



**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. 09-02127

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: B. Daniel Lynch, Esquire

September 1, 2010

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility to access classified information is granted.

Statement of the Case

On September 17, 2009, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether her clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on October 9, 2009, and requested a hearing. The case was assigned to me on January 21, 2010, and was scheduled for hearing on February 23, 2010. A hearing was held on the scheduled date. At the hearing, the

Government's case consisted of four exhibits. Applicant relied on six witnesses (including herself) and two exhibits. The transcript (Tr.) was received on March 5, 2010.

Summary of Pleadings

Under Guideline C, Applicant is alleged to have exercised dual citizenship with the U.S. and Taiwan by virtue of (1) applying for and receiving a Taiwanese passport in about July 2007; although she was a naturalized United States (U.S.) citizen since 1979; (2) using her Taiwanese passport for travel to Taiwan in July 2007 and March 2008, in lieu of her U.S. passport, and after becoming a naturalized U.S. citizen in 1979; (3) travelling to Taiwan so she could vote in the 2008 Taiwan presidential election; and (4) possessing a Taiwanese passport that will not expire until July 2017.

In her answer to the SOR, Applicant admitted most of the allegations. She denied only her current possession of a Taiwanese passport, having destroyed the passport by tearing it in pieces, and then surrendering it to the cognizant security authority, namely her Facility Security Officer (FSO).

Findings of Fact

Applicant is a 62-year old senior vice president for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Background

Applicant was born in the People's Republic of China (PRC). In 1949, while she was only a few months old, she and her family relocated to Taiwan to escape Communist rule that came to dominate the PRC following World War II. (Tr. 58-59, 95.) Applicant received her secondary and college training in Taiwan and immigrated to the U.S. in November 1973 to further her college education. (See GE 1; Tr. 113.) Her parents immigrated to the U.S. in 1986 following her father's retirement and resided in the U.S. until their deaths in 2006 and 2007, respectively. Both of her parents became naturalized citizens. (See GE 1; Tr. 113-17.)

Applicant entered the U.S. with a Taiwanese passport and became a naturalized U.S. citizen in May 1979. (See GE 1; Tr. 96-97, 115.) Her Taiwanese passport expired in the 1980s, and she did not renew it after she became a U.S. citizen. (See GE 4, Tr. 105, 116.) She earned a masters in business adminoin MBA from a respected U.S. university in 1976. (Tr. 96.) Before assuming her current position, she held project manager positions with various federal agencies, and has held security clearances with these assignments. (Tr.100.)

Applicant married a U.S. citizen in December 1974. (See GE 1; Tr. 96.) She has three children from this marriage. (See GE 4.) All of her children are U.S. citizens by birth, and do not exercise dual citizenship with any country. Applicant and her husband

separated in 1989 and divorced in 1995. (GE. 1; Tr. 96-97.) She relocated to her current state of residency in 1992. (Tr. 98.)

In July 2007, Applicant and her two sisters and brother renewed their Taiwan passports and travelled to Taiwan to register to vote in the scheduled 2008 Taiwan presidential election. (Tr. 70-78, 101-02.) They did so to honor her father's dying wish (*viz.*, for Applicant, himself, and her siblings to vote in the 2008 Taiwan presidential election). (See GE 4; Tr. 57-70, 87-88,102.) Her father passed away before the March 2008 election. (GE 4.) Before he passed away, though, he impressed upon Applicant and her siblings his deep interest in voting in the scheduled March 2008 Taiwan presidential election, and voting for Ma Ying-jeou: the challenger seeking to replace Taiwan's president at the time, Chen Shui-bian. (Tr. 67-74.)

In honor of her father's wishes, Applicant, travelled to Taiwan in March 2008 with one of her sisters and brother to vote in the scheduled March 2008 Taiwan presidential election. (Tr. 68-76, 87-90, 102.) Applicant's other sister travelled separately with her husband to vote in the 2008 election. Tr. 77-81. Ma was successful in defeating Chen. (Tr. 74.) After she voted, she and her siblings did some sight seeing in Taiwan before returning to the U.S.

Applicant never used her Taiwan passport after she returned from Taiwan in March 2008. She has since destroyed the passport and surrendered it to her FSO. She documents her FSO's receipt of the destroyed Taiwan passport. (See AE B; Tr. 107.)

