

DATE: June 16, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 04-12360

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR GOVERNMENT

Jeff A. Nagel, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant has three siblings who are citizens and residents of Colombia and one who is a citizen and resident of Venezuela. They are not agents of those governments, or in a position to be exploited by those governments. The Applicant has disposed of all of his foreign financial interests. He is knowledgeable about his security responsibilities, and shows that he can fulfill them. Sufficient mitigation is shown. Clearance is granted.

STATEMENT OF THE CASE

On July 27, 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 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 September 2, 2005, and requested a hearing. The case was received by the undersigned on September 28, 2005, and a Notice of Hearing was issued on October 26, 2005.

A hearing was held on November 18, 2005, at which the Government presented four documentary exhibits. Testimony was taken from the Applicant, who also submitted nine exhibits. The transcript was received on December 1, 2005.

FINDINGS OF FACT

The Applicant is 44, married and has a Master's degree in Electrical Engineering. He is employed by a defense contractor as an Engineer, and he seeks to retain a Top Secret-level DoD security clearance previously granted in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a continued security clearance, based upon the allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR. They are based on the Applicant's Answer to the SOR, the exhibits and the live testimony.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant may have foreign connections which potentially make him vulnerable to coercion, exploitation or pressure.

The Applicant was born in 1961. He emigrated from Colombia with most of his family in 1980. Once in the United States he continued his studies. The Applicant became a naturalized American citizen in June 1984. His wife is a native born American citizen. They were married in 1987, and have two American born children. (Government Exhibit 1, Transcript at 37.)

The Applicant and his wife have about \$1,300,000 in assets in the United States. He owns three properties in the United States, as well as other assets. (Applicant's Exhibit G.)

The Applicant has owned several pieces of property in Colombia. A piece of real property was sold for \$20,000 in August 2004, before the SOR was issued. (Transcript at 22-23, Applicant's Exhibit B.) He sold a condominium in Colombia for \$20,000 in October 2005. (Transcript at 23-24, Applicant's Exhibit C.) The Applicant owned a second condominium, worth \$20,000. He transferred that condominium to his family in Colombia. (Transcript at 24-25, Applicant's Exhibit D.) His Colombian holdings amounted to about 4.6% of his U.S. holdings. He now has no investments of any kind in Colombia. (Applicant's Exhibits E and F.)

The Applicant had loaned one of his sisters, who still lives in Colombia, \$10,000. The Applicant has forgiven this debt of the sister's. (Transcript at 25, 31-32.)

The Applicant has traveled four times to Columbia between 1997 and 2003. (Government Exhibit 1 at 16.) Concerning his travel, the Applicant testified:

Your Honor, I have traveled to Colombia several times. Every time I have traveled, I had contacted the State Department for Travel Warnings and procedures that I must follow in case of emergencies. I also have contacted the Security at my work and advise them of my foreign travel. And when I come back, I always contact the Security for a briefing. So, I have kept all these regulations. I have been here in the United States for over 25 years, and I have been overseas about seven times. In an average, I have been there once every four years. That is 25 years by seven. So, about once every four years, which is not that often. (Transcript at 22.)

The Applicant's wife has no relatives living outside the United States. The Applicant comes from a large family. The Applicant, his parents, and six siblings moved to the United States in 1980. All of them are American citizens. (Government Exhibit 1 at question 9.) His brother works at the same company as the Applicant, and also has a security clearance. (Transcript at 34.)

The Applicant has three sisters who continue to live in Colombia, and one who lives in the Venezuela. The three sisters in Colombia are educators, the one in Venezuela is an apartment manager. He normally calls these sisters once or twice a year on holidays. There were more calls recently in connection with the sale of his property in Colombia. (Transcript at 27-31, 39.) He has not provided any monetary assistance to any of his sisters other than the \$10,000 loan which he has forgiven. (Transcript at 31-32.) None of his sisters are agents of any government. (Transcript at 30.) The Applicant's family filed the paperwork in 2001 to enable these four sisters to emigrate to the United States. (Applicant's Exhibit A.) At the time of the hearing, the Appellant believed that the immigration authorities would begin working on the applications in December 2005. (Transcript at 21, 32.)

