

DATE: January 15, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-15586

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant's 82 year old mother is a British National (Overseas) citizen residing in Hong Kong. The Applicant visits her at least once a year and has frequent telephone contact. However, her mother is not an agent of the Chinese government and the Applicant is not subject to coercion because of her mother's presence in Hong Kong. The Applicant neglected to fully complete her Security Clearance Application with regard to all of her trips. However, this was primarily due to negligence and she did not intentionally falsify her Security Clearance Application as alleged in the Statement of Reasons. Adverse inference is overcome. Clearance is granted.

STATEMENT OF THE CASE

On May 6, 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 June 13, 2003, and requested a hearing. The case was received by the undersigned on July 18, 2003, and a Notice of Hearing was issued on July 30, 2003.

A hearing was held on August 28, 2003, at which the Government presented four documentary exhibits. Testimony was taken from the Applicant, who also submitted three hearing exhibits (Applicant's Exhibits A through C) and six post-hearing exhibits (Applicant's Exhibit D is a letter from her current supervisor dated August 25, 2003; Applicant's Exhibit E consists of copies of the Applicant's mother's British National (Overseas) passport and her current American visa; Applicant's Exhibit F contains instructions for filling out the Standard Form 86 (Questionnaire for National Security Positions) (SF 86) from her corporate security office dated May 3, 2000; Applicant's Exhibit G is an SF 86 of

the Applicant dated July 7, 1997; Applicant's Exhibit H is a newsletter from her employer dated Winter 1998; Applicant's Exhibit I is a letter from the Applicant's former supervisor dated September 8, 2003). The transcript was received on September 8, 2003.

FINDINGS OF FACT

The Applicant is 43, married and has a Master's Degree in Electrical Engineering. She is employed by a defense contractor as a software engineer, and she seeks to retain a Secret-level DoD security clearance previously granted in connection with her employment in the defense sector.

The Government opposes the Applicant's request for a continued 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 B - Foreign influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because she has immediate family members who are not citizens of the United States or may be subject to duress.

The Applicant was born in Hong Kong. She immigrated to the United States in 1976 and became a naturalized American citizen in 1984.

The Applicant's father passed away in 2000. Her mother still resides in Hong Kong. The mother is not a Chinese citizen, but rather a British National (Overseas) citizen. She carries a British passport and has a current visa allowing her to enter the United States. (Applicant's Exhibit E.) The Applicant's mother is 82 years old, and does not have any connection to the Chinese, Hong Kong or United Kingdom governments. The Applicant visits her mother once or twice a year and has frequent telephone conversations with her. Her mother has visited the United States, but does not plan on moving here.

Based on the evidence presented, subparagraph 1.a. of the SOR is amended to read as follows, "Your mother is a British National (Overseas) citizen and resident in Hong Kong, China." (Transcript at 58-62.)

Paragraph 2 (Guideline E - Personal conduct). The Government alleges in this paragraph that the Applicant is ineligible for clearance because she intentionally falsified material aspects of her personal background during the clearance screening process.

On June 6, 2000, the Applicant completed an official DoD questionnaire in which she stated that during the prior seven years she had traveled to Hong Kong twice in 1999, once in 1998, and once to Australia in 1997. (Government Exhibit 1 at Question 16.) This was an incorrect statement as the Applicant had traveled much more extensively over the past seven years, including at least seven other trips to Hong Kong and/or China between 1993 and 2000, a trip to exico in 1996 and a trip to Germany in 1998. (Applicant's Exhibit B.)

The Applicant denies intentionally falsifying her questionnaire. Rather, she states that she did not treat the completion of the forms with the seriousness it deserved. For example, she submitted as an exhibit an SF 86 that she filled out in 1997. On that form she indicated that she visited Hong Kong "Yearly." (Applicant's Exhibit G at Question 18.) She also submitted the newsletter from her employer in 1998, which contained an article by her describing her recent trip to Germany. (Applicant's Exhibit H at 4-5.)

The Applicant also testified that she procrastinated in filling out the forms, and therefore was not as accurate as she should have been. This appears to be true. Applicant's Exhibit F is the memorandum from her security office dated May 3, 2000, giving her a five day suspense for returning Government Exhibit 1. She completed the form June 6, 2000. Applicant's Exhibit G at page 1 shows a May 26, 1997, suspense date for an SF 86 she submitted July 7, 1997.

In essence, the Applicant testified, "I was in a hurry, so I wasn't very careful. I copy from a previous form, and I might have read the instructions on the other form instead of this one. So, I don't know. I made a mistake." (Transcript at 41.)

Mitigation.

The Applicant's husband testified. He holds a security clearance as well. The husband testified that he and the Applicant are knowledgeable about security matters and rules and able to apply them. (Transcript at 23-24.)

Her manager for the last five years submitted a statement on the Applicant's behalf. (Applicant's Exhibit A.) He states that the Applicant has informed him of all of her trips during that time. In addition, "[The Applicant] has always been one of the most ethical and honest people on my team."

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:

Guideline B (Foreign influence)Conditions that could raise a security concern:

(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 (E2.A2.1.2.1);

Conditions that could mitigate security concerns include:

(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 (E2.A2.1.3.1);

Guideline E (Personal conduct)Conditions that could raise a security concern:

(None of the stated conditions have application in this case.)

Conditions that could mitigate security concerns:

(None of the stated conditions have application in this case.)

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 be involved in acts of falsification, or be subject to foreign influences, 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 continued holding 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 an immediate family member who is not an American citizen and lives in Hong Kong. In addition, the Government showed that the Applicant's 2000 Security Clearance Application was missing relevant information.

The Applicant, on the other hand, has successfully mitigated the Government's case. Turning first to Guideline B. The Applicant's mother is not a citizen of China, but a British subject residing in Hong Kong. She is 82, ailing, and has never been involved with the Chinese, Hong Kong or British governments. I have considered the Applicant's close relationship with her mother, the circumstances presented in Paragraph 2 of the SOR, as well as the fact that China is an active collector of intelligence. In my opinion, given the Applicant's close ties to the United States, including living here almost thirty years, working here for a considerable period of time and being married to a native-born American citizen, she has vitiated the security concerns of her mother's presence in Hong Kong.

Turning to Paragraph 2, I also find that the Applicant has successfully mitigated the Government's case. In particular, I do not find that the Applicant intentionally falsified her 2000 Security Clearance Application. From all the evidence available, it appears that the Applicant was a procrastinator in filling out her security paperwork. By her own admission, she did not take the completion of the SF 86 seriously enough. This is, of course, foolish on her part, and I have considered that in my decision. However, the entire record, and not just her credible testimony, shows that she now

understands that her security responsibilities include the careful completion of security documents. While she has behaved somewhat foolishly in the past, I do not believe that conduct rises to the level to require the denial of her security clearance request.

The Applicant is a mature and understanding person. The evidence shows that she now has an understanding of her security responsibilities and a credible intention of fulfilling them. The Applicant has persuasively shown that she is not subject to coercion or pressure because of her foreign connections.

On balance, 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.

Paragraph 2: For the Applicant.

Subparagraph 2.a.: 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