

DATE: April 15, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-08542

**DECISION OF ADMINISTRATIVE JUDGE**

**JOSEPH TESTAN**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a United States citizen. His spouse since 1976 is a citizen of the Philippines. There is no evidence that his spouse is connected to the government of the Philippines, or that she is in a position to be exploited by the Philippines in a way that could force applicant to choose between his loyalty to her and his loyalty to the United States. Applicant's two sisters-in-law and one brother-in-law, and his spouse's son from a previous marriage, are citizens and residents of the Philippines. There is no evidence that applicant and/or his wife have any relationship or contact with these individuals. Clearance is granted.

**STATEMENT OF THE CASE**

On April 21, 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, 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 clearance should be denied or revoked.

Applicant responded to the SOR in writing on May 23, 2003, and elected to have his case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's written case (FORM) on or about August 25, 2003. Applicant did not file a response to the FORM. The case was assigned to me on November 4, 2003.

**FINDINGS OF FACT**

Applicant is a 57 year old employee of a defense contractor.

Applicant was born in the United States. In 1976, he married a citizen of the Philippines. According to applicant's response to the SOR, his wife's decision to maintain her Philippine citizenship "is based solely on the ease and minimized expense with which she could travel back and forth and carry out her yearly volunteer work at a local

orphanage in her hometown."

Applicant admits that (1) he has two sisters-in-law and a brother-in-law who are citizens and residents of the Philippines and (2) his wife's son from a previous marriage is a citizen and resident of the Philippines. There is no other information about these relatives in the FORM.

In his response to the SOR, applicant stated that he worked for the Federal government, and held a security clearance, from 1976 to 1996. He points out that the same conditions the Government now claims make him a security risk were in existence during that time. He added that, although he understands "the concern for heightened security in these times," he wishes to "go on the record as saying [his] allegiance to the United States is in no way compromised by [his] wife's citizenship."

### **CONCLUSIONS**

In this case, the evidence establishes that applicant's spouse of over 25 years is a citizen of the Philippines. This fact, standing alone, requires application of Disqualifying Condition E2.A2.1.2.1 (an immediate family member is a citizen or resident of a foreign country).

Applicant argues that his wife maintains her Philippine citizenship for personal reasons; namely, in order to facilitate her yearly travel to the Philippines where she volunteers in an orphanage. I find this statement to be credible and worthy of belief. Based on this fact, the fact there is absolutely no evidence that she is connected in any way with the Philippine government or with the terrorist group operating in the Philippines that the Government cited in Exhibit 5, and the fact there is no credible evidence that applicant's wife is in a position to be exploited by the Philippines in a way that could force applicant to choose between loyalty to her and loyalty to the United States, I conclude that Mitigating Condition E2.A2.1.3.1 (the immediate family member in question is not an agent of the foreign power or in a position to be exploited by the foreign power in a way that could force applicant to choose between loyalty to the immediate family member and the United States) is applicable to this case.

In addition to applicant's wife, applicant has four other "relatives" that are citizens and residents of the Philippines. Because there is absolutely no evidence that applicant and/or his wife have any current contact with these individuals, I conclude their existence does not trigger any of the Disqualifying Conditions under Guideline B.

Based on the foregoing, Guideline B is found for applicant.

### **FORMAL FINDINGS**

PARAGRAPH 1: FOR THE APPLICANT

All subparagraphs found 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.

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Joseph Testan

Administrative Judge