

DATE: January 8, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-32097

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's exercise of dual citizenship, includes voting in Mexican elections and transporting a foreign dignitary. His many foreign contacts, including his wife, two children, a step-child, mother, three sisters, a brother and parents-in-law, all of whom are citizens of Mexico and reside in Mexico could create the potential for coercion, exploitation or influence by a foreign government. This could result in the compromise of classified information. Mitigation has not been shown. Clearance is denied.

STATEMENT OF THE CASE

On July 9, 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 August 4, 2003, in which he elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on October 22, 2003. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on October 30, 2003. The Applicant submitted no reply to the FORM.

The case was assigned to the undersigned for resolution on December 3, 2003.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR , and the contents of the FORM. The

Applicant is 44 years old and married. He is employed by a defense contractor as a Painter and is seeking to retain his security clearance in connection with his employment.

The Government opposes the Applicant's request for a continued security clearance, on the basis of allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR:

Paragraph 1 (Guideline C - Foreign Preference). The Government alleges in this paragraph that the Applicant is ineligible for a clearance because he has acted in such a way as to show a preference for another country over the United States.

The Applicant is a dual citizen of Mexico and the United States. He was born in Mexico in 1959, to Mexican parents. He is married to a Mexican citizen who resides in Mexico. They have two children and one step child, all of whom are Mexican citizens and reside in Mexico. (*See*, Government Exhibits 3 and 4).

In 1992, the Applicant obtained a Mexican passport that expired in 1997. He states that he used his foreign passport to travel to Mexico and Spain. He further states that he did not renew it. After becoming a United States citizen in September 1996, the Applicant moved to Mexico to live and work. From October 1999, to June 2002, the Applicant resided and was employed in Mexico. The Applicant admits that he has voted in Mexican elections, most recently in 1999. (*See*, Government Exhibits 3 and 4).

The Applicant possesses a United States passport that was issued on December 5, 1996. (*See*, Government Exhibit 4).

Paragraph 2 (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's family, including his wife, two children and one step child, are citizens of Mexico and reside in Mexico. The Applicant's mother, three sisters and one brother are also citizens of Mexico and reside in Mexico. The Applicant's parents-in-law are also citizens of Mexico and reside in Mexico.

The record is void as to whether any of the Applicant's family members in Mexico work for the Mexican government. The record is also void as to the frequency of the contact, if any, the Applicant has with his family in Mexico.

The Applicant claims that his Mexican savings account that had an approximate balance of 50,000 in Mexican pesos or \$5,000.00 has now been closed. The record contains no documentary evidence to support this.

The Applicant further admits that he provided transportation to a Mexican consular employee as an uncompensated favor in March 1994.

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 Preference

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

Conditions that could raise a security concern:

1. The exercise of dual citizenship;
8. Voting in foreign elections.

Conditions that could mitigate security concerns:

None.

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.

Condition 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.

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.

The Applicant is a dual citizen of Mexico and the United States. After becoming a United States citizen in September 1996, he moved to Mexico and was employed there from October 1999 until June 2002, a period of two and a half years. He elected to exercise his dual citizenship by voting in Mexican elections, as recently as 1999. Presently, his family lives in Mexico and he lives and works in the United States. Disqualifying conditions 1 and 8 under Guideline C apply in this case. None of the mitigating factors apply. Thus, he has not demonstrated an unequivocal preference for the United States. Under the circumstances of this case, I find against the Applicant under Guideline C.

With respect to Guideline B, the Applicant has many foreign contacts, as his family resides in Mexico and not in the United States. The limited evidence provided establishes that the Applicant's foreign ties could subject him to foreign influence. The Applicant's wife, two children, a step child, his mother, three sisters, a brother, and his parents-in-law are citizens of and reside in Mexico. The record contains insufficient information as to the frequency of the contacts the Applicant has with his family and other relatives in Mexico. There is also insufficient information in the record to make a determination as to whether any of the Applicant's family are associated with the Mexican government in any way, or whether they are in a position to be exploited that could force the Applicant to choose between loyalty to them and loyalty to the United States. There is evidence that the Applicant has provided transportation for a Mexican Consular employee as an uncompensated favor in March 1994. Disqualifying condition 1 under Guideline B applies in this case. Moreover, the Applicant failed to respond to the FORM, and did not provide any mitigating evidence on his behalf. Based on the foregoing, Guideline B is found against the Applicant.

Considering all the evidence, the Applicant has not met the mitigating conditions of Guideline C or 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 Guidelines C or 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

Paragraph 2: Against the Applicant.

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: Against the Applicant

Subparagraph 2.c.: Against the Applicant

Subparagraph 2.d.: Against the Applicant

Subparagraph 2.e.: 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