

DATE: April 22, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-06893

DECISION OF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

Robert J. Tuider, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The security concerns raised by a 53-year old native-born American Applicant with a permanent resident, non-U.S. citizen, wife (a citizen of Argentina) and in-laws who are residents and citizens of Argentina, none of whom are agents of that foreign government or in a position to be exploited by that government, as well as continuing casual and infrequent professional and personal relationships with individuals who are members of the Argentine military, have been mitigated by the evidence developed herein. Clearance is granted.

STATEMENT OF THE CASE

On January 24, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to 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 Applicant, and recommended referral to an Administrative Judge to determine whether a clearance should be granted, continued, denied, or revoked.

In two sworn written statements, dated February 10, 2003 and February 24, 2003, respectively, Applicant responded to the allegations set forth in the SOR, and requested a hearing. The case was initially assigned to Administrative Judge Joseph Testan on March 11, 2003, but, due to caseload considerations, was reassigned to, and received by, this Administrative Judge that same day. A notice of hearing was issued on March 14, 2003, and the hearing was held before me on March 26, 2003. During the course of the hearing, two Government exhibits and the testimony of one Applicant witness (the Applicant), were received. The transcript (Tr.) was received on April 4, 2003.

FINDINGS OF FACT

Applicant has admitted all the factual allegations pertaining to foreign influence under Criterion B (subparagraphs 1.a.

through 1.c.). Those admissions are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 53-year old employee of a defense contractor seeking to obtain a security clearance, the level of which has not been revealed. He had previously been granted a security clearance in 1986 while serving on active duty with the U.S. Army.

Applicant was born in 1949 in the United States to U.S. citizens.⁽¹⁾ He served on active duty with the U.S. Army for 20 years, commencing in 1968,⁽²⁾ saw combat service in Vietnam during 1968-69,⁽³⁾ and eventually (in 1988) was honorably retired as a Chief Warrant Officer.⁽⁴⁾ Notwithstanding his retired status, in 1991, he was recalled briefly to active duty during the Operation Desert Storm hostilities in the Persian Gulf.⁽⁵⁾ While serving on active duty, Applicant was both a Black Hawk helicopter maintenance test pilot and a Black Hawk helicopter maintenance test flight examiner.⁽⁶⁾ Since 1994, Applicant has either been an independent contractor or direct company employee, as a field service representative, with one employer, or its subsidiary, working either in the U.S. or in Argentina, where he was basically "embedded" with the Argentine military forces furnishing technical support to the highest level of the government⁽⁷⁾ on behalf of his employer.⁽⁸⁾ He relocated to the U.S. in August 2000.

In July 2000, while still in Argentina, Applicant married his current wife.⁽⁹⁾ She was, at that time, a citizen and resident of Argentina, and her parents operated a small laundry in that country.⁽¹⁰⁾ When he relocated, she accompanied him to the U.S., and obtained a "Green Card," denoting her permanent resident status.⁽¹¹⁾ She hopes to become an American citizen when she is eligible to do so.⁽¹²⁾

Applicant's wife and her parents speak with each other by telephone every week, but because Applicant and his in-laws are not very close,⁽¹³⁾ and they only speak Spanish,⁽¹⁴⁾ they rarely speak except to say hello.⁽¹⁵⁾ Applicant owns nothing of value in Argentina,⁽¹⁶⁾ and when she relocated to the U.S., Applicant's wife gave her automobile to her parents.⁽¹⁷⁾

During Applicant's employment activities in Argentina he developed professional and personal relationships with several individuals who were either members of the Argentine military or field service representatives of other U.S. companies. While most of those relationships were initially work-related, some of them developed into continuing personal ones. He communicates, via telephone or e-mail, with several such individuals with varying frequency, sometimes as frequently as two times per month or as infrequently as one time per year.⁽¹⁸⁾ The SOR, in part, alleged that Applicant has "associates" who are officers in the Argentine military. There is no evidence that any of Applicant's continuing professional or personal relationships with members of the Argentine military can be construed as "associations" with "associates." None of the continuing relationships is based on any financial ties. Instead, they are simply "relationships" that commenced on a professional level, with Applicant furnishing technical support.

