

DATE: November 21, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 06-07323

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant mitigated security concerns raised by members of her family who are residents and citizens of Mexico, and by a federal tax lien. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. In accordance with Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan 2, 1992), as amended, DOHA issued a Statement of Reasons (SOR) on 18 July 2006 detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) and Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing on 4 August 2006 and elected to have a hearing before an administrative judge. The case was assigned to me on 23 August 2006. On 12 September 2006, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on 25 September 2006.

Department Counsel mailed to Applicant the documents he intended to introduce at the hearing. When he spoke to her on the morning of the hearing she told him she had not received them. He provided her another set of the documents. At the hearing, Applicant stated that she was ready to proceed.

On 17 November 2006, after I completed the decision in this case but before it was issued, Applicant submitted a certificate of release of federal lien. Although the record was closed on 12 September, I decided to admit the document as Ex. B.

FINDINGS OF FACT

Applicant is a 34-year-old independent truck driver, who works with her husband as a team, hauling Department of

Defense cargo for a defense contractor. She was born in Mexico of Mexican parents. She married a native-born U.S. citizen in 1991. She became a naturalized U.S. citizen in March 2001. She worked for a U.S. police department on the Mexican border and the Arizona Department of Economic Security before becoming a truck driver.

Applicant's parents, two sisters, and one brother are Mexican citizens who are legal residents of the U.S. They live in a border town. Applicant has four other brothers who are Mexican citizens residing directly across the border from their parents. Three of them are construction workers and one is retired. One of those brothers was deported from the U.S. after he violated his probation and served jail time. None of them are associated with the Mexican government.

From 2002 through December 2005, Applicant traveled to Mexico monthly to receive dental treatment (braces). She is not close to her brothers in Mexico and did not usually visit with them when she went to receive her dental treatment. Now she visits Mexico only once every three months.

Applicant's husband served in the U.S. Navy from 1989 to 1992, but was discharged before the expiration of his term of service for his involvement with contraband substances. He is also applying for a security clearance. He has an 18-year-old son who is a dual U.S.-Mexican citizen, who resides most of the year in Mexico. The son has just graduated from high school and intends to enroll in higher education in Mexico. He normally spends the summer and the Christmas holidays in the U.S. When in the U.S., he stays with Applicant and her husband unless they are on the road; then he stays with Applicant's mother-in-law.

In April 1997, a federal tax lien, in the amount of \$26,865, was filed against Applicant and her husband for delinquent taxes for tax years 2002 and 2003. When Applicant and her husband started their trucking business, they didn't realize they were required to file quarterly returns. She admits she is responsible for the delinquent tax debt that resulted in the lien.

In 2003, Applicant and her husband contacted a certified public accounting firm about the tax lien. In July 2004, the firm's Tax Problem Specialist filed an offer in compromise of \$3,500 on the \$26,865 debt. The offer was rejected by the IRS in August 2005. In September 2005, they appealed the rejection and offered a compromise of \$7,000. The Tax Problem Specialist filed a Form 911, Application for Taxpayer Assistance Order on 30 August 2006, asking the current status of the offer. Ex. A. The IRS released the lien on 1 November 2006.

Applicant and her husband report a gross income of more than \$200,000. After taxes, deductions, and payments on their truck, they claim take home pay of approximately \$24,000. They have no other delinquent debts and appear to be able to cover all of their monthly living expenses. They have approximately \$2,200 in savings and \$5,000 in their checking account.

Mexico is a federal republic. "The government generally respected and promoted human rights at the national level; however, violations persisted at the state and local level." Ex. 4 at 1. Narcotics trafficking-related violence is a problem in the northern border region. *Id.* Mexico is not known to target U.S. intelligence resources.

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 authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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.

Enclosure 2 of the Directive sets forth personnel 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 the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

Guideline F-Financial Considerations

In the SOR, DOHA alleged Applicant had a federal lien placed against her by the IRS in the amount of \$26,865 for delinquent taxes for tax years 2002 and 2003. SOR ¶ 1.a. In her Answer, Applicant admitted the allegation.

An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1. It is potentially disqualifying for an Applicant to have a history of not meeting her financial obligations (DC E2.A6.1.2.1) or to be unable or unwilling to satisfy her debts (DC E2.A6.1.2.3). Applicant failed to timely satisfy 2002 and 2003 federal taxes she admits she owes. Both disqualifying conditions apply.

An Applicant may mitigate financial considerations security concerns by establishing that the behavior was not recent (MC E2.A6.1.3.1); it was an isolated incident (MC E2.A6.1.3.2); the financial situation was largely beyond the applicant's control (MC E2.A6.1.3.3); the person has received counseling and there are clear indications the problem is being resolved or is under control (MC E2.A6.1.3.4); or the applicant has made a good-faith effort to repay overdue creditors or otherwise resolve her debts (MC E2.A6.1.3.6). Applicant incurred tax delinquencies in two tax years, some three and four years ago. It is not an isolated incident, and a delinquent debt that was paid after the hearing is recent.

Applicant's failure to pay her taxes was not a condition that was largely beyond her control. She and her husband entered a business without properly researching the applicable tax law. Furthermore, Applicant's failure to file quarterly tax returns would not have increased the amount of the tax owed at the end of the year, although it probably did cause her to incur penalties and interest. Applicant received some counseling about the proper filing of taxes, but there is no clear indications the problem is being resolved or is under control. Applicant and her husband made two offers in compromise in an effort to resolve the debt. Although it is not clear if the IRS accepted the second offer, it did release the lien. Under the circumstances, I conclude Applicant made a good-faith effort to resolve her debts, the lien is resolved, and it no longer represents a security risk.

