

DATE: April 1, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-14887

DECISION OF ADMINISTRATIVE JUDGE

MATTHEW E. MALONE

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has extensive family ties through marriage in a foreign country. He works full time in Kuwait, maintains a family home and two bank accounts in the Philippines, provides financial assistance to members of his wife's family and pays to lease farm land for the benefit of his wife's extended family. Further, he deliberately failed to disclose his financial and property interests in his most recent security questionnaire. He has provided insufficient evidence to mitigate the resulting security concerns under Guideline B (Foreign Influence) and Guideline E (Personal Conduct). Clearance is denied.

STATEMENT OF THE CASE

On September 11, 2003, the Defense Office of Hearings and Appeals (SOR) issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns under Guideline B (Foreign Influence) and Guideline E (Personal Conduct). The SOR further informed Applicant that, based on information available to the Government, DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to continue Applicant's security clearance. [\(1\)](#)

On October 13, 2003, Applicant answered the SOR (Answer) and requested a determination without a hearing. DOHA Department Counsel submitted a file of relevant materials (FORM) in support of the government's preliminary decision, a copy of which was sent to Applicant. He timely submitted a response to the FORM, to which Department Counsel had no objection or comment. The case was assigned to me on March 5, 2004.

FINDINGS OF FACT

Applicant has admitted with explanation, the allegations in SOR ¶1.a, and SOR ¶1.f through ¶1.l. His admissions are incorporated herein as facts. After a thorough review of the pleadings and exhibits, I make the following additional findings of fact:

Applicant is a 54-year-old employee of a defense contractor. He works as a senior simulator technician on a contract to provide services to the Kuwaiti air force. He has held this position since 1995, and has lived and worked in Kuwait the entire time. Applicant served in the U.S. Navy from June 1968 until December 1989. Applicant was born in the United States. His parents and two brothers still live there, but Applicant does not appear to maintain a residence or have any other financial or property interests in the United States. ⁽²⁾

In April 1996, he married a citizen of the Philippines. She and her four children, her mother and 10 siblings and their spouses are all citizens of and live in the Philippines. Applicant maintains a home in the Philippines for his wife and stepchildren. At least one of his wife's siblings lives in that house with Applicant's wife. He visits the Philippines for at least 40 days each year and has done so since 1996. ⁽³⁾

Applicant's wife has two nieces, both citizens of the Philippines, one of whom lives and works in Kuwait. He has frequent, often daily contact with her there. He also has frequent contact in Kuwait with a female friend who is also a citizen of the Philippines. Applicant also provides financial support to his wife's other niece, still living in the Philippines, in the form of tuition for high school and college. ⁽⁴⁾

Applicant and his wife paid for the construction of two houses in the Philippines for two of his sisters-in-law. The total cost was about 3,000 American dollars. Applicant also maintains two bank accounts in the Philippines to facilitate transfer of funds he gives to members of his wife's family for support. The accounts together usually hold about \$5,000. ⁽⁵⁾

The SOR alleges Applicant owns various real property and businesses in the Philippines. Support for these allegations is found in Applicant's notarized response to DOHA interrogatories. However, according to the Philippine constitution, he may not own land there because he is not a Philippine citizen or has not succeeded to hereditary title. Nonetheless, United States citizens may lease real property for as long as 50 years. ⁽⁶⁾ Applicant and his wife lease 1.5 hectares of farm properties as allowed by Philippine law along with her relatives so that the family may farm the land and support themselves from the yields. The total estimated cost of these leases is about \$3,300. I assume without knowing that these lease rates are annual recurring costs.

The other business interests alleged in the SOR are owned and controlled by his wife. Applicant and his wife also own two cars located in the Philippines. One vehicle is in his name and one is in his wife's name. The total value of both cars is about \$28,000. ⁽⁷⁾

On February 21, 2001, Applicant signed and submitted a Security Clearance Questionnaire (SF-86). Applicant answered "no" in response to question 12 of the questionnaire, which seeks disclosure of any foreign property, business connections, or financial interests. ⁽⁸⁾ However, at the time he submitted the SF-86, Applicant had what he referred to as "my house located in Cut-Cut 2nd..." and the bank accounts and leased properties discussed above. Applicant had not yet built the two houses for his sisters-in-law, and the business his wife owns was likewise not yet in existence. ⁽⁹⁾

POLICIES

The Directive sets forth adjudicative guidelines ⁽¹⁰⁾ to be considered in evaluating an Applicant's suitability for access to classified information. The Administrative Judge must take into account both disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Having considered the SOR allegations and having reviewed the record evidence as a whole, I conclude the relevant adjudicative guidelines to be applied here are those conditions listed under Guideline B (Foreign Influence) and Guideline E (Personal Conduct).

