



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
-----)	ISCR Case No. 07-11593
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Candace L. Le'i, Esquire, Department Counsel
For Applicant: *Pro Se*

September 23, 2008

Decision

ABLARD, Charles D., Administrative Judge:

Applicant mitigated security concerns regarding Guideline C (Foreign Preference) and Guideline B (Foreign Influence). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted his Security Clearance Application (e-QIP), on January 25, 2007. On March 28, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns for Applicant under Guidelines C and B. The action was taken under Executive Order 10865, Safeguarding Classified Information within Industry (February 20, 1960), as amended; Department of Defense Directive 5220.6, Defense Industrial Personnel Security Clearance Review Program (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on April 3, 2008 and requested a hearing before an administrative judge. In his answer he denied the one allegation under Guideline C (SOR ¶ 1.a.), and denied the seven allegations in the SOR under Guideline B (SOR ¶¶ 2. a.-g.). Department Counsel was prepared to proceed on May 12, 2008. I received the case assignment on June 10, 2008. DOHA issued a notice of hearing on June 20, 2008, for a hearing on July 25, 2008. I convened the hearing as scheduled.

At the hearing, the government offered four exhibits (Exhs 1-4) that were admitted in evidence without objection. Applicant submitted four exhibits (Exhs. A-D) which were admitted without objection. He testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on June 24, 2008. The record was left open for ten days and one additional document was submitted by Applicant and admitted into evidence without objection (Exh. E).

Findings of Fact

Applicant is a 48-year-old civil engineer who works for an engineering services company that provides services for the U.S. government. He was born in the Philippines and emigrated to the U.S. to complete his education. He became a citizen in 2006. He received his bachelor's and master's degrees in the Philippines and received a PhD in the U.S. from one of the leading engineering schools.

Applicant's principal activity in his work is geo-structural engineering and his work has involved the central artery (Big Dig) in Boston and research on tunnels in the Alps. He does not hold a security clearance and now works on civilian construction projects for his employer. His company has worked for the U.S. government, and they desire to use him on those projects which require a clearance. He is motivated to work on government projects because of his pride in his U.S. citizenship.

Before becoming a citizen he held a passport of the Philippines which did not expire until March 2009 (SOR ¶ 1.a.). He has destroyed the passport (Attachment to Answer) and does not intend to apply for a new one.

Applicant has one brother who is a citizen of and resides in the Philippines. He has two sisters who are also Philippine citizens. One sister resides in Norway and the other one lived in the U.S. until 2007 and then returned to the Philippines. His mother-in-law is also a citizen of the Philippines but resides in the U.S. (SOR ¶¶ 2.b.-d.). He and his siblings have a joint interest in a family home in the Philippines valued at approximately \$250,000 (SOR ¶ 2.e.).

Applicant helped organize and design a plant for a company his wife and her brother now own. Applicant organized the company in 2002 with some university classmates to manufacture an environmental product for use in water and air purification. In August 2006 he sold his interest in the company to his wife (SOR ¶ 2.g.). He traveled to the Philippines in 2001, 2005, and 2006 (SOR ¶ 2.f.) primarily in connection with planning and construction of the plant which was completed in 2006.

It is this allegation in the SOR relating to the company that the government expressed the most concern about in the hearing since there was a possibility that Applicant's activities for the foreign company and his relatives continued interest in it could create conflicts with the work he does for his employer in the U.S. The other allegations under Guideline B were alleged to show a context for this allegation since it involves a company in his country of origin (Tr. 7-8). His immediate supervisor, who is a top company officer, knows of his past involvement with the company and his wife and brother-in-law's continuing interest in it. The supervisory corporate officer concluded that there is no likelihood of overlap or conflict between the work of his employer and the Philippine company (Exh. E). From my analysis of the descriptive information submitted by Applicant (Tr. 63-65) and the corporate officer about both companies, I agree with the conclusion.

