

DATE: January 19, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-06151

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Braden M. Murphy, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is employed by a U.S. defense contractor and is also a Navy reservist. She married a citizen of Pakistan but did not report it to her employer until 18 months later. Although she separated from her husband in 2001, she has taken no steps to divorce him. Her husband has a mother, two brothers and a sister who are citizens of, and reside in, Pakistan. She has had no contact with her husband or his relatives for over two years. Applicant made a false statement to a Defense Security Service investigator on September 21, 2001, that her husband was only her fiancé. The INS concluded in 2003 that her marriage was fraudulent and was entered into for the purpose of circumventing U.S. immigration laws. Clearance is denied.

STATEMENT OF CASE

On July 7, 2004, the Defense Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to 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 Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted.

In a sworn written statement, dated July 27, 2004, Applicant responded to the allegations set forth in the SOR, and requested a hearing. The case was assigned to me on October 1, 2004. A Notice of Hearing was issued on October 6, 2004 and the hearing was held on November 10, 2004. The Government introduced nine exhibits at the hearing and all were accepted into evidence. The Applicant testified on her own behalf. The SOR Par. 2.b. was amended at the hearing to conform to the evidence presented. The transcript was received on November 19, 2004.

FINDINGS OF FACT

After a complete review of the evidence in the record and upon due consideration of the record the following additional findings of fact are made:

Applicant is 50 years old and has been employed by a U.S. defense contractor since February, 2000. She is also a Navy reservist with a college degree in special education.

On March 17, 2000, at age 46 she married a citizen of Pakistan who had worked for the Government of Pakistan before entering the U.S. This was her first marriage but she did not report it to her employer until approximately one year and a half later. Although she separated from her husband in 2001 because they could not agree of where to live, and it had become apparent to her that he had married her to obtain a green card and U.S. citizenship, she has taken no steps since the separation to divorce him. In January 2003 he was denied an immediate relative visa by the Immigration and Naturalization Service (INS).

Her husband has a mother, two brothers and a sister who are citizens of, and reside in, Pakistan. Applicant has had no contact with her husband or his relatives for over two years. She does not know where her husband is living or whether he is still in the United States.

Applicant made a false statement to a Defense Security Service investigator on September 21, 2001, saying that her husband was only her fiancé. The INS concluded in 2003 that her marriage was fraudulent and entered into for the purpose of circumventing U.S. immigration laws.

POLICIES

[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position that will give that person access to such information." *Id.* at 527.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "Any doubt as to

whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2. "[S]ecurity clearance determinations should

err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b)

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors and conditions above, I conclude the following with respect to all allegations set forth in the SOR.

The applicable Guidelines cited in the SOR concern the following Disqualifying Conditions (DC):

Foreign Influence-Guideline B:

A security risk may exist when an individual's immediate family, including co-habitants, and other persons to whom he or she may be bound by affection, influence, or obligation 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 or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure. (E2.A2.1.1.)

Conditions that could raise a security concern and may be disqualifying include:

An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident in a foreign country. (E2.A2.1.2.1) Possible mitigating conditions (MC) that might be applicable are a determination that the immediate family members would not constitute an unacceptable security risk (E2.A2.1.3.1) and that contact and correspondence with foreign citizens are casual and infrequent. (E2.A2.1.3.3)

Based on the evidence of record, including Applicant's admissions, the Government established reasons to deny her a security clearance because of foreign influence. Having established such reasons, the Applicant had the burden to establish security suitability through evidence which refutes, mitigates, or extenuates the disqualification and demonstrates that it is clearly consistent with the national interest to grant a security clearance. ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001). She is still married to a citizen of Pakistan who has four close relatives living there. Even though Applicant has had no contact with her husband or his relatives for two years she remains married to him and the fact that she has taken no positive steps to legally terminate the relationship leaves her vulnerable to threats and undue persuasion. Mitigating factors are not applicable.

Personal Conduct-Guideline E:

Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility. (E2.A5.1.1.)

Refusal to complete required security forms, releases, or provide full, frank and truthful answers to lawful questions of investigators, security officials or other official representatives in connection with a personnel security or trustworthiness determination. (E2.A5.1.1.2.)

Conditions that could raise a security concern and may be disqualifying also include:

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. (E2.A5.1.2.2.)

Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trust-worthiness determination. (E2.A5.1.2.3)

Personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail. (E2.A5.1.2.4.)

Conditions that could mitigate security concerns include:

The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or

duress. (E2.A5.1.3.5.)

While the fact that Applicant has had no contact with her husband or his relatives for two years might indicate that the mitigating condition was applicable, the fact that she is still married to him and has taken no steps to divorce him makes the condition inapplicable. Her failure to report the marriage to her employer promptly and to mislead the investigator also are factors considered.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information.

The "whole person" concept recognizes that we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that she made several serious errors in judgment and continues to do so, and that it is not clearly consistent with the national interest to grant clearance to Applicant.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline B: Against APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Paragraph 2 Guideline E: Against APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

DECISION

After full consideration of all the facts and documents 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. Clearance is denied.

Charles D. Ablard

Administrative Judge