BURDEN OF PROOF

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁽¹¹⁾ for an Applicant to either receive or continue to have access to classified information. The Government bears the initial burden of proving, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If the government meets its burden, it establishes a *prima facie* case that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden then shifts to the Applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, the Applicant bears a heavy burden of persuasion.⁽¹²⁾

A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. The Government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the Government.⁽¹³⁾

CONCLUSIONS

Under Guideline B (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 not citizens of the United States or may be subject to duress. These situations create the potential for foreign influence that might, in turn, result in a 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.⁽¹⁴⁾

Department Counsel has established a *prima facie* case for disqualification due to foreign influence. The Applicant in this case has significant ties of affection - his wife and her family - who are citizens of and resident in a foreign country. In fact, it appears that Applicant's only viable personal and financial interests are outside the United States. Since 1995, Applicant has worked full time in Kuwait and maintained his family residence in the Philippines. He supports his wife and four stepchildren, who are all citizens of and reside in the Philippines. Applicant also provides financial assistance to other members of his wife's family who are also citizens of and reside in the Philippines. Guideline B disqualifying condition (DC) 1⁽¹⁵⁾ applies.

Applicant also has substantial financial and property interests in a foreign country. Guideline B DC 8⁽¹⁶⁾ applies here. Applicant denies SOR ¶¶1.b and 1.c, relying on a technicality of Philippine law that bars him from actual title to property in the Philippines and asserting it is his wife who actually owns those properties. However, Applicant has provided no information to show that, while his wife owns and controls a business and other interests in the Philippines, these interests should not be viewed as their joint marital property. He resides in Kuwait, but returns for extended visits to his "house located in Cut-Cut 2nd," so it is clear that the house is his marital residence regardless of whose name is actually on the deed. It is unlikely in my view that Applicant does not pay for the house he and his wife share.

He also denies SOR ¶¶1.d and 1.e by saying that "we" are leasing the land so that his wife's family can farm the land and use the yields to support themselves.⁽¹⁷⁾ Despite Applicant's characterization of the property, business or other interests at issue as either not actually owned by him or not substantial interests within the meaning of Guideline B DC 8, a lease agreement such as the one documented here, for which Applicant pays, is nonetheless a substantial financial interest in a foreign country. Likewise, his ownership of a marital residence, and, through his wife, a small business in the Philippines further supports application of DC 8.

By contrast, I have considered all of the Guideline B mitigating conditions (MC) that may apply to these facts. MC 1⁽¹⁸⁾ might apply because it appears that none of Applicant's foreign relatives are agents of a foreign power. However, I have taken official notice of Department Counsel's submission of information⁽¹⁹⁾ about the activities of and threats from terrorist groups in the Philippines. That information includes reports of kidnappings of Filipinos and Americans alike for various financial and political purposes. Applicant has not addressed this part of Department Counsel's argument, thus failing to meet his burden of proof to show that his relatives are not subject to coercion or pressure from

representatives or nationals of a foreign country.

Guideline B MC 3-(20) does not apply given Applicant's close relationship with his wife's family. He provides them with significant financial support, assists them in the lease of farm lands, and his immediate family (his wife and her children) are Philippine citizens with no contacts or interests in the United States. While he also spends at least 40 days each year in the Philippines with his wife and her family, there is no indication he has been back to the United States since 1995. Absent any contacts in the United States, and in light of his extensive business and personal relationships in the Philippines, it is also untenable to apply C 5.-(21) On balance, I conclude Guideline B against the Applicant.

