

DATE: January 23, 2004

In Re:

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SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-10801

**DECISION OF ADMINISTRATIVE JUDGE**

**MARTIN H. MOGUL**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a 45 year-old, United States born citizen. His wife was born in Venezuela and became a naturalized United States citizen. The mother of Applicant's wife and her three sisters and one brother are citizens of and reside in Venezuela. None of her relatives has ever worked for the Venezuelan government. Applicant's contact with them is casual and infrequent. Applicant has given some money to his mother-in-law and his niece in Venezuela, but the amount is not significant. Applicant's strong attachment to the United States and minimal ties to Venezuela make it unlikely that he would respond favorably to any efforts to make him act against United States interests. Mitigation has been shown. Clearance is granted.

**STATEMENT OF THE CASE**

On April 17, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

In a signed and sworn statement, dated May 19, 2003, Applicant responded to the SOR allegations. He requested that his case be decided on the written record in lieu of a hearing. On August 19, 2003, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant, and he was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant had until September 27, 2003, to file a response to the FORM, and a timely response was received. The case was assigned to this Administrative Judge on October 3, 2003.

In the FORM, Department Counsel offered seven documentary exhibits (Exhibits 1 - 7). Applicant responded to the FORM with a Certificate of Naturalization of his wife, identified and entered as Exhibit A.

## FINDINGS OF FACT

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline B of the Directive because Applicant's immediate family, and other persons to whom he may be bound by affection, influence, or obligation, are not United States citizens and reside in Venezuela. The SOR contains nine allegations, 1.a. through 1.i., under Guideline B (Foreign Influence). In his response to the SOR, Applicant admits all nine allegations. These allegations are incorporated as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, and the documents, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is a 45 year old employee of a defense contractor. He was born in the United States and has been solely a United States citizen for his entire life. Applicant's wife, whom he married in 1996, was born in Venezuela in 1964, came to the United States approximately seven years ago and became a United States citizen in 2002. Applicant's wife received a Bachelor of Science degree from a college in Venezuela. Applicant and his wife have one daughter, who was born in the United States.

Applicant's mother-in-law is a citizen of and resides in Venezuela. Applicant and his wife send her mother, who is retired, about \$100 a month. Applicant also has three sisters-in-law and one brother-in-law, who are citizens of Venezuela and reside in Venezuela. One sister, who lives with Applicant's mother-in-law, is a lawyer, and works as an assistant for an assemblyman for a state in Venezuela. Applicant's other two sisters-in-law are unemployed. His brother-in-law works as a construction contractor and is not employed by the government of Venezuela (Exhibit 5).

Applicant and his wife traveled to Venezuela in 1997, 1999, and 2000 to see his wife's family. Applicant's wife speaks by telephone to her mother on a monthly or bimonthly basis. Aside from the trips to Venezuela, Applicant does not communicate with his in-laws. Applicant and his wife do not have any financial interests or property in Venezuela.

Applicant's wife is the legal guardian of a niece in Venezuela, and Applicant and his wife provide \$170 a semester to her for tuition and approximately \$200 a year for her clothing. Applicant's wife has a nephew who attended a naval academy. He is now employed as a construction worker (Exhibits 3 and 5).

In a signed, sworn statement made to the Defense Security Service in February 2002, Applicant stated that he would never do anything to compromise the interests of the United States (Exhibit 5).

## POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines that must be carefully considered in evaluating an individual's security eligibility and making the overall common sense determination required. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk.

Each adjudicative decision must also include an assessment of: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 (*See* Directive, Section E2.2.1. of Enclosure 2).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

## **FOREIGN INFLUENCE (GUIDELINE B)**

E2.A2.1.1. The Concern: A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. These situations could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

E2.A2.1.2. Condition that could raise a security concern and may be disqualifying include:

E2.A2.1.2.1. An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident in, a foreign country;

E2.A2.1.3. Conditions that could mitigate security concerns include:

E2.A2.1.3.1. A determination that the immediate family member(s) . . . in question are not agents of a foreign power or 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(s) involved and the United States;

E2.A2.1.3.3. Contact and correspondence with foreign citizens are casual and infrequent;

E2.A2.1.3.5. Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.

### **BURDEN OF PROOF**

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance. Assessment of an applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of rehabilitation.

A person who seeks access to classified information enters into a fiduciary relationship with the U.S. Government that is predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability, or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

### **CONCLUSIONS**

Based on the evidence of record, the Government has established an initial reason to deny Applicant a security clearance because of Guideline B (Foreign Influence). Applicant has five immediate family members who are citizens of and reside in Venezuela. The Venezuela citizenship and residency of Applicant's mother-in-law, three sisters in-law and one brother-in-law, create the potential for foreign influence that could result in the compromise of classified information because it makes Applicant potentially vulnerable to coercion, exploitation, or pressure. The possession of such ties raises a security concern sufficient to require Applicant to present evidence in rebuttal, extenuation, or mitigation sufficient to meet his burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him. The existence of immediate family members, who are citizens of and reside in Venezuela comes within Disqualifying Condition (DC) E2.A2.1.2.1.

Based on the nature of the overall record and the totality of the evidence, I conclude that Applicant's in-laws in Venezuela do not constitute an unacceptable security risk, and that Mitigating Condition (MC) E2.A2.1.3.1. applies. This is based on several factors, including the fact that Applicant is a native born United States citizen, who has lived

his entire life in and as a citizen of the United States only. Applicant's wife has become a United States citizen, and the family members, who are of a concern, are only related to Applicant through marriage, and there has been no government involvement with any of these family members. MC E2.A2.1.3.3. also applies because Applicant's contacts with his in-laws in Venezuela is casual and infrequent. Finally, MC E2.A2.1.3.5. applies because while Applicant and his wife do contribute some funds to his mother-in-law and niece, the amount is not significant.

After considering all of the evidence of record on these issues, I conclude that the mitigating evidence substantially outweighs the evidence supporting the SOR and even in the unlikely event pressure was exerted upon Applicant to compromise classified information, he would resist it, and would report the incident to the proper authorities.

### **FORMAL FINDINGS**

#### **Paragraph 1. Guideline B: FOR APPLICANT**

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant

Subparagraph 1.h.: For Applicant

Subparagraph 1.i.: For Applicant

### **DECISION**

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

Martin H. Mogul

Administrative Judge