

DATE: January 29, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-03751

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Martin H. Mogul, Department Counsel

FOR APPLICANT

James Victor Kosnett, Attorney At Law

STATEMENT OF THE CASE

On August 23, 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 the 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 September 17, 2001, and requested a hearing before a DOHA Administrative Judge. This case was transferred to the undersigned on November 14, 2001. A notice of hearing was issued on December 4, 2001. The hearing was held on January 10, 2001, at which the Government presented two exhibits. The Applicant presented seventeen exhibits. The Applicant called five witnesses to testify on his behalf. The Applicant also testified on his own behalf. The Applicant submitted one Post-Hearing exhibit consisting of items 1 and 2. The official transcript (Tr.) was received on January 18, 2002.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the live testimony and the exhibits. The Applicant is 46 years of age, and has a Ph.D. in Aerospace Engineering. He is employed by a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Guideline B - Foreign Influence

The Applicant was born and raised in Germany. In June 1984, shortly after his first son was born in Germany, the Applicant and his wife, also a German national, moved to the United States. The Applicant immediately took steps to be able to apply for his United States citizenship. He became a permanent resident in April 1988. (*See*, Applicant's Answer to SOR). He became a citizen of the United States in 1995. (Tr. p. 64). The Applicant stated that he severed all ties with

Germany when he became a United States citizen. (Tr. p. 65). The Applicant's youngest son was born in the United States, and is a United States citizen. (Tr. p. 77).

The Applicant's wife and eldest child testified that they are currently in the process of becoming United States citizens. (Tr. pp. 126 and 115). The Applicant also provided immigration documentation supporting this fact. (*See*, Applicant's Exhibits G, H and I). His eldest son will be graduating from high school soon, and wants to attend a University in the United States. (*See*, Applicant's Exhibit J).

The Applicant's father, mother and brother are citizens of Germany, and reside there. His father suffered a stroke in May 2001, and since then has lived in a rehabilitation center. He is immobilized and unable to speak. He is a retired civil engineer. His mother is a homemaker. The Applicant's brother is a research engineer for a plastic manufacturing company. There is no evidence that any of the of the Applicant's family members work for the German government. The Applicant has never served in the German military nor has anyone in his family.

The Applicant's mother-in-law and father-in-law were German citizens, and resided there. His mother-in-law has since passed away. His father-in-law has since remarried and still lives in Germany. The Applicant does not know his father-in-law's wife very well. Before they retired, his father-in-law was an independent sales person with a packaging material company and his mother -in-law was a homemaker.

The Applicant has traveled to Germany for work related purposes, as well as to visit his family. On these occasions, he has either attended business conferences and/or visited his parents and/or brother. The Applicant states that he is probably considered the "black sheep" of the family because he has moved to the United States. (Tr. p. 102). He is not close to his mother, father or brother. The Applicant has other relatives, such as an uncle and some cousins in Germany, but their contact is solely limited to an occasional Christmas or Birthday card. (Tr. p. 97).

The Applicant explained that during his childhood his family made frequent moves within Germany. He attended several different elementary schools and high schools. He really never established any long running friendships. (Tr. p. 105). The Applicant states that he has no friends, and no social or business contacts in Germany. (Tr. p. 85). The Applicant has established a life for himself and his family in the United States. He states that he has 100 percent loyalty to the United States. (Tr. p. 85).

For about twenty years, the Applicant has maintained a life insurance policy and a checking account with an investment portfolio in Germany. This life insurance policy is presently worth at least \$80,000.00 euro, worth approximately \$68,000.00 in the United States. By letter dated January 4, 2002, the Applicant requested that the life insurance policy be cancelled. (*See*, Applicant's Exhibit D). A subsequent letter from the life insurance company dated January 14, 2002, indicates that the termination of the life insurance policy will become effective February 1, 2002. (*See*, Applicant's Post-Hearing Exhibit 2). With respect to the Applicant's checking account, by letter dated January 4, 2002, the Applicant requested that when the money transfer is received from insurance company, the bank will close out the Applicant's account and transfer the closing balance to his bank account in the United States. (*See*, Applicant's Exhibit E). By a subsequent letter dated January 11, 2002, the bank indicated that the Applicant's stocks were sold that day, and on January 16, 2002, the proceeds would be transferred into his bank account in the United States. (*See*, Applicant's Post-Hearing Exhibit 1).

The Applicant owns no property in Germany. He believes that his mother and her brother own an apartment building, consisting of one office building and four housing units. Although he estimates that the building is worth between approximately \$500,000 and \$1,000,000 the Applicant does not know for sure what the apartment building is worth, or whether he stands to inherit anything. (Tr. pp. 102-104).

Two professional associates testified and provided written statements that collectively indicate the Applicant is a competent, dedicated hard working engineer, who demonstrates many professional management skills. He is considered a person of high integrity, character and loyalty. He is honest and trustworthy. (*See*, Tr. pp. 23-29, Tr. pp. 40-45, and Applicant's Exhibits A, and B).

A friend and neighbor of the Applicant, with whom he volunteers for community related activities, testified and provided a written statement indicating that the Applicant is loyal and trustworthy and has a strong work ethic and a

charitable nature. (Tr. pp. 51-55, and Applicant's Exhibit C).

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; 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 conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. 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:

Foreign Influence

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: (1) not citizens of the United States or (2) may be subject to duress. These situations could create the potential for foreign influence that 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.

Conditions that could raise a security concern:

1. An immediate family member, or person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country;
3. A substantial financial interest in a country, or in any foreign-owned or operated business that could make the individual vulnerable to foreign influence.

Conditions that could mitigate security concerns:

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

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 general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- 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, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "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. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have 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."

The Government must make out a case under Guideline B (foreign influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates that he could possibly be subject to foreign influence may be prone to provide information or make decisions that are harmful to the interests of the United States. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSIONS

Having considered the evidence of record, in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the transcript, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR, and that Applicant's foreign contacts have a direct and potentially negative impact on his suitability for access to classified information. However, the Applicant has mitigated the concerns.

The Applicant has been a citizen of the United States for seven years, since 1995. He has lived and worked in the United States since 1984, and has assimilated into the American lifestyle. His wife and son are in the process of becoming United States citizens. They have no desire to return to Germany. He has no foreign contacts, including friends or social associates. He has no foreign business contacts or any association with the German government. He is not close with his immediate or extended family members, who reside in Germany, and they have no Governmental connections; and as such, I find they exert no foreign influence over him. The Applicant has now resolved his foreign financial interest; and thereby, has also mitigated that allegation. In conclusion the Applicant has no current substantial foreign contacts, or emotional and family ties, in Germany. The Applicant has demonstrated an unequivocal preference for the United States. Accordingly, Guideline B is found for the Applicant.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his foreign influence. The Applicant has met the mitigating conditions of Guideline B and of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guideline B.

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.

Subparas. 1.a.: For the Applicant

1.b.: For the Applicant

1.c.: For the Applicant

1.d.: For the Applicant

DECISION

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

Darlene Lokey Anderson

Administrative Judge