



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



In the matter of:)
)
) ISCR Case No. 09-06882
)
)
Applicant for Security Clearance)

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

September 24, 2010

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government's security concerns under Guideline B, Foreign Influence. Applicant's eligibility for a security clearance is granted.

On April 14, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline B. 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 Adjudicative Guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on April 30, 2010, and requested a hearing before an administrative judge. The case was assigned to me on July 6, 2010. DOHA issued a Notice of Hearing on July 29, 2010. I convened the hearing as scheduled on August 23, 2010. The Government offered Exhibits (GE) 1 and 2. Applicant did not object and they

were admitted. The Government requested administrative notice be taken of certain facts relating to Taiwan as contained in Hearing Exhibit (HE) I. I took administrative notice of the source documents. I did not consider for administrative notice Department Counsel's brief and the facts contained in press releases submitted. These documents were rather considered and admitted as GE 3 and 4. Applicant and a witness testified. The record remained open until September 7, 2010, to allow Applicant an opportunity to provide additional documents, which she did. They were marked as Applicant Exhibit (AE) A through C. Department Counsel had no objections and they were admitted.¹ DOHA received the hearing transcript (Tr.) on September 1, 2010.

Findings of Fact

Applicant admitted all of the allegations in the SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 44 years old. She was born in Taiwan. She graduated from college in Taiwan in 1989. She then came to the United States on a student visa to study English for one year. She returned to Taiwan and studied in preparation for the graduate school entrance exam, so she could return to the United States and attend graduate school. In 1995, she returned to the United States and earned a master's degree in education. She again returned to Taiwan to teach English and history. In 1999, she returned to the United States and attended school to earn a second master's degree. In 2004, she became a naturalized U.S. citizen. She formally renounced her Taiwanese citizenship. She has worked for her current employer since April 2009. She and her fiancé have lived together since 2005 and plan to marry next year. He is a U.S. citizen and is employed as an electrical engineer. He holds a security clearance. She has worked as an analyst for a federal contractor since April 2009.²

Applicant's 77-year-old mother is a citizen and resident of Taiwan. They talk on the telephone once a week and Applicant visits her every two years. She last visited her in Taiwan in 2008, when her father passed away. Her father was a high school principal. Her mother is a homemaker. Applicant sends her monetary gifts for her birthday and holidays. Her mother is self-sufficient financially and does not need support from Applicant. She does not receive any government assistance. Her mother visited Applicant in the United States in 2007.³

Applicant's brother is a citizen and resident of Taiwan. He is 50 years old. He completed his two year compulsory military service. He works in the private sector as a marketing manager. He and Applicant have not talked in a long time. Her brother is married and his wife works for a private U.S. advertising company. They have two sons,

¹ Department Counsel provided a Memorandum stating that he did not object to AE A through C. It was marked Hearing Exhibit II.

² Tr. 19, 22-31.

³ Tr. 31-34.

ages 19 and 16. Applicant's last contact with her brother was at her father's funeral. She intimated that they do not get along and do not maintain contact.⁴

Applicant's oldest sister is 53 and is a citizen and resident of Taiwan. They talk on the telephone once every two to three months. She is a homemaker married to a doctor in private practice. They have two daughters, ages 27 and 24. The eldest works in a bank and the younger one works for a university as a research assistant.⁵

Applicant has another sister who is 48 and is a citizen and resident of the United States. She is a college professor for two on-line universities and also works part-time for a drug store. She teaches business management. She is not married and has no children. She and Applicant are in contact every two to three weeks. She has been a United States citizen since approximately 1997 or 1998.⁶

Applicant has no contact with any extended family members in Taiwan. She has no assets there. All of her assets are in the United States. She and her siblings received an inheritance when her father passed away, which they gave to their mother. Applicant does not have any friends in Taiwan with whom she maintains contact. She is not eligible for any pension or government benefits. She is a member of a local church since 2006. She does not maintain any social contacts with any Taiwanese groups in the United States. She and her fiancée plan on being married in the United States, raising a family here, and being buried here. She expects her mother, sister, and a niece from Taiwan to attend her wedding. Applicant votes in U.S. elections.⁷

