

DATE: June 29, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-26510

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's foreign family ties have been mitigated and do not raise a security concern. Clearance is granted.

STATEMENT OF THE CASE

On August 18, 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 September 3, 2003, notarized on September 5, 2003, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on April 6, 2004. A notice of hearing was issued on April 27, 2004, scheduling the hearing for June 10, 2004. At the hearing the Government presented five exhibits. The Applicant presented three exhibits and testified on her own behalf. The record was left open to allow the Applicant an opportunity to submit additional evidence. The Applicant submitted one Post-Hearing Exhibit consisting of eight pages. The official transcript (Tr.) was received on June 25, 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 34 years of age. She holds a Bachelor's Degree in Computer Science. She is employed as a Software 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 Kuwait. Her family moved to Israel when she was eleven years old. She was married in 1987, at the age of eighteen in Israel, and then came with her husband to the United States. She obtained her college education in the United States. She became a naturalized citizen of the United States in 1991. She has three children who are United States citizens. The Applicant's husband became a naturalized United States citizen in 1984. All of her husband's family reside in the United States.

The Applicant's mother and father are citizens of and reside in Israel. Her mother is a housewife. Her father owned a furniture store, but is now retired. Most recently he has been ill and the Applicant has called Israel more than usual. (*See Applicant's Exhibit B*). The Applicant normally contacts her parents by telephone at least twice a month on average. The Applicant has traveled to Israel on five separate occasions in the last ten years, 1996, 1997, 1999, 2000, and 2002. These trips were for family weddings, the birth of her niece, and summer vacations. Her parents have come to the United States to visit her a number of times. Most of her extended family lives in the United States, including many cousins. The Applicant never discusses her work with any of her family members.

The Applicant has two brothers and one sister who are citizens of and reside in Israel. Her two brothers are in the computer engineering business and operate a computer store. (*See Applicant's Exhibit A*). Her sister is a college student studying business and finance. None of her family in Israel has ever worked for or been affiliated with the Israeli government. None of her family in Israel or in the United States have ever been involved in any pro-Palestinian or terrorist organizations.

The Applicant is active in her community. She has purchased a home in the United States worth approximately \$600,000.00. (Tr. p. 36). She owns two cars. She has a retirement plan and intends to stay in the United States the rest of her life. She has no assets of any kind in Israel or Kuwait.

Mitigation.

Several letters of recommendation from the Applicant's supervisor, manager and coworkers attest to the fact that the Applicant is a responsible person. She demonstrates a strong work ethic. She is a team player, considered very dependable, honest and trustworthy. She is well respected among her peers. (*See Applicant's Post Hearing Exhibit*).

Applicant's performance appraisal for 2003 indicates that she is very aggressive in learning new technical skills, willing to take on more responsibility in her assignments, focuses on company best practices in developing work products, has strong communications skills, and works well in a team environment. (*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 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;

Conditions that could mitigate security concerns:

1. A determination that immediate family member(s), spouse, father, mother, sons daughters, brothers, sisters), cohabitant, or associates(s) in questions 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) and the United States;
3. Contact and correspondence with foreign citizens are casual 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 her 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 demonstrates a foreign preference and has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. 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 influence has a direct and negative impact on her suitability for access to classified information.

This 34 year old Applicant came to the United States as a student and has lived in the United States for almost 15 years. She is a United States citizen. She has a large extended family in the United States. She obtained her advanced education, established her family, and made the United States her home. Although her mother, father, two brothers and sister are citizens of and reside in Israel, the rest of her family, including many cousins and all of her husband's family reside in the United States. The Applicant is married to a United States citizen and they have three children who are United States citizens. None of the Applicant's family members in Israel or in the United States have ever been affiliated with, employed for, or agents of, the Israeli Government. Therefore, mitigating condition 1 applies.

In addition, the Applicant's contact with her family in Israel is casual and insignificant. Her father has recently been sick and she called more frequently than usual. However, for the most part, her foreign contact can be considered infrequent. Mitigating condition 3 applies. The Applicant has significant assets in the United States and none in Israel. Except for her parents, two brothers and a sister in Israel the Applicant has, for the most part, cut all of her ties with Israel. The Applicant credibly testified that there is no situation that could ever occur that would force her to reveal classified information to any unauthorized individual no matter what their relationship to the Applicant. She has no foreign ties or contacts that could potentially influence her. Therefore, I find that there is no situation that could create the potential for foreign influence that could result in her compromise of classified information. Accordingly, the Applicant's request for a security clearance must be granted under Guideline B.

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.

Subparas. 1.a.: For the Applicant

1.b.: For the Applicant

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