

DATE: February 12, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-22746

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

Melvin A. Howry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's dual citizenship has been mitigated by her renunciation of her foreign citizenship and her act of surrendering her foreign passport to the appropriate foreign consulate. Clearance is granted.

STATEMENT OF THE CASE

On July 29, 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 September 5, 2002, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on October 16, 2002. A notice of hearing was issued on October 29, 2002, scheduling the hearing for November 14, 2002. At the hearing the Government presented three exhibits. The Applicant presented six exhibits and called one witness. The Applicant also testified on her own behalf. The official transcript (Tr.) was received on December 2, 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 32 years of age, married, and has a Bachelors Degree in Electrical Engineering. She is employed as an Electrical Engineer by a defense contractor. She seeks a security clearance in connection with her employment in the defense industry.

Guideline C - Foreign Preference

The Applicant was born in Malaysia in 1970. She came to the United States in 1992 and married a United States citizen that she had met earlier in Singapore. Since her marriage, until she became a citizen, she held permanent residency in the United States. She became a naturalized citizen of the United States in August 1999. (*See, Applicant's Exhibit A*). She has two children from the marriage that are United States citizens. The Applicant considers herself only a United States citizen and not a dual citizen.

The Applicant first obtained her Malaysian passport in August 1989, that expired in August 1999. She renewed her Malaysian passport in August 1999, (just before she became an American citizen), for the purpose of traveling to visit her ill mother in Malaysia. That same month, the Applicant became a United States citizen and she obtained a United States passport. Since then, the Applicant has not traveled to Malaysia or any other country due to her hectic schedule, but when she does, she plans to always use her United States passport.

On August 23, 2002, after learning that her Malaysian passport could be a problem in obtaining a security clearance, (upon receipt of the SOR) the Applicant immediately submitted the documentation to surrender her Malaysian passport to the Malaysian Embassy and to renounce her Malaysian citizenship. (*See, Applicant's Exhibits C and F and Tr. pp. 18-19*). She was told by the Embassy that the process would take about six months. (*Tr. p. 44*). The Applicant testified with strong conviction that she has always believed that when she took the oath to become a citizen of the United States, she was no longer a Malaysian citizen but an American.

Guideline B - Foreign Influence

The Applicant's mother, and seven siblings are citizens of Malaysia and reside there. She contacts her mother who lives with one of her sisters by telephone every two months or so and during the holidays. None of these family members are agents of the Malaysian Government. (*Tr. pp. 30-32*).

The Applicant also has some younger nieces and nephews in Malaysia, but she has no contact with them.

The Applicant possesses no property, bank accounts or other financial ties in Malaysia. (*Tr. p. 40*).

Letters of recommendation submitted on behalf of the Applicant indicate that she is a dedicated and diligent employee. She is extremely responsible and trustworthy. (*See, Applicant's Exhibit D*).

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 clearly done more than expressed a willingness to renounce her dual citizenship; and as such, that fact no longer has a direct and negative impact on her suitability for access to classified information.

The mere possession of a foreign passport, and dual citizenship status, raise 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 Applicant had possession of a valid foreign passport and thus the provisions of the Money Memorandum apply. In this case, the Applicant has demonstrated her commitment to the United States by immediately surrendering her foreign passport to the Malaysian Embassy and requesting to renounce her foreign citizenship. Supporting documentation in the record verifies this. The Applicant is a United States citizen who has made the United States her permanent home for the last ten years. She lives, works and intends to reside in the United States for the duration of her life. Her husband and children are native born Americans. I am convinced that the Applicant clearly prefers the United States over Malaysia. 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. She maintains minimal contact with her family who still reside in Malaysia. Under the whole person concept, this fact alone is insufficient to overcome the strong evidence supporting the Applicant's security worthiness. There is no evidence in the record that would cause her 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. Accordingly, Guideline B is also found for the Applicant.

Considering all the evidence, the Applicant has rebutted the Government's case regarding her 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, 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

Paragraph 2: For the Applicant.

Subparas. 2.a.: For the Applicant

2.b.: 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