnaires for Investigations Processing (e-QIP), on December 14, 2006. On August 11, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline B (Foreign Contacts) and Guideline C (Foreign Preference). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended, and 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.

In her response to the SOR, dated September 2, 2008, Applicant admitted all allegations raised with exculpatory explanations. She also requested a hearing before an Administrative Judge. The case was ultimately assigned to me on September 18, 2008. Department Counsel and Applicant, through her counsel, agreed to a October 22,

2008, hearing date. A Notice of Hearing was issued by DOHA on October 6, 2008, setting the hearing for that date.

The hearing took place as scheduled. Department Counsel submitted 19 exhibits (Ex.) which were accepted into the record as Exs. 1-19 without objection. Applicant submitted 19 exhibits, accepted as Exs. A-S without objection. Five witnesses were called. The transcript (Tr.) was received on November 3, 2008. The record was closed on November 5, 2008. Based upon a review of the case file, exhibits, and testimony, security clearance is granted.

Administrative Notice

The Government requested administrative notice of certain facts regarding Taiwan, including that country's precarious position in relation to the People's Republic of China and the U.S. Government's "one-China" policy. In support of its position on these facts, it introduced Exs. 5-19 as applicable resources.¹ Citing to a 2000 Annual Report to Congress from the National Counterintelligence Center, it notes that Taiwan is among the most active collectors of U.S. economic and proprietary information.² It also cites to various cases involving the illegal export, or attempted illegal export, of U.S. restricted, dual use technology to Taiwan. The Government's request is granted. Applicant declined to object to the documents, but added without objection Ex. Q, an October 14, 2008, news article regarding the \$6.5 billion arms sale the United States made to Taiwan shortly before the hearing. All the documents have been reviewed and given due consideration in light of the particular facts of this case.

Findings of Fact

Applicant is a 44-year-old senior software engineer who has worked for the same defense contractor since 2005. She was born in Taiwan, the daughter of a carpenter and a dressmaker. Her father is deceased. Her retired 73-year-old mother remains a citizen of Taiwan, but has permanent resident status in the United States (U.S.).³ Her sister is single, a private school bus driver, and her divorced brother is a stock advisor with custody of his daughter. Her siblings are also citizens of Taiwan, but both have been approved for permanent resident status in the U.S. At the time of the hearing, they were awaiting visas so they can relocate to the U.S.⁴ The family is expected to be reunited in early 2009. Applicant has never married and has no children.

After receiving her Bachelor of Science (B.S.) degree in 1988, Applicant came to the U.S. to pursue graduate studies. She accepted a scholarship in 1989 and

¹ These documents were issued between September 1999 and March 2008.

² Ex. 4 (Administrative Notice) at 2-3.

³ Tr. 58. Despite this status, the mother is currently in Taiwan helping care for her divorced son's daughter.

⁴ *Id.*

graduated with a Master of Science (M.S.) degree in 1992. She received her second M.S. degree in 1994. After graduation, she moved to her present area of residence, where some of her friends and colleagues had moved, but entry level work was difficult to find. She did, however, receive a recruitment offer to move to a more costly region, which she accepted in 1995. The company was favorably impressed by her work. With the company's encouragement, she applied for permanent residency. She became active in her church and with musical groups. She started looking at real estate while earning her state real estate license. She received her green card in February 2000. She declined to buy a home initially, however, because the area in which she was then employed had a high cost of living, a highly inflated real estate market, and she found the climate disagreeable.⁵

Over the next few years, Applicant began to consider the United States as her home. She applied for U.S. citizenship in 2004. In 2005, she thought of again trying to find work in the area in which her friends and colleagues resided and which had a reasonable cost of living. She found a job through a friend and moved later that year. She became active in that community, especially with her local church and in an orchestra, and has been fully accepted into that community. She enjoys her work, is paid a competitive salary, and is building a retirement.

Applicant became a U.S. citizen in September 2006 with every intent of spending the rest of her life in the U.S.⁶ She took her oath very seriously, especially those sections dealing with renunciation of other ties with other countries and taking up arms to defend the U.S.⁷ It was her understanding that this renunciation obviated her qualification as a dual citizen.⁸ Three days after becoming a citizen, she got her voter's registration card, seeing it as an important right of her citizenship.⁹ Similarly she applied for a U.S. passport. She turned her Taiwanese passport over to her security manager in September 2006 with a note again stating that she renounced her past citizenship and relinquished her passport.¹⁰

In the past 20 years, Applicant has visited Taiwan four times.¹¹ She used her Taiwanese passport for each trip because the trips were taken before she became a

⁵ Tr. 40-42.

⁶ Tr. 43-44.

⁷ Tr. 46.

⁸ Indeed, in completing her 2006 security clearance application, she marked question 8d (Countries of Dual Citizenship) as "not applicable."

⁹ Tr. 44.

¹⁰ Tr. 47, 97-100. On Applicant's security clearance application, she noted the expiration of her Taiwan passport as September 2006, the month it was relinquished. Had she not relinquished her passport, it would have expired in 2014. Tr. 67.

¹¹ Tr. 54.