Since becoming a U.S. citizen, Applicant has used her U.S. passport almost exclusively to travel outside of the U.S. She has resided with the chief executive officer of the financial planning firm who has employed her for over ten years. Her residential partner is, like herself, a CPA and a financial planner, and they have taken trips together to Taiwan in 1998, 2000, and 2005. They returned to Taiwan with her parents in 2006 for a two-week vacation. (Tr. 28-31, 34-35, 107-10.) On each trip, they used their U.S. passports exclusively. (Tr. 28-29.) The only time she used a Taiwan passport was when she travelled to Taiwan in 2008 to vote in the Taiwan presidential election. (See GE 4.)

Applicant has only one living family member in Taiwan: an older brother who did not accompany her and her parents to Taiwan. (Tr. 112.)¹ She met him once in 2001 and does not maintain any contact with him in Taiwan. Tr. 112. Nor has Applicant had any contact with Taiwan nationals since becoming a U.S. citizen. (GE 4.) However, she does maintain relatively frequent contact with her extended family members residing in the U.S. (Tr. 30-31.)

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Department Counsel provided a copy of an administrative notice and supporting documents concerning Taiwan, and referenced them in his opening statement. However, he did not request official notice be taken of the administrative notice and supporting documents, and they were never formally received in the record. No foreign influence allegations are included in the SOR, and Applicant has no identified family members residing in Taiwan, except for her distant brother.

Applicant considers herself a loyal U.S. citizen with no ties or allegiances to Taiwan. She has not returned to Taiwan since March 2008, and has no intention of doing so in the foreseeable future. (Tr. 104-05.) Her parents are deceased, but resided in the U.S. continuously before their passing. (Tr. 28, 87.) They were avid sports fans who supported U.S. professional teams in their state. (Tr. 30, 82.) She and her two sisters and brother also reside in the U.S. (See GE 1; Tr. 27, 7082.)

Applicant expressed a willingness to renounce her Taiwanese citizenship. (Tr. 107.) Since becoming a U.S. citizen, she has voted regularly in U.S. and local elections. (Tr. 124-25.) She is currently a registered voter in her county of residence (Tr. 125-26.), and expressed a clear preference for the U.S. over Taiwan.

Endorsements

Applicant is highly regarded by her current and former colleagues. Her current residential partner (a U.S. citizen by birth and current holder of a top secret clearance) is very familiar with the judgment and trustworthiness she has displayed at work, and in her personal life. He credits her with being honest and a loyal U.S. citizen who is very active with her local church and community. (Tr. 32-33.)

Applicant also draws strong endorsement support from neighbors, CPA clients of hers, and attorneys who have referred clients to her. (See AE A; Tr. 40-41.) They characterize her as intelligent, honest, and a role model who possesses excellent moral character. (Tr. 41-42.) Former colleagues describe Applicant as honest, reliable and trustworthy. (See AE A; Tr. 51-52.)

Policies

The AGs list guidelines to be considered by judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and all of the "[c]onditions that could mitigate security concerns," if any. These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. However, the guidelines do not require judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision.

In addition to the relevant AGs, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial, commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period

of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following 2(a) factors: (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.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent herein:

Foreign Preference

The Concern: When an individual acts in such a way as to indicate preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States. See AG, ¶ 9.

Burden of Proof

By virtue of the precepts framed by the Directive, a decision to grant or continue and Applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of proof shifts to the applicant for the purpose of

establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

Analysis

Applicant is a naturalized U.S. citizen who immigrated to the U.S. from Taiwan in 1973 to pursue higher education goals. Security concerns focus on foreign preference issues related to Applicant's active exercise of dual Taiwan citizenship, which includes her acquiring and using her Taiwan passport to travel to Taiwan in March 2008 to vote in the Taiwan presidential election. She has since destroyed her Taiwan passport and expressed a willingness to renounce her Taiwanese citizenship.

Dual citizenship concerns necessarily entail allegiance assessments and invite critical considerations over acts indicating a preference or not for the interests of the foreign country over the interests of the U.S. The issues, as such, raise concerns over Applicant's preference for a foreign country over the U.S.

