

DATE: July 28, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-06156

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Edward W. Loughran, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's foreign family ties, assets and businesses do not make him vulnerable to foreign influence and do not raise a security concern. Clearance is granted.

**STATEMENT OF THE CASE**

On October 15, 2004, 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 January 21, 2004, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on April 26, 2004. A notice of hearing was issued on May 28, 2004, scheduling the hearing for June 23, 2003. At the hearing the Government presented seven exhibits. The Applicant presented five exhibits and he testified on his own behalf. The official transcript (Tr.) was received on July 13, 2004.

**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 46 years of age, has a high school diploma, some college and some technical courses in his field of expertise. He is employed as an Electronic Wire Fabricator for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

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 Chile. He immigrated to the United States in 1976 and became a naturalized United States citizen in 1984. He testified that he came to the United States to chase the "American dream." (Tr. p. 28). The Applicant's father, one brother, a step-mother and a half-brother are citizens of and reside in Chile. The Applicant has one brother currently living in Spain. None of the Applicant's family in Chile have, or ever have had, any affiliation with the Chilean Government. The Applicant has casual and infrequent contact with his family in Chile. The Applicant's mother and one other brother and sister are deceased.

In 1986, the Applicant's mother passed away. At the time of her death, the Applicant and his siblings inherited ½ of their mother's estate. The estate included a house and land worth approximately \$50,000 to \$60,000 dollars. After it is divided among his siblings, the Applicant stands to inherit approximately \$8,000.00 to \$10,000.00 from the estate.

From 1997 to 2003, the Applicant traveled to Chile on six separate occasions attempting to start several business ventures under his parent company. At one point he owned and operated four small businesses all of which were created to do business exclusively in Chile. One of the companies did some business in the United States. None of these businesses proved to be very successful. After failures and disappointments, the Applicant discontinued operation of the businesses. At the present time he operates no businesses in Chile and does not intend to do so in the future. (Tr. p. 41). The only assets the Applicant still has in connection with his businesses in Chile are several inoperable wave runners that he hopes to have sent back to the United States for repair and then to be sold. The parent company is still in effect for tax purposes and limited dealings. It was incorporated in the United States. (See Government Exhibit 3).

In 1978, the Applicant married a United States citizen. He has a daughter and a step-son who are native born United States citizens. His daughter will soon be joining the Army. The Applicant owns a home in the United States worth approximately \$100,000.00 to \$120,000.00.

### Mitigation.

Letters of recommendation from the Applicant's supervisor, coworkers, and friends, collectively indicate that the Applicant is considered to be an outstanding employee. He is dependable, talented and considered to be a valuable asset to the company. (See Applicant's Exhibit D).

The Applicant received several awards for "outstanding and superior performance" on the job. (See Applicant's Exhibit E).

## **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.

Conditions 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;
6. Conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government.
8. A substantial financial interest in a country, or in any foreign owned or operated business that could make the individual vulnerable to foreign influence.

Conditions that could mitigate security concerns:

1. A determination that the immediate family member(s), cohabitant, or associate(s) in question would not constitute an unacceptable security risk.
3. Contacts 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 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) 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 has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. Foreign influence can raise questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. 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 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 in the SOR, and that Applicant's foreign contacts have a direct and negative impact on his suitability for access to classified information.

With respect to Guideline B, the evidence establishes that the Applicant is not vulnerable to foreign influence. The Applicant's father, and one brother, are citizens of and reside in Chile, but the Applicant has casual and infrequent contact with them and none of them are affiliated with the Chilean government in any way. The Applicant's other brother lives in Spain. Admittedly, in the past, the Applicant tried to start several business ventures in Chile. His business adventures in Chile are now over and he does not intend to ever start them again. He is presently in the process of moving his remaining business assets of minimal value from Chile to the United States.

The Applicant, his wife and their native born children are United States citizens. They have established their home, purchased a house, and never plan to leave the United States. Accordingly, I find that the Applicant's foreign ties, assets or business ventures in Chile are not significant, and are not of a nature to influence his security worthiness. Mitigating conditions 1, 3 and 5 apply. Therefore, under the particular facts of this case, the Applicant has met his burden of demonstrating that he is not in a position to be exploited by Chile in a way that could force the Applicant to choose between loyalty to his family in Chile and loyalty to the United States. Based on the foregoing, this does not raise a security concern and Guideline B is found for the Applicant.

Considering all the evidence, the Applicant has met the mitigating conditions of Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guideline 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.

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

**DECISION**

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson

Administrative Judge