Applicant has significant financial interests in the U.S. primarily in two homes in two states valued respectively at \$400,000 and \$200,000. He also owns a rental property valued at \$150,000. He has a savings account of over \$10,000. His annual salary is \$118,000. His wife works for a non-profit agency concerned with juveniles and is paid \$40,000 per annum. They have two children ages 17 and 11. He is highly regarded by the officers of his company for his abilities, integrity, and competence (Exhs. A-C).

The government did not offer any documents for administrative notice in Applicant's hearing, relating to the Philippines, the country at issue, as is often done in cases involving either of the foreign guidelines (B and C). However, I take notice of the fact that it is well known that the Philippines has a democratically elected government and is a staunch ally of the United States. Historically, it was ceded to the U.S. after the Spanish American War in 1898 and became independent in 1946 after its occupation by the Japanese in World War II. It has a history of support of U.S. interests in the Pacific area, and as an ally of the U.S. in various conflicts in the Far East. It has taken action against Muslim extremists on the southern island of Mindanao with the assistance of the U.S. military.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as "the whole person concept." The administrative judge must consider all available,

reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off duty hours. The government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See also EO 12968, Section 3.1(b) listing multiple prerequisites for access to classified or sensitive information.

Analysis

Guideline C, Foreign Preference

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors and conditions above, I conclude the following with respect to all allegations set forth in the SOR:

The security concern relating to the guideline for Foreign Preference is set out in AG ¶ 9:

[W]hen an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

AG ¶ 10 describes conditions that could raise a security concern and may be disqualifying:

(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to possession of a current foreign passport;

AG ¶ 11 provides conditions that could mitigate security concerns including that the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated. While he had a passport, it was acquired before he became a citizen and it has been destroyed. I conclude that the security concern has been mitigated.

Guideline B, Foreign Influence

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors and conditions above, I conclude the following with respect to the allegations set forth in the SOR:

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism

Conditions under Guideline B that could raise a security concern and may be disqualifying include contact with a foreign family member who is a citizen of, or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion (AG ¶ 7a). A second condition that could raise a security concern include a substantial business, financial, or property interest in aforeign owned or operated business, which could subject the individual to heightened risk of foreign influence or exploitation (AG ¶ 7e).

Based on the evidence of record, including Applicant's acknowledgment of family members living abroad and his past work for a foreign company in which his wife and brother-in-law have a financial interest, the Government established a basis for a security concern over foreign influence. The Applicant had the burden to establish security suitability through evidence which refutes, mitigates, or extenuates the disqualification

and demonstrates that it is clearly consistent with the national interest to grant a security clearance. ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

Mitigating conditions (MC) that might be applicable are a determination that the nature of the relationships with foreign persons, the country in which the persons are located, or the positions or activities of those persons in that country are such that is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual group or government and the interests of the U.S. (AG ¶ 8a).

Applicant's relatives are from a country with long and solid ties to the U.S. with shared and common interests. His two siblings living in the Philippines present minimum security concerns that are not of serious concern because of the nature of the government of the Philippines and its historical connections with the U.S. The foreign company is now owned by his wife and brother-in-law and he has no continuing involvement with it. The business is not similar to, or in any way in conflict with the services his employer provides. This has been confirmed by a senior officer of the company. I conclude that the allegations of foreign influence have been mitigated.

Whole Person Concept

Under the whole person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (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 extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole person concept. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. The security concerns do not arise because of any misconduct by Applicant, but because family members have a financial interest in a foreign company and two others are citizens of and live in a foreign country which is the country of origin of Applicant. The above cited factors are not precisely relevant to this type of case. Of relevance is his expressed strong feeling concerning his identity as an American citizen and where his loyalty and obligations belong. He is a well-motivated and well-educated

professional with strong ties to the United States (Tr. 69-70). I find his testimony credible. There is no basis for denial of access to classified information.

Applicant has mitigated the security concerns arising from the allegations of foreign preference and foreign influence.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline C FOR APPLICANT

Subparagraph 1.a.: For Applicant

Paragraph 2, Guideline B FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Access to classified information is granted.

CHARLES D. ABLARD

Administrative Judge