

DATE: November 27, 2007

In re:)
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 -----) ISCR Case No. 07-00083
 SSN: -----)
)
 Applicant for Security Clearance)
)
)

**DECISION OF ADMINISTRATIVE JUDGE
ELIZABETH M. MATCHINSKI**

APPEARANCES

FOR GOVERNMENT

Fahryn Hoffman, Esq., Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

Applicant is a dual citizen of Serbia and the U.S. who actively exercised his foreign citizenship by renewing and using a Federal Republic of Yugoslavia passport after he became a U.S. citizen. He maintained his foreign citizenship in part to protect his ownership of property abroad. Foreign preference concerns are not fully mitigated by his recent surrender of his foreign passport to his employer's facility security officer. His mother, a Serbian citizen, resides with him in the U.S., but Applicant remains at risk of foreign influence because of his co-ownership with her of an apartment in Serbia and of a resort property in Montenegro, and his sole ownership of a second seaside apartment in Montenegro, which in the aggregate are valued at between 290,000 and 340,000 euros. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. As required by ¶ E3.1.2 of Department of Defense Directive 5220.6 (Jan. 2, 1992), as amended, DOHA issued a statement of reasons (SOR) on April 10, 2007, detailing the basis for its decision—security concerns raised under Guideline C (foreign preference) and Guideline B (foreign influence) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006. The guidelines were provided to Applicant when the SOR was issued. Applicant answered the SOR on May 4, 2007.¹

On June 25, 2007, the government notified Applicant that it was requesting a hearing in his case and the case was assigned to me on August 3, 2007. I convened a hearing on October 16, 2007, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. At the hearing, two Government exhibits (Ex. 1-2) and one Applicant exhibit (Ex. A) were admitted. Testimony was taken from Applicant and two witnesses. DOHA received the transcript (Tr.) of the hearing on October 25, 2007.

The record was held open until October 30, 2007, for Applicant to submit additional documentation and for the government to amend a request for administrative notice to include information about Montenegro. By facsimile on October 22, 2007, Applicant submitted through his employer's facility security officer (FSO) a document confirming the FSO's receipt of Applicant's foreign passport. Department Counsel had no objection and I admitted the document as Exhibit B. The government did not move to amend its request for administrative notice.

RULINGS ON PROCEDURE

On July 26, 2007, the government requested administrative notice be taken of several proposed facts concerning Serbia. For source documentation the government relied on publications from the U.S. State Department: *Background Note: Serbia*, dated June 2007; *Consular Information Sheet-Serbia*, dated February 21, 2007, and *Country Reports on Human Rights Practices 2006-Serbia (Includes Kosovo)*, dated March 6, 2007. Applicant filed no objections. After weighing the reliability of the source documentation and assessing the relevancy and materiality of the facts proposed, I took administrative notice of certain facts as set forth below.

FINDINGS OF FACT

DOHA alleged under Guideline C, foreign preference, that Applicant exercises dual citizenship with Serbia and the U.S. (SOR ¶ 1.a); obtained his Serbian passport in July 1997 (renewed August 26, 2000) after he had become a U.S. citizen in March 1996 and been granted his U.S. passport in May 1996 (SOR ¶ 1.b); maintains his Serbian citizenship because he owns three apartments in Serbia valued collectively at about \$350,000 (SOR ¶ 1.c); and used his Serbian passport in lieu of his U.S. passport to enter and exit Serbia in 2000, 2003, and 2004 (SOR ¶ 1.d).

¹Applicant's answer is dated May 4, 2006 [sic], due likely to a typographical error.

DOHA alleged under Guideline B, foreign influence, that Applicant's mother is a dual citizen of Serbia and the U.S. living with him in the U.S. (SOR ¶ 2.a); his two aunts are Serbian resident citizens (SOR ¶ 2.b); Applicant owns the three apartments in Serbia (SOR ¶ 2.c); and he traveled to Serbia in 2000, 2001, 2002, 2003, 2004, and 2005 (SOR ¶ 2.d). Applicant admitted the allegations, but indicated at his hearing that with the recent dissolution of the Serbia-Montenegro federation in June 2007, it is no longer accurate to indicate that his properties are all in Serbia. Two of his properties abroad are located in Montenegro and one in Serbia.

After a thorough consideration of the pleadings, exhibits, and transcript, and having agreed to take administrative notice of relevant and material facts concerning Serbia, I make the following factual findings.

Applicant is a 51-year-old mechanical engineer employed by a small defense contractor since July 1997. He has served as principal investigator on more than 30 research projects and is a group leader of eight engineers on an autonomous intelligence program. He seeks a secret-level security clearance so he can participate in the implementation stage of projects.

