

KEYWORD: Foreign Influence

DIGEST: Applicant is 37 years old and employed by a defense contractor. His wife is a citizen of Malaysia, where her parents, brothers, and sisters reside. Applicant's wife holds a passport from Malaysia; to facilitate future travel to Malaysia to support her family, if necessary, she does not presently intend to seek citizenship in the United States when eligible. Applicant and his wife own real property in Malaysia that constitutes 25% of their net worth. Applicant has not mitigated the security concerns arising from the foreign residence of his wife's family members or his financial interests in a foreign country. Clearance is denied.

CASENO: 02-09401.h1

DATE: 08/04/2004

DATE: August 4, 2004

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-09401

**DECISION OF ADMINISTRATIVE JUDGE**

**MICHAEL J. BRESLIN**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Esq., Department Counsel

## FOR APPLICANT

*Pro Se*

### SYNOPSIS

Applicant is 37 years old and employed by a defense contractor. His wife is a citizen of Malaysia, where her parents, brothers, and sisters reside. Applicant's wife holds a passport from Malaysia; to facilitate future travel to Malaysia to support her family, if necessary, she does not presently intend to seek citizenship in the United States when eligible. Applicant and his wife own real property in Malaysia that constitutes 25% of their net worth. Applicant has not mitigated the security concerns arising from the foreign residence of his wife's family members or his financial interests in a foreign country. Clearance is denied.

### STATEMENT OF THE CASE

Under Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (the "Directive"), the Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On November 5, 2003, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision: security concerns raised under Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing on December 1, 2003, and admitted all the factual allegations. He elected to have the matter decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on January 9, 2004. Department Counsel provided a complete copy of the file of relevant material (FORM) to Applicant, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on January 26, 2004, but did not provide additional materials for consideration. The case was initially assigned to another administrative judge but was transferred to me on August 3, 2004.

### FINDINGS OF FACT

Applicant admitted all of the factual allegations contained in the SOR. Those admissions are incorporated herein as

findings of fact. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant is 37 years old and has been married since November 1999. Item 4, Security Clearance Application, dated November 20, 2000, at 2. He is a United States citizen by birth, and his parents, brothers, and sisters are all citizens and residents of this country. *Id.* at 1, 3-4. Applicant has worked for a defense contractor as a design engineer since October 2000 and seeks a security clearance for the first time. *Id.* at 2, 9.

Applicant's wife was born in Malaysia and is a citizen of that country. *Id.* at 3. She is a permanent resident of the United States, and works as a software engineer. Item 5, Statement of Subject, dated December 18, 2001, at 1. Her parents and five brothers and sisters still live in Malaysia. *Id.* Applicant did not indicate what his spouse's family members do for a living, but states none of them have any connection with the government of Malaysia and they are favorably disposed toward the United States. *Id.* Applicant's spouse has considered applying for citizenship in the United States when she becomes eligible, but recognizes that it would restrict her ability to visit Malaysia for longer periods if necessary to tend to family business involving her parents. *Id.*

Applicant denies having any foreign property, business connections, or financial interests in a foreign country. Item 4, *supra*, at 6. He and his wife own a house in Malaysia that she bought as a residence for her parents. Item 5, *supra*, at 2. The house is worth about \$60,000, which constitutes about 25% of their net worth. *Id.*

Applicant and his wife visited her family in Malaysia in June 2000 and October-November 2001. Item 4, *supra*, at 6; Item 5, *supra*, at 2. Applicant indicates they will visit her family in Malaysia about every two years. Item 5, *supra*, at 2. Otherwise, they maintain regular contact with her family by telephone and e-mail. *Id.*

Terrorist organizations, including those linked to al-Qaida, are operating in the east coast of Malaysia in the state of Sabah. They have taken hostages from that area and are a potential threat to Westerners and Western interests in the region. Item 6, U.S. Department of State, Public Announcement, dated November 7, 2003.

## POLICIES

In Executive Order 12968, *Access to Classified Information* § 3.1(b) (August 4, 1995), the President provided that eligibility for access to classified information shall be granted only to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion,

and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are:

**Guideline B - Foreign Influence:** A security risk may exist when an applicant's immediate family, or other persons to whom he may be bound by affection, influence, or obligation, are not citizens of the United States or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Directive, ¶ E2.A2.1.1.

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to these adjudicative guidelines, are set forth and discussed in the conclusions below.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." Directive, ¶ E2.2.1. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. *Id.* An administrative judge should consider the following 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 voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent 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. *Id.*

Initially, the Government must establish, by substantial evidence, conditions that disqualify or may disqualify the applicant from being eligible for access to classified information. Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive, ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2.

