

DATE: April 26, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 04-11783

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Candance Le'i, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's foreign influence that includes his brother in Afghanistan does not pose a security risk. However, his intentional falsifications on his security clearance application concerning his arrest and financial history has not been mitigated. Clearance is denied.

STATEMENT OF THE CASE

On September 28, 2005, 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 October 7, 2005, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on November 25, 2005. A notice of hearing was issued on February 7, 2006, and the hearing was scheduled for February 24, 2006. At the hearing the Government presented nine exhibits. The Applicant presented no exhibits but testified on his own behalf. The official transcript (Tr.) was received on March 7, 2006.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the exhibits and the testimony. The Applicant is 52 years of age, is separated from his wife, and holds a degree from a law college in Afghanistan. He is employed as an interpreter or linguist for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (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 Kabul, Afghanistan. He grew up there, attended a law college, and became a high school language teacher for a school ran by the Afghanistan Government. His wife, also born in Afghanistan, worked for an American company in Afghanistan. They lived in Afghanistan until 1985, when they moved to Pakistan because a Russian Communist regime had invaded their country (Afghanistan). In December 1988, they moved from Pakistan to the United States. The Applicant became a naturalized United States citizen in April 2000.

In April 2003, the Applicant became employed with a defense contractor as an interpreter to assist the United States Army Reserves. He stated at that time that he considered Afghanistan to be his country. (Tr. p. 38). His wife urged him not to take the job because she did not want him to return to Afghanistan. (Tr. p. 37). The Applicant told her that, "I am going to work in Afghanistan for both countries-- the United States and my country too. Both my countries. She said no. You should be stay here. That's why we separated." (Tr. pp. 37-38). Despite this, the Applicant took the job and returned to Afghanistan to live from April 2003 until August 2005. While in Afghanistan the Applicant tried to contact his eldest brother but was unable to find him. (Tr. p. 47).

The Applicant's parents are now deceased, but were at one time citizens of Afghanistan. The Applicant has four siblings, only one brother is still a citizen of and resides in Afghanistan.

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because he engaged in conduct involving questionable judgment, 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 Applicant completed a security clearance application dated March 25, 2003. (*See* Government Exhibit 1). The information on this electronic security clearance application was taken from a security clearance application he filled out by hand. (*See* Government Exhibit 9). Question 6 of the application asked him to list his previous employers. The Applicant listed that he was self-employed at the Salinas Flea Market from about January 1994 to March 19, 2003. This was a false answer. He failed to list that he was employed in 2001/2002 with Film Production Company for production of a movie in Russia. In addition to the Applicant's employment contract with the Film Company, the Applicant admitted that he was employed for the Film Company for production of a movie in Russia, that the movie was never completed and no money was ever made. (*See* Government Exhibit 4).

Question 12 of the same application asked the Applicant if he has any foreign property, business connections, or financial interests. The Applicant answered, "No". (*See* Government Exhibits 1 and 9). This was a false answer. The Applicant failed to list his business and financial interests in the production of a movie in Russia with a Film Production Company. The Applicant contends that since no money was ever made and the film was never completed he did not list this as a foreign interest of any sort.

Question 33 of the same application asked the Applicant if in the last seven years he had filed bankruptcy. The Applicant failed to answer this question and left it blank. (*See* Government Exhibit 9). The electronic version of this security clearance application automatically defaulted to "No" in response to this question. (*See* Government Exhibit 1). The Applicant failed to list the fact that he did file bankruptcy in August 1998 and his debts were discharged in September 1998. (*See* Government Exhibit 3). The Applicant gives no explanation for this.

I find that the Applicant was not truthful or candid in answering the questions on the security clearance concerning his previous employment or his 1998 bankruptcy filing. There is no other excuse for these inaccuracies than to attribute them to the Applicant's carelessness or his deliberate attempt to conceal this information from the Government. In either circumstance, he has not been forthcoming with the information and is ineligible for access to classified information.

Several letters of recommendation submitted on behalf of the Applicant indicate that although they have only known him for a short time, he has been reliable and dependable on the job. He is also capable, flexible and skillful at interpreting in any given situation. His language skills in Pashtu, Dari and Urdu make him a valuable resource. He is recommended for

a position of trust. (See attachments to Applicant's Answer to SOR).

A certificate of appreciation for exceptional performance was awarded the Applicant on September 21, 2003. (See attachments to Applicant's Answer to SOR).

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.

Condition 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;

Condition 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 the loyalty of the person(s) involved and the United States.

Guideline E (Personal Conduct)

Condition that could raise a security concern:

2. 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 statute, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

Condition 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) and Guideline E (Personal Conduct) 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 demonstrates that he has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The mere possession of a foreign passport raises legitimate 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 contacts have a direct and negative impact on his suitability for access to classified information.

The evidence establishes that the Applicant has one brother who may or may not be alive and living in Afghanistan. His parents are now deceased and his other siblings no longer live in Afghanistan. None of his foreign siblings and their families have any connection with any foreign Government, or are in a position to be exploited by that Government in a way that could force the Applicant to choose between loyalty to them and loyalty to the United States. Although he is

close to his foreign relatives, his contacts with them is not of a nature to influence his security worthiness. Mitigating Condition (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 the loyalty of the person(s) involved and the United States* applies. Based on the foregoing, this does not raise a security concern and Guideline B (Foreign Influence) is found for the Applicant.

As previously discussed, I find that the Applicant intentionally falsified his security clearance application concerning his previous employment and his 1998 bankruptcy. The Applicant was not honest with the Government when he answered these questions on his security clearance application. The Government relies on the answers on the application to help determine ones trustworthiness and reliability. Under the particular facts of this case, I do not find that the Applicant was forthcoming. Accordingly, I find against the Applicant under Guideline E (Personal Conduct).

Considering all the evidence, the Applicant has not mitigated the conditions of Guideline E of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Guidelines E. As previously noted, Guideline B is found for the Applicant.

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

Paragraph 2: Against the Applicant.

Subparas. 2.a.: Against the Applicant 2.b.: Against the Applicant 2.c.: 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