

DATE: July 23, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-08087

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Martin H. Mogul, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's dual citizenship, including possession of a foreign passport (now expired); and his foreign contacts have been mitigated. Clearance is granted.

STATEMENT OF THE CASE

On February 7, 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 in writing on March 7, 2002, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on April 29, 2002. A notice of hearing was issued on May 13, 2002, scheduling the hearing for June 7, 2002. At the hearing the Government presented four exhibits. The Applicant presented five exhibits. The Applicant testified on his own behalf. The official transcript (Tr.) was received on June 18, 2002.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the exhibits and the testimony. The Applicant is 45 years of age and has a Bachelor's Degree in Electrical Engineering. He is member of the technical staff and is employed by a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Guideline C - Foreign Preference

The Applicant was born in Peru, and first came to the United States in 1974 as a high school exchange student. (Tr. p. 27). He remained in the United States for eleven months before he returned to Peru. In 1979 he returned to the United States to obtain a college education. He liked the United States and its opportunities, and ended up staying. In 1983 he married a United States citizen, but they divorced in 1986. In 1988 he became a United States citizen. (Tr. p. 32). That same year he obtained his Bachelor's Degree. In June 1989 he started working for a defense contractor. He remarried in 1993 to a Peruvian woman who is a resident alien and in the process of becoming a United States citizen. The Applicant has three children from the marriage that were born in the United States. The Applicant was thus, a dual citizen of Peru and of the United States.

The Applicant obtained a Peruvian passport in 1974, (before he became an American citizen), for the purpose of traveling to Peru to visit relatives. In 1988, his Peruvian passport expired. That same year, the Applicant became a United States citizen and he obtained a United States passport. Since then, the Applicant has traveled to Peru on at least ten separate occasions and has always used his American passport. He has never renewed his Peruvian passport.

In 1990, the Applicant's father passed away in Peru and in order to give his mother the power of attorney, the Applicant had to apply for a Peruvian voting card. In 1993, he had to reactivate his voting card when he was married. He has never used the voting card to vote or for any other purpose. The Applicant's voting card has long since expired and is presently of no value. The last time the Applicant voted in a Peruvian election was in 1980 when he was still a Peruvian citizen. (Tr. P. 39). Since becoming a United States citizen, the Applicant states that he votes in every election.

The Applicant avoided serving in the Peruvian military. He participated in an ROTC program three hours a week for nine months and was exonerated from having to join the Peruvian military.

In 1958, his father was the mayor of the city of Cuzco in Peru for several years. The Applicant was two years old at the time.

The Applicant's wife maintained a bank account in Peru that contained approximately \$10,000.00. In June 2001, the Applicant and his wife used the money to buy a bigger house in the United States. (Tr. pp. 43- 44). The Applicant presently has no monetary interests in Peru.

The Applicant's mother, while still alive, distributed to him between \$25,000.00 and \$30,000.00 of his inheritance from the sale of one of her houses in Peru. The value of the home that she has remaining is approximately \$110,000.00. The Applicant and his three siblings will share the inheritance of that house someday. Other than that, the Applicant stands to inherit nothing in Peru.

The Applicant states that he has no problem renouncing his Peruvian citizenship. The Government conceded that because the Applicant's Peruvian passport and voting card have long expired and he has not renewed them, the Money Memorandum does not apply. (Tr. 56).

Guideline B - Foreign Influence

The Applicant's mother, as well as his two brothers and a sister are Peruvian citizens currently residing in Peru. None of these family members are agents of the Peruvian Government. Both of the Applicant's brothers are physicians in private practice. The Applicant's sister is an economist who works for a private banking institution. His mother is a homemaker. There is no evidence that they are in an intelligence gathering capacity. His father, who died in 1990, was also a physician.

The Applicant contacts his mother in Peru by telephone every two weeks or so. She comes to the United States to visit him about once every two years. The Applicant is also in contact with his brothers and sister in Peru by telephone about every couple of months or so. His father and mother-in-law also live in Peru. His wife contacts them by telephone about every two weeks. The Applicant has no close friends that he maintains contact with in Peru. He occasionally e-mails his wife's cousin who went to school with him. His wife's cousin owns a lumber business and has no affiliation with the Peruvian Government.

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.

Conditions that could raise a security concern:

1. The exercise of dual citizenship;
2. Possession and/or use of a foreign passport.

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.

Condition that could mitigate security concerns:

1. A determination that the immediate family member(s), . . . 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.

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 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, although the Government established its case as to all allegations in the SOR, the Applicant has expressed a willingness to renounce his dual citizenship and thus that fact no longer has a direct and negative impact on his suitability for access to classified information.

The mere possession of a foreign passport, and dual citizenship status, raises legitimate questions as to whether an Applicant can be counted upon to place the interests of the United States paramount to that of another nation.

The Government concedes that the Money Memorandum does not apply in this case because the Applicant's foreign passport had expired some time ago and has not been renewed. The Applicant is a United States citizen who has made the United States his permanent home for the last twenty-three years. He lives, works and intends to reside in the United

States for the duration of his life. I am convinced that the Applicant clearly prefers the United States over Peru. He has further demonstrated his commitment by exclusively using his American passport to travel since becoming a United States citizen in 1988 and by stating his willingness to renounce his foreign citizenship. Accordingly, under the circumstances of this case, Applicant's request for a security clearance should be granted under Guideline C.

As to any foreign influence his mother and siblings may have over the Applicant, I can find none. He maintains minimal contact with his birth home of Peru, or with his family who still reside there. Although he stands to inherit some money from his mother upon her death, there is no evidence that this will cause him to be exploited or pressured to compromise the interests of national security. In addition, the country is one in which the United States has friendly relations. Under the whole person concept, this fact alone is insufficient to overcome the strong evidence supporting the Applicant's security worthiness. Accordingly, Guideline B is also found for the Applicant.

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

Paragraph 2: For the Applicant.

Subparas. 2.a.: For the Applicant

2.b.: For the Applicant 2.c.: For the Applicant

2.d.: For the Applicant

2.e.: 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