U.S. citizen in September 2006. Her last Taiwanese passport was issued in March 2004 and was set to expire in March 2014, but it was relinquished to her security manager in September 2006 upon becoming a U.S. citizen. Her four trips to Taiwan were her only trips abroad in the past two decades. Applicant's employer was apprised of each of these trips.¹² The sole purpose of the trips was to visit her parents and siblings.

Applicant formerly had a small interest in four real estate properties in Taiwan that she inherited from her father when he died in 2000. Those properties are maintained by Applicant's mother and siblings. Her interest was a 1/76th or 1/60th interest.¹³ She was initially unaware of this inheritance. She learned of it when she was preparing her 2006 security clearance application and she asked her family if she had any foreign interests remaining in Taiwan. Not wishing to have any apparent conflicts, she sold her interest in one of the properties and transferred her interest in the other three properties to her niece.¹⁴ She no longer has any property interests in Taiwan. In contrast, she has been house hunting in her current town for a while, but has been cautious given the currently volatile real estate market.¹⁵ Her pension and savings are here in the U.S.

Applicant has never been approached by members of a foreign government while in the U.S. or while visiting Taiwan. She is aware of the appropriate protocols should she ever be thus contacted. None of her family work for a foreign government. The only time any member of her family has been contacted by a government official was when her brother was questioned about his business practices. In that situation, however, the brother was simply released without charges.¹⁶

Applicant's contact with her siblings is infrequent, usually pertaining to their mother or calls made on holidays. They do not discuss their respective jobs.¹⁷ Applicant is waiting for her siblings to emigrate to the U.S. so they can be here with their mother.

At work, Applicant works for a smaller entity with limited resources and projects. It lacks the major name recognition of many defense contractors. She is well regarded for both her work performance and personality. She is completely open about her life. She is trusted by her employer and colleagues, who have no reservations regarding her acquisition of a security clearance.

¹² Tr. 83.

¹³ Tr. 52.

¹⁴ Tr. 53, 59-61; Ex. K.

¹⁵ Tr. 55-57.

¹⁶ Tr. 65.

¹⁷ Tr. 66.

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's over-arching adjudicative goal is a fair, impartial and common sense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole person concept." The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." ¹⁸ The burden of proof is something less than a preponderance of evidence. ¹⁹ The ultimate burden of persuasion is on the applicant. ²⁰

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that 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." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites

¹⁸ See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

¹⁹ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

²⁰ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

for access to classified or sensitive information). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”²¹ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.²² The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.²³ 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.

Based upon consideration of the evidence, I find **Guideline C (Foreign Preference)** and **Guideline B (Foreign Contacts)** to be the most pertinent to the case. Conditions pertaining to these adjudicative guidelines that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

Analysis

Guideline C – Foreign Preference.

The concern regarding foreign preference is that when an individual acts in such a way as to indicate a preference for a foreign country over the U.S., then he or she may be prone to provide information or make decisions that are harmful to the interests of the U.S.²⁴ Conditions that could raise a security concern and may be disqualifying include exercise of any right, privilege, or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member.²⁵

The SOR contains two allegations. First, that available information showed that Applicant exercised dual citizenship with Taiwan and the United States. Second, that available information showed that she possessed a Taiwanese passport that was set to naturally expire in March 2014.

Applicant’s testimony and the relevant documents indicate that since taking the oath of U.S. citizenship in September 2006, Applicant has not exercised any rights of citizenship of any country other than the U.S. This includes the retention of a Taiwanese passport, possession of which appears to have been her only exercise of Taiwanese citizenship in the past 20 years. Her highly credible testimony, personal conduct, and her security clearance application all demonstrate that she took her oath of U.S. citizenship seriously, particularly with regard to her renunciation of her

²¹ *Id.*

²² *Id.*

²³ Executive Order 10865 § 7.

²⁴ AG ¶ 9.

²⁵ AG ¶ 10(a).

Taiwanese citizenship. In fact, upon becoming a .S. citizen, she surrendered her Taiwanese passport to the cognizant security authority despite the fact it was good through 2014. Lacking evidence of an exercise of dual citizenship and with her Taiwanese passport so relinquished, no security concerns remain under Guideline C and no further discussion of that guideline is necessary.²⁶ Foreign Preference Security Concerns have been mitigated.

Guideline B – Foreign Influence

The concern under Guideline B is that 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. The adjudication 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 U.S. citizens to obtain protected information and/or is associated with a risk of terrorism. Conditions pertaining to this adjudicative guideline that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, are set forth and discussed in the conclusions below.

When Applicant emigrated from Taiwan, she left behind a mother, who is a permanent resident of the U.S., but remains a citizen of Taiwan. Similarly, she left behind two siblings, both of whom recently received permanent U.S. citizen status, but remain citizens of Taiwan. Applicant maintains contact with these relatives. Over the past two decades, Applicant has returned to Taiwan to visit them. Foreign Influence Disqualifying Conditions (FI DC) AG ¶ 7a (*contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of exploitation, inducement, manipulation, pressure, or coercion*) and AG ¶ 7b (*connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information*) apply. With disqualifying conditions thus raised, the burden shifts to Applicant to mitigate security concerns.

Applicant's mother is currently in Taiwan, helping raise her granddaughter. Applicant maintains contact with her mother and siblings. While infrequent, their relations are naturally familial. Consequently, Foreign Influence Mitigating Condition (FI MC) AG ¶ 8c (*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*) does not apply. Similarly, neither AG ¶ 8a (*the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or*

²⁶ As noted by Department Counsel in his closing argument: "And under Guideline C we don't see any dispute with respect to her having turned over her passport to the cognizant Security authority. But Guideline B remains a concern." Tr. 102.

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.) nor AG ¶ 8c (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) apply.

The facts show, however, that Applicant works for a smaller entity with limited resources and projects. It does not have major name recognition. Neither Applicant nor her family discuss their work. Applicant duly reported her foreign travel to her employer. Applicant has never been approached by foreign nationals while either at home or abroad. Should such contact be made, Applicant is fully aware of her reporting obligations and is capable of fulfilling them. Her family in Taiwan has never been approached by government or other officials regarding Applicant. Therefore, FI MC AG ¶ 8e (*the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country*).

Furthermore, Applicant has spent her entire adult and professional life in the U.S. Through two graduate programs and two employers over 20 years, she has cultivated many friends and colleagues in the U.S. She has become a member of a solid community here, active with both her church and a local orchestra, and it is her intent to spend the rest of her life in the U.S. To that end, she has helped her mother and siblings attain permanent resident status in the U.S. and she is awaiting their arrival within the next few months. Upon arrival, Applicant will have no ties to Taiwan. Moreover, Applicant is currently seeking to buy a home in her area of residence.

Further, taking her oath of citizenship seriously, Applicant cut all ties to the government of Taiwan. She disposed of her property interests and relinquished her Taiwanese passport. She has no residual sense of loyalty or obligation to Taiwan. She is proud to call the U.S. her home and has gone to great lengths to minimize even the appearance of divided loyalties. Her unwavering devotion to the U.S. is notable. The facts give rise to FI MC AG ¶ 8b (*there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest*).

Whole Person Concept

Under the whole person concept, the Administrative Judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a): "(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other

permanent 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.” Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a public trust position must be an overall common sense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the “whole person” factors noted above. Applicant has many factors which speak in her favor. She is mature, articulate, analytical, and well-educated. She has spent two decades, nearly her entire adult life in the U.S. During that time, she made and maintained friendships and professional contacts to the exclusion of any non-familial ties in Taiwan. She has been continuously employed in the U.S., earns a handsome salary, and is building a retirement fund. She has pursued a real estate license to help her understand the ins and outs of the real estate market. Applicant is looking into buying a home of her own. With her encouragement, her remaining family have gained permanent resident status in the U.S. and are soon to relocate to the U.S. In taking her oath of citizenship, she clearly and volitionally renounced her ties to Taiwan, sold her foreign property interests, and relinquished her foreign passport. She has never been questioned by a foreign agent, nor has a foreign agent ever contacted her family regarding her. Today, her sole country of preference and interest is the U.S. and her only passport is issued by the U.S.

The main factor speaking against Applicant is her country of birth, Taiwan, and its relationship with the Republic of China. The literature is extensive with regard to Taiwan’s information gathering. To some degree, trust between the U.S. and Taiwan has hit a new high with the recent \$6.5 billion arms sale the United States made to Taiwan. As well, Applicant’s family has no significant ties to either the Taiwan or Chinese government. They have thus far “lived under the radar” with regard to their having a family member in the U.S. None have worked for a foreign government and none are dependent on a foreign government’s largesse. More importantly, her family members have U.S. permanent residency status and are anticipated to relocate here in the near future, if they have not already. There is no reason to believe that now, after 20 years in the U.S., a foreign entity may take interest in this emigrating family.

Today, Applicant’s sole country of preference is the U.S., and her only passport is U.S.-issued. No evidence has been presented that she has any residual indications of foreign preference which have not been addressed, nor is there any hint that she might be prone to provide information or make decisions that are harmful to the U.S. While foreign influence was discussed above, it is interesting to note that Applicant’s family’s only government contact had to do with her brother’s stock market activities, not with Applicant. Otherwise, she and her family have thus far escaped notice by foreign governments. Moreover, despite the many negative points about Taiwan and its relationship with China, recent events in 2008 show that the U.S. is working closer to Taiwan toward their mutual benefit. With foreign interest and preference security concerns mitigated, I conclude it is clearly consistent with national security to grant Applicant a security clearance. Clearance is granted.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 2, Guideline B:	FOR APPLICANT
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Subparagraph 1.a:	For Applicant
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Subparagraph 1.b:	For Applicant
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Paragraph 2, Guideline C:	FOR APPLICANT
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Subparagraph 1.a:	For Applicant
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Subparagraph 1.b:	For Applicant
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Subparagraph 1.c:	For Applicant
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Subparagraph 1.d:	For Applicant
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Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Clearance is granted.

ARTHUR E. MARSHALL, JR.
Administrative Judge