

DATE: October 1, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-23506

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant is a naturalized American citizen from the Philippines. He retains a Philippine passport which expired in March 2004. There is no evidence he has surrendered the passport. He has a house in the Philippines worth \$40,000 as well as a bank account. The Applicant has substantial family ties in the Philippines which he has not mitigated. The Applicant also falsified his security clearance questionnaire with regards to four questions concerning his foreign connections, foreign passport, foreign travel and owning foreign property. Insufficient mitigation is shown. Adverse inference is not overcome. Clearance is denied.

STATEMENT OF THE CASE

On January 10, 2004, 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 February 9, 2004, and requested that the Decision be made without a hearing. The Department Counsel submitted the File of Relevant Material (FORM) to the Applicant on June 1, 2004. The Applicant was given 30 days after receipt of the FORM to submit any additional information to the Administrative Judge. The Applicant acknowledged receipt the FORM on June 24, 2004, and submitted additional information on July 20, 2004. The Department Counsel did not object to the admission of the additional information. The case was received by the undersigned for Decision on July 27, 2004.

FINDINGS OF FACT

The Applicant is 55 and married. He is employed by a defense contractor as a Senior Design Technician, and he seeks to

obtain or retain a DoD security clearance in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a 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 and the exhibits.

Paragraph 1 (Guideline C - Foreign preference). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has acted in a way which shows a preference for another country over the United States.

The Applicant was born in the Philippines. He worked for the United States Navy for many years in the Philippines, beginning in 1974 until the United States military left the Philippines in 1992. (*See Applicant's Additional Information.*) At that time the Applicant immigrated to the United States. While still a citizen of the Philippines, he renewed his Philippine passport in 1999 (Government Exhibit 10). This passport expired in March 2004. In his Answer to the SOR he states that since becoming an American citizen, "I have not used it nor have the intention to use it. Should your office require that I submit it for proper disposal, I will be glad to do so." (Government Exhibit 3 at 1.) The passport has now expired, but the Applicant submits no evidence that he has returned it to the Philippine government.

The Applicant became a naturalized United States citizen in September 2001. Since he took the oath of citizenship, the Applicant does not believe himself to be a Philippine citizen. He obtained a United States passport in October 2001 (Government Exhibit 9). He used his American passport to travel to the Philippines in 2002.

Paragraph 2 (Guideline B - Foreign connections). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has relatives who are citizens of a foreign country, or contacts or connections with a foreign country that may make him vulnerable to coercion, exploitation or pressure.

The Applicant's wife is a citizen of the Philippines. He states that she wants to become an American citizen, but simply has not had the time to apply for citizenship.

Subparagraph 2.b. of the SOR alleges that all five of the Applicant's children are citizens of the Philippines. The FORM and the Applicant's evidence shows that there have been changes in their status. Government Exhibits 6, 7 and 8 show that his three youngest daughters are American citizens, since they have United States passports issued in August 2003, after the date of his sworn statement (Government Exhibit 5). His other two daughters have filed Petitions for Naturalization in 2004. (*Applicant's Additional Information.*)

The Applicant now has one brother and three sisters living in the Philippines. One of his brothers has passed away. There is no evidence in the record as to whether any of his siblings has any connection to the Philippine government. The Applicant provided financial assistance to this brother while he was alive, consisting of a cash gift and the rental proceeds of a house the Applicant owns in the Philippines. The house is worth approximately \$40,000 and is still owned by the Applicant. In order to assist with giving his sick brother money, the Applicant opened a bank account in the Philippines in 2002. The amount in the account is small, \$200. He has no intent on depositing further funds in the account.

The Applicant sends a sister \$22 a year to maintain his membership in a Philippine Masonic Lodge. This amount is so trivial, subparagraph 2.g. is found for the Applicant.

The Applicant has traveled to the Philippines in 2000 and 2002. The first trip he used his Philippine passport, for the second he used his American passport.

Paragraph 3 (Guideline E - Personal conduct). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he intentionally falsified material aspects of his personal background during the clearance screening process.

On September 27, 2001, the Applicant completed an official DoD questionnaire in which he listed as relatives and associates his wife and siblings but did not list his children. (Government Exhibit 4, question 9.)

Question 12 of the same questionnaire asked the Applicant if he owned any property in a foreign country. The Applicant answered "No," even though he has owned a house in the Philippines since 1991.

The questionnaire goes on to ask the Applicant at question 15 whether, the past seven years, he had an active passport issued to him by a foreign country. Once again, the Applicant answered "No," whereas at the time he had an active Philippine passport.