An ethnic Serb, Applicant was born and raised in what was then the Socialist Republic of Yugoslavia. His father was employed as an engineer for the federal patent bureau before his death in 1983, and his mother was an editor for an electric power systems journal. In December 1980, Applicant was awarded his diploma (equivalent to a bachelor of science degree) in mechanical engineering from a university in Belgrade. At the time, he was serving one year of compulsory military service in the Yugoslav Army. He completed his obligation in about March 1981. In 1982, he began working as a research and design engineer at a research and design institute affiliated with a large manufacturing company in Belgrade. The company produced trains, coaches, and heavy equipment for civil engineering.

In September 1982, while continuing to work, Applicant began graduate studies in mechanical engineering at the same university in Belgrade where he had earned his undergraduate diploma. On earning his master of science degree in mechanical engineering in June 1985, he was awarded a competitive stipend from Yugoslavia's science association to study abroad. Applicant elected to pursue a research fellowship at an Ivy League university in the U.S. and he came to the U.S. in about September 1986. He continued to receive a salary from the Belgrade company while conducting thesis-related research in the U.S.

In August 1988, Applicant married his first wife, who was a native U.S. citizen. A son was born to them in May 1989. In late 1989, Applicant moved his spouse and child temporarily to Belgrade, as he had an obligation to his foreign employer who had made it financially possible for him to pursue his research for three years in the U.S. Applicant and his spouse experienced marital problems, and she returned to the U.S. with their son. They were divorced in the U.S. in August 1991. Applicant's son lived with his mother until she died in June 2007. He visited Applicant two or three times monthly until he went to college in about September 2007.

Applicant completed his obligation to his employer in Belgrade in about fall 1991. In January 1992, he was awarded a doctorate of technical sciences degree from the Yugoslavian (now Serbian) university. Applicant contacted the faculty member in the U.S. who had invited him to come to the university in 1986, and he returned to the U.S. in 1992 to assume a faculty/research position at the

university. Applicant brought his mother to live with him in the U.S. in 1992. She had already retired from her job as an editor.

In March 1996, Applicant became a naturalized U.S. citizen, taking an oath to renounce all foreign allegiances, to support and defend the U.S. Constitution and its laws, and to bear arms or perform noncombatant service or civilian service on behalf of the U.S. if required. His acquisition of U.S. citizenship did not affect his status as a citizen of Yugoslavia. Applicant was issued his U.S. passport in May 1996. In early January 2002, his mother became a naturalized U.S. citizen.

Applicant left academia for his current employment in July 1997. In 1999, he met his current spouse who is a native U.S. citizen. In January 2002, Applicant and his current spouse were married. His late father's two sisters came from Belgrade for his wedding. They stayed with Applicant and his mother.

In late August 2000, Applicant renewed his Federal Republic of Yugoslavia passport for another ten years. Applicant renewed his foreign passport, in part so there would be no problems with his ownership of property in Yugoslavia. To his knowledge, it was very difficult if not prohibited for non citizens to own property in what is now Serbia, and he co-owned with his mother an apartment in Belgrade that had been the family residence. It also did not feel right to Applicant to request the visa that would be required to travel to his native country on a U.S. passport.

Sometime after 2000, his mother purchased two seaside apartments in what is now independent Montenegro.² She sold an apartment inherited from her parents, and used the funds to buy the properties. She listed herself and Applicant as co-owners on one and Applicant as sole owner on the other. Applicant has since vacationed annually with his family (including his mother) on the Montenegrin seacoast, entering through Belgrade where he spent no more than a couple days visiting his paternal aunts before proceeding to the seacoast. Following the defeat of the Milosevic government in September 2000, non citizens could own property in Serbia, and visas were no longer required for U.S. citizens.³ On subsequent trips to Serbia and Montenegro, Applicant carried both his U.S. and his Yugoslavian passports. He entered Serbia on his Federal Republic of Yugoslavia passport in at least 2000, 2003, and 2004. Applicant renewed his U.S. passport for another ten years in May 2006, but also retained his Federal Republic of Yugoslavia passport for sentimental reasons and because he would have felt "funny" to travel to his native land with just his U.S. passport. (Tr. 32)

On March 6, 2006, Applicant completed an Electronic Questionnaires for Investigations Processing (e-QIP) to apply for a security clearance. He disclosed that he and his mother are dual citizens of the U.S. and the Federation of Serbia and Montenegro, that he owns three apartments in Serbia and Montenegro, and that he holds a current Serbia and Montenegro passport. Applicant also

²Applicant testified he is not certain of when the two apartments in Montenegro were purchased ("I think it was in 2000, after 2000, after the year 2000, so was it 2001? 2003?"). (Tr. 80)

³There is no evidence contradicting Applicant's testimony that even before its recent independence from Serbia, Montenegro had its own laws that allowed foreigners to own property within its territory. (Tr. 78)

listed his foreign travel to Serbia and Montenegro in August 2000, August 2001, August 2002, July 2003, June 2004, and July 2005.⁴

Applicant traveled to Serbia and Montenegro in June 2006. He gave little thought to which passport he was using. He entered Serbia on his U.S. passport and exited on his Federal Republic of Yugoslavia passport.

