



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



In the matter of:)
)
) ISCR Case No. 15-04580
)
Applicant for Security Clearance)

Appearances

For Government: Erin Thompson, Esq., Department Counsel
For Applicant: *Pro se*

06/27/2017

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant contests the Defense Department's intent to deny her eligibility for access to classified information. She presented sufficient evidence to explain, extenuate, or mitigate the security concerns stemming from her ties to the country of Taiwan during the security clearance process. Accordingly, this case is decided for Applicant.

Statement of the Case

Applicant completed and submitted a Questionnaire for National Security Positions (SF 86 format) on September 15, 2014. This document is commonly known as a security clearance application. On August 18, 2016, after reviewing the application and the information gathered during a background investigation, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant her eligibility for access to classified information.¹ The SOR is similar to

¹ This action was taken under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended, as well as Department of Defense Directive 5220.6, *Defense*

a complaint in a civil court action. It detailed the factual reasons for the action under the security guideline known as Guideline, B, Foreign Influence and Guideline, C, Foreign Preference. Applicant answered the SOR (undated), and requested a hearing before an administrative judge. The case was assigned to me December 2, 2016. A notice of hearing was issued on March 22, 2017, scheduling the hearing for May 11, 2017. Government Exhibits (GX) 1-2 were admitted into evidence without objection. Applicant testified, presented one witness, and submitted six exhibits, which were marked as Applicant's Exhibits (AX) A-F, and admitted into the record without objection. The transcript was received on May 22, 2017. Based on a review of the pleadings, testimony and exhibits, eligibility for access to classified information is granted.

Procedural Matters

Department Counsel requested that I take administrative notice of certain facts regarding the Republic of China - Taiwan. Applicant did not object and the memorandum of administrative notice and source documents were entered into the record as Government Exhibit 2. At the hearing, SOR allegations under Guideline C were formally withdrawn. (Tr. 7)

Findings of Fact

In her Answer to the SOR, Applicant admitted SOR ¶ 1.a. The admission was incorporated in my findings of fact. Applicant also admitted the SOR allegations under Guideline C, Foreign Preference. However, as noted above, Guideline C was withdrawn at the hearing.

Applicant is 24 years old, single, an only child, and born in the United States, but acquired Taiwanese citizenship through her parents. From the age of three to ten she lived in Taiwan with her parents when they returned to Taiwan for employment. (Tr. 9) Her parents also had to care for Applicant's grandparents, who reside in Taiwan. Applicant and her parents returned to the United States in 2003. She graduated from a U.S. high school in 2010, and received her undergraduate degree from an American university in 2014. (GX 1; AX D) Applicant held a position of trust with another Government agency in 2014. (AX A) She has worked for her current employer as an IT analyst since June 2014.

Applicant has financial interests in the United States. She earns about \$85,000 from her current position as a senior analyst. She supports herself in the United States. She has her health benefits through her employer. (AX F) She had a small bank account in Taiwan as a child, which has long been closed. She rents a townhome in the United

*Industrial Personnel Security Clearance Review Program (January 2, 1992), as amended (Directive). In addition, DOD CAF adjudicators reviewed the case using the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006. I decided the case using new AGs effective June 8, 2017. My conclusions would be the same under either guideline.*

States. Applicant has a retirement account and savings account in the United States. She estimates that the combined value is about \$90,000. (Tr. 41) She has no financial interests in Taiwan.

Applicant's parents are dual citizens of the United States and Taiwan. They lived in the United States until 2013. Her mother and father held professional positions in the United States. (AX E). They moved back to Taiwan to care for Applicant's grandparents. Applicant's parents have a home in the United States. (AX B) Applicant's mother pays U.S. tax on her home. (AX C). Applicant's parents spend part of the year in the United States and the rest of time in Taiwan. (Tr.21)

Applicant's parents have no association with the Taiwanese government. They have never worked for that government. (Tr. 33) Applicant's parents do not know about the nature of Applicant's work or that she is in the process of obtaining a security clearance. Applicant visited her parents in 2016, and stayed with them for a few weeks. She has visited them once a year since they returned to Taiwan. Applicant speaks to her parents on the phone via Skype.

Applicant's employer testified that Applicant has some specialized skills around statistics and optimization which would help the company meet requirements on contracts. (Tr. 43) The witness testified that the combination of skills that Applicant has are hard to find in new analysts. The witness is aware of the security concern at issue in this case. She is aware that Applicant travels to see her parents in Taiwan. (Tr. 45) The witness has known Applicant for about two years. She holds a security clearance. (Tr. 46) The person who was responsible for hiring Applicant knew about Applicant's dual citizenship. (Tr. 49) Applicant informed the interviewer that she was willing to do anything that was necessary to obtain her security clearance.

