

DATE: November 24, 2003

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 01-23147

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's foreign contacts consist of his wife and four-step children who are citizens of the Philippines. His wife is a legal resident alien of the United States who plans on becoming a citizen. Her four children, all under the age of 18, also plan to become citizens. The Applicant has a brother-in-law and sister-in-law who are citizens of and reside in the Philippines. Neither of these individuals are agents of the Filipino government, nor are they in a position that poses a risk that they could be exploited by the Filipino government. Mitigation has been shown under Foreign Influence. Applicant's excessive financial indebtedness continues and has not been mitigated by sufficient evidence of reform and rehabilitation. Clearance is denied.

Applicant's excessive financial indebtedness, shows a pattern of irresponsibility. No good faith effort has been made to resolve his indebtedness. Mitigation has not been shown. Clearance is denied.

STATEMENT OF THE CASE

On January 2, 2003, 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 February 5, 2003, in which he elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on May 15, 2003. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on June 4, 2003, and submitted no response.

The case was assigned to the undersigned for resolution on September 3, 2003.

FINDINGS OF FACT

The Applicant is 43 years old and married. He is employed by a defense contractor as a Engineer Technician and is seeking to obtain a security clearance in connection with his employment.

The Government opposes the Applicant's request for a security clearance, on the basis of allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR:

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant was born in the United States in 1960. His wife, and her four children from a previous marriage, were born in and are citizens of the Philippines. He met his wife in 1998 during a business trip she made to the United States. The two were married in 1999. The Applicant's wife is presently a permanent legal resident alien, who is planning on applying for her United States citizenship as soon as she can afford the \$360.00 filing fee, and the immigration test can be scheduled. Her four minor children are also legal resident aliens who intend on becoming United States citizens. The Applicant has hired an immigration attorney to assist him in the paperwork to obtain their legal status. The Applicant and her children immigrated from the Philippines to the United States with hopes of finding a better way of life for her family. The Applicant's has only a brother-in-law and a sister-in-law in the Philippines. Neither of these individuals are associated with the Filipino government in any capacity.

Paragraph 2 (Guideline F - Financial Considerations) The Government alleges that the Applicant is ineligible for clearance because he is financially overextended and at risk to engage in illegal acts to generate funds.

The Applicant admits to financial difficulties in the past due to irresponsibility. He indicates that his priority was to feed, cloth and house his family while other bills became delinquent. His wife also incurred some debts that he was unaware of. She has been juggling payments between creditors as she can afford to pay them. As a result, the Applicant remains indebted to the following creditors set forth in the SOR:

Subparagraph 1(a) The Applicant was indebted to a creditor in the approximate amount of \$1,000.70 as of September 1999. He has since paid off most of this debt. He owes a remainder of \$135.00. This account remains outstanding.

Subparagraph 1(b) The Applicant is indebted to a creditor in the approximate amount of \$407.00 as of March 2000. This account remains outstanding.

Subparagraph 1(c) The Applicant is indebted to a creditor in the approximate amount of \$557.00 as of June 1999. This account remains outstanding.

Subparagraph 1(d) The Applicant is indebted to a creditor in the approximate amount of \$600.00 as of September 1999. This account remains outstanding.

Subparagraph 1(e) The Applicant is indebted to a creditor in the approximate amount of \$63.00 as of January 2000. This account remains outstanding.

Subparagraph 1(f) The Applicant is indebted to a creditor in the approximate amount of \$82.00 as of June 1999. This account remains outstanding.

Subparagraph 1(g) The Applicant is indebted to a creditor in the approximate amount of \$160.00 as of April 1999. This account remains outstanding.

Subparagraph 1(h) The Applicant was indebted to a creditor in the approximate amount of \$320.00 as of October 2000. He has since paid off this debt in full.

The personal financial statement completed by the Applicant dated June 6, 2001, indicates a net remainder of \$805.00 after expenses. The Applicant explained that the information he provided was only a good faith estimate. His move from one city to another substantially increased the cost of living for him and his family, which he had not expected. He also incurred substantial expenses for the services of an immigration attorney to work on issues related to his wife's children's legal residency.

In his sworn statement to the Defense Security Service (DSS) dated June 26, 2001, the Applicant indicated that he further learned that his wife is in debt in an amount in excess of \$17,000.00. He indicated that he planned to file bankruptcy to resolve their indebtedness within 60 days from the date of the statement. In his answer to the SOR dated February 5, 2003, over two years later, it is clear that he has not yet filed bankruptcy, as all except one of his outstanding debts listed in the SOR remain outstanding.

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 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), (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 the loyalty of the person(s) involved and the United States.

Guideline F (Financial Considerations)

Conditions that could raise a security concern:

1. A history of not meeting financial obligations;
3. Inability or unwillingness to satisfy debts.

Conditions that could mitigate security concerns include:

None.

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 B (Foreign Influence) and Guideline F, (Financial Considerations) 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.

In this case the Government has met its initial burden of proving that the Applicant has foreign contacts that could create the potential for foreign influence (Guideline B), and that he has been financially irresponsible (Guideline F). This evidence indicates poor judgment, unreliability and untrustworthiness on the part of the Applicant. Because of the scope and nature of the Applicant's conduct, I conclude there is a nexus or connection with his security clearance eligibility.

CONCLUSIONS

Having considered the evidence 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 set forth under Guideline F, and that Applicant's history of delinquent indebtedness has a direct impact on his suitability for access to classified information.

With respect to Guideline B, the evidence establishes that the Applicant's foreign ties do not subject him to foreign influence. The Applicant's wife and her four children have immigrated to the United States from the Philippines in order to make it their permanent home and to ultimately become citizens here. His wife is currently a legal resident alien, and intends on applying for her United States citizenship as soon as she can afford to. Her children are all under the age of eighteen. The Applicant's mother-in-law who lived in the Philippines is now deceased. There is no evidence that the Applicant's wife and four minor children who live in the United States, nor the Applicant's brother-in-law or sister-in-law who reside in the Philippines, are in a position to be exploited by the Filipino government in a way that could force the Applicant to choose between the loyalty to the foreign contacts and the United States. Accordingly, Guideline B is found for the Applicant.

The Applicant has admitted to a history of delinquent debts brought on by financial irresponsibility. He has made little effort to pay his outstanding creditors. In his sworn statement to DSS in June 26, 2001, he stated that he planned to file bankruptcy. He has yet to do that, and remains delinquent to most of the creditors listed in the SOR. The Applicant has either been unwilling or unable to satisfy his past due debts. His stated intention to handle his financial situation is positive. However, he has not made a good faith effort or shown a systematic pattern of payment to improve his financial situation. He remains indebted in the approximate amount of nearly \$20,000.00.

The Applicant has a long road ahead to reduce his indebtedness. Given this uncertainty and the extent of his indebtedness, the risk is too great that he could engage in illegal acts that could jeopardize the national security. Furthermore, the Applicant has failed to submit a reply to the FORM, and has not provided this Administrative Judge with any evidence in mitigation that would negate the negative impact his financial situation has on his security worthiness. At this time, I cannot find that it is clearly consistent with the national interest to grant the Applicant a security clearance. Accordingly, Guideline F (Financial Considerations) is found against the Applicant.

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.

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Paragraph 2: Against the Applicant.

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: Against the Applicant

Subparagraph 1.h.: Against the Applicant

Subparagraph 1.i.: Against the Applicant

DECISION

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson

Administrative Judge