



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 10-04755

Appearances

For Government: Jeff A. Nagel, Department Counsel

For Applicant: *Pro se*

November 29, 2011

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on January 20, 2010. (Government Exhibit 1). On June 16, 2011, 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.

Applicant answered the SOR in writing on July 23, 2011, and requested a hearing before an Administrative Judge. The case was assigned to the undersigned Administrative Judge on September 20, 2011. A notice of hearing was issued on October 6, 2011, scheduling the hearing for October 12, 2011. At the hearing, the Government offered four exhibits referred to as Government Exhibits 1 through 4, which were received without objection. The Applicant offered nine exhibits, referred to as

Applicant's Exhibits A through I, which were admitted into evidence without objection. He also testified on his own behalf. The transcript of the hearing (Tr.) was received on October 21, 2011. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

REQUEST FOR ADMINISTRATIVE NOTICE

Department Counsel submitted a formal request that I take administrative notice of certain facts concerning the current political condition in Burma that were set forth in Administrative Notice documents 1 through 6. Applicant had no objection to the documents. The request and the attached documents were not admitted into evidence, but are included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, testimony and the exhibits. The Applicant is 31 years of age and has a Master's Degree in Electrical Engineering. He is employed as a Software Engineer by a defense contractor and seeks to obtain 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 Burma in 1980. In 1996, at the age of sixteen, he immigrated with his parents to the United States on an immigration visa. His parents always liked the United States for its many opportunities that included education and work. Prior to their immigration, his father had worked for the United States Government in Burma for twenty-two years. His father retired in 1992. The Applicant attended high school in the United States, and then attended college where he graduated with honors in 2002. He then started working for his current employer, a defense contractor, who offered him a fellowship and paid for a masters degree. In 2002, the Applicant became a naturalized United States citizen and received a United States passport. After becoming a United States citizen he has traveled to Burma on two occasions and both times he traveled using his United States passport. The Applicant has always timely filed his pre and post foreign travel reports with his company security department. (Applicant's Exhibit B.)

The Applicant has no foreign business, financial interests, property, investments or assets of any kind in Burma. All of his assets are in the United States. Between liquid assets, banking accounts, retirement accounts and his salary, his approximate net worth

in the United States is \$450,000. (Applicant's Exhibit I and Tr. p. 68.) He states that he would never do anything to benefit Burma over the United States, or to jeopardize the national security of the United States. (Tr. p. 74.)

In 2007, the Applicant was engaged to his wife, a citizen of Burma and got married in 2008. He promptly reported this marriage to his company security department. (Applicant's Exhibit A.) His wife is now a permanent resident of the United States, and a physician who is currently working on her medical residency in the United States. She plans to immediately file for her citizenship when she is eligible. The Applicant's mother-in-law, father-in-law, brother-in-law and sister-in-law are citizens and residents of Burma. His mother-in-law owns a clothing store in Burma. His father-in-law is the assistant manager of a plastics factory. His sister-in-law helps run the clothing store. His brother-in-law is a medical student at the same university the Applicant's wife attended. The Applicant also has three aunts who are citizens and residents of Burma. The Applicant has minimal contact with his in-laws. His last contact with his in laws was more than three months ago when his wife moved out of state to work on her medical residency.

His three aunts, his father's sisters, all live together in one house in Burma. They are all retired school teachers. The Applicant maintains no regular contact with them and has not had contact with them for over a year. (Tr. p. 53.) The Applicant provides no financial support to any of his extended family in Burma. The Applicant has told none of her family in Burma that he is applying for a security clearance with DoD and has no intentions of ever discussing the issue with them. None of his family members in Burma are associated with the Burmese Government in any way. He has no loyalty, affection or obligation of any kind to his extended family in Burma.

The Applicant's mother and father are naturalized United States citizens who reside in the United States. His father is now retired. He currently receives a retirement check from the United States Government. (Tr. p. 62.) The Applicant's mother currently works as a nurse's aid at an adult day care center. (Tr. p. 69.)

A letter from the Applicant's wife dated October 11, 2011, indicates that she is working to establish her permanent ties in the United States. She is currently a permanent resident of the United States and plans to apply for her United States citizenship as soon as she is eligible, which would be on December 23, 2011. (Applicant's Exhibits E and F.)

A letter dated October 12, 2011, from the Applicant's retired Center Manager who hired the Applicant describes the Applicant as an employee who has a one of a kind technical expertise, loyalty and customer commitment to excellence. He is also a person of integrity and loyalty. He is highly sought after by management due to his skills. He has never had a security violation. He is recommended for a security clearance. (Applicant's Exhibit G.)