Administrative Notice (Republic of China -Taiwan)

In response to the Government's request, to which Applicant did not object, I have taken administrative notice of the following relevant facts about Taiwan:

- The 2009 and 2011 Annual Reports to Congress on Foreign Economic Collection and Industrial Espionage identified Taiwan as being involved in economic collection and industrial espionage, particularly in cyberspace.
- The United States does not diplomatically recognize Taiwan. In the U.S.-PRC Joint Communiques of 1972, 1979, and 1982 the U.S. expressly "acknowledged" China's position that there is only "one China" on both sides of the Taiwan Strait.
- China's intelligence services, as well as private companies and other entities, frequently seek to exploit Chinese citizens or persons with family ties to China

who can use their insider access to corporate networks to steal trade secrets using removable devices or e-mail. Moreover, “Chinese actors are the world’s most active and persistent perpetrators of economic espionage. Chinese attempts to collect U.S. technological and economic information will continue at a high level and will represent a growing and persistent threat to U.S. economic security.”

Law and Policies

It is well-established law that no one has a right to a security clearance.² As noted by the Supreme Court in *Department of the Navy v. Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”³ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.⁴ An unfavorable clearance decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.⁵

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.⁶ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.⁷ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.⁸ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁹

² *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

³ 484 U.S. at 531.

⁴ Directive, ¶ 3.2.

⁵ Directive, ¶ 3.2.

⁶ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

⁷ Directive, Enclosure 3, ¶ E3.1.14.

⁸ Directive, Enclosure 3, ¶ E3.1.15.

⁹ Directive, Enclosure 3, ¶ E3.1.15.

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.¹⁰ The Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.¹¹

Discussion

Guideline B (Foreign Influence)

The security concern under Guideline B (Foreign Influence) is set out in AG ¶ 6, as follows:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, such considerations as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

Three disqualifying conditions under this Guideline are relevant:

AG ¶ 7(a): contact, regardless of method, 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;

AG ¶ 7(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 or technology; and

AG ¶ 7(e) shared 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.

¹⁰ *Egan*, 484 U.S. at 531.

¹¹ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

Applicant's close family ties to her parents who are dual citizens and resident of Taiwan establish AG ¶¶ 7(a), 7(b), and 7(e). A "heightened risk" is associated with Taiwan, given its history of economic collection and industrial espionage.

Application of Guideline B is not a comment on an applicant's patriotism but merely an acknowledgment that people may act in unpredictable ways when faced with choices that could be important to a loved one, such as a family member.¹² Family relationships can involve matters of influence or obligation.¹³ Therefore, Applicant's family ties with her parents raise concerns for which she has the burden of persuasion to mitigate.¹⁴

The following mitigating conditions under this Guideline are potentially relevant:

AG ¶ 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 United States;

AG ¶ 8(b): there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States that the individual can be expected to resolve any conflict of interest in favor of the U. S. interest;

AG ¶ 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; and

AG ¶ 8(f): the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

¹² ISCR Case No. 08-10025 at 4 (App. Bd. Nov. 3, 2009).

¹³ ISCR Case No. 02-04786 (App. Bd. Jun. 27, 2003).

¹⁴ ISCR Case No. 99-0532 at 7 (App. Bd. Dec. 15, 2000) (When an applicant's ties in a foreign country raise a *prima facie* security concern, the applicant is required to present evidence of rebuttal, extenuation, or mitigation sufficient to carry his burden of persuasion that it is "clearly consistent with the national interest" to grant or continue a security clearance on his behalf).

For the reasons set out in the discussion of AG ¶¶ 7(a), 7(b), and 7(e), above, AG ¶ 8(a) is not established.

Applicant was born and educated in the United States. She has lived in the United States all her life, with the exception of the years from three to ten, when she left with her parents to go to Taiwan. Her parents have lived in the United States and own property in the United States. They are dual citizens of the United States and Taiwan. Applicant sees her parents when they are living in the United States part of the year. She visits them in Taiwan. She has no siblings or other contacts in Taiwan. Her parents have no connection with the government of Taiwan. They do not know about Applicant's security clearance process.

Applicant has such deep and longstanding relationships and loyalties in the U.S. that she can be expected to resolve any conflict of interest in favor of the U.S. interest. There is little likelihood that Applicant's communications with her parents could create a risk for foreign influence or exploitation. Applicant's financial interests are in the United States. She is financially stable. She has no financial interests in Taiwan. She has savings and retirement accounts in the United States. She wants to have a career in the United States. I find that mitigating conditions AG ¶¶ 8(b), (c), and (f) apply.

Conclusion

The record does not create doubt about Applicant's reliability, trustworthiness, good judgment, and ability to protect classified information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also gave due consideration to the whole-person concept.¹⁵ Accordingly, I conclude that Applicant met her ultimate burden of persuasion to show that it is clearly consistent with the interest of national security to grant her eligibility for access to classified information.

Formal Findings

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the SOR allegations:

Paragraph 1, Guideline B:	For Applicant
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline C:	Withdrawn

¹⁵ AG ¶ 2(d)(1)-(9). In that consideration, I gave positive weight to the Applicant's credibility, demeanor and maturity.

Conclusion

In light of the record as a whole, it is clearly consistent with the interest of national security to grant Applicant access to classified information.

Noreen A. Lynch
Administrative Judge