

DATE: September 7, 2001

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 00-0737

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Peregrine D. Russell-Hunter, Esq., Chief Department Counsel

FOR APPLICANT

Pro Se

Administrative Judge Elizabeth M. Matchinski issued a decision, dated May 16, 2001, in which she concluded it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Applicant appealed. For the reasons set forth below, the Board affirms the Administrative Judge's decision.

This Board has jurisdiction on appeal under Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.

Applicant's appeal presents the issue of whether the Administrative Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law.

Procedural History

The Defense Office of Hearings and Appeals issued a Statement of Reasons (SOR) dated January 12, 2001 to Applicant. The SOR was based on Guideline C (Foreign Preference) and Guideline B (Foreign Influence). A hearing was held on April 3, 2001. The Administrative Judge issued a written decision, dated May 16, 2001, in which she concluded it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. The case is before the Board on Applicant's appeal from the Administrative Judge's adverse security clearance decision.

Administrative Judge's Findings and Conclusions

Applicant was born in a foreign country (FC). Applicant was raised and educated through two years at a university in FC.

In June 1991, Applicant received an FC passport to come to the United States to pursue educational opportunities here. Applicant came to the United States, sponsored by a fraternal aunt who had emigrated from FC to the United States in 1978 and married a U.S. citizen. Applicant's father opened a store in the United States, which eventually went out of business while Applicant and his younger brother pursued university studies here. Applicant's mother, who does not speak English, elected to remain in FC.

In March 1997, Applicant renewed his FC passport. In May 1997, Applicant received his college degree. Family

members who attended his graduation included his maternal grandparents, both resident citizens of FC. Applicant became a naturalized U.S. citizen in August 1997. Thereafter, Applicant considered himself a citizen only of the United States. In March 1998, Applicant was issued a U.S. passport.

Applicant traveled to FC and visited his mother, maternal grandparents, and aunts and uncles from May 1998 to August 1998. Applicant used his U.S. passport on this trip. While in FC, Applicant met his future spouse on a blind-date arranged by his mother and his future father-in-law. Applicant's mother and his future mother-in-law worked together as school teachers.

In August 1999, Applicant visited his mother in FC. He entered and exited FC on his U.S. passport. In December 1999, Applicant contacted his future spouse after not corresponding with her for about a year. In July 2000, Applicant traveled to FC on his U.S. passport to see his mother and his fiancée. In September 2000, Applicant traveled to FC, where he married his fiancée. While in FC, Applicant underwent a formal process of renunciation of his FC citizenship. In November 2000, Applicant traveled with his spouse to FC to celebrate their marriage. At the celebration, Applicant met his spouse's relatives. After this trip, Applicant's spouse came to the United States and was granted permanent residency status here. Applicant's spouse intends to apply for U.S. citizenship as soon as she is eligible.

In March 2001, Applicant asked the FC consulate to invalidate his FC passport. Applicant's FC passport was officially invalidated.

Applicant's younger brother has been a U.S. citizen since December 1998. Applicant's father, an FC citizen, is a permanent resident alien in the United States. Applicant's mother, maternal aunts and uncles, and four cousins are FC citizens residing in FC. Applicant's mother comes to the United States once or twice a year to visit her husband and sons. Applicant's mother was a school teacher in FC until she retired in 2000. One of Applicant's aunts is a school teacher, while her husband works in a hotel. Of Applicant's two other uncles, one is employed by the FC government and one is a teacher for a private school.

All the family members of Applicant's spouse are citizens of FC and reside there. Applicant's father-in-law is employed with the FC intelligence agency. Applicant did not know about his father-in-law's employment until September 2000. Applicant has not discussed his work with his father-in-law.

Applicant has infrequent contacts with three friends who are FC citizens who live in FC. Applicant visits with these friends on his trips to FC.

Applicant has rebutted any concern that he prefers FC to the United States through: (a) his renunciation of FC citizenship; (b) his getting his FC passport invalidated; (c) his actions consistent with U.S. citizenship; and (d) his actions inconsistent with FC citizenship. Formal findings are entered in favor of Applicant with respect to Guideline C (SOR paragraphs 1.a and 1.b).

Applicant's contacts with three friends who are FC citizens living there are infrequent and do not raise concerns of foreign influence. Furthermore, under the particular facts of this case, Applicant is not vulnerable to foreign influence based on the fact that his parents own a residence in FC in which his mother resides. Accordingly, formal findings are entered for Applicant with respect to SOR paragraphs 2.c and 2.f.

The following facts and circumstances of Applicant's situation raise foreign influence security concerns: (a) his family ties with relatives in FC; (b) his spouse's FC citizenship; (c) his family ties with in-laws in FC; and (d) the fact that one of his maternal uncles and his father-in-law work for the FC government (with his father-in-law working for the FC intelligence agency). Applicant has failed to rebut the security concerns raised by the facts and circumstances of his family ties with FC. Accordingly, formal findings are entered against Applicant with respect to SOR paragraphs 2.a, 2.b, 2.d, and 2.e.

