

DATE: May 23, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 01-09389

**DECISION OF ADMINISTRATIVE JUDGE**

**JOHN R. ERCK**

**APPEARANCES**

**FOR GOVERNMENT**

Matthew E. Malone, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant credibly states her relatives residing in the Phillipines are not in a position to be exploited in a way that could force her to choose between loyalty to them and loyalty to the United States. However, because the financial assets Applicant and her husband are known to own in the Phillipines exceed their known assets in the United States, clearance is denied.

**STATEMENT OF THE CASE**

On December 3, 2001, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, "*Safeguarding Classified Information Within Industry*," dated February 20, 1960, as amended, and modified, and Department of Defense Directive 5220.6, "*Defense Industrial Personal Security Clearance Review Program*." (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make the preliminary finding under the Directive that it is clearly consistent with the national interest to grant a security clearance for Applicant and recommended referral to an Administrative Judge to determine whether a security clearance should be granted, denied ore continued.

Applicant answered the SOR on January 24, 2002, and requested a decision be made in her case without a hearing. Applicant received the File of Relevant aterial (FORM) consisting of five items on March 5, 2002. She did not file a response. The case was assigned to this Administrative Judge on April 30, 2002.

**FINDINGS OF FACT**

The SOR alleges Applicant is subject to foreign influence (Guideline B) because her aunt, her adopted sister, her brother-in-law and his wife, her sister-in-law, and her cousins are citizens of the Philippines. Also alleged as a potential basis for foreign influence are Applicant's financial interests in the Philippines and her possible entitlement to social security benefits in that country. Applicant admitted, without explanation, all allegations set forth in the SOR. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the

following additional findings of fact:

Applicant is a 55-year-old bookkeeper who has worked for her current employer, a DoD contractor since August 1991. She was born in the Philippines and became a naturalized U.S. citizen in October 1990 after immigrating in 1985. Her husband and two children are also naturalized U.S. citizens<sup>(1)</sup>. Her mother immigrated to the U.S. more recently and became a US. citizen in April 2000. Several other relatives including her aunt, her adopted sister, her brother-in-law and his wife, her sister-in-law, and her cousins continue to reside in the Philippines. She had not previously applied for or held a security clearance.

Before moving to the United States, Applicant and her husband acquired property in the Philippines which they continue to own. They own a three story house with an approximate value of \$120,000.00 U.S., and they own a lot with an approximate value of \$40,000.00 U.S. Applicant worked for more than 20 years in the Philippines before immigrating to the United States and believes she may be entitled to the equivalent of social security benefits at age 62. She has not made a definitive inquiry to ascertain her entitlement to this benefit.

Applicant states she and her husband did not receive any financial assistance for their move to the U.S., but made the move using their own savings. They have no financial obligations to the Government of the Philippines.

Although Applicant has relatives who continue to reside in the Philippines, she has stated none of them are in a position to be exploited in a way that could force her to choose between loyalty to them and loyalty to the United States (Item 5).

There is no evidence in the record about Applicant's professional abilities or competence. Nor is there evidence Applicant and her husband own property or hold financial assets in the United States, comparable to, or greater in value than the financial assets they own in the Philippines.

### **POLICIES**

The Adjudicative Guidelines of the Directive are not a set of inflexible rules of procedure. Instead, they are to be applied by Administrative Judges on a case by case basis with an eye toward making decisions with reasonable consistency that are clearly consistent with the interests of national security. In making these overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but also in the context of the factors set forth in Section 6.3 of the Directive. In that vein, the Government not only has the burden of proving any controverted fact(s) alleged in the SOR, it must also demonstrate the facts proven have a nexus to Applicant's lack of security worthiness.

The following Adjudicative Guidelines are deemed applicable to the instant matter:

### **FOREIGN INFLUENCE**

#### **(Guideline B)**

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 create the potential for foreign influence that could result in the compromise of classified information. Contracts 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 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 or present in a foreign country;

E2.A2.1.2.8. 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 include:**

E2.A3.1.3.1. A determination that the immediate family members 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 involved and the United States.

**Burden of Proof**

The Government has the burden of proving any controverted facts alleged in the Statement of Reasons. If the Government established its case, the burden of persuasion shifts to Applicant to establish her security suitability through evidence which refutes, mitigates, or extenuates the disqualifying conduct and demonstrates it is clearly consistent with the national interest to grant or continue his security clearance.

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

**CONCLUSION**

Having considered the record evidence in accordance with appropriate precepts and factors, this Administrative Judge concludes the Government has established its case with under Guideline B. In reaching my decision, I have considered the evidence as a whole, including each of the factors enumerated in Section 6.3, as well as those referred to in Section E2.2. dealing with adjudicative process, both in the Directive.

A security concern is raised by members of Applicant's extended family residing in the Phillippines and by the financial interests she and her husband have in the Phillippines. 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 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.

Applicant has stated that none of her relatives residing in the Phillippines are in a position to be exploited by a foreign power in a way that could force her to choose between loyalty to her family and loyalty to the United States. Her statement on this issue is found to be credible.

Another issue is raised by the financial assets Applicant and her husband own in the Phillippines. While these financial assets total less than \$200,000.00, Applicant has not indicated the value, if any, of the financial assets she and her husband hold in the United States. Applicant and her husband have lived in the United States for more than 15 years and have undoubtedly accumulated some assets--if only personal property--in that time. But the value of these assets is unknown in contrast with the known value of the assets owned in the Phillippines. Under the circumstances, there is no basis for speculating or concluding Applicant and her husband own financial assets in the United States that exceed the value of the assets they own in the Phillippines.

Given the situation where Applicant and her husband are known to have more financial assets in the Phillippines than in the United States, it logically follows she would act to protect these assets. If the national interest of the United States was ever in conflict or in competition with the national interest of the Phillippines in a manner that could adversely impact Applicant's financial assets (in that country), Applicant may act to protect her financial assets, rather than to act in the best interests of the United States. Guideline B is concluded against Applicant.

**FORMAL FINDINGS**

Formal findings as required by Section 3, Paragraph 7, of enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 (Guideline B) AGAINST THE APPLICANT

Paragraph 1.a. For the Applicant

Paragraph 1.b. Against the Applicant

Paragraph 1.c. 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 Applicant's security clearance.

**John R. Erck**

**Administrative Judge**

1. Applicant's daughter was naturalized, however, her son was under 14 at the time his parents moved to the United States and became a citizen along with his parents (Item 4).