Applicant's supervisor testified on her behalf. He has known her for about eighteen months. She has access to the company's proprietary information. He has never had a reason to question her ability to follow the rules and procedures. He has no reason to question her reliability, trustworthiness or good judgment. He recommends she be granted a security clearance.⁸

Applicant loves her adopted country. She moved to the United States because of the opportunities it offered to women. She would never dishonor her family by being disloyal to her adopted country.⁹

Applicant's college professor provided a character letter on her behalf. He has known her for more than eight years and she took one of his courses as part of the

⁴ Tr. 35-38.

⁵ Tr. 39-42.

⁶ Tr. 38-40.

⁷ Tr. 42-51.

⁸ Tr. 52-59.

⁹ Tr. 20-21.

curriculum for her master's degree. He is also a program manager for two military weapons systems and is familiar with the responsibilities that go along with holding a security clearance. He considers Applicant to be a trustworthy person of good character and a loyal citizen of the United States. He recommends her without reservation for a security clearance.¹⁰

Another supervisor provided a character letter on her behalf. He has worked closely with her since April 2009. Their company's work involves the careful handling of sensitive material. Applicant has demonstrated that she can be trusted to work with, secure, and handle sensitive material. He further commented that Applicant is "Americanized and continues to build her personal and professional future here in the United States."¹¹

Another supervisor provided a character letter for Applicant. She is described as an outstanding developer. He is completely confident in her fidelity, loyalty, and patriotism to the United States and their company. Her work ethic is exceptional; she exercises initiative and is extremely reliable.¹²

Taiwan¹³

In 1949, Taiwan was populated by refugees fleeing a civil war in China. That same year, Communists in mainland China established the People's Republic of China (PRC), and a separate, independent government was established in Taiwan. The PRC does not recognize Taiwan, and insists there is only "one China."

Taiwan is a multi-part democracy. Through nearly five decades of hard work and sound economic management, Taiwan has transformed itself from an underdeveloped, agricultural island to an economic power that is a leading producer of high-technology goods. On January 1, 1979, the United States formally recognized the PRC as the sole legal government of China. The U.S. also announced that it would maintain cultural, commercial, and other unofficial relations with the people on Taiwan. The Taiwan Relations Act (TRA) signed into law on April 10, 1979, created the legal authority for the conduct of unofficial relations with Taiwan. The American Institute in Taiwan, a private nonprofit corporation with offices in Taiwan, is authorized to issue visas, accept passport applications, and provide assistance to U.S. citizens in Taiwan. A counterpart organization was established by Taiwan. It has multiple offices in the U.S.

Maintaining strong, unofficial relations with Taiwan is a major U.S. goal. The U.S. does not support Taiwan independence, but does support Taiwan's membership in

¹⁰ AE A.

¹¹ AE B.

¹² AE C.

¹³ All of the information about Taiwan is contained in Hearing Exhibit I.

appropriate international organizations such as the World Trade Organization (WTO), which it joined in 2002, Asia-Pacific Economic Cooperation (APEC) forum, and the Asian Development Bank. In addition, the U.S. supports appropriate opportunities for Taiwan's voice to be heard in organizations where its membership is not possible.

The TRA enshrines the U.S. commitment to help Taiwan maintain its defensive capability. The U.S. continues to sell appropriate defensive military equipment to Taiwan, in accordance with the TRA. President Bush publicly stated in 2001 that the United States would do "whatever it takes" to help Taiwan's defense and approved a substantial sale of U.S. weapons to Taiwan, including destroyers, anti-submarine aircraft, and diesel submarines. The White House also was more accommodating to visits from Taiwan's officials than previous U.S. Administrations. It permitted visits from Taiwan's president in 2001 and 2003, and Taiwan's vice president and defense minister in 2002.

Since then, there have been changes in U.S.-Taiwan relations. Taiwan's new president disavowed key concepts long embraced by the opposing party - the "status quo" that there is only one China and Taiwan is part of it - and instead has adopted the more provocative position that Taiwan already "is an independent, sovereign country," a "status quo" he promises to maintain. There was also a series of recent corruption scandals.