It is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Appeal Issue

The Administrative Judge's findings of fact and favorable conclusions under Guideline C (SOR paragraphs 1.a and 1.b) are not at issue on appeal. The Judge's favorable formal findings with respect to SOR paragraphs 2.c and 2.f also are not at issue on appeal.

Applicant argues: (1) he has been honest with the government in the security clearance process; (2) the Judge's decision is unreasonable for just jumping to negative conclusions when she states the government need not wait for Applicant to be approached by a foreign government or organization; (3) the Judge's decision unfairly questions his integrity and loyalty to the United States; (4) most of his father's relatives reside in the United States and most of them are U.S. citizens; (5) although his mother resides in FC, she visits the United States once or twice every year, was only a school teacher, and was never politically active in FC; (6) his parents would never do anything to harm him, and they do not pose any threat to the security of the United States; (7) his relationship with his father-in-law has always been casual, he has spoken with his father-in-law very infrequently, and his father-in-law is not politically active; (8) his uncle has little or no influence over his mother, and his mother's other relatives have no connection with the FC government, except an aunt who works in a public school; (9) his parents' other relatives in FC do not raise any concerns toward the United States; (10) the Administrative Judge's decision failed to mention that his father-in-law was planning to retire within a few months after the hearing; (11) his father-in-law does not pose a threat to the security of the United States, either at the time of the hearing or after he retires; (12) his father-in-law has retired from the FC government; (13) his spouse will obtain U.S. citizenship when she is eligible and she would not do anything to harm him or the United States; and (14) he would not disclose sensitive or classified information to unauthorized persons. Applicant's arguments raise the issue of whether the Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law. For the reasons that follow, the Board concludes Applicant has failed to demonstrate the Judge erred.

Applicant's honesty with the government in the security clearance process weighs in his favor. But Applicant's honesty with the government did not preclude the Administrative Judge from evaluating the security significance of the information Applicant has provided about the facts and circumstances of his conduct and family ties with FC.

Contrary to Applicant's contention, the Administrative Judge did not merely jump to negative conclusions about Applicant. The Judge's decision sets forth a well established rule, namely, the federal government need not wait until an applicant mishandles or fails to properly handle or safeguard classified information before it can deny or revoke access to such information. *Adams v. Laird*, 420 F.2d 230, 238-39 (D.C. Cir. 1969), *cert. denied*, 397 U.S. 1039 (1970). *See also* ISCR Case No. 99-0480 (November 28, 2000) at p. 6 ("[T]he federal government need not wait until Applicant is actually approached or contacted by any [foreign country] person or organization before it can decide whether to deny or revoke Applicant's access to classified information in light of all the facts and circumstances of Applicant's conduct and situation."). Furthermore, the Judge's analysis of Applicant's case reflects reasoned decision-making about Applicant's circumstances (namely his family ties with FC), not jumping to conclusions about Applicant himself without reasoning or analysis.

Applicant's assertion that his father-in-law retired after the hearing constitutes new evidence. The Board cannot consider new evidence on appeal. Directive, Additional Procedural Guidance, Item E3.1.29.

The rest of Applicant's arguments set forth his interpretation of the record evidence and his disagreement with the adverse conclusions the Administrative Judge drew concerning Applicant's family ties. Applicant's arguments fail to demonstrate the Judge erred.

Security clearance decisions are not an exact science, but rather are predictive judgments about a person's security suitability in light of that person's past conduct and present circumstances. *Department of Navy v. Egan*, 484 U.S. 518, 528-29 (1988). Direct or objective evidence of nexus is not required before the government can deny or revoke access to classified information. *Gayer v. Schlesinger*, 490 F.2d 740, 750 (D.C. Cir. 1973). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information.

A review of the decision below persuades us that the Administrative Judge drew conclusions that follow rationally from her factual findings and reflect a reasoned application of pertinent provisions of the Directive (including the

Adjudicative Guidelines). The Judge had a rational basis for concluding that Applicant's family ties with FC raised security concerns. Furthermore, the Judge properly noted that Applicant had the burden of demonstrating that his family ties did not place him in a position of vulnerability through possible foreign influence. *See* Directive, Additional Procedural Guidance. Item E3.1.15 ("The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."). Considering the record as a whole, it was not arbitrary, capricious, or contrary to law for the Judge to conclude that Applicant failed to meet his burden of overcoming the security concerns raised by his family ties.

Conclusion

Applicant has failed to meet his burden of demonstrating error below. Accordingly, the Board affirms the Administrative Judge's May 16, 2001 decision.

Signed: Emilio Jaksetic

Emilio Jaksetic

Administrative Judge

Chairman, Appeal Board

Signed: Michael Y. Ra'anan

Michael Y. Ra'anan

Administrative Judge

Member, Appeal Board

Signed: Jeffrey D. Billett

Jeffrey D. Billett

Administrative Judge

Member, Appeal Board