



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



In the matter of:)
)
) ISCR Case No. 09-04217
)
)
Applicant for Security Clearance)

Appearances

For Government: Caroline H. Jeffreys, Esquire, Department Counsel

For Applicant: David A. Titman, Esquire

June 25, 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 May 21, 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 See Executive Order 10865, as amended; DoD Directive 5220.6 (Directive), as amended; and the adjudicative guidelines effective within the Department of Defense for SORs issued after September 1, 2006.

On December 18, 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 Adjudicative Guidelines (AG). Applicant signed her notarized Answer to the SOR on January 5, 2010, in which she admitted four allegations, and denied three allegations.² She also requested a hearing before an administrative judge.

Department Counsel was prepared to proceed on January 28, 2010, and the case was assigned to me on February 2, 2010. DOHA issued a Notice of Hearing on March 2, 2010, and I convened the hearing as scheduled on March 24, 2010. During the hearing, Department Counsel offered five exhibits, which were marked and admitted as Government Exhibits (GE) 1 through 5. Applicant testified and offered 20 exhibits, which I marked and admitted as Applicant Exhibits (AE) A through T. DOHA received the transcript (Tr.) on March 31, 2010.

Procedural Ruling

I take administrative notice of facts relating to Taiwan, set forth in 15 documents presented by Department Counsel. The facts administratively noticed appear in these U.S. Government reports, and are limited to matters of general knowledge, 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, 47 years old, was born in Taiwan. She earned a law degree there in 1986. (Tr. 64) Applicant and her husband, a native-born U.S. citizen, met in Taiwan when they worked for the same company. They married in Taipei in 1986. Concerned about the violent events that occurred at Tiananmen Square in 1989, they decided to save their money so they could move back to the United States to live and raise a family. They moved in 1991, when Applicant was 29. She became a U.S. citizen in 1995. (GE 1, 4)

Applicant earned two masters degrees in law in the United States, the most recent in 2007. After being admitted to a local bar, she worked as a legal document reviewer. (Tr. 65) In 2005, she started working for a federal contractor as a linguist, and held an interim security clearance continuously without incident from 2005 to 2008. (Tr.

² Applicant admitted all seven allegations. However, as to allegations 1.b. and 1.f., she denied the portions pertaining to the residences of her sister and her sister-in-law, respectively. She also admitted allegation 1.g., but denied the alleged residence of several friends. I conclude that these mixed responses are denials.

149) She also translated books, legal documents, and court transcripts for the Department of Justice, the Federal Bureau of Investigation, and the Department of Defense. Her Taiwanese relatives made no inquiries about her work, and she did not discuss it with them. (GE 1, 5; Tr. 65-68)

Applicant's two sons, aged 14 and 16, were born in the United States. The younger son was diagnosed as autistic at three years old. He has received federally mandated special education from a team of educators in public schools as a child, and is now highly successful academically. Applicant's husband testified that he would have been deprived of such education in Taiwan. In addition, he stated that such disability is viewed as a disgrace in Taiwan, and this has affected the way Applicant's family relates to her. (Tr. 40-45)

Applicant's parents were citizens and residents of Taiwan. Her father, who ran a small shoe business, died in 1999. (GE 4; Tr. 63) He strongly disagreed with Applicant's decision to marry an American (Tr. 77-79), believing it caused him to lose face among his family and friends. (Tr. 79) In 1998, when her father was terminally ill, Applicant and her husband visited him to introduce their sons; her father ignored them. Applicant's husband testified that there had been no contact with Brother A between 1991 and the trip in 1998, when they saw him briefly. None of Applicant's relatives who lived in the area contacted or visited them. (Tr. 33-34) As a result, Applicant and her husband left Taiwan shortly after their arrival. When Applicant's father died the following year, he left a sizable estate. He disinherited Applicant because of her marriage to an American, and left his estate to his two sons (Brothers A and B). Her mother, a homemaker, died in 2009. Before her death, she had serious medical problems and Applicant sent her money to help with expenses. (GE 4) In 2007, Applicant went to Taiwan to assist her mother with these medical problems. She last visited Taiwan in June 2009, to attend her mother's funeral. (GE 4)³

Applicant's two brothers (A and B) are citizens and residents of Taiwan. Brother A is 46 years old and Brother B is 39 years old. She has one 40-year-old sister, who lives in the United States and attends nursing school; she holds a student visa.

