DATE: September 22, 2004

In Re:

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

Applicant for Security Clearance

ISCR Case No. 03-17400

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 have been mitigated. Clearance is granted.

STATEMENT OF THE CASE

On February 13, 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 February 20, 2004, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on May 14, 2004. A notice of hearing was issued on June 23, 2004, scheduling the hearing for July 27, 2004. At the hearing the Government presented seven exhibits. The Applicant presented eight exhibits, and he testified on his own behalf. The official transcript (Tr.) was received on August 17, 2004.

FINDINGS OF FACT

The following Findings of Fact are based on the Applicant's Answer to the SOR, the exhibits and his testimony. The Applicant is 55 years of age, married, and holds a Master's Degree in Business Administration. He is employed as an Industrial 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 in the People's Republic of China in 1949. In 1968, he immigrated from China to the United States. He obtained both his Bachelor's and Master's Degrees in the United States, and permanently made the United States his home. In 1980, he became a United States citizen. He has worked for the same United States defense contractor for the past twenty eight years. He has held a security clearance since 1991. He is married to a United States citizen and has two children who are native born United States citizens.

The Applicant has five brothers and two sisters. One of his brothers and one of his sisters are United States citizens. He has five siblings who are not United States citizens. Two of brothers are citizens of and reside in Canada. One is a factory worker, the other is a physician. One of his brothers is a citizen of Canada residing in Hong Kong, who is an engineer. One of his brothers is a citizen of Britain, working for the British Government in Hong Kong as a civil engineer. One of his sisters is a citizen of Canada who is currently living in the People's Republic of China. His other sister is a citizen of Canada currently living in Hong Kong. They are both housewives. The Applicant contacts any one of his siblings no more than two or three times a year. None of his family members are associated in any way with the Communist party nor have they ever served in the military. The one brother who works for the British Government has little knowledge of what the Applicant does and very limited contact with him.

The last time the Applicant traveled to Hong Kong was when his mother passed away in 1997. He has no intentions of ever returning. The Applicant has no assets of any kind in any foreign country. He owns a home and a few rental properties in the United States. (Tr. p. 46). He also has a 401K retirement fund with his employer.

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:

1. A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question 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) involved and the United States;

3. Contacts 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 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 is not vulnerable to foreign influence. The Applicant has been a loyal citizen of the United States for twenty four years. His immediate family, that includes his wife and two children, are also United States citizens. His siblings that are citizens of and/or reside in other foreign countries such as Canada, Hong Kong or the People's Republic of China are in no way in a position to influence him. He has very limited contact with them, and they know very little about what he does. He has essentially cut all of his foreign ties except his casual and infrequent contact with his siblings from time to time. None of his siblings are associated with the Communist party, or any other subversive organizations. The one brother that is employed with the British Government has very little contact with the Applicant. Therefore the Applicant has no close foreign ties or contacts that could potentially influence him. Mitigating factors 1 and 3 apply. It is improbable that a situation could occur that could create the potential for foreign influence that could result in his 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, he 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

1.d.: For the Applicant

1.e.: 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