

DATE: October 13, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-08068

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Jason R. Perry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's wife is a citizen of Sri Lanka and employed by an international organization. As a young man, he lived with his father, who held a high position in the Sri Lanka government. Applicant's uncle, a citizen of Sri Lanka, holds an appointed position in the government of Sri Lanka. Applicant has several friends who also hold high-level positions in the government of Sri Lanka. He is an unofficial point of contact for Sri Lankans who come to the U.S. for business and tourism. Applicant has traveled to Sri Lanka five times since 1995. He plans to travel to Sri Lanka in December 2005 to visit friends and family. Applicant's familial and social ties to citizens of Sri Lanka raise serious security concerns because they could be exploited by terrorist groups operating inside Sri Lanka, resulting in the compromise of classified information. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On March 4, 2005, under the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision—security concerns raised under Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing March 15, 2005, and elected to have a hearing before an administrative judge. On July 7, 2005, the case was assigned to me. I convened a hearing on August 31, 2005, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses, introduced two exhibits, and offered four documents for administrative notice. Applicant called no witnesses. He introduced nine exhibits and offered two popular press articles for administrative notice. The Government's exhibits (Ex.) were numbered 1 and 2, and its documents offered for administrative notice were numbered I through IV. Applicant's exhibits (Ex.) were identified as A through I, and his documents offered for administrative notice were designated A-I and A-II. All exhibits and documents were admitted into evidence without objection. DOHA received the transcript (Tr.) of the proceeding September 13, 2005.

FINDINGS OF FACT

The SOR contains eight allegations of disqualifying conduct alleged under Guideline B, Foreign Influence. In his answer to the SOR, Applicant admitted seven allegations and admitted in part and denied in part one allegation. At the close of the hearing, the parties agreed to two changes to the SOR to conform the allegations with facts elicited at the hearing. The first stipulated change substituted the word acquaintance for the word friend in SOR allegation 1.f. and further deleted a present tense description of employment and substituted in its place a past tense description of employment. The second stipulated change deleted the year 2004 from a list of years in SOR allegation 1.g. With these changes in place, Applicant admitted all allegations in the SOR. His admissions are incorporated as findings of fact.

Applicant is 47 years old and has been employed since 2000 as a senior member of the professional staff of a government contractor. His work involves software quality assurance and testing. (Ex. 1; Ex. G.) He became a naturalized U.S. citizen in 1995. (Ex. 1.) Applicant does not need a security clearance to carry out his present job, but if he were granted a security clearance, he would increase his opportunities for additional assignments within his company. (Tr. 32-33.)

Applicant was born in Sri Lanka. From 1978 to 1981, he lived with his father, a high-level official of the government of Sri Lanka, when his father was on assignment in the U.S. Applicant's father is deceased. (Ex. 1.) Applicant attended college in the U.S. (Ex. 1; Tr. 53.) Before taking his present job, Applicant worked as a language and culture instructor for the U.S. government. In that work, he provided translation services for officials in the U.S. and Sri Lanka governments at government-sponsored meetings. (Tr. 57.)

Applicant is married and he and his wife have two grown children, both of whom are in college in the U.S. (Tr. 40-41.) Applicant's wife has been living in the U.S. since 1978. She is a citizen of Sri Lanka and is employed by an international organization. She has elected not to become a U.S. citizen because, if she retains her Sri Lanka nationality, her employer will provide education benefits to their children and will pay travel costs for a home visit to Sri Lanka for her and her family every two years. (Tr. 39-40.)

Applicant traveled to Sri Lanka with his family in 1995, 1998, 1999, 2001 and 2003. When Applicant and his family traveled to Sri Lanka, they stayed in the home of his wife's aunt. Applicant intends to travel with his family to Sri Lanka in December 2005, and they will stay again with his wife's aunt. (Tr. 35-36.)

Applicant has numerous family members and friends in Sri Lanka. His uncle is a citizen and resident of Sri Lanka and holds an important appointed position in the Sri Lanka government. (Tr. 41-42.) The uncle's wife is a teacher and an employee of the Sri Lanka government. (Tr. 44.) Applicant last met with his uncle in September 2004. (Tr. 43.)

Applicant has a friend who is a citizen and resident of Sri Lanka who holds a high-level legal position in the Sri Lanka government. He visited the friend when he was in Sri Lanka in 2003. (Tr. 44- 45.) He has another friend, a citizen and resident of Sri Lanka, who is a high-level police official in the Sri Lanka government. Applicant and the official went to the same high school in Sri Lanka and Applicant met him when he came to the U.S. many years later on official business. When Applicant was in Sri Lanka in 2003, the official invited him and his family to his home for dinner (46-48.)

