

DATE: April 24, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-20497

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The evidence does not establish that applicant is vulnerable to foreign influence. Clearance is granted.

STATEMENT OF THE CASE

On August 26, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to 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 applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR in writing on September 14, 2002. The case was assigned to the undersigned on January 15, 2003. A Notice of Hearing was issued on February 4, 2003, and the hearing was held on February 27, 2003. The transcript was received on March 18, 2003.

FINDINGS OF FACT

Applicant is a 34 year old employee of a defense contractor.

Applicant utilized the services of prostitutes an average of once per year from approximately 1991 to August 2002. Some of this activity occurred in applicant's home state, where prostitution is illegal. Some of this activity also occurred in Nevada and in at least one other country where it is legal. As to his use of prostitutes in his home state, applicant found the prostitutes through ads in papers and/or adult book stores, and then met them at their residence where he paid anywhere from \$80.00 to \$150.00 for their services. Applicant believed that if he disclosed this activity to the Government, he would eliminate any security concerns because he would be proving he "could not be coerced" (SOR Response). Since he learned that just admitting to this activity was insufficient to satisfy the Government's security concerns, he has not, and will not, use the services of prostitutes in jurisdictions where it is illegal to do so. He has,

however, kept open the possibility of utilizing the services of prostitutes where such conduct is legal (TR at 27).

Applicant testified, credibly, that a couple of his friends and one coworker know about this activity (TR at 28). He further testified, credibly, that although public disclosure of this activity would be embarrassing, he would not lie about it (TR at 29).

In January 2000, applicant went on a business trip to Singapore. While in a bar in Singapore, he met a resident and citizen of Thailand who was working in Singapore as a prostitute. Applicant paid for her services, and they spent four or five nights together during the ten days he was in Singapore.

After applicant returned home, he and the prostitute communicated with each other by telephone, mail, and e-mail on a frequent basis. Applicant made a second business trip to Singapore in May 2000. Before the trip he told the prostitute about his plans, she met him there, and they spent about a week together. Applicant testified that during this trip he did not pay for her services because by then they had developed a romantic relationship. Instead, he just paid her expenses (TR at 19-21).

Applicant communicated with his prostitute turned girlfriend on a frequent basis from the time he returned from the trip through the end of 2000. Since then his contacts with her have been less frequent; from December 2000 to at least August 2001 they communicated just once (by e-mail) (Exhibit 2), and the last time they communicated was in June 2002 (by e-mail), over six months ago (TR at 12). Applicant would like to pursue his relationship with this woman, perhaps even marry her, but in his mind, at this point, "it is more of a wishful dream" (TR at 22). If she reinitiated contact with him he would respond to her because he still might like to bring her to the United States to see if she would like to live here, and would still like to visit her and her family in Thailand (TR at 23; 30-31). Applicant told a couple of his friends about the woman, including the fact that she was a prostitute (TR at 31).

Applicant's supervisor appeared at the hearing and testified that applicant is "very professional, very accurate and highly skilled in the work" he performs (TR at 33). He further testified that applicant told him that he was "involved with a prostitute" (TR at 40-41).

POLICIES

Enclosure 2 of the Directive sets forth Guidelines (divided into Conditions that could raise a security concern and conditions that could mitigate security concerns) which must be followed by the Administrative Judge. Based on the foregoing Findings of Fact, the following Disqualifying Factors and Mitigating Factors are applicable:

Sexual Behavior

Conditions that could raise a security concern:

E2.A4.1.2.1: Sexual behavior of a criminal nature.

E2.A4.1.2.3: Sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress.

E2.A4.1.2.4: Sexual behavior which reflects lack of discretion or judgment.

Conditions that could mitigate security concerns:

E2.A4.1.3.3: There is no other evidence of questionable judgment, irresponsibility, or emotional instability.

E2.A4.1.3.4: The behavior no longer serves as a basis for coercion,

exploitation, or duress.

Foreign Influence

Conditions that could raise a security concern:

E2.A2.1.2.1: A person to whom the individual has close ties of affection is a citizen and resident of a foreign country.

Conditions that could mitigate security concerns:

E2.A2.1.3.3: Contact and correspondence with foreign citizens are casual and infrequent.

CONCLUSIONS

With respect to Guideline B, the evidence establishes that applicant had a romantic relationship with a foreign citizen. Although applicant candidly admitted that he still has feelings of affection for the foreign citizen, the fact is that they have rarely communicated since December 2000, and have had no communication since June 2002, over six months ago. Based on these facts, their relationship has, in all likelihood, ended. However, even if it has not ended, there is absolutely no evidence that this woman has any connections to the government of Thailand, or that she is in a position to be exploited by the government of Thailand in a way that could possibly force applicant to choose between loyalty to her and loyalty to the United States. Finally, based on (1) applicant's openness and honesty with DoD about this relationship, as evidenced by the fact he voluntarily disclosed the woman's identity on his September 2000 Security Clearance Application (when there is no evidence he was required to do so), and the fact he voluntarily disclosed her occupation during an interview with a Defense Security Service (DSS) agent in August 2001, and (2) the fact he disclosed this relationship, including the fact the woman was/is a prostitute, to a couple of his friends, I conclude that this relationship does not leave applicant vulnerable to coercion, exploitation or pressure. Based on the foregoing, Guideline B is found for applicant.

With respect to Guideline D, the evidence establishes that applicant used the services of prostitutes an average of once a year from approximately 1991 to August 2002. Although some of this activity occurred where prostitution is legal, some of it occurred where it was illegal. Applicant's illegal use of prostitutes reflects a lack of discretion and judgment, and accordingly, suggests he cannot be relied upon to safeguard classified information.

When applicant realized that his mere admission of this conduct was insufficient to remove the Government's security concerns, he forswore the future illegal use of prostitutes. Given applicant's full disclosures and complete honesty with the Government about this matter, I conclude that he will keep this commitment and not engage in this conduct in the future. Based on this fact, and the fact I find, based on applicant's disclosure of this activity to a couple of friends and a coworker, that this conduct does not leave him vulnerable to coercion, exploitation or pressure, I conclude that applicant has successfully overcome the Government's case under Guideline D.

FORMAL FINDINGS

PARAGRAPH 1: FOR THE APPLICANT

PARAGRAPH 2: FOR THE APPLICANT

DECISION

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

Joseph Testan
Administrative Judge