Those relationships that survived Applicant's relocation from Argentina to the U.S. either progressed to continuing, but less frequent, personal relationships, or remained occasional professional relationships. For example, Applicant maintains an occasional, strictly professional, relationship with a major in the Argentine Air Force, and all of their communications relate to aircraft maintenance issues.⁽¹⁹⁾ On the other hand, Applicant's relationship with a captain in the Argentine Air Force did progress to a friendship status, but it too consists solely of occasional communications.⁽²⁰⁾ Two other Argentine Air Force pilots, whom Applicant now considers friends, periodically come to the U.S. for simulator training and they have called him either to say hello or to discuss aircraft issues.⁽²¹⁾

Argentina is a nation whose interests are not inimical to the United States. It is considered a friendly democracy, following a lengthy period in which it was under military authoritarian rule. It is not known to conduct intelligence operations or economic espionage against the United States

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Conditions).

An Administrative Judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision set forth in Section E.2.2., Enclosure 2, of the Directive, are intended to assist the Administrative Judge in reaching fair and impartial common sense decisions.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The Adjudicative Process factors which an Administrative Judge should consider are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable 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.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

[GUIDELINE B - 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 and may be disqualifying include:

(E2.A2.1.2.1.) 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;

(E2.A2.1.2.2.) sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse influence or duress exists;

(E2.A2.1.2.3.) relatives, cohabitants, or associates who are connected with any foreign government.

Conditions that could mitigate security concerns include:

(E2.A2.1.3.1.) 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 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;

(E2.A2.1.3.3.) Contact and correspondence with foreign citizens are casual and infrequent.

Since the protection of the national security is the paramount determinant, the final decision in each case must be arrived at by applying the standard that the issuance of the clearance is "clearly consistent with the interests of national security," [\(22\)](#) or "clearly consistent with the national interest." For the purposes herein, despite the different language in each, I have concluded that both standards are one and the same. In reaching this Decision, I have endeavored to draw

only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have attempted to avoid drawing inferences that are grounded on mere speculation or conjecture.

In the decision-making process, the burden of producing evidence initially falls on the Government to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. If the Government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the doubts raised by the Government's case, and to ultimately demonstrate that it is clearly consistent with the national interest to grant or continue the applicant's clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

CONCLUSIONS

Upon consideration of all the facts in evidence, an assessment of the witness testimony, demeanor, and credibility, and after application of all appropriate legal precepts and factors, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

With respect to Guideline B, the Government has established its case. Applicant has been portrayed as a person who is a potential security risk because members of his immediate family or persons to whom he is bound by affection, influence, or obligation--in this instance, the parents of Applicant's wife--are not citizens or residents of the United States or may be subject to duress. The concern also carried over to Applicant's wife because of her citizenship status as a non-citizen permanent resident of the U.S. In addition, there is concern over Applicant's continuing casual and infrequent professional and personal relationships with individuals who are members of the Argentine military. These situations raise the potential for vulnerability to coercion, exploitation, or pressure, and the exercise of foreign influence that could result in the compromise of classified information. In support of its contentions, the Government has cited the fact Applicant's wife is a citizen of Argentina, and her parents are citizens of, and reside in, Argentina.

It is uncontroverted that Applicant's wife is a citizen of Argentina residing in the U.S., and her parents are citizens and residents of Argentina. Those simple facts, standing alone, might be sufficient to raise security concerns over the possibility of Applicant's vulnerability to coercion, exploitation, or pressure. However, the mere possession of family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B: ⁽²³⁾

The language of [Guideline] B (Foreign Influence) in the Adjudicative Guidelines makes clear that the possession of such family ties *may* pose a security risk. Whether an applicant's family ties in a foreign country pose a security risk depends on a common sense evaluation of the overall facts and circumstances of those family ties. *See* ISCR Case No. 98-0419 (April 30, 1999) at p. 5.

