

DATE: April 7, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-14514

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant is a naturalized American citizen of Filipino descent. She has been an American citizen for 19 of her 27 years. She does not intend to be a dual citizen of the Philippines, and has never acted in a way to show a preference for the Philippines over the United States. Her parents and grandfather are also naturalized American citizens of Filipino descent. Her parents live in the United States. Her grandfather lives in the Philippines and the Applicant has little contact with him. Adverse inference is overcome. Clearance is granted.

STATEMENT OF THE CASE

On June 20, 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 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 July 22, 2003, and requested that the case be decided without a hearing. The Government submitted its File of Relevant Material (FORM) to the Applicant on or about November 25, 2003. The Applicant was given 30 days from receipt of the FORM to submit any documents in rebuttal, extenuation or mitigation. The Applicant received the FORM on December 3, 2003, and did not submit any additional information. The case was received by the undersigned on January 29, 2004.

FINDINGS OF FACT

The Applicant is 27, single and has a Bachelor of Science degree. She is employed by a defense contractor as a Programmer, and she seeks to obtain a DoD security clearance in connection with her employment in the defense sector.

The Government opposes the Applicant's request for a security clearance, based upon the 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. They are based on the Applicant's Answer to the SOR, the exhibits and the live testimony.

Paragraph 1 (Guideline C - Foreign Preference). The Government alleges in this paragraph that the Applicant is ineligible for clearance because she 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 in 1977. Her parents moved to the United States when she was a young girl. She and her parents became naturalized American citizens in 1985.

On her 2000 Security Clearance Application, the Applicant stated that she remained a dual citizen of the Philippines and the United States. (Government Exhibit 4 at question 3.) In her sworn statement, the Applicant said, "It is my intention to maintain a dual-citizenship status with the Philippines and USA, because I may want to go visit the country of my birth. I have no intention of living in the Philippines. I do not have a passport issued by the Philippines or USA." (Government Exhibit 5 at 1.) She goes on to state, "I have not returned to the Philippines since my arrival in the United States in 1979. The only foreign travel I had was to Mexico in 1995." (Government Exhibit 5 at 2.)

The Applicant submitted an extensive Answer to the SOR in which she discusses all of the allegations in the SOR. In her preamble, she states, "In responding to questions during my security interview, I now realize that I misunderstood the concept of 'dual citizenship' and did not give any serious thought about citizenship issues." (Government Exhibit 3 at 3.)

Subparagraph 1.a. The Applicant denied ever exercising dual citizenship with the Philippines and the United States. She states, "I thought that being born in a foreign country automatically meant that I would remain a citizen of that country even after becoming a naturalized citizen of the United States." She goes on to say that she naively believed saying she was a dual citizen allowed her to show pride in her Filipino heritage. She concludes, "It simply did not occur to me that acknowledging 'dual citizenship' might mean that I was showing a preference for any country but the United States." (Government Exhibit 3 at 3.)

The Applicant does not have a passport from either the Philippines or the United States. When responding to interrogatories she stated, "I intend to obtain a passport from the U.S., not the Philippines." (Government Exhibit 6 at 3.)

Subparagraph 1.b. alleges that the Applicant intends to maintain her citizenship in the Philippines. In the Interrogatories she stated, "Will remain a citizen of the Philippines, but will exercise my citizenship in the U.S." (Government Exhibit 6 at 3.)

In her Answer the Applicant states, "Now that I more accurately understand what it means to be a dual citizen, I deny this Statement of Reasons since I never intended to maintain any kind of legal or formal ties with the Philippines other than to acknowledge my Philippines heritage." (Government Exhibit 2 at 3.)

She goes on to state that her actions have always been those of a proud American citizen, and not someone interested in being a dual citizen. "For example, I have never possessed or used a Philippines passport, voted in the Philippines, served in the Philippines military or any government agency, accepted any kind of Philippines educational, medical, retirement, or social welfare benefits, or desire to reside in the Philippines." (Government Exhibit 2 at 3.)

The Applicant's parents are naturalized American citizens who live in the United States. (Government Exhibit 4 at question 10.) The Applicant confirmed with her parents that her surviving grandfather is also a naturalized American citizen who resides in the Philippines, (Government Exhibit 2 at 2-4.) She has contact with her grandfather two or three times a year through her parents.

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance

determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. 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 those under Guideline C (Foreign Preference) and Guideline B (Foreign Influence).

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 factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- 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 guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may have foreign connections or be subject to foreign influence that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a 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."

CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the granting of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of

persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant has made statements that she is a dual citizen of the United States and the Philippines and intends to maintain that status. In addition, the evidence also shows that the Applicant's parents and grandfather are also naturalized American citizens of Filipino descent.

The Applicant, on the other hand, has successfully mitigated the Government's case. Naturalized at the age of 8, in 1985, the Applicant has spent all of her formative years as an American citizen. She has never visited the Philippines, and indeed does not have a passport from any country. Other than her statement, there is no other evidence that she has ever acted as a dual citizen. Instead, her statement that she is a dual citizen of the Philippines and the United States should be seen as what it was, a statement of pride in her heritage and nothing more.

Turning first to Paragraph 1. Under the facts of this case, I find that none of the Disqualifying Conditions under Guideline C apply. Mitigating Condition 1 applies: "Dual citizenship is based solely on parents' citizenship or birth in a foreign country." As stated above, the Applicant has not acted in any way to maintain any form of dual citizenship with the Philippines. Under the particular facts of this case, she has overcome the adverse inferences of these allegations and Paragraph 1 is found for the Applicant.

The Applicant's parents and her grandfather are naturalized American citizens of Filipino descent. Her grandfather lives in the Philippines. That fact, and that fact alone, brings Disqualifying Condition 1 of Guideline B into effect. ("An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country.") However, her occasional contact with her grandfather brings Mitigating Condition 3 into the equation: "Contact and correspondence with foreign citizens are casual and infrequent."

On balance, considering the whole person, it is concluded that the Applicant has successfully overcome the Government's case opposing her request for a DoD security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the Government's Statement of Reasons.

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: For the Applicant.

Subparagraph 1.a.: For the Applicant.

Subparagraph 1.b.: For the Applicant.

Paragraph 2: For the Applicant.

Subparagraph 2.a.: For the Applicant.

Subparagraph 2.b.: 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 the Applicant.

Wilford H. Ross

Administrative Judge