

DATE: May 29, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-03744

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant has expressed a willingness to renounce her dual citizenship and she does not have significant foreign contacts. Accordingly, she has mitigated the allegations against her. Clearance is granted.

STATEMENT OF THE CASE

On December 12, 2002, 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 on December 21, 2003, and she requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on March 27, 2003. A notice of hearing was issued on April 7, 2003, scheduling the hearing for April 29, 2003. At the hearing the Government presented two exhibits. The Applicant presented four exhibits and called three witnesses. She also testified on her own behalf. The Applicant submitted one Post-Hearing Exhibit. The official transcript (Tr.) was received on May 14, 2003.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the testimony and the exhibits. The Applicant is 49 years of age and has a high school diploma. She is employed as a Production Control Coordinator for a defense contractor. She seeks a security clearance in connection with her employment in the defense industry.

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

States.

The Applicant was born in Mexico in 1953, to parents who are natural born United States citizens. In 1999, in order to be eligible to some day purchase property in Mexico, the Applicant officially applied for and obtained her Mexican citizenship. Her application was approved by the Mexican Consulate in July 2000. Presently, the Applicant owns no property in Mexico and never has. The Applicant indicated that she is willing to renounce her Mexican citizenship.

The record was left open for five days beyond the hearing date to allow the Applicant an opportunity to renounce her Mexican citizenship. The Applicant submitted a Post-Hearing-Exhibit wherein she indicates that she went to the Mexican Consulate to renounce his Mexican citizenship and was told that they would not provide her with a formal letter indicating that she has renounced her citizenship. She was further told that she should simply not exercise any rights under Mexican citizenship. (See, Applicant's Post-Hearing Exhibit, letter dated May 6, 2003).

Paragraph 2 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because she has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant's father-in-law resides in Mexico and is a citizens thereof. He is retired and was formerly employed as a laborer for an Airlines in Mexico. The Applicant has had no direct contact with him for about two to three years. She or her husband have telephonic contact with him about once every two months. The Applicant also has some extended family members in Mexico, such as cousins and several brothers-in-law, however she has never met them, and does not know their names. (See, Government Exhibit 2).

Mitigation.

Three witnesses testified on the Applicant's behalf, including her husband, her brother-in-law and a coworker, all of whom consider the Applicant to be honest, reliable, trustworthy, friendly and an excellent worker.

A letter of recommendation from the Applicant's manager indicates that she is considered extremely reliable, loyal and trustworthy. (See, Applicant's Exhibit A).

The Applicant has received numerous commendations, awards and performance reviews, from her employer for excellent job performance. (See, Applicant's Exhibits B,C and E).

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 Preference

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

Condition that could raise a security concern:

1. The exercise of dual citizenship.

Conditions that could mitigate security concerns:

1. Dual citizenship is based solely on parent's citizenship or birth in a foreign country;
4. Individual has expressed a willingness to renounce dual citizenship.

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.

Condition 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.

Conditions that could mitigate security concerns:

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.

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 C (foreign preference), and 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 a foreign preference and has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The mere possession of a foreign passport raises legitimate questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. 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 record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR. However, the Applicant's foreign preference and contacts have been mitigated and do not have a direct or negative impact on her suitability for access to classified information.

The Applicant is a dual citizen of Mexico and the United States. She applied for and was granted Mexican citizenship in 1999. Since then, she has not exercised any privileges or rights granted solely to Mexican citizens. She does not possess a Mexican passport. She has expressed a willingness to renounce her Mexican citizenship. She has even taken this a step further by going to the Mexican Consulate and requesting a formal letter indicating that she has renounced her Mexican citizenship. Mitigating factor 4, under Guideline C, "Individual has expressed a willingness to renounce dual citizenship," clearly applies in this case. Thus, she has demonstrated an unequivocal preference for the United States. Under the circumstances of this case, I find for the Applicant under Guideline C (Foreign Preference).

With respect to Guideline B, the Applicant has only one immediate family member who resides in Mexico, her father-in-law. She does not have a close relationship with him and has little or no contact with him. Furthermore, her father-in-law is retired and not affiliated with the Mexican Government in any way. The possibility of foreign influence that could create the potential for influence that could result in the compromise of classified information does not exist. I find that the Applicant is not vulnerable to foreign influence. Accordingly, the Applicant's request for a security clearance must be granted under Guideline B (Foreign Influence).

Considering all the evidence, the Applicant has met the mitigating conditions of Guideline C and Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, she has met her ultimate burden of persuasion under Guidelines C and 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

Paragraph 2: For the Applicant.

Subparas. 2.a.: For the Applicant

DECISION

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

Darlene Lokey Anderson

Administrative Judge