

DATE: August 31, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-08201

CISION OF ADMINISTRATIVE JUDGE

MARTIN H. MOGUL

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 69 year-old United States born citizen. Applicant's wife has family members, who are citizens of and reside in Japan, but he has extremely limited contact with them, and none of them has ever had any connection with the government of Japan. Applicant has significant financial interests in Japan. However, Applicant's strong attachment to the United States, including his family and employment history, and his financial holdings in the United States, far outweigh his Japanese interests. The evidence establishes that Applicant is not vulnerable to foreign influence. By mitigating these foreign influence security concerns, Applicant has demonstrated it is clearly consistent with the national interest to grant or continue his security clearance. Clearance is granted.

STATEMENT OF THE CASE

On December 15, 2003, 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, 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 deny a security clearance for Applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or granted.

Applicant filed a notarized response, dated December 26, 2003, to the allegations set forth in the SOR, and requested a hearing before a DOHA Administrative Judge. On February 17, 2004, the case was assigned to this Administrative Judge to conduct a hearing. Pursuant to formal notice, dated April 6, 2004, a hearing was held on May 6, 2004.

At the hearing, the Government presented two exhibits, (Exhibits 1 and 2), admitted without objection, and no witnesses were presented. Applicant, acting pro se, presented one exhibit, (Exhibit A), admitted without objection into evidence, and offered his own testimony and that of one additional witness. The transcript was received on May 25, 2004.

FINDINGS OF FACT

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline B of the Directive because members of Applicant's family are not United States citizens and may be subject to duress, and has Applicant has significant financial interests in a country other than the United States. The SOR contains five allegations, 1.a., through 1.e., under Guideline B. Applicant admitted all of the SOR allegations 1.a. through 1.e. The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the admitted documents, and testimony of Applicant and the other witness, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 69 years old. He is employed by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector. Applicant previously worked for a defense contractor from 1965 until 1994, when he retired.

Applicant was born in the United States in 1935, and as such, he is a natural born United States citizen. In 1946, after World War II, his father moved his entire family back to Japan, to see the status of his family in Hiroshima. Applicant lived in Japan until in 1954, when he returned to the United States. He has lived here since that time, approximately fifty years. He has a Bachelors Degree in engineering, which he received from a United States university in 1960.

Applicant is married to a Japanese born woman, who became a naturalized United States citizen in 1966. They have one son, who is a natural born United States citizen. Applicant's parents

are both deceased, and he has a sister and brother, who reside in the United States and are United States citizens.

Applicant estimates that his net worth in the United States includes the following: 1) his home, which he owns outright, is worth between \$500,000 and \$1 million; 2) his retirement assets are worth \$1.4 million; 3) his 401K is worth \$1.1 million (Tr at 54).

The family of Applicant's wife, including: her mother, brother and three sisters are citizens of and reside in Japan. None of Applicant's wife's family has any connection with the government of Japan. Applicant's only contact with his wife's family occurs when he is in Japan (Tr at 38-43).

Applicant owns four rental properties in Japan, which he inherited from his father. He receives approximately \$50,000 each year, in rental revenue, from the properties. He estimated that the properties would be worth \$1.5 million, less a heavy tax, if he sold them (Tr at 44-45).

Applicant maintains two bank accounts in two banks in Japan, with balances of approximately \$50,000 and \$30,000. These funds are kept in Japan solely to help him manage his properties (Tr at 51).

Applicant has traveled to Japan at least two times a year since 1992. He goes primarily to attend to matters regarding the managing of his property, but he also has gone for memorial services for his parents (Tr at 48-49).

Finally, Applicant introduced the testimony of a coworker, who has known Applicant professionally and personally since 1991. This witness, who had a twenty year career as a United States Navy flight officer, and now works for a Defense Contractor, testified in an extremely positive and powerful manner, that Applicant is a very loyal American (Tr at 16-22).

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines that must be carefully considered in evaluating an individual's security eligibility and making the overall common sense determination required. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk.

Each adjudicative decision must also include an assessment of: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 (*See* Directive, Section E2.2.1. of Enclosure 2).

BURDEN OF PROOF

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance. Assessment of an applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of rehabilitation.

A person who seeks access to classified information enters into a fiduciary relationship with

the U.S. Government that is predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability, or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

CONCLUSIONS

Based on the evidence of record, the Government has established reason to deny Applicant a security clearance because of foreign influence. Applicant's wife's family members are citizens of and reside in Japan. The Japanese citizenship and residency of members of Applicant's wife's family create the potential for foreign influence that could result in the compromise of classified information because it makes Applicant potentially vulnerable to coercion, exploitation, or pressure. Also, Applicant has considerable financial interest in Japan by his ownership and management of properties in that country. The possession of these ties raises a security concern sufficient to require Applicant to present evidence in rebuttal, extenuation, or mitigation sufficient to meet his burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him. ISCR Case No. 99-0424, 2001 (App. Bd. Feb. 8, 2001). This he has done.

The evidence of family members, who are citizens of and reside in Japan. comes within Disqualifying Condition (DC) E2.A2.1.2.1. Based on the fact that Applicant has had extremely limited contact with them, and none of them has ever had any connection with the government of

Japan, I have determined that these family members in Japan do not constitute an unacceptable security risk, and Mitigating Condition (MC) E2.A2.1.3.1. applies.

Applicant does have a significant financial interest in Japan. The four rental properties that he owns, the money in his bank accounts in Japan, and his frequent trips to Japan to manage the properties, come under (DC) E2.A2.1.2.8, a substantial financial interest in a foreign country that could make an individual vulnerable to foreign influence. However, I have also considered the following: 1) Applicant was born in the United States, and while he did live for a time when he was young in Japan, he has lived uninterrupted for fifty years in the United States; 2) all of Applicant's significant family members, including his wife, his son and his brother and sister are United States citizens and live in the United States; 3) Applicant has a net worth of at least \$3 million in the United States; and 4) Applicant has had a

history of working for 30 years for the same defense contractor, until he retired in 1994. Based on the nature of the overall record and the totality of the evidence, I conclude that (MC) E2.A2.1.3.5. applies because the financial interests are not significant enough to cause Applicant to do anything which would be contrary to the interests of the United States.

After considering all of the evidence of record on these issues, I conclude that the mitigating evidence substantially outweighs the evidence supporting the SOR, and Applicant would not act in a way that would compromise the interests of the United States.

FORMAL FINDINGS

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Martin H. Mogul

Administrative Judge