## **CONCLUSIONS**

I considered carefully all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

### **Family Members in a Foreign Country.**

The Government's documentary matters and Applicant's admissions constitute substantial evidence of two disqualifying conditions under Guideline B of the Directive. Paragraph E2.A2.1.2.1 of the Directive provides that it may be a disqualifying condition if "an immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country." "[T]here is a rebuttable presumption that a person has ties of affection for, and obligation to, the immediate family members of the person's spouse." ISCR Case No. 01-03120, 2002 DOHA LEXIS 94 at \*8 (App. Bd. Feb. 20, 2002). Applicant travels to Malaysia to visit his spouse's family, and they maintain regular contact by telephone and e-mail. I conclude his wife's parents and siblings in Malaysia are persons to whom Applicant has close ties of affection.

The substantial evidence is sufficient to raise security concerns under ¶ E2.A2.1.2.1. These circumstances "could create the potential for foreign influence that could result in the compromise of classified information." Directive, ¶ E2.A2.1.1. While the

mere possession of family ties with persons in a foreign country is not, as a matter of law, automatically disqualifying . . . [it] does raise a prima facie security concern sufficient to require an applicant to present evidence of rebuttal, extenuation or mitigation sufficient to meet the applicant's burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for the applicant.

ISCR Case No. 99-0424, 2001 DOHA LEXIS 59 at \*\*33-34 (App. Bd. Feb. 8, 2001).

Where there is a potential for foreign influence, security concerns can be mitigated where it is determined that the family members or associates in question are not agents of a foreign power, and they are not in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person involved and the United States. Directive, ¶ E2.A2.1.3.1.

Applicant declares his relatives in Malaysia have no connection with the government there. Item 5, *supra*, at 1. However, he provides no information about what they do for a living or their associations or activities. In the absence of

more information, it is difficult to determine that Applicant's relatives are not agents of a foreign government.

In determining whether relatives are vulnerable to exploitation, a judge should consider several factors, including the character of the government of the relevant foreign country. Malaysia is a constitutional monarchy. The United States has maintained friendly relations with Malaysia since its independence in 1957. The two countries have a record of cooperation in many areas, including trade and investment, defense, and counter-terrorism. Malaysia is not a hostile country with interests inimical to the United States. Of course,

nothing in Guideline B (Foreign Influence) indicates or suggests that it is limited to countries that are hostile to the United States. The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States.

ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

Department Counsel submitted Item 6, a Public Announcement from the State Department warning of threats to travelers from terrorists in the east coast of the Malaysian state of Sabah. Notably, the described threat arises from terrorist activity, not the government of Malaysia. Moreover, the specific area of concern is on the east coast of the island of Borneo, and not on the Malayan Peninsula, where Applicant's relatives reside. Therefore, these concerns about terrorist activity are not compelling.

Another significant factor is Applicant's vulnerability to duress. Applicant's closest tie is with his wife, a citizen of Malaysia. The relatives in issue are immediate family members of Applicant's spouse. Applicant and his wife provide financial support to her family by furnishing a residence, visit Malaysia on occasion, and maintain regular telephone and e-mail contact. This indicates a very close personal relationship with her family members. Indeed, Applicant's wife has reservations about seeking citizenship in the United States when eligible, because she wants to maintain her passport in order to facilitate possible future visits to Malaysia. Considering all the circumstances, I conclude Applicant has not mitigated the security concerns arising from his close contacts with his relatives in Malaysia.

### **Financial Interests in a Foreign Country.**

The substantial evidence also presents a disqualifying condition under ¶ E2.A2.1.2.8 of the Directive, which arises when an applicant has a "substantial financial interest in a country . . . that could make the individual vulnerable to foreign influence." Applicant's real-estate holdings in Malaysia are worth about \$60,000. This gives rise to security concerns under ¶ E2.A2.1.2.8 of the Directive.

It may be a mitigating condition if foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities. The real estate in Malaysia belonging to Applicant and his wife represent 25% of their total net worth. Although Applicant indicates he and his spouse could do without the real property, nonetheless a considerable financial interest remains. Applicant is potentially vulnerable to governmental, corporate, or individual action against his assets. I conclude Applicant has not mitigated the security concerns arising from his financial interests in a foreign country.

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline B: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

### **DECISION**

In light of all of the circumstances presented by the record in this case, it not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

**Michael J. Breslin**  
**Administrative Judge**