

DATE: March 27, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-03634

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Esquire, Deputy Chief Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant mitigated security concerns over foreign influence from his family and economic ties to his country of birth, Malaysia. Given his strong ties to the United States (US) where he has lived for 25 years and is a naturalized citizen, I conclude there is no substantial likelihood that his family and economic resources there would lead to a case of foreign influence over Applicant. Given his long history of responsible conduct and his stellar performance professionally, I conclude it is improbable that foreign pressure on his family would create a situation that could result in the compromise of classified information or subject him to duress. His foreign financial interests are minimal. Further, his references attest to his good character and professionalism at work and in the community, including an award from a state governor for his work. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on October 15, 2002. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.⁽¹⁾ The SOR alleges specific concerns over foreign influence (Guideline B) in paragraph 1. Applicant replied to the SOR allegations in an Answer notarized, but undated, and requested a hearing.

The case was assigned to Department Counsel who attested it was ready to proceed on December 6, 2002. Although initially assigned to another judge, the case was reassigned to me on December 16, 2002. Subsequently, a mutually convenient date for hearing was agreed to and a Notice of Hearing issued on January 7, 2002, set the matter for January 7, 2003. At the hearing the Government introduced one exhibit which was admitted into evidence (Exhibits 1) and asked that I take official notice of two documents (Exhibits 2 and 3). (TR 11-14) Applicant represented himself; he testified and offered ten exhibits (Exhibits A through J) which were admitted into evidence. (TR 15-25) The transcript (TR) was received on February 3, 2003.

FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following Findings of Fact:

Applicant, a 44-year-old employee, began working for a defense contractor in State #1 as an engineer in August 1986 in a position where he did not need a security clearance. He is now a senior engineer and applied for a security clearance in order to be able to expand the scope of his work. In August 2001 he completed a Security Clearance Application (Standard Form 86) and requested a security clearance. (TR 5, 11, 25-26, 41; Exhibit 1)

Born in Malaysia, Applicant came to the US to study in 1977 and attended college in State #2. Later he studied in State #1 and received received a MSEE and PHD degrees from a university in State #1 in December 1986. (Exhibit 1; TR 41) He has co-authored a graduate text in his field, gives seminars in his field of expertise, and has received numerous awards. (Exhibit I; TR 25-26) He is single. (Exhibit 1)

Foreign Influence

Applicant was sponsored by his company to become a permanent resident in 1986 which he received in 1989 or 1990. He then had to wait five years to apply for his US citizenship. (TR 41-42) He became a naturalized U.S. citizen in November 1999. (Exhibit 1) His Malaysian passport expired in April 2001, and he has used only his US passport since he became a US citizen. (Exhibit 1; TR 49) Applicant explained that his country of birth is viewed as a very peaceful and civil place which is friendly to the Western world. (TR 36) Malaysia⁽²⁾ is a constitutional monarchy with an elected federal parliamentary government with a low crime rate. (Exhibit 2)

Applicant has a brother, sister, aunt and two friends in Malaysia. (SOR 1.a., b., c., d.) His father died in November 2001 and his mother died earlier. His brother and sister live in the suburbs of the capital city. He sees his brother and his sister once a year and contacts them a few times a year. He rarely sees his aunt. He has recently lost contact with his two friends. (Exhibit 1; TR 26,35-36; 45-49)

Applicant last visit Malaysia in December 2002 and saw his brother, sister, and aunt. His brother who is an engineering manger for a small private airline actually now lives in Singapore, but his family still lives in Malaysia. His brother last visited him in the US in 1986. His sister who works for a weather service last visited in 2000 with her children. (TR 45-47)

Applicant declared persuasively that he would not compromise the US interests for material gain nor for political or religious reasons. In January 2002 he applied to have his brother and sister admitted to the US for permanent residency, but the applications are still pending at the Immigration and Naturalization Service (INS). He is not certain if they would leave their established careers to move to the US. (Exhibit J; TR 36-40; 47-48) If his brother or sister were threatened by a terrorist organization and he were contacted to provide information, he would contact the US Government. When he returned to visit, he was not approached by anyone to cultivate a friendship for no apparent reason. (TR 50, 52)

Foreign Financial Interests

Applicant has had several accounts in Malaysia:

- When he was alive, Applicant's father originally gave him \$25,000- \$30,000; and Applicant left the money in Malaysia in case his father needed it. Applicant held the money in a joint account with his sister. His sister would move the money to different accounts to get better interest rates; he then had his sister close that account worth \$7,700 in March 2002 and transferred the money to his US account using a bank draft after his initial security clearance interview. (SOR 1.e.) (Exhibit 1; Exhibit A; TR 28-31, 52, 53) sister is reluctant to close it as she might be fined because of the capital controls. After 1998 Malaysia established capital controls which require that any large sums of money over \$3,000 withdrawn have to be reported. He considers this account a minor part of his entire assets and would consider giving this money to his sister; he would not mind if he lost that money as it is only 10% of his total assets. He would give up this account before he

would break US law. (SOR 1.f.) (Exhibit 1; Exhibit A; TR 31-33; 43-44, 51. 53-54) TR 10, 16-20, 34, 53)