Brother A performed his mandatory military service in the Taiwanese army from 1986 to 1992. He was a law clerk to a military judge for two years, after which he served as a military judge from 1989 to 1992. After leaving the military service, he established a private law practice in Taiwan, which he has maintained since 1992. In her affidavit (GE 4), Applicant stated that they had contact by telephone once every two to six months from 1991 to 2005. Their contact increased in about 2005 because his wife and children were moving to the United States. Applicant saw Brother A during her trips to Taiwan, except 1998. When he came to the United States to see his wife and children, he also saw Applicant for one week in 2005, one day in 2007, and one day in 2008. (GE 4) She is unaware if he has any contacts with the Taiwanese government. Brother A knows

³ Applicant's visits to Taiwan since 1991 (1993, 1998, 2007, and 2009) are not alleged in the SOR and have no independent security significance. See ISCR Case No. 02-26978 at 5 (App. Bd. Sep 21, 2005).

Applicant is a translator, and that she needs a security clearance for her job. He does not know Applicant applied for a security clearance, and she has not discussed her work with him. (Tr. 109-110) Applicant testified that she does not have a close relationship with him, and that he is not susceptible to coercion because he is very comfortable financially. The last time Applicant saw her brother was at their mother's funeral in 2009, and their last telephone conversation occurred in October 2009. It lasted about ten minutes, and concerned disposition of their mother's personal effects. (GE 4; Tr. 71-74)

Brother A and his wife have four children. They wanted the children to be educated in the United States, and his wife moved, with the children, to the United States in 2006. Brother A's wife and their children are legal U.S. residents and have no intent to return to Taiwan. After they arrived in the United States, Applicant had contact with this sister-in-law every three to four months. She lived with Applicant for one month in 2007, before completing her home purchase. They had weekly contact until February 2008. At that point, they had a serious argument because Applicant's sister-in-law did not want to share responsibility for Applicant's ailing mother. As a result, Applicant and her sister-in-law do not speak, and have had no contact in the past two-and-one-half years. (GE 4; Tr. 106, 118-119)

Brother B completed his mandatory military service in the Taiwanese army as an enlisted member from 1990 to 1992. He has been a chef in Taiwan since then. In her February 2009 affidavit, she said she talks with him by telephone two to six times per year, and saw him during her trips to Taiwan. Brother B stayed with her in the United States for several months following a contentious divorce in 2005. To Applicant's knowledge, he has no affiliation with the Taiwanese government. He is aware that Applicant applied for a security clearance, but they have never discussed her work. Applicant testified that they are not close because he is eight years younger. He lives in Taiwan with his girlfriend, and Applicant testified that he is more interested in his own life than Applicant or her family. They last spoke in 2009 at their mother's funeral. (GE 4; Tr. 75-76)

Applicant's sister is a citizen of Taiwan, and has a 12-year-old son. Between 1991 and 2005 when the sister lived in Taiwan, they had weekly telephone contact. In 2005, she stayed in the United States with Applicant, who helped support her by providing approximately \$4,000. Applicant's sister has remained in the United States. She lived in Applicant's home periodically during the period 2005 to 2007. The longest period she lived continuously with Applicant was three to four months. She attends nursing school and her 12-year-old son has been in an American school for the past five years. She is engaged to a U.S. citizen, and is planning to marry next year and remain in the United States. Applicant's sister is aware that Applicant applied for a security clearance, but Applicant has not discussed her work with her sister. (GE 4; Tr. 82-87)

Two of Applicant's uncles are deceased, and three are citizen-residents of Taiwan. One uncle is a supervisor at a government water resource agency. The other

uncle is a retired bank branch manager. The third uncle is a retired school teacher and was on a county board of education. Applicant's aunt is also a Taiwan citizen-resident, and is a clerical worker at a town clinical sanitary center. Applicant saw these relatives briefly during her Taiwan visits. Her contact with the uncles is approximately once every five to seven years, and with her aunt about once every ten years. (GE 2, 4; Tr. 124, 126)

