

DATE: September 16, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-16718

ECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant's foreign family ties are close and continuing and have not been mitigated. Clearance is denied.

STATEMENT OF THE CASE

On April 12, 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 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 April 23, 2004, in which he elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on June 21, 2004, consisting of eight documents. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on June 28, 2004, and he submitted a reply dated July 21, 2004.

The case was assigned to the undersigned for resolution on July 29, 2004.

FINDINGS OF FACT

The following Findings of Fact are based on the Applicant's Answer to the SOR, the exhibits and his reply to the FORM. The Applicant is 30 years of age and holds a Masters Degree in Engineering. He is employed as an Electrical Engineer for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 2 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant was born and raised in Hong Kong. He and his family immigrated to the United States from Hong Kong in 1994, as his father wanted a better life for his family. His father also knew that Hong Kong was being returned to Communist China in 1997. Before moving to the United States, the Applicant's father worked as a general clerk for the Honk Kong government. His mother worked as a dishwasher at a Hong Kong hotel. His parents are now retired and they live with the Applicant in the United States. The Applicant provides for their financial support.

The Applicant's wife is a citizen of Taiwan. She has been a permanent legal resident of the United States since 2001, and recently applied for United States citizenship in April 2004. She lives with the Applicant and his parents in the United States.

The Applicant and his wife send between \$5,000.00 and \$10,000.00 a year to his wife's parents in Taiwan to pay for their home mortgage. The Applicant indicates that it is a tradition in Asian families to help their parents. The Applicant's parents-in-law were born and have lived in Taiwan their entire lives. The Applicant contacts them two or three times a year. His wife maintains regular contact with them approximately twice a week.

The Applicant has two sisters who are citizens of the People's Republic of China. They reside in Hong Kong and have done so for all of their lives. The Applicant contacts them about once a week by e-mail to keep in touch with his family.

The Applicant has two close friends who were born in Hong Kong, are citizens of the Republic of China, and who reside in Hong Kong. He contacts them about two to three times per year by telephone and approximately once a month by e-mail. One of them is an electrical engineer, the other is a physician.

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.

Conditions that could raise a security concern:

1. An immediate family member, or person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country;
3. Relatives, cohabitants, or associates who are connected with any foreign government;

Conditions that could mitigate security concerns:

None.

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 his 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 has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. Foreign influence can raise questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. 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 have a direct and negative impact on his suitability for access to classified information.

With respect to Guideline B, the evidence establishes that the Applicant may be vulnerable to foreign influence. The Applicant has a wife, two sisters, parents-in-law and friends who are citizens of and or reside in either Hong Kong or Taiwan. Although none of these individuals are directly associated with the Government of Hong Kong or Taiwan, the Applicant maintains regular contact with all of these individuals either directly or indirectly through his wife. The Applicant has significant ties of affection in Hong Kong, as his sisters and two close friends live there, and he maintains regular contact with them. The Applicant's wife is a citizen of Taiwan. She and the Applicant send a substantial amount of money to her parents in Taiwan on a monthly basis. She also maintains regular contact with them. Therefore the Applicant has close foreign ties or contacts that could potentially influence him. The Applicant has not severed his ties with Hong Kong or Taiwan. None of the mitigating conditions in the Directive apply. It is possible that a situation could occur that could create the potential for foreign influence that could result in his compromise of classified information. None of the mitigating factors in the Directive apply. Accordingly, the Applicant's request for a security clearance must be denied under Guideline B.

Considering all the evidence, the Applicant has not met the mitigating conditions of Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has not 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: Against the Applicant.

Subparas. 1.a.: Against the Applicant

1.b.: Against the Applicant

1.c.: Against the Applicant

1.d.: Against the Applicant

1.e.: Against the Applicant.

DECISION

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson

Administrative Judge