Another friend of the Applicant's, a citizen and resident of Sri Lanka, is a physician who holds a high appointment in a government hospital in Sri Lanka. Applicant last met this friend in 2003 when he was in Sri Lanka. He said he considered his friendship with the physician to be " a very valuable contact, because [in Sri Lanka] . . . even if you have so much money, you still won't get good care unless you know . . . personally some doctors." (Tr 50.)

Applicant has an acquaintance who is a citizen and resident of Sri Lanka who, until recently, held a high level position in the Sri Lanka military. (Tr. 51-52; Ex. A- II)

At his hearing, Applicant stated that his name is given out in certain circles as a person to contact for assistance in the U.S. He said he often receives calls from citizens of Sri Lanka who come to the U.S. for government-sponsored activities. (Tr. 58.)

At his hearing, Applicant explained that it is important to know people of influence when visiting third world countries.

(Tr. 48.) To support his observation, he recollected that when he and his family were in Sri Lanka on a visit several years ago, terrorists attacked and destroyed all the airplanes at the country's only international airport. The next day, Applicant and his family were scheduled to fly home to the U.S. The government decreed that only foreigners could leave the country. Applicant explained: "At that point, I had to use some influence to get my family out of town, out of harm's way. So knowing such people when we visit is a big plus." (Tr. 48.)

I take administrative notice of a Counselor Information Sheet on Sri Lanka, prepared by the Bureau of Counselor Affairs, U.S. Department of State, dated January 21, 2005, and current as of June 28, 2005, which states that terrorist activities in the city of Columbo and other areas of Sri Lanka are a serious threat. Moreover, the information sheet alerts Americans traveling in Sri Lanka to be aware of increasing crime and violent incidents and to be aware that they cannot safely travel to certain locations within the country.

The information sheet reports that since 1997, a group in Sri Lanka identified as the Liberation Tigers of Tamil Eelam (LTTE) has been on the Department of State's list of foreign terrorist organizations. The LTTE is identified as the group which attacked Columbo International Airport on July 24, 2001, destroyed commercial and military aircraft, and killed military and airport employees. Additionally, the LTTE has attempted or carried out many political assassinations and suicide bombings. While the LTTE has not specifically targeted U.S. citizens, it has planned and executed operations with the knowledge that Americans and other foreigners might be killed or injured.

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. The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

CONCLUSIONS

In the amended SOR, the Government alleged, under Guideline B of the Directive, that Applicant's wife is a citizen of Sri Lanka (¶ 1.a.); that Applicant's uncle is a citizen and resident of Sri Lanka who is employed in a high-level appointed position in the government of Sri Lanka (¶ 1.b.); that Applicant has a friend who is a citizen of Sri Lanka and

employed in a high-level legal position by the government of Sri Lanka (§1.c.); that Applicant has a friend who is a citizen of Sri Lanka and employed in a high-level police position by the government of Sri Lanka (§1.d.); that Applicant has a friend, who is a citizen of Sri Lanka, and employed by the government of Sri Lanka in a high-level medical position (§1.e.); that Applicant has an acquaintance who is a citizen of Sri Lanka and who was employed in a high-level military position by the government of Sri Lanka (§1.f.); that Applicant traveled to Sri Lanka in 1995, 1998, 1999, 2001, and 2003 (§1.g.); and that from at least June 1978 to June 1981, Applicant resided in the U.S. with his father, who was a high-level official of the government of Sri Lanka (§1.h.)

A Guideline B security concern may exist when an individual seeking clearance is bound by ties of affection, influence, or obligation to immediate family, close friends, or professional associates in a foreign country, or to persons in the United States whose first loyalties are to a foreign country. These situations could create the potential for foreign influence that could result in the compromise of classified information. ¶E2.A2.1.1.

A person who places a high value on family obligations or fidelity to relationships in another country may be vulnerable to duress by the intelligence service of the foreign country or by agents from that country engaged in industrial espionage, terrorism or other criminal activity. The more faithful an individual is to family ties and obligations, the more likely the chance that the ties might be exploited to the detriment of the United States.

Applicant's case requires the recognition that at least one international terrorist group is operating in Sri Lanka and is taking actions that could cause death or harm to U.S. citizens and interests. These actions threaten U.S. security interests. American citizens with immediate family members who are citizens or residents of Sri Lanka could be vulnerable to coercion, exploitation, or pressure.

