

DATE: October 28, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-03517

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

John D. Morgan, Esquire

SYNOPSIS

The Applicant and his wife are naturalized American citizens. He has been in the United States for over 25 years. He and his wife have relatives who are Philippine citizens and either live in the Philippines, or the United States. Contact with those relatives who still live in the Philippines is infrequent, and he has persuasively shown that his relatives do not work for the Philippine government. His financial interests in the Philippines are minimal and not sufficient to affect his security responsibilities. The Applicant has also shown that he is not subject to coercion because of his foreign connections. Adverse inference is overcome. Clearance is granted.

STATEMENT OF THE CASE

On January 6, 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 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 11, 2003, and requested that the case be decided without a hearing. The Government submitted its File of Relevant Material (FORM) to the Applicant on April 9, 2003. The Applicant was given 30 days from receipt of the FORM to submit any documents in rebuttal, extenuation or mitigation. The Applicant received the FORM before May 8, 2003, ⁽¹⁾ and submitted additional information on May 8, 2003. Department Counsel did not object to the additional information. The case was received by the undersigned on June 18, 2003.

FINDINGS OF FACT

The Applicant is 47, married and has an Associate of Science degree. He is employed by a defense contractor as a security officer and maritime patrol officer, and he seeks to obtain or retain a DoD security clearance in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a security clearance, based upon the 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. They are based on the Applicant's Answer to the SOR and the exhibits.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has immediate family members who are not citizens of the United States, or may be subject to duress.

The Applicant was born in the Philippines. He moved to the United States in 1975 and became an American citizen in 1987. He retired from the United States Navy in 1999 as an E-6.

The Applicant's wife and daughter are also American citizens. His brother, also retired from the United States Navy, is an American citizen, but lives in the Philippines. One sister is a Filipino citizen and lives there. The other sister is a permanent legal resident of the United States, and resides here. His mother-in-law is deceased, but his father-in-law is a Filipino citizen and lives there. None of his relatives who live in the Philippines have any connection to the Philippine government.

The Applicant's mother is a permanent legal resident of the United States, and resides here. In 2000 she transferred her former residence in the Philippines to her four children as equal partners. According to the Applicant:

My interest in the residence in the Philippines is minimal. My mother still owns the property but she as a **"Title"** that divides the property within the siblings, just in case something happens to her, the siblings would know what to do with it. My brother . . . now resides in the property and he is the one taking care of it. Except for the acquisition of a quarter interest in the family residence in the Philippines, I had the same **"Foreign Interest"** issues today that I had when I was on active duty. No one told me that I cannot make my mother decide what she wants to do with her property. (Response to FORM at 2.) (Emphasis in original.)

The Applicant has visited the Philippines once in the last ten years. He states, "My contacts between myself and families in the Philippines are casual and infrequent. I received a Christmas card for the year 2002 and a Birthday card on (*sic*) January of 2003 from my brother and brother in law. I talked to my brother on the phone once on Christmas Day, once on New Years Day and once on my Birthday." (Response to FORM at 1.)

The Applicant's wife contacts her side of the family slightly more often, calling them 2 to 3 times a month.

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. 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:

Guideline B (Foreign influence)

Conditions that could raise a security concern:

(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;

Conditions that could mitigate security concerns include:

- (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 loyalty to the person(s) involved and the United States;
- (3) Contact and correspondence with foreign citizens are casual and infrequent;
- (5) Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.

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 factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- 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 guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may have foreign connections that demonstrates untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a 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."

CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational

connection, between the Applicant's conduct and the granting or continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant and his wife have immediate family members who are not American citizens and either live in the Philippines, or the United States.

The Applicant, on the other hand, has successfully mitigated the Government's case. The families of both the Applicant and his wife are not involved with the Philippine government. All the available evidence indicates that they are not in a position to be exploited by a foreign government.

The Applicant has visited the Philippines twice in 15 years. He talks to his siblings very infrequently. While it is difficult to call any family relationship "casual," this one is infrequent.

The Applicant's mother has made him a one fourth owner of property in the Philippines. His share is worth approximately \$50,000. Under the particular facts of this case, considering his mother lives in the United States and his distant relationship with his siblings, I find the interest to be minimal and not sufficient to affect the Applicant's security responsibilities.

The Applicant is a mature and understanding person. Based on the record, he shows an understanding of his security responsibilities and a credible intention of fulfilling them. I have considered Government Exhibit 5 and, based on the record in this case, find it of little relevance. The Applicant has persuasively shown that he is not subject to coercion or pressure because of his foreign connections.

On balance, it is concluded that the Applicant has successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

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.

Subparagraphs 1.a. through 1.c.: 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 the Applicant.

Wilford H. Ross

Administrative Judge

1. The Applicant's receipt indicates that he received the FORM on May 14, 2003. However, since his Response dated May 8, 2003, includes a copy of the FORM, that date is obviously incorrect.