

DATE: December 11, 2003

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 02-11440

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Melvin A Howry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 51-year-old electronic technician. Born in the Philippines, he came to the U.S. after college, served in the U.S. Army for 15 years, became a U.S. citizen, and rose to be a Staff Sergeant with a security clearance before retiring in 1995. He moved back to the Philippines, expecting to live in retirement with his family, but was unable to do so. He returned to the U.S. in 2000 to work. He left his family in the Philippines, but has begun the process of bringing all of them back to the U.S. Otherwise, he has minimal ties to the Philippines and views himself as an American only. He follows the rules as to reporting foreign travel and can be relied upon to reject any efforts to persuade him to act against U.S. interests. Mitigation has been established. Clearance is granted.

STATEMENT OF THE CASE

On February 28, 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, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons

why DOHA could not make the preliminary affirmative finding required under the Directive that it

is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and

determine whether a clearance should be granted, denied or revoked.

On March 25, 2003, Applicant responded to the allegations set forth in the SOR, and elected to have a hearing before a DOHA Administrative Judge. The matter was assigned to another Administrative Judge, but was reassigned to me on June 24, 2003, because of caseload considerations. A Notice of Hearing was issued on July 9, 2003, and the hearing was conducted on July 31, 2003. At the hearing, Applicant testified, and offered nine exhibits, which were marked and admitted as Applicant's Exhibits (AX) A-I. The Government did not call any witnesses, but offered one exhibit, which

was marked and admitted as Government Exhibit (GX) 1. On or about August 18, 2003, Applicant timely submitted two packages of documents, through Department Counsel. There being no objection, one package of exhibits was marked and admitted as AX J. The second package contains four documents which, upon examination, are duplicates of four documents in AX J. The second package is marked AX K for identification, and is included in the case file, but is not admitted into evidence. The transcript (Tr) was received at DOHA on August 8, 2003.

FINDINGS OF FACT

Applicant is a 51-year-old electronic technician for a defense contractor. The SOR contains seven allegations under Guideline B (Foreign Influence) in the Directive. In his response, Applicant admitted allegations 1.a., 1.c., 1.d., 1.e., 1.f., and 1.g. He denied allegation 1.b. The admissions are incorporated herein and are deemed findings of fact. During the hearing, at the request of both parties, allegation 1.b. was deleted from the SOR.

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

Guideline C (Foreign Influence)

At the time of the hearing on July 31, 2003:

1.a. - Applicant's wife was a citizen of, and resident in, the Philippines. Her U.S. Green Card has expired, and Applicant intends to obtain a new one for her so that she can again legally reside in the U.S. (Tr at 24).

1.b. - Deleted. [\(1\)](#)

1.c. - Applicant's daughter, A, was a citizen of, and resident in, the Philippines. Applicant has filed papers with the Immigration and Naturalization Service to make this daughter a legal resident of the U.S. (AX A).

1.d. - Applicant's daughter, B, and his son, C, are U.S. citizens and are residents of the Philippines. (AX F, AX G, and AX H).

1.e. - Applicant's sisters, D and E, are citizens of, and residents of, the Philippines.

1.f. - Applicant's mother is a citizen of, and resident of, the Philippines.

1.g. - Applicant's sister, F, is a citizen of the Philippines and resides in Germany.

Applicant was honorably discharged from the U.S. Army in 1995 (AX B and AX C). He holds a valid U.S. passport (AX D), as does his daughter B (AX B) and his son C (AX I). He has received letters of reference from his current employment supervisor (AX G2), and his Chief Warrant Officer at the time he left the Army in 1995. (AX G1 and G2). He also has highly positive work evaluations (AX G3, AX G4, and AX G5). He received the Army's Meritorious Service medal in 1995. (AX G7).

POLICIES

Each adjudicative decision must also include an assessment of nine generic factors relevant

in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowing 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 (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

Considering the evidence as a whole, I find the following specific adjudicative guidelines to be most pertinent to this case:

GUIDELINE B (Foreign Influence)

Conditions that could raise a security concern and may be disqualifying:

1. An immediate family member, or a person to whom the applicant 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 include:

1. A determination that the immediate family member (s), cohabitant, or associate(s) in question would not constitute an unacceptable security risk.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of

whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons. If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence

of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

CONCLUSIONS

Applicant was born in the Philippines in 1952. He attended college in the Philippines from 1970 to 1975, and then migrated to Guam in 1975, and then to the U.S. mainland. He has been married twice, the first time from 1978 to January 1986, and now from December 1986 to the present. Both wives were born in the Philippines. The first wife became a U.S. citizen. His current wife remains a citizen of the Philippines and resides in that country pending her return to the U.S. Applicant resides in the U.S. Other than his relatives in the Philippines, he has no connection, personal, financial, political, or otherwise with the Philippines.