Applicant admits all allegations in the SOR. His admissions raise security concerns under Guideline B of the Directive. Applicant's wife, with whom he lives and with whom he shares his home, is a citizen of Sri Lanka. His father, now deceased, was connected with the government of Sri Lanka. His uncle, a citizen of Sri Lanka, is an appointed official in the Sri Lanka government. Applicant has three associates who are connected with the government of Sri Lanka and one associate who was, until recently, connected with the government of Sri Lanka. These facts raise security concerns under §§ E2.A2.1.2.1., E2.A2.1.2.2., and E2.A2.1.2.3. of Guideline B. In his answer to the SOR and at his hearing, Applicant acknowledged five trips to Sri Lanka since 1995, and he stated he intends in the future to make a trip to Sri Lanka. Under § E2.A2.1.2.6., these actions could make Applicant vulnerable to coercion, exploitation, or pressure by individuals or groups in Sri Lanka hostile to the U.S. and its policies.

An applicant may mitigate foreign influence security concerns by demonstrating that foreign associates are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force an applicant to choose between loyalty to the foreign associates and loyalty to the U.S. ¶ E2.A2.1.3.1. While the evidence does not establish that Applicant's wife is an agent of a foreign power, she is a citizen of Sri Lanka and may be subject to duress because of her citizenship and her relationship with the Applicant. Additionally, she shares Applicant's living quarters while the potential for adverse foreign influence or duress exists. Accordingly, Applicant's wife could be exploited by a foreign power in a way that could force him to choose between loyalty to his wife and loyalty to the United States. Thus, mitigating condition ¶ E2.A2.1.3.1. is inapplicable to the citizenship and relationship status of Applicant's wife.

Applicant's late father held a high position in the government of Sri Lanka. His uncle is at present a high government official in Sri Lanka. Three of Applicant's associates hold positions in the government of Sri Lanka. The fourth associate, until recently, held a high position in the military services of Sri Lanka.

Applicant's father is deceased and no longer connected with the government of Sri Lanka. He is no longer in a position to be personally exploited by a foreign power in a way that could force Applicant to choose between loyalty to his father and the United States. Accordingly, ¶ E2.A2.1.3.1. applies to the alleged security concerns relating to Applicant's late father.

The same cannot be said for security concerns relating to the citizenship and employment of Applicant's uncle and three of Applicant's associates, all of whom are citizens of Sri Lanka and currently employed by the government of Sri Lanka. While Applicant's fourth associate no longer carries out a high-level military assignment, he remains in a position to be exploited in a way that could force Applicant to choose between loyalty to his associate and loyalty to the U.S.

Moreover, Applicant's uncle and four associates are citizens of a unstable country where groups with interests antithetical to the United States are not constrained from acting against U.S. interests. Applicant offered no evidence to rebut the Government's assertion that his uncle and associates in Sri Lanka could be exploited by these groups in a way that could force him to choose between loyalty to them and the security interests of the United States. (*See* ISCR Case No. 03-15485, at 4-6 (App. Bd. June 2, 2005) Accordingly, mitigating condition ¶ E2.A2.1.3.1. of Guideline B does not apply to the allegations specifying Applicant's relationships with his uncle and four associates.

Applicant's personal travel to Sri Lanka with his immediate family in 1995, 1998, 1999, 2001, and 2003, raises security concerns because it evinces conduct that may make him vulnerable to coercion, exploitation, or pressure by a foreign government. ¶ E2.A2.1.2.6. An applicant may mitigate foreign influence security concerns if he shows his contacts and correspondence with foreign citizens are the result of United States official government business or are casual and infrequent. ¶¶ E2.A2.1.3.2. and E2.A2.1.3.3. Applicant's contacts with these citizens of Sri Lanka are not casual but derive from affection, influence, and obligation and are not the result of official government business. While there is no record evidence to suggest Applicant's uncle and four associates in Sri Lanka are hostile to the U.S., they are agents of the government they serve and each could be exploited by a foreign power in a way that could force Applicant to choose between loyalty to them and to the U.S. Accordingly, the mitigating conditions at ¶¶ E2.A2.1.3.2. and E2.A2.1.3.2. of Guideline B are inapplicable.

Nothing in Applicant's answers to the SOR suggested he was not a loyal American citizen and a credit to his adopted country. However, he was unable to put forward evidence that could mitigate the security concerns alleged in subparagraphs 1.a. through 1.g. of the SOR and demonstrate he would not be vulnerable to foreign influence that could result in the compromise of classified information. Accordingly, allegations in subparagraphs 1.a. through 1.g. under Guideline B of the SOR are concluded against Applicant. Subparagraph 1.h. is decided for Applicant for the reasons discussed herein.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

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

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: For Applicant

DECISION

In light of all of 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. Clearance is denied.

Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.