



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



In the matter of:)
)
) ISCR Case No. 09-01794
)
)
Applicant for Security Clearance)

Appearances

For Government: Braden Murphy, Esquire, Department Counsel

For Applicant: *Pro se*

February 24, 2010

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant has mitigated the security concerns raised under the guideline for foreign influence. Accordingly, her request for a security clearance is granted.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP), signed on September 2, 2008. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding¹ that it is clearly consistent with the national interest to grant Applicant's request for a security clearance.

¹ Required by Executive Order 10865, as amended, and DoD Directive 5220.6 (Directive), as amended.

On August 7, 2009, DOHA issued to Applicant a Statement of Reasons (SOR) that specified the basis for its decision: security concerns addressed in the Directive under Guideline B (Foreign Influence) of the Revised Adjudicative Guidelines (AG).² Applicant signed her notarized Answer to the SOR on September 2, 2009, in which she admitted to all the allegations in the Statement of Reasons. She also requested a hearing before an administrative judge.

Department Counsel was prepared to proceed on October 1, 2009, and the case was assigned to me on October 9, 2009. DOHA issued a Notice of Hearing on November 6, 2009, and I convened the hearing as scheduled on December 8, 2009. During the hearing, Department Counsel offered two exhibits, which were marked and admitted as Government Exhibits (GE) 1 and 2. Applicant testified and offered eight exhibits, which I marked and admitted as Applicant Exhibit (AE) A through H. DOHA received the transcript (Tr.) on December 17, 2009.

Procedural Ruling

Department Counsel requested that I take administrative notice of facts relating to Taiwan, set forth in a summary marked as Hearing Exhibit (HE) I, with 15 attached documents. The facts administratively noticed are limited to matters of general knowledge and not subject to reasonable dispute.

Findings of Fact

Applicant's admissions to the SOR are incorporated herein as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the record evidence, I make the following additional findings of fact.

Applicant, 35 years old, was born in Taiwan and earned a bachelor's degree there in 1996. She immigrated to the United States in 1997, at the age of 23, to further her education. In 1999, she earned a master's degree in Business Administration at a U.S. university. She became a U.S. citizen in July 2008, and received her U.S. passport in September 2008.³ She has worked for the same federal defense contractor since 1999, receiving the highest performance ratings. (GE 1; AE D, E; Tr. 52-54, 60)

² Adjudication of this case is controlled by the Revised Adjudicative Guidelines, approved by the President on December 29, 2005, which were implemented by the Department of Defense on September 1, 2006. The Revised Adjudicative Guidelines supersede the guidelines listed in Enclosure 2 to the Directive, and they apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

³ At her security interview, Applicant informed the agent that she held a valid Taiwanese passport, which she had last used in 2006, before becoming a U.S. citizen. As a result of the interview, she realized that the foreign passport represented a security concern for the government, and promptly destroyed it at her home. A short time later, she received a letter informing her of the proper method to destroy it. She sent

Applicant married in 2003. Her husband and his family are U.S. citizens. He is a petty officer in the Navy, and has held a security clearance since 1994. Their daughter, aged three, was born in the United States (GE 1; AE H; Tr. 35, 41).

When Applicant lived in Taiwan, she had a strong attachment to her grandfather, who raised her while her mother worked. Applicant traveled to Taiwan to visit her ailing grandfather in 1999 and 2000, and then in 2002 to attend his funeral. Applicant testified that after he died, she had little reason to return to Taiwan, and has only visited once since then, in 2006. When there, she stays with her mother (AE B; Tr. 48-49, 72)

Applicant's divorced parents are citizens and residents of Taiwan. Her mother, 60 years old, was born in Taiwan and resides there. She was self-employed as an internet service provider and has no contact with the Taiwanese government. She retired in 2007 because she planned to spend more time in the United States with Applicant's daughter. Although Applicant's relations with her mother are strained, they have been in touch frequently since the birth of Applicant's daughter in 2006. Applicant stated in her security interview that she talks with her mother about 3 times per week and emails once every two weeks. Applicant's husband testified that she talked to family in Taiwan about once per week before her grandfather died in 2002, and currently talks with her mother about once every two weeks. Applicant's mother came to the United States about three to five times per year between 2006 and 2008 to take care of Applicant's daughter. In 2009, she visited twice. Her last visit occurred in September 2009 when she came to accept her permanent resident card. (GE 2; AE B; Tr. 29, 39, 45-46, 65, 68-69)

Applicant sponsored her mother for permanent U.S. resident status. As of the date of the hearing, her mother has been approved for permanent resident status and has received a "green card." Applicant's mother is aware that Applicant is applying for a security clearance. (GE 2; AE F, G; Tr. 46).

Applicant's mother owns a home and two income properties in Taiwan. She plans to sell them in anticipation of moving to the United States. As of the hearing date, she had obtained a buyer for one property, and had contacted a realtor to sell the second property. When both are sold, she will sell her residence. (Tr. 47, 69-70).

Applicant's father, 62 years old, was born in China (PRC) and is a citizen and resident of Taiwan. Applicant thinks he used to be a salesman, but is unaware of his current employment. She spoke to him in approximately 1997, when she moved to the United States. After 1997, she saw him at her grandfather's funeral in 2002, and then did not speak to him again until 2008, when her mother requested it. "I have been

a notarized letter indicating that she had already destroyed it (the record does not indicate the addressee of the letter). Possession of a valid foreign passport is a security concern under Guideline C, which is not alleged in this case.

estranged from my father, and that is why I was not, and will not, be sponsoring him for his green card to come to the United States, and I do not have any intention to have additional further relationship with him, really.” (Tr. 49, 65-66)

Applicant's grandmother was born in China, and is a Taiwanese citizen. Before she retired, she was a doctor. Applicant used to talk with her by telephone approximately twice per month. However, she currently suffers from Alzheimer's disease, and resides in a community home in Taiwan.⁴ Applicant has not been able to see or speak to her since early 2006. She has no other family in Taiwan. Applicant has an aunt and uncle who are naturalized U.S. citizens and live in the United States. Applicant does not provide financial support to any family members. She has a 401(k) account through her company and an individual retirement account. Her husband will receive a Navy pension in the future (GE 1, 2; AE A; Tr. 72-74, 76, 79).