Applicant's Cousin A holds a government job as an elementary school teacher in Taiwan. She has an autistic son, like Applicant, and stayed with Applicant for about one month in 2002 when she investigated treatment options for her son in the United States. Applicant saw Cousin A on her 2007 Taiwan trip. They have been in touch twice in the past 15 months. Cousin A is not aware of Applicant's application for a security clearance. She has no plans to return to the United States. (Tr. 119-123) Cousin B is about 20 years younger than Applicant. They had never talked until Cousin B decided to come to the United States to further her education; around that time, they talked monthly. She stayed with Applicant for about one month in 2008. She returned to Taiwan last year, and Applicant saw her at the funeral in 2009. They have exchanged one holiday greeting since then. Applicant has six other cousins who are or were government employees – four are school teachers, one is a retired policeman, and one is a janitor. Other than brief contacts in 2007 or 2009 trips, she has had no contact with any of them during the previous 18 to 30 years. (GE 2, 3, 4; Tr. 120, 123, 150-152)

Applicant's Friend A, a Taiwan citizen-resident, is employed by a bank. Applicant visited her during her Taiwan trips, and Friend A visited Applicant in the United States in 2001 and 2004. They speak by telephone about four times per year. Applicant's Friend B, also a citizen-resident of Taiwan, works as an electric company supervisor. They met in the 1980s and have weekly telephone conversations. They visited each other in Taiwan and in the United States. Friend C is a citizen-resident of Taiwan. Applicant met her when Friend C lived in the United States in 1996. She returned to Taiwan approximately 10 years ago. They have email contact approximately monthly and met briefly during Applicant's 2009 trip for the funeral. Applicant met Friend D in 2007. She is an attorney, and a legal U.S. resident. Applicant speaks with her a few times per week and they meet approximately monthly. (GE 4)

Applicant has a close relationship with her American in-laws. Her father-in-law, a former U.S. Navy commander and physician, stated in his letter of reference that she has "gone to extraordinary lengths to provide (her son) the intensive services that he needed." He noted that she is upstanding and responsible and would never compromise anyone's trust. Applicant's sister-in-law is a psychologist who was employed in that capacity by a state police department for eight years. She also worked at a national laboratory where she held a security clearance. She stated that over the years, when asked about Taiwan, Applicant has never expressed a wish to return, but always spoke of the benefits and opportunities she has received in the United States. (AE L, M) The psychologist who treated Applicant's son wrote of her strong character, commitment, and advocacy for him since 1999. (AE N)

Applicant has no financial interests, investments, or real estate in Taiwan. (GE 2; Tr. 87-88) She has bank accounts in the United States and owns a home valued at approximately \$500,000. (Tr. 133) Applicant excels in her work performance (AE O, P, Q, S), and received the Outstanding Interpreter Service Award in 2005. (AE R) She is also active in her community and belongs to a bar association that supports young attorneys' development. (AE J, K) Since 2007, she has volunteered with a group that prepares legal residents for the examination to become naturalized U.S. citizens. (AE K) Her pastor noted her dedication to her family, and commented on Applicant's work as an interpreter for local courts and hospitals. (AE T) In 2009, she received the Governor's Volunteer Service Certificate for her work in her community. (AE I)

Administrative Notice

I take administrative notice of the following facts.⁴ In 1949, two million refugees fled a civil war with Communist forces on the Chinese mainland, and established the Republic of China on the island of Taiwan. On the mainland, the Communists established the People's Republic of China (PRC). In the 1979 Taiwan Relations Act (TRA), the United States established the "one China" policy, formally recognizing the People's Republic of China (PRC) as China's sole legal government.

Taiwan has become a modern multi-party democracy with active public participation. It is an economic power and a leading producer of high-technology goods. The United States continues to maintain strong unofficial relations with Taiwan that include significant commercial ties; objections to PRC threats to use force against Taiwan; support of democratic developments; assurances as to its security; and continued arms sales. Commercial connections between the United States and Taiwan have expanded since the TRA took effect. Taiwan enjoys Export-Import Bank financing, normal trade relations status, and ready access to U.S. markets.

Taiwan and the PRC have significant economic ties, which are attributable to their physical proximity and history. Taiwan's primary defense goal is to deter invasion from the PRC, which has not renounced the use of force against Taiwan. The two countries do not negotiate directly. Taiwan is an active collector of U.S. economic intelligence. Because of its geographic location, Taiwan has a particular interest in information from the United States that could aid it in its own defense. The United States sells appropriate defensive military equipment to Taiwan, in accordance with the TRA.