A letter from a coworker dated October 11, 2011, who has worked closely with the Applicant for the past five years indicates that he has no doubts about the Applicant's reliability, work habits, or loyalty to the company or the country. He has no reservations recommending him for a security clearance. (Applicant's Exhibit G.)

I have taken administrative notice of the current political conditions in Burma. Burma is a former British colony that gained its independence in 1948, but its post colonization history has been marred by unrest and military coups. The political relationship between the United States and Burma worsened after the 1988 military coup and violent suppression of pro-demonstrators. Subsequent regime repression, including the brutal crackdown on peaceful protestors in September 2007, further strained the relationship. The Burmese government has historically committed human rights abuses. The State Department noted that, the Army increased attacks on ethnic minority villagers. . . designed to drive them from their traditional land. In addition, the government continued to commit other serious abuses, including extrajudicial killings, custodial deaths, disappearances, rape, and torture. The government abused prisoners and detainees, held persons in harsh and life threatening conditions, routinely used incommunicado detention, and imprisoned citizens. The government restricted freedom of speech, press, assembly, association, religion, and movement.

Another significant human rights concern with Burma is its forced labor and trafficking in persons. In 2003, as a direct result of Burma's poor human rights record, the United States imposed a range of trade sanctions, including bans on the importation of Burmese products into the United States and export of financial services from the United States to Burma. President George W. Bush expanded the 2003 Executive Order most recently with a new Executive Order blocking property and prohibiting certain transactions related to Burma based upon the Burmese government's "continued repression of the democratic opposition to Burma." United States and Burma relations remain strained and United States citizens have been detained, arrested, tried, and deported for, among other activities distributing pro-democratic literature and visiting the home and offices of Burmese pro-democracy leaders. The Burmese government has also warned the United States that it intends to jail United States citizens in the future if they participate in similar activities, rather than deport them.

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

6. *The Concern.* 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 that could raise a security concern:

7. (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact creates a heightened risks of foreign exploitation, inducement, manipulation, pressure, or coercion; and

7. (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information.

Conditions that could mitigate security concerns:

8. (a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;

8. (b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

8. (c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

In addition, as set forth in Enclosure 2 of the Directive at pages 18-19, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following 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 extent to which participation is voluntary;
- f. The presence or absence of rehabilitation and other permanent behavior changes;
- g. The motivation for the conduct;
- h. The potential for pressure, coercion, exploitation or duress; and
- 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 predicated 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) 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 has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. Foreign influence can raise 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 of record 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.

Under Foreign Influence, Disqualifying Conditions 7.(a) *contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion*, and 7.(b) *connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information* apply. However, Mitigating Conditions 8.(a) *the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.*, 8.(b) *there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest*, and 8.(c) *contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation* also apply.

It is acknowledged that the Applicant's mother-in-law, father-in-law, sister-in-law, brother-in-law, and three aunts are citizens of and reside in Burma. The Applicant has

never formed close ties with his in laws, nor has he kept in contact with his aunts. Given his limited contact with them, he has clearly established that those contacts are casual and pose no security risk whatsoever. His wife is a permanent resident of the United States and is planning on applying for her United States citizenship as soon as she is eligible. It is noted that the current political situation in Burma elevates the cause for concern in this case. However, in this case, the Applicant is a naturalized American citizen who has lived in the United States since the age of sixteen. He considers himself only American and has adopted the American culture and its values. He is grateful to the United States for the many opportunities it has provided him and he expresses his loyalty to this country. Under the particular facts of this case, the possibility of foreign influence does not exist, nor could it create the potential for conduct resulting in the compromise of classified information. I find that the Applicant is not vulnerable to foreign influence. Accordingly, I find for the Applicant under Guideline B (Foreign Influence).

I have also considered the “whole-person concept” in evaluating the Applicant’s eligibility for access to classified information. Under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed as a whole, support a whole-person assessment of good judgement, trustworthiness, reliability, candor, a willingness to comply with rules and regulations, or other characteristics indicating that the person may properly safeguard classified information. The Applicant is a bright engineer who has a promising future with the Defense Department. His favorable evidence, which include letters from his retired manager who hired him and a coworker, is additional evidence that demonstrate his trustworthiness. He has presented sufficient evidence in mitigation to demonstrate that he is not a security risk.

Considering all the evidence, the Applicant has met the mitigating conditions of Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guideline B.

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.
- Subpara. 1.a.: For the Applicant
- Subpara. 1.b.: For the Applicant
- Subpara. 1.c.: For the Applicant

DECISION

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson
Administrative Judge