The security concern under Guideline E (Personal Conduct) is that conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.-(22)

Department Counsel has established a *prima facie* case for disqualification because of Applicant's deliberate falsification of his SF-86. As to that part of the allegation in SOR ¶2.a that Applicant deliberately falsified his answer to SF-86 question 12 when he did not list the information under SOR ¶¶1.c, 1.f, 1.k, and 1.l, Applicant filled out the form in February 2001, several months and before acquiring those financial interests. Therefore, he could not have had an intent to falsify his answer to question 12 regarding those particular interests.

However, it is clear he had the bank accounts (SOR ¶1.a), was engaged in leasing the farm land (SOR ¶¶1.d and 1.e), and owned a house with his wife (¶1.b) at the time he submitted the SF-86. For the reasons stated under Guideline B, above, Applicant's position that he does not have actual title to property in the Philippines does not obviate the fact that he still had, at the time he answered question 12, financial and property interests there that might conflict with his ability to properly attend to the national interests of the United States. Guideline E DC 2-(23) applies here.

By contrast, there is some basis for application of Guideline E MC 2-(24) because this appears to be the only instance of deliberate falsification. It further appears that the information Applicant has provided in response to the FORM may be more reliable, but I remain concerned by his technical responses to foreign property ownership and other issues in this case that he does not fully appreciate his duty to be candid at all times in response to government queries about his security suitability. Additionally, this is a recent falsification and, to apply MC 2, all three conditions stated therein must be present. The remaining mitigating conditions are either irrelevant to these particular facts or there is no other basis for their application. On balance, I conclude Guideline E against the Applicant.

I have carefully weighed all of the evidence in this case, and I have applied the aforementioned disqualifying and mitigating conditions as listed under each applicable adjudicative guideline. I have also considered the whole person concept as contemplated by the Directive in Section 6.3, and as called for by a fair and commonsense assessment of the record before me as required by Directive Section E2.2.3. Applicant has no ties to the United States aside from his employment by a U.S. company. His entire family, those closest to him, and all of his financial affairs are grounded in the Philippines. These facts raise significant questions under Guideline B as to his susceptibility to foreign influence through his ties of affections and other foreign interests. Further undermining the government's confidence in his suitability for access to classified information is his deliberate falsification on his most recent SF-86 regarding those same foreign ties. Absent substantial information to the contrary, which Applicant has failed to provide, I cannot conclude it is clearly consistent with the national interest to grant Applicant's request for a security clearance.

FORMAL FINDINGS

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

Paragraph 1, Foreign Influence (Guideline B): AGAINST THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.c: Against the Applicant

Subparagraph 1.d: Against the Applicant

Subparagraph 1.e: Against the Applicant

Subparagraph 1.f: Against the Applicant

Subparagraph 1.g: Against the Applicant

Subparagraph 1.h: Against the Applicant

Subparagraph 1.i: Against the Applicant

Subparagraph 1.j: Against the Applicant

Subparagraph 1.k: Against the Applicant

Subparagraph 1.l: Against the Applicant

Paragraph 2, Personal Conduct (Guideline E): AGAINST THE APPLICANT

Subparagraph 2.a Against the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for the Applicant. Clearance is denied.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. FORM, Item 4.
3. FORM, Item 4 and Item 5.
4. FORM, Item 5.
5. FORM, Item 5; Applicant's Response to FORM.
6. Applicant's Response to FORM.
7. FORM, Item 5; Applicant's Response to FORM.
8. FORM, Item 4.
9. Answer; Response to FORM.
10. Directive, Enclosure 2.
11. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
12. *See Egan*, 484 U.S. at 528, 531.

13. *See Egan*; Directive E2.2.2.

14. Directive, E2.A2.1.1.

15. Directive, E2.A2.1.2.1. 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;

16. Directive, E2.A2.1.2.8. A substantial financial interest in a country, or in any foreign-owned or -operated business that could make the individual vulnerable to foreign influence.

17. Answer.

18. Directive, E2.A2.1.3.1. A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) 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(s) involved and the United States;

19. FORM, Items 6, 7 and 8.

20. Directive, E2.A2.1.3.3. Contact and correspondence with foreign citizens are casual and infrequent;

21. Directive, E2.A2.1.3.5. Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.

22. Directive, E2.A5.1.1.

23. Directive, E2.A5.1.2.2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

24. E2.A5.1.3.2. The falsification was an isolated incident, was not recent, *and* the individual has subsequently provided correct information voluntarily; (emphasis added)