

DATE: April 11, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-13209

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Melvin A. Howry, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's interest in protecting his foreign financial interests, including real property and revenue from investments in the Philippines indicates a preference for that country. His significant foreign contacts, emotional ties, including his spouse, his immediate and extended family, establish the possibility of foreign influence. These concerns have not been mitigated. Clearance is denied.

**STATEMENT OF THE CASE**

On November 7, 2002, 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 December 17, 2002, 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 February 7, 2003. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on February 19, 2003, and he submitted no reply.

The case was assigned to the undersigned for resolution on March 25, 2003.

**FINDINGS OF FACT**

The following Findings of Fact are based on Applicant's Answer to the SOR, and the documents in the record. The Applicant is 53 years of age. He seeks a security clearance in connection with his employment in the defense industry.

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

The Applicant was born in the Philippines and came to the United States in 1979. He obtained his United States citizenship in 1990. His wife was also born in the Philippines and is a permanent resident alien in the United States. The Applicant's wife inherited real property in the Philippines from her parents, which includes a house and some farmland. He and his wife have also purchased other real property in the Philippines, which includes an apartment building and one house, strictly for investment purposes. The Applicant and his spouse plan to keep their properties in the Philippines. They may at some point in the future return to the Philippines to retire there. If so, the Applicant plans to use his properties as income.

According to the law in the Philippines, the Applicant's spouse must maintain her Filipino citizenship in order to own real property in the Philippines.

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 has many relatives living in the Philippines. To name a few, his mother, brother, and four sisters, sister-in-law and brother-in-law are citizens of the Philippines, and they currently reside there. The Applicant indicates that he maintains regular contact with only one of his sisters there. The Applicant traveled to the Philippines to visit his family in April 1994, April 1996 and May 1997.

As mentioned above, the Applicant's spouse is a citizen of the Philippines. The Applicant's spouse maintains her Filipino citizenship to protect the properties that she and the Applicant own in the Philippines. The Applicant receives \$8,000.00 per year as revenue from his investments in the Philippines.

The Applicant's brother and sister are United States citizens and currently live in Guam.

## **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.

#### Condition that could raise a security concern:

6. Using foreign citizenship to protect financial or business interests in another country.

#### Condition 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.

### 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;
2. Sharing living quarters with a persons or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists;
8. A substantial financial interest in a country, or in any foreign owned or operated business that could make the individual vulnerable to foreign influence.

### 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 C (foreign preference) and 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 Applicant is presently qualified for a security clearance.

An individual who demonstrates a foreign preference and has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The mere possession of a foreign passport raises legitimate 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 of record 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 interests and contacts have a direct and negative impact on his suitability for access to classified information.

The Applicant and his wife were born in the Philippines. The Applicant is a naturalized citizen of the United States. His wife is a permanent resident who has chosen not to become a United States citizen as it would adversely effect her and her husband's substantial financial interests in the Philippines, that they someday hope to use for retirement income. Under the circumstances, the Applicant has, vicariously through his wife, sought to protect his financial interests, specifically his real property ownership and his foreign revenue. Thus, the Applicant has not demonstrated an unequivocal preference for the United States. Accordingly, I find against the Applicant under Guideline C.

With respect to Guideline B, the Applicant has significant foreign contacts, as well as emotional and family ties, in the Philippines. The Applicant's wife is a citizen of the Philippines living in the United States. She is not a United States citizen. The Applicant's mother, sister and four brothers, brother-in-law and sister-in-law, as well as other extended family members, are citizens of Philippines and they reside there. The Applicant and her husband visit the Philippines and maintain close contact with their family in the Philippines. There remains the possibility of pressure being placed on them, and through them, on the Applicant. It is the Applicant's burden to show that these ties are not of a nature that could create the potential for influence that could result in the compromise of classified information. He has not done so. Accordingly, I cannot say that he would not be vulnerable to foreign influence. The risk is considerable, and is of present security significance. Accordingly, the Applicant's request for a security clearance must be denied under Guideline B.

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, she has not met her ultimate burden of persuasion under Guidelines B and C.

### **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.

Subparas. 1.a.: Against the Applicant 1.b.: Against the Applicant 1.c.: Against the Applicant

1.d.: Against the Applicant

1.e.: Against the Applicant

1.f.: Against the Applicant

1.h.: Against the Applicant

1.i.: Against the Applicant

Paragraph 2: Against the Applicant.

Subparas. 2.a.: Against the Applicant

2.b: 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