Applicant was a member of the U.S. Army from January 1980 to May 1995. He rose to the rank of Staff Sergeant (E-6) before retiring and becoming part of the Inactive Reserve. (GX 1). While in the U.S. Army, he received a DoD Secret level security clearance in 1987. After retiring from the Army in 1995, he and his wife decided to retire in the Philippines, because his Army pension was not enough to support his entire family in the U.S. (Response to SOR). When he returned to the Philippines after his retirement from the Army, he was not able to work and he had to pay a fee to the Philippine government to live there, because he was an American citizen. (Tr at 47). He did not seek to regain Philippine citizenship. Finally, he realized he could not support his family in the Philippines. He then decided to return to the U.S. to obtain a better paying job so that he could properly support his family. That was in 2000 and he obtained his present employment in that same year.

Applicant and his wife and family have agreed that the family will return to the U.S., and his present employment, along with his military pension, makes it economically feasible. One daughter is already here, and the others will be returning within the next year or so. (Tr at 22, 23). Applicant telephones his wife about once a week, and the other relatives much

less frequently (Trat 36). As far as Applicant knows, none of his relatives in the Philippines are employed by or are agents of the government of that country. (Tr at 38-40).

Applicant was allowed to enlist in the U.S. Army as a foreign national and became a U.S. citizen while in the Army, in 1986 or 1987 (Tr at 44). In his mind, at that point he stopped being a citizen of the Philippines. (Tr at 46). He served in Operation Desert Storm in the early 1990s. (Tr at 48).

No one in the Philippines has asked him anything about his employment in the U.S. and no one knows about his current job. (Tr at 50). Applicant's feeling about the U.S. and his obligations to this country are stated in simple words: "[u]ntil I die, I tell you the truth, and I'm going to keep everything what I got here." If asked to do anything improper, "the first thing I have to do . . . I have to report it to the proper authorities or to my security officer," even if the person asking is a member of his family. (*Id.*). Before his last trip to the Philippines, he received a security briefing from his company and even brought a copy of his company's security guidelines with him (Tr at 52).

This is not a complicated case. All the allegations in the SOR comes from information provided by Applicant in his security clearance application. In fact, that document as an exhibit, is the extent of the government's evidence. Applicant has family members in the Philippines. His immediate family members are already in the process of returning to the U.S. There is absolutely no evidence even suggesting that any of his relatives are agents of the Philippine government or are in a position to be coerced into asking Applicant to act improperly. While relatives in any foreign country may constitute a risk in the abstract, the absence of any improper efforts by a foreign government in the past, while it doesn't prove that such efforts will not occur in the future, must nonetheless be taken into account.

As mitigation, I find most compelling the evidence of Applicant's long and meritorious service in the U.S. Army, his holding of a DoD security clearance for many years, his clear understanding of his obligation to protect U.S. security interests, and his compelling and highly credible avowing of what he would do if anyone asked him to violate that obligation. Added to that is the reality that while all foreign countries must be evaluated, the Philippines is a traditional friend and ally of the United States, and has provided many valuable members of the U.S. Armed Forces, such as Applicant. In addition, it is not cited in official publications as being (or suspected of being) involved in military or other espionage against the U.S. Overall, reason and common sense indicate that the risk of Applicant's being asked is minimal and his likely reaction to protect U.S. interests is based on long service to his country.

Disqualifying and Mitigating Conditions

Only Disqualifying Condition 1 (Immediate family members are citizens of, or resident or present in a foreign country) is applicable but so is Mitigating Condition 1 (a determination that the immediate family members(s) in question would not constitute an unacceptable risk). Considering the totality of the evidence, I conclude that Applicant's words and conduct demonstrate an unequivocal preference for, commitment to, and identification with, the United States. I find no basis to conclude that Applicant might be prone to provide information or make decisions that are harmful to the United States. I do conclude there is minimal risk that Applicant would ever act against the interests of the United States. He has demonstrated that he possesses the integrity, good judgment, reliability, and trustworthiness required of someone seeking access to the nation's secrets.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Guideline B (Foreign Influence) For the Applicant

Subparagraph 1.a.. For the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.c.. For the Applicant

Subparagraph 1.d. For the Applicant

Subparagraph 1.e.. For the Applicant

Subparagraph 1.f. For the Applicant

Subparagraph 1.g.. 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.

BARRY M. SAX

ADMINISTRATIVE JUDGE

1. Applicant stated that both parents-in-law are now deceased. At Department Counsel's request, this allegation has been stricken from the SOR. (Tr at 26).