KEYWORD: Foreign Influence

DIGEST: This 58-year-old technician was born in Cuba in 1946 and came to the U.S. in 1994, at age 48, and began working for a U.S. company. He became a U.S. citizen in 2000. He is married to a Cuban-born naturalized U.S. citizen and has two grown sons (in their 30s). One son has recently become a U.S. citizen and the other son has begun the citizenship process. In 2000, Applicant applied for the admission to the U.S. of his 33-year- old daughter and four grandchildren, all still living in Cuba. Applicant recently surrendered his Cuban passport and no longer travels to Cuba. Applicant has failed to establish that there is no undue risk caused b the continuing presence in Cuba of his close family members. Mitigation has not been shown. Clearance is denied.

CASENO: 03-19672.h1

DATE: 04/28/2005

DATE: April 28, 2005

In Re:

SSN: ----------

Applicant for Security Clearance

ISCR Case No. 03-19672

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 58-year-old technician was born in Cuba in 1946 and came to the U.S. in 1994, at age 48. He began working for a U.S. company. He became a U.S. citizen in 2000. He is married to a Cuban-born naturalized U.S. citizen and has two grown sons (in their 30s). One son has recently become a U.S. citizen, and the other son has begun the citizenship process. In 2000, Applicant applied for the admission to the U.S. of his 33-year- old daughter and four grandchildren still living in Cuba. Applicant recently surrendered his Cuban passport and no longer travels to Cuba. Applicant has failed to establish that there is no undue risk caused by the continuing presence in Cuba of his close family members. Mitigation has not been shown. Clearance is denied.

STATEMENT OF THE CASE

On June 15, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding required under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and

determine whether a clearance should be granted, denied or revoked.

On August 10, 2004 and July 12, 2004, Applicant submitted responses to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge on the written record, i.e, without a hearing. A File of Relevant Materials (FORM) was issued on August 31, 2004, in which Applicant was advised to file any response within 30 days of receipt of the FORM. Any such response was due by October 10, 2004, but no new submission was received by DOHA. The matter was assigned to me on November 10, 2004.

FINDINGS OF FACT

Applicant is a 58-year-old technician engineer employed by a defense contractor. He was born in Cuba in 1946 and moved to the U.S. in 1994. He became a naturalized U.S. citizen in 2000 and obtained a U.S. passport later that year.

The SOR contains three allegations under Guideline B (Foreign Influence), 1.a., 1.b., and 1.c. Applicant admits all three allegations, with extensive explanations. The admissions are incorporated herein as Findings of Fact.

After considering the totality of the evidence found in the FORM, I make the following additional FINDINGS OF FACT as to each SOR allegation:

Guideline B (Foreign Influence)

Applicant was born in Cuba in 1946, and served in the Cuban military, active and reserves, from 1976 to 1994. He came to the United States in 1994 and became a naturalized citizen and obtained a U.S. passport in 2000.

1.a. - Applicant's daughter and her immediate family are citizens of Cuba and reside in that country. Applicant has filed a petition with the U.S. Government to allow his daughter and her family to come to the U.S., but as of the date of his responses the SOR (July and August 2004), he had not received a reply. None of the family members in Cuba are affiliated in any way with the Cuban Government or Communist Party (Item 3).

1.b. - Applicant had two sons who were citizens of Cuba and who reside in the U.S. On March 25, 2004, one son became a naturalized U.S. citizen, and the other son began the process of becoming a U.S. citizen (*Id.*, and attachments).

1.c. - Applicant traveled to Cuba on approximately six occasions between November 1996 and August 2002. His travels were made legally, for humanitarian reasons (Item 5), but once he became aware that such travel might hinder his obtaining a security clearance, he stopped any travel to that country, as of August 2002 and he returned his Cuban passport in August 2003 (Item 5). He traveled to Cuba once a year to see his daughter and four grandchildren, but has

seen them since 2002.

POLICIES

Each adjudicative decision must include an assessment of nine generic factors relevant

in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding

the conduct, to include knowing participation; (3) the frequency and recency of the conduct; (4) the

individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6)

the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation

for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood

of continuation or recurrence (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons.

If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

CONCLUSIONS

Under Guideline B (Foreign Influence), a security risk may exist when an individual's immediate family [members] . . . are not citizens of the United States or 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 . . . are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

My decision is made on the evidence of record at the present time. The SOR is based primarily on information found in Applicant's Security Clearance Application (SCA) of November 8, 2002 (Item 4). I have carefully considered the SCA and Applicant's responses to the SOR. There is no sworn statement and no response to the FORM.

SOR 1.b. - Applicant's two sons are approximately 35 and 36 years old. The older son became a U.S. citizen in 2004 and the other is in the process of becoming one. The older son lives with his father. The younger son arrived in the U.S. in June 2001 and was "Paroled" on June 2, 2002, by which I take to mean he came from Cuba and was subsequently granted official status here. He lives in the southeastern part of the U.S. Based on these facts, I conclude there is minimal risk involved.

SOR 1.c. - Applicant's travels to Cuba were made for humanitarian reasons recognized by U.S. authorities, specifically a grandchild with serious medical problems. In December 2000, he filed a petition with U.S. authorities to gain entry to the U.S. for his daughter and grandchildren. Four years later, however, there is no evidence as to the present status of the petition, and the presumption is that they are still in Cuba.

It is SOR 1.a. that is particularly troublesome. Based on official U.S. Government documents, there is no doubt that Cuba is viewed a country with significant espionage activities in the U.S. There is a concern because of the presence in that country of Applicant's only daughter and grandchildren. Despite his not traveling to Cuba anymore, the record suggests he is still in contact with them and that the relationship is both warm and close (Item 3). Although Applicant conformed to DoD requirements by surrendering his passport, it also had the unfortunate result of bringing him to the attention of Cuban authorities. It is a fact of life in DOH Adjudications that doubts must be construed against the granting or retention of a clearance. It is also fundamental that the ultimate burden of proof as to eligibility is on the Applicant.

I find for Applicant as to both SOR 1.b and SOR 1.c. However, as to SOR 1.a., I am unable to conclude that no risk exists of his family member being approached by Cuban authorities. In addition, under the facts and circumstances of this case, Applicant has failed to make a convincing case that he would not feel torn between his loyalty to his daughter and grandchildren on the one hand and U.S. security interests on the other. In the year that must pass before he will be eligible to reapply for a security clearance, Applicant may want to seek a resolution of the matter concerning the admission of his daughter and grandchildren into the U.S.

Condition that could raise a security concern and may be disqualifying:

1. An immediate family member . . . is a citizen of, or resident or present in, a foreign country;

Condition that could mitigate security concerns:

1. None at the present time. The evidence does not permit a determination that the immediate family member(s) . . . in question would not constitute an unacceptable risk.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Guideline B (Foreign Influence) Against the Applicant

Subparagraph l.a. Against the Applicant

Subparagraph 1.b. For the Applicant.

Subparagraph 1.c. For 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 Applicant.

BARRY M. SAX

ADMINISTRATIVE JUDGE