The citizenship status of Applicant's in-laws--persons with whom he has no close ties or obligations and with whom he has infrequent contact--as well as the citizenship status of his wife, when considered in light of the nature of the government in Argentina--a friendly democracy that is not hostile to the United States, and whose interests are not inimical to the United States--facilitates an analysis involving the adjudicative guidelines and the various applicable conditions set forth therein. In this regard, see Foreign Influence Disqualifying Condition (DC) E2.A2.1.2.1. (*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*) and DC E2.A2.1.2.2. (*sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse influence or duress exists*).

However, also applicable, in this instance, is Foreign Influence Mitigating Condition (MC) E2.A2.1.3.1. (*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 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). In this instance, after an examination of the evidence, I determine that Applicant's wife and her parents, considering their citizenship and residency status, do not constitute an unacceptable security risk. Furthermore, their continuing personal relationship is viewed in positive terms, having no security significance.

Another area of potential security concern relates to having associates who are connected with any foreign government. In this regard, see Foreign Influence DC E2.A2.1.2.3. (*relatives, cohabitants, or associates who are connected with any foreign government*). As indicated above, Applicant's continuing professional or personal relationships with members of the Argentine military are simply "relationships" that commenced on a professional level, with Applicant furnishing technical support. Those relationships that survived Applicant's relocation from Argentina to the U.S. either progressed to continuing, but less frequent, personal relationships, or remained occasional professional relationships. In this instance, the nature of Applicant's continuing relationships with those members of the Argentine military raises Foreign Influence MC E2.A2.1.3.3. (*contact and correspondence with foreign citizens are casual and infrequent*). Contact is casual when it is unintended or occurs as an incidental byproduct of other activities, e.g., calling Applicant when the foreign military member is in the U.S. attending training. Likewise, the relatively infrequent exchange of e-mails and telephone calls with those few members of the Argentine military are, in this instance, deemed minimal and not sufficient to affect Applicant's security responsibilities. Thus, I conclude Applicant has, through evidence of extenuation and explanation, successfully mitigated and overcome the Government's case with respect to Guideline B. Accordingly, allegation 1.a. through 1.c. of the SOR are concluded in favor of Applicant.

For the reasons stated, I conclude Applicant is suitable for access to classified information.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline B: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 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 Applicant.

Robert Robinson Gales

Chief Administrative Judge

1. *See* Government Exhibit 1 (Security Clearance Application (SF 86), dated October 24, 2001), at 1 and 4.
2. *See* Government Exhibit 2 (Statement, dated January 7, 2002), at 1.
3. *Ibid.*
4. *See* Government Exhibit 1, *supra* note 1, at 6.

5. *Ibid.*

6. Tr., at 19.

7. *See* Response to SOR, dated February 10, 2003, at 1.

8. *See* Government Exhibit 1, *supra* note 1, at 2.

9. *Id.*, at 3-4. Applicant was previously married and subsequently divorced on four occasions to U.S. citizens.

10. Tr., at 16.

11. *See* Government Exhibit 1, *supra* note 1, at 6.

12. Tr., at 25.

13. Tr., at 36.

14. Tr., at 35.

15. Tr., at 36.

16. Tr., at 25-26.

17. Tr., at 26.

18. *See* Government Exhibit 2, *supra* note 2, at 3-4.

19. *Ibid.*

20. *Id.*, at 4.

21. *See* Response to SOR, *supra* note 7, at 1.

22. *See* Executive Order 12968, "*Access to Classified Information*;" as implemented by Department of Defense Regulation 5200.2-R, "*Personnel Security Program*," dated January 1987, as amended by Change 3, dated November 8, 1995. However, the Directive uses both "clearly consistent with the national interest" (*see* Sec. B.3; Sec. C.2.; and Sec. D.2.; Enclosure 3, Sec. 1.; and Sec. 25), and "clearly consistent with the interests of national security" (*see* Enclosure 2 (Change 3), Adjudicative Guidelines, at 2-2).

23. *See* ISCR Case No. 98-0507 (Appeal Board Decision and Reversal Order, May 17, 1999), at 10.