Finally, question 16 of the questionnaire asks the Applicant whether, in the seven years preceding the date of the questionnaire, he has visited a foreign country other than on official travel. The Applicant answered "No" to this question as well, though he had traveled to the Philippines in June 2000. These statements were all false answers to material questions pertaining to the Applicant's foreign relationships and contacts.

The Applicant was subsequently interviewed by a Special Agent of the Defense Investigative Service (DIS) in April 2003 (Government Exhibit 5). In that interview the Applicant gave a truthful account of his foreign contacts. He states, "I attribute providing incorrect responses in these areas to oversight and/or misinterpretation of the questions on the security form." (Government Exhibit 5 at 5.)

Mitigation.

The Additional Information packet submitted by the Applicant shows that he has been a very highly thought of employee of the United States Navy for many years. He was Employee of the Quarter twice and has several outstanding evaluations in his record.

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 C (Foreign preference)

Condition that could raise a security concern:

(2) Possession and/or use of a foreign passport; [\(1\)](#)

Conditions that could mitigate security concerns include:

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

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;

(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.

Conditions that could mitigate security concerns include:

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

Guideline E (Personal conduct)

Condition that could raise a security concern:

(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;

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 have foreign contacts, show a preference for a foreign country or be involved in acts of falsification 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 granting or 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 a foreign passport (Guideline C); that he has substantial foreign connections (Guideline B); and that he intentionally made false material statements to DoD (Guideline E).

The Applicant, on the other hand, has not introduced persuasive evidence in rebuttal, explanation or mitigation which is sufficient to overcome the Government's case against him, except in part. Subparagraph 1.a. is found for the Applicant, as he has not exercised dual citizenship with the Philippines since becoming a naturalized American citizen. Under Paragraph 2 (Guideline B); subparagraphs 2.b. and 2.g. are found for Applicant as I have found the facts do not have a security significance.

Turning to Paragraph 1, the Applicant has not shown evidence that he has surrendered his Philippine passport. The passport may have expired, but the DOHA Appeal Board has ruled that Applicants are still required to surrender even expired passports in order to fulfill the requirement of the Money Memorandum. Disqualifying factor 2 applies (*Possession and/or use of a foreign passport*). None of the mitigating factors apply to this case. Paragraph 1 is found against the Applicant.

Regarding Paragraph 2, while some of the Applicant's foreign connections have been mitigated, I am not able to find that he has entirely answered the Government's concerns. He has not shown, as required by mitigating factor 1, that his siblings are not agents of the Philippine government or that they are not in a position to be exploited by that government. Disqualifying factor one applies, (*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*). The Applicant owns a house worth a substantial amount of money in the Philippines. Accordingly, he comes under the purview of disqualifying factor 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*). He has not shown that the value of that house is minimal in relation to his personal financial worth as a whole, which is required by mitigating factor 5. This paragraph is also found against the Applicant.

Finally, the Applicant gave false answers to no less than four questions which directly related to his foreign relationships and financial dealings. The Applicant's sole excuse is that his falsifications were inadvertent has little or no evidence to support it. Under the particular facts of this case, while one or even two misstatements might be excusable, I must find that his failure to answer these four questions was intentional. Disqualifying factor 2 applies (*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*). None of the mitigating factors apply. Paragraph 3 is found against the Applicant.

On balance, it is concluded that the Applicant has failed to overcome the Government's information opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the conclusionary allegations expressed in Paragraphs 1, 2 and 3 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: Against the Applicant.

Subparagraph 1.a.: For the Applicant.

Subparagraph 1.b.: Against the Applicant.

Paragraph 2: Against the Applicant.

Subparagraph 2.a.: Against the Applicant.

Subparagraph 2.b.: For the Applicant.

Subparagraph 2.c.: Against the Applicant.

Subparagraph 2.d.: Against the Applicant.

Subparagraph 2.e.: Against the Applicant.

Subparagraph 2.f.: Against the Applicant.

Subparagraph 2.g.: For the Applicant.

Subparagraph 2.h.: Against the Applicant.

Paragraph 3: Against the Applicant.

Subparagraph 3.a.: Against the Applicant.

Subparagraph 3.b.: Against the Applicant.

Subparagraph 3.c.: Against the Applicant.

Subparagraph 3.d.: 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.

Wilford H. Ross

Administrative Judge

1. Applicant received a copy of Government Exhibit 12, the Memorandum from the Assistant Secretary of Defense for Command, Control, Communications and Intelligence dated August 16, 2000 (Money Memorandum). It states, "[Consistent] application of [Guideline C] requires that any clearance be denied or revoked unless the Applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United States Government."