

DATE: June 11, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-01749

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 50-year-old security official for a defense contractor. She was born in Japan to Japanese parents in 1953, married an American Naval officer in 1976, and moved with him to the U.S. She has resided here ever since, and has raised two children, one of whom is a serving U.S. Naval aviator. She obtained her Green Card in 1977 and became a U.S. citizen in 1999. She has regular telephone contact with her parents and periodic contact with other relatives, but her personal and emotional ties have been predominantly with the U.S. for more than 26 years. She credibly expressed both her loyalty to the U.S. and her understanding of the necessity of protecting U.S. interests. Mitigation has been established. Clearance is granted.

STATEMENT OF THE CASE

On January 8, 2003, 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, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding required under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether a clearance should be granted, denied or revoked.

On January 19, 2003, Applicant submitted a response to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge on the written record, i.e., without a hearing. Department Counsel issued a File of Relevant Material (FORM) on February 5, 2003. The FORM instructed Applicant that any response to the FORM had to be submitted within 30 days of its receipt by Applicant. The response was due by March 16, 2003, but none has been received. The matter was assigned to me for resolution on March 25, 2003.

FINDINGS OF FACT

Applicant is a 50-year-old security officer for a defense contractor. The SOR contains five allegations of fact, 1.a. - 1.e.,

under Guideline B (Foreign Influence). Applicant's responses are basically admissions of the allegations, although she adds explanations to each response (GX 3). The admissions are deemed to be findings of fact.

After considering the totality of the evidence derived from the contents of the FORM, I make the following additional FINDINGS OF FACT as to each SOR allegation:

Guideline B (Foreign Influence)

- 1.a. - Applicant's mother is a citizen of and resident in Japan.
- 1.b - Applicant's brother and his wife are citizens of and resident in Japan.
- 1.c. -Applicant's half-brother and his wife are citizens of and residents of Japan.
- 1.d. - Applicant's other brother and his wife are citizens of and residents of Japan.
- 1.e. - Applicant's sister is a citizen of and resident of Japan.

Applicant was born in 1953 in Japan. Her husband is a native-born U.S. citizen. They have been married since 1976. They arrived in the U.S. in 1977, and have resided here ever since. They have two adult children who are U.S. citizens by reason of their birth here and because of the father's U.S. citizenship. Both children are citizens and her son is a flight officer in the U.S. Navy (GX 3 and GX 5). Applicant obtained her "Green Card" in 1977, became a U.S. citizen in 1999, and received a U.S. passport in the same year. Applicant has been employed by a defense contractor since 1996 and is now a "security associate" (GX 4).

The SOR allegations are based on information Applicant provided in her security clearance application of November 1999 (SF 86) (GX 4). Applicant's sworn statement of October 24, 2001 (GX 5), discusses her relatives in Japan and their mutual relationship. She keeps in contact with "her family in Japan three to four times monthly" (*Id.* at page 2). She last visited her family in Japan in February 2001, using her U.S. passport. She previously visited Japan in 1995, using the Japanese passport she last renewed in 1997 (she was not yet a U.S. citizen) (*Id.*). She has no other personal, financial, or other ties to Japan (*Id.*). As of October 24, 2001, she still retained her valid Japanese passport (expiration date in February 2007), but did not intend to use it again (*Id.*). In her SF 86, at Item 3 Citizenship, Applicant states that she is not a dual citizen of any other country. She does "not consider [herself] to have dual citizenship" and "considers [herself] to be a loyal U.S. citizen" (*Id.* at page 3).

Because this case is being determined without a hearing, my evaluation is based solely on the written record. The most recent evidence appears in Applicant's January 19, 2003, response to the SOR (GX 3). As to Applicant's feelings about this country, I find the following statement by Applicant to be credible as a finding of fact,

I am an American citizen who loves our country. I've been a Navy wife for over 16 [*sic*, actually 26] years and am presently a U.S. Navy mother. My son is a U.S. Naval Academy graduate and he is presently deployed defending our country as a Naval Flight Officer. For over 26 years, I have been supporting the defense of our country, and I understand the importance of classified information . . . My love of our country, the importance of National Security, and the safety of our military are more important to me than my relatives in Japan [and] I would never think of disclosing classified information (Response to the SOR (GX 3)).

POLICIES

Each adjudicative decision must also include an assessment of nine generic factors relevant in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowing participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

Considering the evidence as a whole, I find the following specific adjudicative guidelines to be most pertinent to this case:

Guideline B (Foreign Influence)

Condition that could raise a security concern and may be disqualifying:

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;

Condition that could mitigate security concerns:

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(s) involved and the United States;

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons. If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

CONCLUSIONS

This case involves only concerns that Applicant might be subjected to foreign influence by her family member in Japan, thereby raising the risk that Applicant would be forced to chose between her loyalty to her family in Japan and her loyalty to the United States. In the absence of any evidence other than the fact of existence of her relatives in Japan, I conclude that a conclusion that Applicant was at risk of disclosing classified information would be based solely on her status as the child of foreign citizens and having s parents and family members who retain their Japanese citizenship and reside in that country.

While such relationships are of concern in security clearance cases, the likelihood of improper conduct by Applicant is based on general concerns about the county involved and speculation about the Applicant's response to any pressure or coercion, rather than solid evidence. The evidence in mitigation, on the other hand, is clear, consistent, convincing. Applicant's 26 years as part of American society, the involvement of both her husband and her son as officers in the U.S. Navy, and her own long involvement in protecting classified information and material, makes a compelling case that she knows what must be done to protect U.S. interests and that she would act accordingly.

Based on the above conclusions and findings of fact, I conclude that while Foreign Influence Disqualifying Condition 1 (family in a foreign country) is applicable, the evidence supporting the applicability of Mitigating Condition 1 is much more persuasive, to the degree that it outweighs the concerns stated in the SOR. Based on the totality of the evidence, and considering her conduct and statements over 26-year period, Applicant has demonstrated an unequivocal preference for the United States.

FORMAL FINDINGS

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

Guideline B (Foreign Influence) For the Applicant

Subparagraph 1.a.. For the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.c. For the Applicant

Subparagraph 1.d. For the Applicant

Subparagraph 1.e. 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.

BARRY M. SAX

ADMINISTRATIVE JUDGE