Administrative Notice

I take administrative notice of the following facts derived from the documents submitted for administrative notice. Taiwan is a multi-party democracy. The United States does not support Taiwan independence, in keeping with the “one China” policy. However, it continues to maintain strong unofficial relations with Taiwan. The United States supports Taiwan's membership in appropriate international organizations where statehood is not a requirement for membership and also supports its meaningful participation in appropriate international organizations.

Taiwan and the People's Republic of China (PRC) have significant economic ties, which are attributable to their physical proximity and history. Because of its location, Taiwan has a particular interest in information from the United States that could aid it in its own defense. Taiwan's primary defense goal is to deter invasion from the PRC. The PRC maintains intelligence operations in Taiwan through a bureau utilizing PRC nationals with Taiwanese connections.

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the Revised Adjudicative Guidelines (AG).⁵ Decisions must also reflect consideration of the “whole person” factors listed in ¶ 2(a) of the Guidelines.

The presence or absence of disqualifying or mitigating conditions does not determine a conclusion for or against an applicant. However, specific applicable

⁴ Applicant's family has moved her grandmother between Singapore and Taiwan, but as of the date of the hearing, she was living in Taiwan. (Tr. 79)

⁵ Directive. 6.3.

guidelines are followed when a case can be so measured, as they represent policy guidance governing the grant or denial of access to classified information.

A security clearance decision is intended only to resolve the question of whether it is clearly consistent with the national interest⁶ for an applicant to receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it falls to applicants to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, applicants bear a heavy burden of persuasion.⁷ A person who has access to classified information enters a fiduciary relationship based on trust and confidence. The government has a compelling interest in ensuring that applicants possess the requisite judgment, reliability, and trustworthiness to protect the national interest as her or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of the government.⁸

Analysis

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern pertaining to foreign influence:

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.

The relevant disqualifying conditions are AG ¶¶ 7(a), 7(b) and 7(e):

⁶ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁷ See *Egan*, 484 U.S. at 528, 531.

⁸ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

(a) 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 foreign exploitation, inducement, manipulation, pressure, or coercion; and

(b) 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.

Applicant has foreign family ties through her parents and grandmother, who live in Taiwan. She has visited Taiwan four times since 1999, and she stays with her mother during these visits. Such ties do not automatically disqualify an Applicant from obtaining a security clearance. However, Taiwan both maintains defenses against the People's Republic of China, and has economic ties to it based on history and proximity. Family ties in Taiwan raise security concerns because of the potential for foreign influence. AG ¶¶ 7(a) and 7(b) apply.

The foreign influence guideline also includes factors that can mitigate security concerns. Under AG ¶ 8, the following mitigating conditions are relevant:

(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 United States;

(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 of the U.S. interest;

Applicant has three family members in Taiwan: her father, mother, and grandmother. She has been estranged from her father for several years and has no current relationship with him. Her grandmother suffers from Alzheimer's disease. The remaining family member, Applicant's mother, is the primary concern. However, she is retired, and even when employed, she did not have a high-profile or government-related job. Moreover, she is in the process of obtaining U.S. citizenship, and planning to move the United States to be with her granddaughter. It is unlikely that Applicant would be exploited because of any of her three family members in Taiwan. Mitigating condition AG ¶ 8(a) applies.

Applicant has an ambivalent relationship with her mother. Although they have strained interactions when they are together, Applicant did help her mother obtain U.S. permanent residency. Their relationship rests primarily on Applicant's mother's desire to maintain ties with Applicant's daughter. On the other hand, Applicant's longstanding ties to the United States weigh in her favor when evaluating the question of potential conflicts of interest. She earned an advanced degree here. She married a U.S. service member, and her daughter is a native-born U.S. citizen. She has retirement accounts here. She has provided support to the federal government for more than ten years through her job with a defense contractor. I conclude that she would choose these strong U.S. ties over her foreign connections, in the event that a conflict of interest arose. AG ¶ 8(b) applies.

Whole Person Analysis

Under the whole person concept, an administrative judge must evaluate the Applicant's security eligibility by considering the totality of the Applicant's conduct and all the relevant circumstances. An 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) the 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept. Under the cited guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Foreign family ties raise security concerns because of the potential for conflicts of interest and exploitation. Here, Applicant's ongoing relationship with her mother in Taiwan raises such concerns. She is in frequent contact with her mother, and she has traveled to Taiwan four times since 1999. However, Applicant's strong ties to the United States through her education, her husband, her daughter, and her investments represent substantial ties to the United States. She has provided support to federal contracts since 1999. Given Applicant's significant ties to the United States, I conclude that she would resolve any conflict of interest in favor of the United States.

Overall, the record evidence satisfies the doubts raised concerning Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from the cited adjudicative guidelines.

Formal Findings

Paragraph 1, Guideline B	FOR APPLICANT
Subparagraph 1.a. - 1.d.:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to allow Applicant access to classified information. Applicant's request for a security clearance is granted.

RITA C. O'BRIEN
Administrative Judge