Applicant's assets include a US savings account with \$75,000 (Exhibit B), a house assessed for \$130,000 with a mortgage of \$36,000 (Exhibits C & D) He has excellent credit. (Exhibit E)

Awards and References

Applicant was named Engineer of the Year in 1992 and was named Inventor of the Year in 2001 by his corporation. (TR 42) He provided excellent character references from his eye doctor, his corporate manager and friend, his advising professor in graduate school, and his mentor. All recommend him for a security clearance. (Exhibits F, G, H; TR 27) He received an award from the Governor of State #1 for his inventions. (Exhibit I)

His manager commends Applicant as a "stellar professional technical staff member" whom he has known for 14 years on a professional and personal basis. He recommends him for a security clearance. (Exhibit G)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. The mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below :

Guideline B - Foreign Influence

The concern: 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.

Conditions that could raise a security concern and may be disqualifying include:

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;
3. Relatives, cohabitants, or associates who are connected with any foreign government;

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.

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance.

Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Foreign Influence

Applicant has mitigated the Government's security concerns over foreign influence raised by Applicant's close ties of affection to citizens of a foreign country: he has siblings, an aunt and friends who are citizens of Malaysia. The security concern under Guideline B, Foreign Influence, is that a security risk may exist when an individual's immediate family, . . . 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 (3) or have relatives who are connected with any foreign government who may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Further, the government expressed concern that under guideline (8) that his financial ties to Malaysia could make him vulnerable to foreign influence. However, the guideline makes clear that the test is whether or not an individual has "a substantial financial interest in a country, or in any foreign-owned or -operated business. . . ." While I have considered these concerns, I conclude Applicant has presented sufficient evidence to meet the burden⁽³⁾ those circumstances presents.

While Born in Malaysia, Applicant came to the US to study in 1977 and attended college in State #2. Later he studied in State #1 and received received a SEE and PHD degrees from a university in State #1 in December 1986 and has worked for the same company since then. Indeed Applicant was sponsored by his company to become a permanent resident in 1986 which he received in 1989 or 1990. Since he became a naturalized U.S. citizen in November 1999, he has used only his US passport which evinces his full commitment to the US.

Further, the foreign influence security concerns are mitigated⁽⁴⁾ by the fact that his financial interests in Malaysia are not "substantial" in the context of his overall financial ties to the US. He closed two accounts and only two accounts remain open in joint ownership with his sister. He has a reasonable explanation for not closing the remaining accounts because of the financial controls in his country of birth. Applicant's overall assets are significant and include a US savings account with \$75,000, a house assessed for \$130,000 (with a mortgage of only \$36,000); he has excellent credit. His joint accounts with his sister are minimal in the context of his overall assets in the US. He is a highly respected professional in his field with awards not only from his company but also from the governor of the state where he lives. His manager commends Applicant as a "stellar professional technical staff member" and recommends him for a security clearance.

Moreover, Applicant made evident that if there were any hint of coercion or pressure on himself or his family, he would immediately report such coercion to the appropriate US officials as he is a principled person. Also, his contact and correspondence with foreign relatives are infrequent; he no longer is in touch with his foreign friends. I find his family has no formal ties to this foreign government; there is no substantial likelihood that they would be subject to duress and thus exercise foreign influence over Applicant or create a situation that could result in the compromise of classified information. Further, while there may be radical factions in Malaysia they do not live near his family; and the government of Malaysia itself is friendly to the US. Thus, I conclude Applicant is not vulnerable to duress merely because of these family ties and accounts overseas.

Security clearance decisions are predictive judgments about an applicant's security eligibility in light of the applicant's past conduct and present circumstances. *Department of Navy v. Egan*, 484 U.S. 518, 528-29 (1988). Contacts with citizens of other countries are relevant to security determinations only if they make an individual potentially vulnerable to coercion, exploitation, or pressure through threats against those foreign relatives. Acts indicative of foreign influence warrant careful scrutiny.

After considering the Enclosure 2 Adjudicative Process factors and the Adjudicative Guidelines, I conclude these ties are not of such a nature as to create any tangible risks of undue pressure on Applicant, so foreign influence security

concerns are mitigated. Thus, I resolve SOR paragraph 1 and subparagraphs 1.a. through 1.h. in Applicant's favor.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline B FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant

Subparagraph 1.h.: For 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.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.

2. Since the October 2002 terrorist bombings in Bali, the State Department fears that similar attacks may occur elsewhere in southeast Asia, including alaysia. The US Government has designated a terrorist group that operates throughout southeast Asia. (Exhibits 2, 3)

3. Although the Government presented no evidence of the hostile nature of the relationship between the U.S. and Malaysia the Appeal Board in ISCR Case No. 01-26893 issued on October 16, 2002, outlined a standard that when there is hostility between a foreign government and the U.S. this circumstance places "a very heavy burden on Applicant " to show that family ties there do not pose a security risk.

4. 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;

2. Contacts with foreign citizens are the result of official United States Government business;

3. Contact and correspondence with foreign citizens are casual and infrequent;
4. The individual has promptly reported to proper authorities all contacts, requests, or threats from persons or organizations from a foreign country, as required;
5. Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.