

DATE: March 16, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-27081

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's foreign contacts, specifically his professional associates, travel and lectures raise a security concern that has not been mitigated. Clearance is denied.

STATEMENT OF THE CASE

On August 27, 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 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 September 28, 2003, and requested a hearing before a DOHA Administrative Judge. This case was transferred to the undersigned on January 8, 2004. A notice of hearing was issued on January 22, 2004, scheduling the hearing for February 17, 2004. At the hearing the Government presented four exhibits. The Applicant presented one exhibit, called four witnesses and he testified on his own behalf. The official transcript (Tr.) was received on February 27, 2004.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the exhibits, the witnesses and the Applicant's testimony. The Applicant is 48 years of age and has a Doctorate degree in Applied and Computational Mathematics. He is employed as a Technical Fellow in Research and Development 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 Taiwan in 1955. He came to the United States in 1978 or 1979. He became a naturalized citizen in 1991. The Applicant began his employment with a United States defense contractor in 1987 with an emphasis on the commercial side of the industry. From 1994 through 1999 the Applicant held a security clearance. Recently, he has moved from the commercial side to the defense side of the industry. The Applicant is nationally known in his field of expertise.

His sister is a citizen of the Republic of China currently residing in Taiwan. She is a history professor at a University in Taiwan. Her husband is an engineer for an electric company in Taiwan. The Applicant's contact is limited to a telephone call once or twice a year. The Applicant's parents-in-law are citizens of Taiwan. They are currently living in the United States. The Applicant's father-in-law was a colonel in the Taiwanese army before he retired some thirty-five years ago. (Tr. P. 60). The Applicant has contact with his parents-in-law in the United States about once every two weeks.

The Applicant also has several significant foreign professional contacts in the People's Republic of China. The Applicant befriended an individual by the name of Dr. A, whom he met during a company assignment in 1992-93, when the individual was a visiting professor in the United States. Dr. A is now a professor at a University in the People's Republic of China. On at least three occasions, the Applicant was invited and accepted Dr. A's invitation to lecture in China on commercial related applications in the industry. On each occasion, the Applicant was reimbursed for his airfare, and room and board which came to approximately \$3,000.00. Dr. A is presently a citizen of the People's Republic of China and is currently residing in China. The Applicant does not know if he is a member of the communist party.

The Applicant has traveled to the People's Republic of China on six separate occasions since 1996. None of the six occasions were assignments by his United States employer. Two of the six occasions, in September 1996 to October 1996, and April 2001 to May 2001, were for pleasure. The other four occasions were related to work abroad that he generated through his foreign contacts, and were in no way associated with his employer in the United States. The Applicant traveled to the People's Republic of China from July 1996 to October 1996, June 1997 to July 1997, in April 1998 and from May 1999 to June 1999 to lecture at three Universities. The Applicant indicated that the lectures involved the "composite material application to commercial airplanes." The topics varied from "design to analysis, to some specific analysis of impact." (Tr. p. 62). The Applicant claims that his lecture notes were approved by his company. The Applicant explained that during these trips he was not required to lecture every day. On the weekends he was furnished with a tour guide and taken to some of the tourist sites, such as the Great Wall of China and the National Palace Museum. (Tr.p. 73).

In November 2000, the Applicant was invited by a Mr. B, an internationally known composite expert, to lecture in the Republic of Korea. The Applicant had met Mr. B, some years earlier when Mr. B was his manager, employed at that time for a United States defense contractor. Mr. B is now working at a research institute connected with the Korean government.

Three witnesses, including his past and present supervisors, and another professional colleague who have worked closely with the Applicant testified on the Applicant's behalf. Each of the witnesses testified favorably about the Applicant and considered him to be ethical, loyal, honest and trustworthy. (Tr. pp. 17- 47). The Applicant's present supervisor told the Applicant when he recruited him in 2001, that he should report all foreign travel to the government and minimize or completely discontinue doing his foreign lectures. (Tr. pp. 20-21). The Applicant is said to be a top performing employee with outstanding integrity. (See, Applicant's Exhibit A).

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;
3. Relatives, cohabitants, or associates who are connected with any foreign government;
6. Conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government.

Conditions that could mitigate security concerns:

None.

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 may be vulnerable to foreign influence. The Applicant has significant foreign ties, including a sister and other associations with individuals who are either agents of or employed by a foreign government. Ironically, the Applicant established these relationships during his employment in the United States defense industry. Specifically his contacts with these foreign professionals, and his frequent foreign travel to lecture for them upon their request, is contact that may be of a nature to influence his security worthiness. None of these lectures were requested by the Applicant's employer. The fact that his lecture notes were approved by his company does not guarantee that the notes were the content of the lectures. Only those present at his lectures would know the content of the lectures. This situation raises a security concern that has not been mitigated. The burden of proof at this point is on the Applicant, and the record does not contain information that mitigates this concern. Therefore, the Applicant has failed to meet his burden of demonstrating that he is not in a position to be exploited by a foreign government in a way that could force the Applicant to choose between loyalty to a foreign government and loyalty to the United States. Based on the foregoing, this raises a security concern and Guideline B is found against the Applicant.

Considering all the evidence, the Applicant has not met the mitigating conditions of Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has not 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: Against the Applicant.

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: Against the Applicant

DECISION

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson

Administrative Judge