By virtue of her birth to parents of Chinese ancestry, and Taiwanese residency and citizenship, Applicant acquired Taiwan citizenship and a Taiwan passport, which she permitted to expire after she became a U.S. citizen in 1979. She married a U.S. citizen and exercised only U.S. citizenship rights and privileges between 1979 and 2007. In honor of her dying father's wishes, she and her two siblings applied for and obtained Taiwan passports in 2007 and used them to travel to Taiwan in March 2008 to vote in the Taiwan presidential election. (See GE 4) Since returning to the U.S., she has consistently voted in U.S. and local elections and exercised only the rights and privileges of U.S. citizenship. She documents her destruction of her Taiwan passport in October 2008, and has expressed her willingness to renounce her Taiwanese citizenship. (See AE B.)

Applicant retains no other Taiwan privileges, and has never (save for her application for, possession, and use of her Taiwan passport to honor her father's wishes) performed or attempted to perform duties, or otherwise acted so as to serve the interests of Taiwan or the PRC in preference to the interests of the U.S., since becoming a U.S. citizen. But because Applicant applied for and obtained a Taiwan passport to use in travelling to Taiwan in 2007 and 2008 to register to vote and later vote in the 2008 Taiwan presidential election, several disqualifying conditions under the foreign preference guideline apply. Specifically, the Government may apply DC ¶ 10(a) of AG ¶ 9, "exercise of any right, privilege or obligations of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to:

- (1) possession of a current foreign passport;
- (2) military service or a willingness to bear arms for a foreign country;

- (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;
- (4) residence in a foreign country to meet citizenship requirements;
- (5) using foreign citizenship to protect financial or business interests in another country;
- (6) seeking or holding political office in a foreign country; and
- (7) voting in a foreign election.

While Applicant voted in Taiwan's 2008 presidential election, she did so only to honor the wishes of her dying father, and not to express her preference for Taiwan over the interests and values of the U.S. And she has since destroyed her Taiwan passport and expressed her willingness to renounce her Taiwan citizenship. Under these circumstances, Applicant may claim the mitigation benefits of MC ¶ 11(b), "the individual has expressed a willingness to renounce dual citizenship," and (c) "the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated."

Failure to satisfy a mitigating condition may be taken into account when assessing an applicant's overall claim of extenuation, mitigation, or changed circumstances, but may not be turned into a disqualifying condition. See ISCR Case No. 01-02270 (App. Bd. Aug. 29, 2003). So, even though there is no express mitigating condition to mitigate Applicant's voting in Taiwan's 2008 presidential election, this does not preclude her from mitigating the government's overall preference concerns by demonstrating her exercise of dual citizenship was attributable to extenuating circumstances, and her overall preference is to the U.S. Applicant is able to mitigate the Government's security concerns through her credible showing that her acquiring a Taiwan passport and using it to travel to Taiwan to vote in Taiwan's 2008 presidential election were isolated acts undertaken to honor her father's dying wishes. Her actions, as such, are not indicative of any preference for Taiwan over the U.S.

Whole person precepts enable Applicant to surmount the Government's preference concerns herein. Her many years of devoted public and private service in the U.S., her destruction of her Taiwan passport, and her expressed willingness to renounce her Taiwan citizenship all factor in her favor. She has strong support from neighbors, colleagues, and clients, who know her and trust her, and she manifested a clear preference for the interests and values of the U.S. over Taiwan. And she has shown her support for U.S. institutions and values by voting regularly in U.S. national and local elections since becoming a U.S. citizen in 1979.

Overall, Applicant establishes that her preference is with the U.S. She meets her proof burden in an important way: isolated exercise of privileges associated with her Taiwan citizenship and passport after her naturalization as a U.S. citizen in 1979. Applicant absolves herself of foreign preference concerns and carries her evidentiary

burden on the presented issue of whether her preference lies with her adopted country (U.S.) or the country (Taiwan) where she was raised as a minor through her parents' Taiwan citizenship. Favorable conclusions warrant with respect to the allegations covered by subparagraph 1.a of Guideline C.

In reaching my recommended decision, I have considered the evidence as a whole, including each of the factors and conditions enumerated in AG ¶ 2(a) of the Adjudicative Guidelines of the Directive.

Formal Findings

In reviewing the allegations of the SOR in the context of the findings of fact, conclusions, and the factors and conditions listed above, I make the following formal findings with respect to Applicant's eligibility for a security clearance.

GUIDELINE C (FOREIGN PREFERENCE):	FOR APPLICANT
Subparagraph. 1.a:	For Applicant

Conclusions

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is granted.

Roger C. Wesley
Administrative Judge

