

DATE: March 15, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-22255

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's foreign contacts, specifically her mother, a citizen of the Republic of China and her four siblings who reside in Hong Kong, do not pose an unacceptable security risk. Clearance is granted.

STATEMENT OF THE CASE

On October 2, 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 November 12, 2003, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on January 8, 2004. A notice of hearing was issued on January 22, 2004, scheduling the hearing for February 12, 2004. At the hearing the Government presented three exhibits. The Applicant presented five exhibits and she testified on her own behalf. The record was left open to allow the Applicant to submit additional documentation. The Applicant submitted one Post Hearing Exhibit consisting of nineteen pages. The official transcript (Tr.) was received on March 1, 2004.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the exhibits and the testimony. The Applicant is 47 years of age, married and has a Masters Degree in Electrical Engineering. She is employed as an Electrical Engineer for a defense contractor. She seeks a security clearance in connection with her employment in the defense industry.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because she has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant was born in Hong Kong in 1957. At the age of twenty-one she came to the United States to study electronic engineering. With no support from her parents in Hong Kong, she worked her way through college in the United States, and obtained both her bachelors and masters degrees. While in college, she met her husband, a native born United States citizen whom she married in 1981. In 1985, she became a naturalized United States citizen. In 1986, she began worked for a defense contractor and held a security clearance from 1986 through 1991 without incident. In 1991, she stopped working to have a child, who was born in the United States. In 1996, she rejoined her previous employer.

The Applicant's mother, who is a citizen of the Republic of China, and her four siblings, that include two brothers and two sisters, all reside in Hong Kong. The Applicant also has a sibling who is a Canadian citizen, who is now residing in the United States. The Applicant's mother is eighty-two years old, illiterate, and resides in an old folks home. She was a housewife her entire life. The Applicant provides no financial support to any of her family members in Hong Kong. Her oldest brother works for the railroad and drives a taxi. Her other brother is a teacher. One of her sisters is an office attendant, the other is a security guard for an apartment complex. None of her family in Hong Kong is associated in any way with the Chinese government. None of her family in Hong Kong have any knowledge of where the Applicant works or what she does. The Applicant's youngest brother, who is a Canadian citizen living in the United States, is a computer programmer. He is not involved in any political activities, nor is he associated with the Chinese government or the Canadian government in any way. He and his wife have recently purchased a home in the United States and he plans to make it his permanent home. He also plans to apply for United States citizenship when he is eligible.

Since moving to the United States, the Applicant has traveled to Hong Kong on four occasions to visit her family. In 1981, she went to introduce her husband to her family, in 1988, she traveled for a vacation, and in 1995 she visited her sick father. The last time she traveled to Hong Kong was in 1995 to attend her father's funeral. (*See*, Applicant's Exhibit D).

Other than a Christmas card once a year, the Applicant does not exchange letters or other correspondence with her family in Hong Kong. She contacts her siblings by telephone about once or twice a year at the most.

Letters of recommendation submitted on behalf of the Applicant attest to her high level of work performance, dependability, trustworthiness, and high moral standards. (*See*, Applicant's Exhibits A, B and C).

Excerpts from the Applicant's employee personnel file show that she has received numerous achievement awards in recognition for her exceptional contributions on the job. Her performance appraisals for the periods from January 2000 through 2003 are either "outstanding" or "far exceeds requirements". (*See*, Applicant's Post-Hearing Exhibit).

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.

Condition 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.

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 the loyalty of the person(s) involved and the United States;

3. Contact with foreign citizens is causal and infrequent.

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 her suitability for access to classified information.

With respect to Guideline B, the evidence establishes that the Applicant is not vulnerable to foreign influence. Over the past twenty-six years, for most of the her adult life, the Applicant has lived in the United States. She has established her permanent home in the United States. She has obtained her education, married, become a United States citizen, and has had a child in the United States.

Since moving to the United States, the Applicant has had minimal contact with her family in Hong Kong. The Applicant's elderly mother, a citizen of the Republic of China, and the Applicant's four siblings who live in Hong Kong, are not agents of or associated with the Chinese Government in any way. The Applicant's casual and infrequent contact with her family in Hong Kong is not of a nature to influence her security worthiness. Mitigating Factors 1 and 3 clearly apply. The Applicant has met her burden of demonstrating that she is not in a position to be exploited by Hong Kong in a way that could force the Applicant to choose between loyalty to her family in Hong Kong and loyalty to the United States. Based on the foregoing, the Applicant's foreign ties do not raise a security concern and Guideline B is found for the Applicant.

Considering all the evidence, the Applicant has met the mitigating conditions of Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, she 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

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