

DATE: November 8, 2004

---

In re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 02-28260

**DECISION OF ADMINISTRATIVE JUDGE**

**JAMES A. YOUNG**

**APPEARANCES**

**FOR GOVERNMENT**

Francisco J. Mendez, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant, born and raised in Sri Lanka, fled the country in 1983 when ethnic violence erupted. Although one boyhood friend and three siblings with whom Applicant has little contact remain in Sri Lanka, Applicant has demonstrated they are not in a position to be exploited. Clearance is granted.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 26 April 2004, DOHA issued a Statement of Reasons<sup>(1)</sup> (SOR) detailing the basis for its decision-security concerns raised under Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing on 11 May 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on 9 August 2004. On 13 September 2004, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on 22 September 2004.

**FINDINGS OF FACT**

Applicant is a 38-year-old program manager for a defense contractor. He was born into a Tamil family in Columbo, the capital of Sri Lanka. Sri Lanka is composed of approximately 74 % Sinhalese (mainly Buddhist) and 17 % Tamil (mostly Hindu). The remaining 9 % is composed of several other ethnic groups. Ex. 3 at 2. Although Sri Lanka is a democratic nation, many Tamils believed they were being discriminated against. Some of the radical Tamils formed the Liberation Tigers of Tamil Eelam (LTTE) that sought an independent Tamil state by force. In 1983, when Applicant was about 17 years old, the LTTE killed 13 Sinhalese soldiers. Outraged Sinhalese went on a rampage in the capital city and hundreds of Tamils were killed. Applicant's parents were in the U.K. visiting Applicant's older brother. Applicant and two of his siblings hid for 40 days before Applicant could flee to the U.K. In 1985, he returned to Sri Lanka to obtain a visa to move to the U.S.

Applicant arrived in the U.S. in 1985 and attended university. He graduated in 1988 with a bachelor's degree in

engineering and received his master's degree in engineering in 1990. In 1991, he married a U.S. citizen of Tamil heritage who had immigrated to the U.S. when she was two years old. She became a naturalized U.S. citizen in 1998. Applicant applied for U.S. citizenship in 1997 and was naturalized in 1999. They have two children, both of whom are U.S. citizens by birth.

Applicant's father is deceased. His mother is a citizen resident of the U.K., as are two of his siblings. Three of his siblings are citizen residents of Canada, as is his mother-in-law. One of his brothers works as a surveyor for a provincial government. Two of his siblings are naturalized U.S. citizens who reside in the U.S. Three other siblings are still citizen residents of Sri Lanka. Applicant has had virtually no contact with two of his siblings in Sri Lanka and only very infrequent contact with the other. Applicant visited Sri Lanka for 10 days in 2001 and two weeks from December 2003-January 2004. His last trip was with his family to show them where he was born and raised. He has no plans to return to Sri Lanka. On both trips, he traveled using his U.S. passport.

Applicant owns two homes outright--with no mortgage--in the U.S. He has no financial interests in Sri Lanka or any other foreign nation.

One of Applicant's childhood friends is a citizen resident of Sri Lanka. Although this friend is of Tamil heritage, he is a manager for SriLankan, the national airway for Sri Lanka. He was posted to Singapore at the time Applicant completed the security clearance interview, but has since returned to Sri Lanka. They stay in touch by telephone and e-mail.

### POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

### CONCLUSIONS

In the SOR, DOHA alleged Applicant has three sibling who are citizen residents of Sri Lanka whom he visits every year or every other year (¶ 1.a), has a friend who is a citizen of Sri Lanka residing in Singapore (¶ 1.b), and traveled to Sri

Lanka in 2001. A security risk may exist when an applicant's immediate family, or other persons to whom he may be bound by affection, influence, or obligation, are not citizens of the U.S. or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Directive ¶ E2.A2.1.1.

The Government established by substantial evidence and Applicant's admissions each of the allegations in the SOR, except that he does not visit his sibling in Sri Lanka every year and his friend has returned to Sri Lanka from Singapore. The presence, residence, or citizenship of an applicant's immediate family member, or a person to whom the applicant has close ties of affection or obligation, in a foreign country may cause a security concern and may disqualify an applicant from a security clearance. DC E2.A2.1.2.1. And one of Applicant's brothers works for a provincial government in Canada. DC E2.A2.1.2.3. Possible mitigating conditions include: The immediate family members or associates 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 and loyalty to the U.S. (MC E2.A2.1.3.1) and if the contacts and correspondence with foreign associates is casual and infrequent (MC E2.A2.1.3.3).

Evidence that an applicant has contacts with an immediate family member in a foreign country raises a rebuttable presumption that those contacts are not casual in nature. ISCR Case No. 00-0484 at 5 (App. Bd. Feb. 1, 2002). Applicant rebutted that inference with evidence that he has no continuing dialogue with his siblings in Sri Lanka. He also presented evidence that life has improved in Columbo where his family and friend reside. Since the cease fire with the Tamil in 2002, the threat of violence in the capital city has decreased significantly. After balancing the much closer connection of Applicant to the U.S., and to his family here and in countries allied to the U.S., I am convinced there is no likelihood Applicant could be placed in a position of having to choose between loyalty to his associates in Sri Lanka and loyalty to the U.S. I find for Applicant.

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

### **DECISION**

In light of all of 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. Clearance is granted.

**James A. Young**

**Administrative Judge**

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).