The Applicant was asked what he would do if he was approached by a foreign intelligence service. He stated, "Well, the first thing I would do is to contact the proper authorities. In this case, the State Department, and let them handle everything. One thing I will not do is to compromise my principles to sell secrets or, you know, anything like that." (Transcript at 35.)

Mitigation.

The Applicant has been part of the defense industry for over 15 years, and is very proud of the work he does. (Transcript at 18-20.) His work is very well thought of by his supervisors, as shown by his evaluations over the past several years. (Applicant's Exhibit H at 2-11.) His most recent evaluation showed that the Applicant "Far Exceeds Expectations" in all areas. (Applicant's Exhibit H at 6-8.) The Applicant was selected as his functional area's Employee of the Month for November 2005. (Applicant's Exhibit I.)

A former manager who has known the Applicant since 1990 submitted a letter on the Applicant's behalf. He states that, "[The Applicant] is a trustworthy individual who will not sacrifice his moral principles for any unsavory activity." (Applicant's Exhibit H at 1.)

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. 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 will be set forth under CONCLUSIONS, below.

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 factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- 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 guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may have foreign connections that could lead to the exercise of poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent,

willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a 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."

CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant has foreign connections which could cause a security concern (Guideline B).

The Applicant, on the other hand, has successfully mitigated the Government's case. The Applicant's parents and the majority of his siblings live in the United States and are American citizens. The evidence shows that the Applicant's relationship with his sisters in Colombia and Venezuela is dutiful, but not terribly close. His travels to Colombia have not been excessive, and he has fully briefed his security office concerning them. Finally, none of his family in Colombia or Venezuela is an agent of those governments or, in my opinion, in a position to be exploited by the those governments. I have considered the information provided by the Government in Government Exhibits 2, 3 and 4. The Colombian government is making strides in the area of security. The United States is a major trading and defense partner of Colombia, and there is little chance that the Colombian government would damage that relationship by pressuring the family of an American citizen. The possibility that the Applicant can be coerced by his family is virtually nil.

The Applicant had several small financial investments in Colombia, the value of which was \$30,000. This amount pales next to his assets in the United States of approximately \$1,300,000. In order to assuage the Government's concerns, the Applicant went ahead and disposed of all of his property in Colombia and forgave a small personal loan that was given to one of his sisters. He has completely eliminated whatever concerns existed from his prior financial interests in Colombia.

Disqualifying Condition E2.A2.1.2.1. (*An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country*) is the only one which applies on its face. Under the particular facts of this case, the following Mitigating Conditions apply: E2.A2.1.3.1. (*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*), and E2.A2.1.3.5. (*Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities*).

"[A] Judge is not limited to Adjudicative Guidelines mitigating conditions when deciding whether an applicant has demonstrated extenuation or mitigation."⁽¹⁾ The application of the Directive's General Factors to the Applicant's foreign connections also justifies granting the Applicant a security clearance. The Applicant is eligible for clearance under relevant General Factor h. The totality of this Applicant's conduct and circumstances, as set forth at length above, including the virtually non-existent potential for exploitation, still warrants a favorable finding under the whole person standard.

The record shows that the Applicant has been a patriotic American citizen for many years, he has substantial financial assets in the United States, as are almost all of his immediate family (especially his wife and children). The Applicant has a favorable character reference, and he is alert to the security concerns presented by his particular circumstances and

the responsibilities incumbent upon him. The Applicant testified about the importance of his family in the United States, and his pride in being an American citizen and a member of the defense industry. Using the whole person standard, the Applicant has mitigated the security significance of his foreign connections and is eligible for a security clearance.

On balance, it is concluded that the Applicant has successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

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.

Subparagraphs 1.a. through 1.d.: For the 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 the Applicant.

Wilford H. Ross

Administrative Judge

1. ISCR Case No. 03-17620 at 4 (App. Bd. Apr. 17, 2006).