

DATE: June 20, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-19902

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant's foreign contacts, (specifically his mother, sister and brother) who are citizens of and reside in Italy, and who have regular contact with the Applicant do not pose a security risk. The Applicant's brother is an agent of the Italian government. These foreign ties are not of a nature that could create the potential for influence that could result in the compromise of classified information. Clearance is granted.

STATEMENT OF THE CASE

On February 25, 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 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 March 4, 2003, and requested a hearing before a DOHA Administrative Judge. This case was transferred to the undersigned Administrative Judge on April 8, 2003. A notice of hearing was issued on April 11, 2003. The hearing was held on May 8, 2003, at which the Government presented four exhibits. The Applicant presented eight exhibits. The Applicant called one witness and testified on his own behalf. The official transcript was received on May 27, 2003.

FINDINGS OF FACT

The Applicant is 54 years old and unmarried. He holds a Master's Degree in International Relations. He is employed by a defense contractor as a Systems Engineer, and is seeking to retain his security clearance in connection with his employment.

The Government opposes the Applicant's request for a continued security clearance, on the basis of 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:

Paragraph (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, after serving several years on active duty, retired from the United States Navy Reserves in 1995 as a Commander, with an unblemished career. The Applicant has held a DoD security clearance for the last thirty seven years. The Applicant was born in the United States in 1948, to Italian parents. The Applicant indicated in his security forms that he may be a dual citizen, but he is not sure. The Applicant moved to Italy when he was four years old. He returned to the United States to attend college.

The Applicant's mother, sister and brother are citizens of Italy. The Applicant's mother and sister reside in Italy. His mother is a homemaker. His sister works at the American Embassy as a political specialist in Rome. The Applicant's brother is the Deputy Chief of Mission of the Italian Embassy in Cairo. He has been an Italian diplomat for about thirty years. The Applicant explained that his brother, "deals with bilateral relations between Italy and the European Union, but Italy primarily, and Egypt." The Applicant's father, who has since passed away, was the Italian Ambassador in Lagos, Nigeria.

The Applicant travels to visit his mother and sister in Italy at least once a year. He has daily contact with his brother and sister through electronic mail. He contacts his mother by telephone on a monthly basis. The Applicant considers himself very close to his family in Italy. His family in Italy have no intentions of becoming United States citizens.

The Applicant's mother owns a small two bedroom row house and an apartment in Italy. She rents out the row house for about \$1,000.00 a month. The Applicant may share in his portion of their value when his mother passes away. It is also possible that his sister will live in the row house and his brother in the apartment.

The Applicant also has a twin brother who is a citizen of and resides in the United States. He is an engineer like the Applicant.

Mitigation

An electronic letter dated April 27, 2003, from the Applicant's brother, the Italian diplomat, states in part:

"If I am suspect in this, I can assure you that I have never had and have no intention of exploiting my brother or anyone else working in the US defense industry for sensitive information. As an Italian diplomat, now posted at the Italian Embassy in Cairo, Egypt, my responsibilities revolves around political issues involving Italy and other governments. I have absolutely no need or interest for information on defense issues, much less technical defense information. Furthermore, Italy has been one of the strongest US allies both bilaterally and through the North Atlantic Treaty Organization (NATO), since World War II. I have no intention of jeopardizing that relationship and the trust that has developed between our countries. And to think that I would do so using my own brother is way over the top. It will not happen.

If the US government is worried that the Italian government might use me as an unwilling agent to wrest information from my brother, you can rest assured that this is not an issue. Not only has this never happened to me personally, and no requests of this or even vaguely similar nature have ever been addressed to me directly or indirectly or even hinted to me by my authorities, but to my knowledge no actions of the sort have ever been taken since World War II, in any case since Italy and the United States have been allies. Italy would have nothing to gain from such a serious breach of NATO security and of mutual trust with its foremost military and political partner. (See, Applicant's Exhibit A).

Letters of recommendation submitted by a retired Navy Captain, and several coworkers of the Applicant, collectively indicate that the Applicant is extremely reliable, trustworthy and loyal to the United States. (See, Applicant's Exhibit B, C and D).

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 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.
3. Relatives, cohabitants, or associates who are connected with any foreign government.

Conditions that could mitigate security concerns:

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;
5. Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.

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 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 past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. Foreign influence can raise 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 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 contacts have a direct and negative impact on his suitability for access to classified information.

With respect to the Applicant's eligibility for a security clearance, there are mitigating conditions under Guideline B, of DoD5220.6 that are applicable to warrant the Applicant's access to classified information. I have carefully assessed the degree of actual or potential influence that persons may exercise on the Applicant. I have considered the frequency and nature of his personal contact, his correspondence with the foreign contact, his political sophistication, and the general maturity level of the Applicant. I have carefully considered the Applicant's testimony and his documentary evidence.

Although the Applicant has many foreign contacts, as well as emotional and family ties in Italy, he has overcome the burden by showing that these ties are not of a nature that could create the potential for influence that could result in the compromise of classified information. The Applicant's mother, sister and brother are all citizens of Italy and reside there. His mother is an elderly homemaker. Her sister works for the American Embassy in Rome. He maintains regular daily contact with them and considers himself to be very close to them. Most importantly, however is the fact that the Applicant's brother, is the Deputy Chief of Mission at the Italian Embassy in Cairo, Egypt. He is an agent of a foreign government which raises questions about the potential for exploitation, coercion or blackmail.

In this case, however, sufficient mitigation has been shown to overcome the adverse inference this association might otherwise make. First, the Applicant's United States Navy career shows a long track record of trustworthiness and reliability while holding a security clearance, with no security violations or incidents of exploitation for over twenty five

years. Secondly, the Applicant's brother's letter is extremely persuasive that exploitation of the Applicant is against both his brother's interest and the interests of the Italian government, and under no circumstances would it ever happen. Third, the letters of recommendation submitted on behalf of the Applicant show the Applicant to be an exceptional individual with the highest level of integrity, morals and loyalty to the United States. Fourth, the Applicant foreign financial interests, (his possible inheritance of a fourth of his mother's estate at some point) is minimal, and not sufficient to affect his security responsibilities. Finally it is noted that Italy is, and has been since World War II, an ally of the United States.

It is the Applicant's burden to show that his family ties are not of a nature that could create the potential for influence that could result in the compromise of classified information. He has done so. Accordingly, I find that he would not be vulnerable to foreign influence. The risk is not considerable, and is not of present security significance. Accordingly, the Applicant's request for a security clearance must be granted 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, he has met his ultimate burden of persuasion under Guideline B.

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

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: For the Applicant

DECISION

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson

Administrative Judge