Guideline B-Foreign Influence

In the SOR, DOHA alleged Applicant's four brothers are citizens and residents of Mexico, one of whom was deported from the U.S. (¶ 2.a); her two sisters and a brother (¶ 2.b) and mother and father (¶ 2.c) are citizens of Mexico residing in the U.S.; her stepchild is a citizen and resident of Mexico (¶ 2.d); and Applicant has traveled to Mexico at least once a month since 2002 (¶ 2.e). In her Answer, Applicant admitted each of the allegations

A security risk may exist when an applicant's immediate family, or other persons to whom he may be bound by affection, influence, or obligation, are not citizens of the U.S. or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Directive ¶ E2.A2.1.1. It is potentially disqualifying for an applicant to have immediate family members who are citizens or residents of, or are present in, a foreign country (DC E2.A2.1.2.1) or to share living quarters with persons if the potential for adverse foreign influence or duress exists (DC E2.A2.1.2.2).

Applicant's parents, two sisters, and one brother are Mexican citizens who legally reside in the U.S.; her other four brothers are Mexican citizens who reside in Mexico; and her step-son, although a dual citizen, resides most of the year in Mexico, but also spends summers and the Christmas vacation living with Applicant and her husband. Both potentially disqualifying conditions apply.

Security concerns raised by an applicant's foreign associates may be mitigated when it is determined they 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 involved and loyalty to the U.S. (MC E2.A2.1.3.1); the contacts with foreign citizens are the result of official U.S. Government business (MC E2.A2.1.3.2); contact and correspondence with the

foreign citizens are casual and infrequent (MC E2.A2.1.3.1); the applicant promptly reported to proper authorities all contacts, requests, or threats from persons or organizations from a foreign country, as required (MC E2.A2.1.3.4); and the applicant's foreign financial interests are minimal and not sufficient to affect the individuals' security responsibilities (MC E2.A2.1.3.5).

In weighing the evidence, an administrative judge must evaluate an applicant's security eligibility in terms of the totality of his conduct and circumstances under the whole person concept. A piecemeal analysis is inconsistent with the whole person analysis. ISCR Case No. 02-09907, 2004 DOHA LEXIS 642 (App. Bd. Mar. 17, 2004); *but see* ISCR Case No. 02-31154 (App. Bd. Sep. 22, 2005) (Appeal Board evaluated facts individually, and concluded the administrative judge erred because one of several facts the judge's cited was not determinative).

The evidence of record supports a conclusion that Applicant's parents and siblings who are citizens or residents of Mexico are not agents of a foreign power. *See* 50 U.S.C. §§ 438, 1801(b). Neither are they employed by the Mexican government.

In assessing whether an associate is in a position to be exploited by a foreign power, it is helpful to consider several factors. Even friendly nations can have profound disagreements with the U.S. over matters they view as important to their vital interests or national security. We know friendly nations have engaged in espionage against the U.S., especially in the economic, scientific, and technical fields. *See* ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002). Nevertheless, the nature of a nation's government, its relationship with the U.S., and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, or the country is known to conduct intelligence operations against the U.S. *See* ISCR Case No. 02-24254, 2004 DOHA LEXIS 703 at *17 (App. Bd. Jun. 29, 2004) (distinguishing ISCR Case No. 98-0419 (App. Bd. Apr. 30, 1999) and suggesting it was appropriate for the administrative judge to consider that the foreign country involved had a friendly relationship with the United States, is not an authoritarian regime, and is not on the U.S. list of countries sponsoring terrorism); *but see* ISCR Case No. 02-31154 at 6 (App. Bd. Sep. 22, 2005) (claiming "nothing in Guideline B indicates or suggests that it is limited to countries that are hostile to the U.S.").

Whether Applicant is in a vulnerable position concerning her foreign associates "hinges not on what choice Applicant might make if [she] is forced to choose between [her] loyalty to [her] family and the United States, but rather hinges on the concept that applicant should not be placed in a position where [she] is forced to make such a choice." ISCR Case No. 03-15205 at 3-4 (App. Bd. Jan. 21, 2005).

Applicant established that her foreign associates are neither agents of a foreign power nor do they place her in a position to be exploited by a foreign power in a way that could force her to choose between loyalty to her family members in Mexico and loyalty to the U.S. Under all the circumstances, Applicant's foreign associates do not represent a threat to national security.

Evidence an applicant traveled to a foreign country in the past does not establish any potentially disqualifying condition. But it is evidence of an applicant's ties to that country and any friends or relatives living there. I also conclude Applicant reported her foreign travels and contacts with foreign citizens, as required. MC E2.A2.1.3.4 applies. Applicant and his wife have no financial interests in Mexico. MC E2.A2.1.3.5 applies.

Whole Person Analysis

"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. . . . The adjudicative process is the careful weighing of a number of variables known as the whole person concept," including (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. Directive ¶ E2.2.1.

Applicant mitigated the security concerns raised by her family members in Mexico. None of these foreign associates are agents of a foreign power and Mexico is not known to conduct espionage against the U.S.

Applicant mitigated the financial security concerns raised by her tax delinquencies. It appears the tax lien was Applicant's only financial delinquency and that has been resolved.

FORMAL FINDINGS

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

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph 1.a: For Applicant

Paragraph 2. Guideline B: FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For Applicant

Subparagraph 2.c: For Applicant

Subparagraph 2.d: For Applicant

Subparagraph 2.e: For Applicant

DECISION

In light of all of the circumstances in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

James A. Young

Administrative Judge