In response to Taiwan's political developments, the U.S. Administration appears to have dialed back its earlier enthusiasm for supporting Taiwan's initiatives. While still pursuing a close relationship with Taiwan, U.S. officials now appear to be balancing criticisms of the PRC military buildup opposing Taiwan with periodic cautions and warnings to the effect that U.S. support for Taiwan is not unconditional, but has limits. In January 2010, the current White House Administration notified Congress of its intent to sell various defense weapons to Taiwan. Taiwan is known to be an active collector of U.S. economic intelligence.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used 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 overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by an applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable clearance decision.”

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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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 for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern regarding 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.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. The following are potentially applicable:

(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's mother, brother, and sister are citizens and residents of Taiwan. Applicant maintains regular and frequent contact with her mother and sister. I find due to her close connection to her sister and mother that this contact could potentially create a heightened risk of foreign influence. She has an estranged relationship with her brother and limited contact with him. I find her contact is not close and does not create a security concern.

I have also analyzed all of the facts and considered all of the mitigating conditions for this security concern under AG ¶ 8 and especially considered the following:

(a) the nature of the relationship 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 and interests of the U.S.;

(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 interests in favor of the U.S. interests; 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.

The mere possession of a close personal relationship with a person who is a citizen and resident of a foreign country is not, as a matter of law, disqualifying under Guideline B. However, depending on the facts and circumstances, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the

compromise of classified information. Applicant's mother, sister, and brother are citizens and residents of Taiwan. The United States maintains close relations with Taiwan. Applicant talks to her mother and sister regularly, visits with them periodically, and anticipates them attending her wedding in the United States. Her relatives have no ties to the Taiwanese government. I do not find Applicant's relationship with her mother and sister and her visits to Taiwan create a heightened security risk. There is no evidence Taiwan pressures its citizens to obtain classified information and it is highly unlikely Appellant would have to choose between loyalty to her family in Taiwan and the U.S. I find mitigating condition AG ¶ 8(a) applies.

The nature of a nation's government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that Applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, the country is known to conduct intelligence operations against the U.S., or there is a serious problem in the country with crime or terrorism. Taiwan has a close and friendly relationship with the U.S. and the violent crime rate is low. The U.S. is the main supplier of military hardware to Taiwan. Taiwan is an active collector of U.S. economic intelligence. However, there is no indication that they target or exploit their own citizens to obtain it. It is also unlikely that Applicant would be forced to choose between loyalty to the U.S. and her family in Taiwan. Based on Taiwan's relationship with the U.S. it is very unlikely that intelligence officials would attempt to pressure Applicant's mother or sister to gather valuable or classified information from the U.S. through Applicant. I find mitigating condition AG ¶ 8(b) applies.

Applicant is a devoted American citizen. She renounced her ties with Taiwan. She is firmly rooted in the United States. Her fiancé is a U.S. citizen. All of her assets are in the United States. She votes in the United States. She has established her life in the United States and except for her sister and mother her ties to Taiwan are minimal. She can be expected to resolve any conflict of interest in favor of the United States. The evidence supports the application of AG ¶ 8(b).

Applicant maintains a close relationship with her mother and sister living in Taiwan. Her relationships are not casual and infrequent. Therefore, mitigating condition AG ¶ 8(c) does not apply.

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 relevant 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) 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense 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. Applicant received some of her education in the United States. She adopted the United States as her country and embraces the opportunities it has provided to her. All of her assets are located in the United States and she exercises her voting rights. She plans on marrying, in the next year, a United States citizen and raising a family here. She has proved that she can be trusted with sensitive company information and is a loyal employee. Her supervisors trust her and are completely confident in her loyalty and fidelity to the United States. Her only connections with Taiwan are with her mother and sister. Considering the nature of that country and her limited contacts there, I do not find they rise to the level of creating a heightened security risk. Overall the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the guideline for Foreign Influence.

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 1, Guideline B:

FOR APPLICANT

Subparagraphs 1.a and 1.b:

For Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge