



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-08674
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jennifer I. Goldstein, Department Counsel
For Applicant: Personal Representative, Gerald Martinez

December 10, 2009

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing on May 15, 2009. (Government Exhibit 1). On June 17, 2009, 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 July 6, 2009, and she requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on July 30, 2009. A notice of hearing was issued on August 12, 2009, scheduling the hearing for September 23, 2009. At the hearing the Government presented three exhibits, referred to Government Exhibits 1 through 3, which were admitted without objection. The Applicant presented fourteen exhibits, referred to as

Applicant's Exhibits A through N, which were admitted without objection, and testified on her own behalf. The record remained open until close of business on October 8, 2009 to allow the Applicant the opportunity to submit additional documentation. The Applicant submitted three Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits A through C that were admitted without objection. The official transcript (Tr.) was received on October 5, 2009. 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. 10). 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 34 years of age and has two Master's of Science Degrees; in Systems Engineering and in Business Administration. She is employed as a Senior 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 Taipei, Taiwan in 1975. In 1989, at the age of fourteen, the Applicant's aunt and uncle gave her the opportunity to move to the United States to obtain a better education and to pursue sports, so she did. Applicant moved to the United States, became ingrained in the American way, and became a naturalized United States citizen in February 1992. (Applicant's Exhibit I). By the age of sixteen, Applicant's biological aunt and uncle by marriage attempted to adopt her, but at the time were going through a divorce. Applicant's aunt moved out of the house, and the Applicant was subsequently adopted by her American uncle. While in college, the Applicant, an excellent student, received an internship with her employer, a defense contractor, and in 2000, was offered a full time position with the company that she has held successfully since then.

The Applicant's biological parents are citizens of and reside in Taiwan. Applicant's biological father is a chiropractor. Applicant's biological mother is a

housewife. Applicant contacts her biological mother about once a week to see how she is doing.

The Applicant has two adopted children, who are actually her biological niece and nephew. She adopted her biological brother's children, to give them the same opportunity she had to come to the United States to study. Both of the adopted children are dual citizens of the United States and Taiwan. (Applicant's Exhibits L and M). The children contact their biological parents on a daily basis by telephone or web-cam. Applicant believes as their adopted parent, even though one of them is 19 years old and no longer a minor, they both want to permanently stay in the United States.

The Applicant has three biological brothers who are citizens of and reside in Taiwan. One of her brothers is an optometrist for a private company, his wife is his assistant. Another brother works in the cosmetic business and his wife is an accountant. Her third brother is a laboratory assistant at a college. All of her brothers know that she is an Engineer, but they do not discuss her work. She speaks to her brothers between one and three times a year.

The Applicant traveled to Taiwan in December 2007, January 2006, December 2003, December 2001 and August 2000 to visit family and friends who are citizens and residents of Taiwan. On those trips, she stayed with her biological parents and spent between 17 and 21 days. Her only contact with her friends is when she visits there. On those occasions she has used her Taiwanese passport to enter and exit Taiwan for convenience. Realizing that possession of a foreign passport can jeopardize her chances of obtaining a security clearance, the Applicant has destroyed her Taiwanese passport, and is also willing to renounce her Taiwanese citizenship. (Applicant's Exhibit N). In her mind she is only a United States citizen. She states that she has no patriotic feelings toward Taiwan.

No one has ever approached the Applicant to obtain sensitive or classified information. (Tr. pp. 75-76). None of her family in Taiwan know that she is applying for a security clearance, and she has no intention of telling them. To her knowledge, none of her family in Taiwan is associated with the Taiwanese government. The Applicant has no financial assets outside of the United States and no knowledge of any possible inheritance in Taiwan. (Tr. p. 111, and Applicant's Exhibits F, G and H). Applicant provides no financial support to any of her family or friends in Taiwan.

Testimony from the Applicant's section manager, who is also her supervisor at times, attests to her professionalism, her value to the company, and her skill in the field of engineering. Her work product "exceeds expectations" for 2008, and she was promoted last year. He recommends her for a position of trust. (Tr. pp. 55-61).

Letters of recommendation from Applicant's colleagues indicate that she is an eager and excellent learner, who has strived for excellence and has consistently demonstrated it. She is a promising young engineer who is conscientious, enthusiastic, considerate and thoughtful. She is considered honest, trustworthy, with integrity beyond

her years. In their opinion, she had demonstrated complete loyalty to the United States and is proud to be an American. She is a strong candidate for a security clearance. (Applicant's Exhibit A).

A letter from the Applicant's adopted American father attests to the Applicant's hard working character, trustworthiness and responsible nature. He states that she exhibits loyalty to the United States and he considers her to be a "model American citizen". He strongly recommends her for a position of trust. (Applicant's Post-Hearing Exhibit A).

A letter from a coworker, who has been the Applicant's mentor in the past, states that the Applicant is energetic and enthusiastic. She is also said to be a quick learner who maintains a positive outlook. She is considered to be person with a high level of integrity, honesty and trustworthiness. (Applicant's Post-Hearing Exhibit B).

A letter from a Senior Principal Engineer, who also a colleague of the Applicant's, and has overseen her work product, states that she is an outstanding engineer. She can be relied upon in any instance to get the job done at its highest level of completeness. He states that the Applicant has exceptional leadership, responsibility, dependability and communication skills. (Applicant's Post-Hearing Exhibit C).

Applicant received an award of recognition for her dedicated service on the job. (Applicant's Exhibit E).

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(b) 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 in the U.S. interest;

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 18-19, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature, extent, 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 extent to which the participation was voluntary;
- f. The presence or absence of rehabilitation and other permanent behavioral changes;
- g. The motivation for the conduct;
- h. The potential for pressure, coercion, exploitation or duress; and
- 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 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.

CONCLUSION

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.*, 8(b) *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 biological parents and three brothers are residents and citizens of Taiwan, the Applicant has only casual and limited contact with them. Her early years as a child were spent in Taiwan, but her entire adult life has been spent in the United States. She left her biological parents for the opportunity of moving to the United States. She attended high school and college in the United States, where she excelled, and obtained advanced degrees. For the past twenty years, she has made the United States her permanent home. Clearly, the Applicant's deep and abiding ties are here in the United States. She has worked hard to establish herself as a responsible, educated, productive United States citizen. She adopted her niece and nephew to be able to provide them the same American values and opportunities that she has been given. All of her assets are in the United States. Although she maintains some casual and infrequent contact with her biological mother, brothers, and a few friends, the nature of the conversations are just that, casual.

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. She has made that clear. She has surrendered her Taiwanese passport and is willing to renounce her Taiwanese citizenship. There is no possibility of foreign influence that could create the potential for conduct resulting in the compromise of classified information. She has demonstrated that she can be trusted with sensitive 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