

DATE: December 30, 2003

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-19601

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's family and in-laws are all naturalized U.S. citizens, but his parents and in-laws spend considerable portions of each year at their homes in the Philippines. Applicant recognizes his vulnerability to coercion or pressure because of the presence of his parents and in-laws in the Philippines, which is subject to terrorist attacks and bombings. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 11 August 2003, under the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision—security concerns raised under Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing on 12 September 2003 and elected to have a hearing before an administrative judge. The case was originally assigned to another administrative judge, but was transferred to me on 12 November 2003. On 8 December 2003, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the transcript (Tr.) of the proceeding on 22 December 2003.

FINDINGS OF FACT

Applicant was born in Italy in 1971 of Filipino parents. His father was stationed in Italy, at the time, with the U.S. Navy—he eventually retired from the Navy with over 20 years of service. Applicant's father became a U.S. citizen in 1973 and his mother in 1985. Applicant's certificate attesting to his U.S. citizenship was issued in 1975. Ex. 1. His parents own a home in the Philippines and they spend approximately six months of each year there. His mother is incapacitated and the entire family pitches in to help pay for the necessary care she needs. Tr. 23.

Applicant's wife was born in the Philippines in 1968, came to the U.S. with her parents in about 1988, and became a

U.S. citizen in 1994. Her father was formerly employed at a U.S. military installation in the Philippines. Tr. 18. Applicant's wife's parents own a home in the Philippines. Her father spends about three months a year there, her mother six months a year. Applicant's wife has two sibling who are not U.S. citizens and reside in the Philippines. Applicant is very close to his in-laws. He sees them at least three times a week when they are in the U.S. Tr. 20.

Applicant and his wife have a three year old son. Applicant travels to the Philippines every four to six years, but plans to go there more often in the future. Tr. 28. He admits being vulnerable to coercion if asked to compromise U.S. security to protect the lives of his family. Ex. 2 at 2; Tr. 26. However, he would work with U.S. authorities if his parents were threatened.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

CONCLUSIONS

In the SOR, DOHA alleged a security risk may exist because Applicant's parents (¶ 1.a.) and parents-in-law (¶ 1.b.) each own a house in the Philippines, and Applicant indicated that he may be vulnerable to pressure, coercion, or possible blackmail if the lives of his family were threatened (¶ 1.c.). A security risk may exist when an applicant's immediate family and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the U.S. or may be subject to duress. Directive ¶ E2.A2.1.1.

The Government established by substantial evidence and Applicant's admissions that his parents and in-laws own homes in the Philippines and reside there a substantial portion of each year. Applicant admits his close ties to his parents and his in-laws. Having a family member, or persons to whom an applicant has close ties of affection or obligation, living in a foreign country may raise a security concern that disqualifies the applicant from holding a security clearance. DC E2.A2.1.2.1. The U.S. Department of State asserts that the "terrorist threat to Americans in the Philippines for kidnappings and bombings remains high." Ex.3 at 1. Under Guideline B, foreign contacts or connections must be

evaluated in terms of whether they place an applicant in a position of vulnerability to be influenced by coercive or noncoercive means. ISCR Case No. 000628 at 5 (App. Bd. Feb. 24, 2003). The fact that his parents and in-laws spend a considerable amount of time in the Philippines places Applicant in a position of vulnerability as does his wife's siblings who still live there.

There is no evidence that Applicant is other than a loyal U.S. citizen. Applicant's sworn statement and testimony that he would be vulnerable to coercion if threats were made against his family is a refreshing admission of the profound influence of family ties when compared to the self-serving denials of others in the same position. Applicant recognizes the need to notify U.S. authorities if any person attempts to coerce or pressure him to reveal classified information. Nevertheless, I can find no factors which mitigate the foreign influence security concerns.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline B: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

DECISION

In light of all of 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 Applicant. Clearance is denied.

James A. Young

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.