

Date: November 7, 2001

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 01-03055

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR GOVERNMENT

Marc Curry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On March 22, 2001, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on April 25, 2001, and requested that the case be decided without a hearing. The Government submitted its File of Relevant Material (FORM) to the Applicant on August 29, 2001. The Applicant was given 30 days from receipt of the FORM to submit any documents in rebuttal, extenuation or mitigation. The Applicant received the FORM on September 7, 2001, and submitted a response on September 27, 2001. Department Counsel did not object to the Applicant's additional information. The case was received by the undersigned on October 5, 2001.

FINDINGS OF FACT

The Applicant is 46, married and has a Master of Science degree. He is employed by a defense contractor and he seeks to obtain a DoD security clearance in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a security clearance, based upon the allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and criterion in the SOR. They are based on the FORM, the Applicant's Answer to the SOR, and the exhibits.

Paragraph 1 (Guideline C - Foreign Preference). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has acted in such a way as to show a preference for another country over the United States.

The Applicant was born in Foreign Country 1 (FC1) in 1955. He moved to the United States in 1984. The Applicant became a naturalized American citizen in 1996. In his Answer to the SOR at page 2, the Applicant states, "On May 19th, 1996, as per instructions of the U.S. Immigration & Naturalization Services, I surrendered my [FC1] passport to the U.S. Immigration & Naturalization Officer at [an American city]. I consequently took oath of Allegiance and received my Naturalization Certificate I was not aware of the requirement to return the passport to the issuing authority." (Government Exhibit 3.) (Emphasis in original.)

In his Response to the FORM, the Applicant submitted a letter dated September 19, 2001, from the Third Secretary (Political/Education) of the FC1 Embassy. This official states, "This is to certify that [the Applicant], has fully and completely renounced his [FC1] citizenship. [The Applicant's FC1] passport expired in 1996 and [the Applicant] does not possess or use any Passport issued by [FC1]."

Paragraph 2 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has immediate family members or people to whom he may be bound by affection or obligation who are not citizens of the United States, or may be subject to duress.

The Applicant's brother is a FC1 citizen and still lives there. The Applicant's mother and father-in-law moved to the United States in March 2001 and are permanent residents. (*See*, Answer to the SOR.) The Applicant has no plans to visit FC1 in the future. The Applicant speaks to his brother approximately every month.

The Applicant's other brother lives in FC2. FC2 is in close geographical proximity to the United States. The Applicant visits this country with his family on a yearly basis and usually visits with his brother.

Paragraph 3 (Guideline F - Financial Considerations). The Government alleges in this paragraph that the Applicant is financially overextended and at risk of having to engage in illegal acts to generate funds.

3.a. This debt in the original amount of \$3,600.00 concerns a credit card. The Applicant has disputed this debt because he does not recognize the bank name. Two of three credit reporting agencies have removed it from his file. In his Response to the FORM the Applicant states that he will make a good-faith effort to resolve this disputed amount and pay it off within two years. Based on all available information, I find that this is the Applicant's debt and he has not made any firm plans to pay it off.

3.b. This Applicant has paid this debt off. Accordingly, this subparagraph is found for the Applicant.

3.c. The Applicant admits that he is responsible for this debt. However, he disputes the amount of the debt. The original amount of the debt is over \$3,000.00. With interest, the amount is over \$8,000.00. In his Response to the FORM the Applicant states that he will make a good-faith effort to resolve this disputed amount and pay it off within two years.

3.d. The Applicant admits that he is responsible for this debt, in the amount of approximately \$3,500.00. In his Response to the FORM the Applicant states that he will attempt to pay this debt off within two years.

The Applicant submits that these debts were all incurred eight years ago. At that time the Applicant was unemployed and unable to make payments on these debts. The Applicant discussed these debts in depth with a Defense Security Service Special Agent in June 2000. (Exhibits 6 and 7.)

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm

of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Guideline C (Foreign preference)

Conditions that could raise a security concern:

(None of the stated conditions have application in this case.)

Conditions that could mitigate security concerns include:

(None of the stated conditions have application in this case.)

Guideline B (Foreign influence)

Conditions that could raise a security concern:

(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 or present in, a foreign country;

Conditions that could mitigate security concerns include:

(1) A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(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;

(3) Contact and correspondence with foreign citizens are casual and infrequent;

Guideline F (Financial considerations)

Conditions that could raise a security concern:

(1) a history of not meeting financial obligations;

(3) inability or unwillingness to satisfy debts;

Conditions that could mitigate security concerns:

(None of the stated conditions have application in this case.)

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes

- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence."

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in acts of financial irresponsibility, as well as having foreign connections and preferences, that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the granting or continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation that is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant has foreign connections, that he possessed a FC1 passport at one time and that he has had financial problems.

The Applicant, on the other hand, has not introduced persuasive evidence in rebuttal, explanation or mitigation which is sufficient to overcome the Government's case against him, except in part.

The Applicant is a naturalized citizen of the United States. He has submitted compelling evidence from the FC1 embassy that he is not a dual citizen and that he does not now have or use a FC1 passport. In fact, he has not had an FC1 passport since he became an American citizen. Guideline C is found for the Applicant.

The Applicant's mother and father-in-law now live in the United States, thereby obviating any security concern about them. His brother in FC2 lives in a country in close proximity to the United States. As the Applicant stated, common sense must be used when discussing travel to this particular nation. The Applicant stated that he has no future intentions to visit FC1. His relations with his brothers are cordial but are not, in my opinion, close. He has overcome the adverse inference of his foreign connections and Guideline B is found for the Applicant.

The Applicant has known since June 2000 of the Government's concern with his debt situation. The Applicant accepts his responsibility for these debts, but has done nothing substantial about them in the ensuing 15 months. The debt in subparagraph 1.b. has been paid, and that subparagraph is found for the Applicant. He submits that he will resolve the other debts within two years of the date of the FORM. That is much too late. He has not initiated a good-faith effort to

resolve these debts and cannot be found to have mitigated this allegation. Guideline F is found against the Applicant.

On balance, it is concluded that the Applicant has not overcome the weight of the Government's evidence opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the conclusionary allegations expressed in Paragraph 3 of the Statement of Reasons. As stated previously, Paragraphs 1 and 2 of the Statement of Reasons are found for the Applicant.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1: For the Applicant.

Subparagraph 1.a.: For the Applicant.

Paragraph 2: For the Applicant.

Subparagraph 2.a.: For the Applicant.

Subparagraph 2.b.: For the Applicant.

Subparagraph 2.c.: For the Applicant.

Paragraph 3: Against the Applicant.

Subparagraph 3.a.: Against the Applicant.

Subparagraph 3.b.: For the Applicant.

Subparagraph 3.c.: Against the Applicant.

Subparagraph 3.d.: Against the Applicant.

DECISION

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

Wilford H. Ross

Administrative Judge