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,

⁴ The facts regarding Taiwan derive from the documents provided for Administrative Notice.

and consideration of the pertinent criteria and adjudication policy in the 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 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

⁵ Directive. 6.3.

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).

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(d):

(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;

(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; and

(d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

Applicant's immediate family includes her two brothers in Taiwan, and her sister and sister-in-law in the United States. She also has an extended family of an aunt, uncles, and cousins in Taiwan, as well as friends there and in the United States. Several family members stayed with Applicant in the United States at various times. Such ties do not automatically disqualify an Applicant from obtaining a security clearance. However, as some of Applicant's contacts are citizens and/or residents of Taiwan, a heightened risk of foreign exploitation or coercion exists. AG ¶¶ 7(a), 7(b), and 7(d) apply.

The foreign influence guideline 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; and

(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.

Taiwan is a democracy, and looks to the United States for arms in its defense against the PRC. Although Taiwan is known to conduct intelligence operations against the United States, as do many U.S. allies, there is no indication it uses coercion against its citizens or former citizens for espionage purposes. Therefore, it is unlikely Taiwan would induce one of its citizens to exploit a U.S. citizen to engage in espionage. Applicant's immediate family in Taiwan consists of two brothers. She has a minimal relationship with Brother A, and has not spoken to him since last year. Applicant and Brother A's wife (who is a permanent U.S. resident) are estranged and have not spoken in two-and-one-half years, making significant contact with Brother A even less likely in the future. Brother B has little interest in Applicant or her family, and they have not spoken since their mother's funeral a year ago. Applicant's final immediate family member, her sister, lives in the United States. The record shows Applicant has a more substantial relationship with her sister. She has had more contact with her sister than her brothers, and has provided funds to her in the past. However, Applicant's sister has lived in the United States since 2005. She holds a U.S. student visa, and will soon finish her nursing studies. She is engaged to marry a U.S. citizen, and will remain in the United States, where her son has been in U.S. schools for the past five years. I conclude that the Applicant's limited relationship with her brothers, the country in which they reside, and the facts surrounding her sister's residence and future in the United States, make it unlikely Applicant would have to choose between the interests of her siblings and those of the U.S. government. AG ¶ 8(a) applies.

Applicant has five friends who are citizens of Taiwan. Three reside in Taiwan. She is in contact with one friend weekly, one monthly, and the third about once every three months. Two other friends are Taiwan citizens and legal U.S. residents, currently living in the United States. She speaks with one annually and one monthly. However, Applicant's longstanding ties to the United States weigh in her favor when evaluating the question of potential conflicts of interest because of these friends. Applicant married a U.S. citizen, and her sons are native-born U.S. citizens. She has been in the United States for 19 years, and has been a U.S. citizen for 13 years. Her home represents a substantial U.S. financial investment, and she has no financial ties to Taiwan. She has a loving relationship with her husband's family. Given these strong U.S. ties, I conclude that there would be no conflict of interest for Applicant. AG ¶ 8(b) applies.

Applicant's cousin, who has an autistic son, is a school teacher, and stayed with Applicant in 2007. She is now Taiwan and they have been in touch twice in the past 15

months. A second cousin stayed with Applicant in 2008, and has also returned to Taiwan. They have exchanged one holiday greeting since then. Four other cousins have government jobs as school teachers, one is retired, and one is a janitor. She saw them briefly at her mother's funeral; before that, Applicant had no contact with them in 18 to 30 years. Of Applicant's three living uncles, two are retired. The third works in a government agency. Her aunt is a government clerk. Her contact with her uncles and aunt occurs once every five to ten years. Applicant's contacts with these extended family members are infrequent and of a casual nature. AG ¶ 8(c) 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.

Applicant has been fully invested in her life in the United States for the past 19 years. Her strong ties to the United States include her husband and two sons who are all U.S. citizens, her close relationship with her American in-laws, her U.S. education, and her home of substantial value. Her relationship with her husband, sons, and U.S. in-laws, is significantly deeper and more intrinsic to her life than her contacts with her Taiwanese relations. Applicant has been intimately involved in her son's treatment for 13 years, and testified to her deep gratitude to the U.S. government for providing the federal program that allowed him to thrive. She has given back to her community through volunteering, specifically by helping others to gain their U.S. citizenship. She supported federal contracts, and held a security clearance without incident for three years.