In late January 2007, Applicant responded to interrogatories from DOHA. He provided copies of his current U.S. and Federal Republic of Yugoslavia passports and denied any intent to renew his foreign passport on its expiration (“I have clear allegiance to the U.S. Serbia is my country of birth and I feel comfortable when I go there on vacation, but my life and home are here. This is why I am not planning to renew my Serbian passport when it expires in 2010.”) (Ex. 2)

After he received the SOR from DOHA, he realized his use of a foreign passport concerned the government. Applicant went to Serbia and Montenegro for vacation from June 22, 2007 to July 3, 2007. He used his U.S. passport exclusively on that trip.

While attending church on October 16, 2007, Applicant heard that all Serbian citizens would be issued new passports in 2008 and that his passport, scheduled to expire in 2010, would not be valid beyond December 31, 2008. He confirmed from a Serbian media company’s website that new passports are to be issued starting in March 2008 with a deadline of December 31, 2008, for changing the current passports. The new passports are to meet European Union standards to ease access to visas for its citizens traveling abroad. Applicant understands that the passport is not going to be issued automatically, but requires surrender of the old passport and an application, although the available media report (Ex. A) neither confirms nor refutes that an application is required to obtain the new Serbian passport.

Applicant is required to put in a vacation request with the FSO, who also serves as director of human resources. He reported his foreign travel to Serbia and Montenegro. She has known for “quite a while” that Applicant holds a foreign passport, but was unaware until late September/early October 2007 that there was a problem with dual passports. Informed by DOHA that another employee of the company would have to surrender his foreign passport to her to hold while he held a clearance, she discussed with Applicant the possibility of him turning in his passport to her as well. Since his hearing had been scheduled, they elected to wait to confirm if that was the proper way to handle the passport issue.

Applicant had both his U.S. and foreign passports with him at his hearing. He was uncertain how best to handle his foreign passport as he did not want to renounce his Serbian citizenship, which he feared would be the consequence of surrendering his passport to the Serbian Embassy. Applicant has not seriously considered renouncing his Serbian citizenship (“I couldn’t do that to my mom.” Tr.

⁴The record is inconclusive as to which passport he used in July 2005. Applicant’s May 1996 U.S. passport was not available for review. His August 2000 Federal Republic of Yugoslavia passport (Ex. 2) shows he used his Yugoslavian passport to enter and/or exit Serbia in August 2000, July 2003, June 2004, and to exit in June 2006. It bears other stamps that are illegible. His latest U.S. passport, issued May 2006 (Ex. 2), bears a stamp from Serbia in June 2006. Apparently, he entered Serbia on his U.S. passport. A check of the passport at his hearing revealed he used it to enter and exit Serbia in 2007. (Tr. 82)

60). He views it as dishonest to renounce citizenship for any material gain, such as to obtain a security clearance:

So I am just saying if I am loyal in the sense of being loyal to the fact that I was born there, I have a citizenship, I'm loyal to this country because it enabled me to achieve professional success and my family here, I also am going to be loyal, very loyal to this country, but if someone renounced their citizenship in order to get a clearance, I think that's a person the Government should look at more carefully, I think, that's my opinion. (Tr. 68-69)

Applicant expressed his intent to surrender his foreign passport to his employer's FSO. On the afternoon of October 16, 2007, Applicant turned in his Federal Republic of Yugoslavia passport to the FSO in front of three witnesses. (Ex. B)

Applicant estimates that the apartment in Serbia is valued at 70,000 to 80,000 euros. The properties in Montenegro have an estimated value of 180,000 to 200,000 euros and 40,000 and 60,000 euros.⁵ The properties are vacant until Applicant and/or his mother visit. His mother pays for a service to clean them in preparation for their arrival.

Applicant owes an estimated \$600,000 US on his mortgage for his home in the U.S. The home is valued at \$1.1 million. Applicant does not have a foreign bank account. When he travels to Serbia and Montenegro, he takes cash or withdraws funds from his U.S. bank accounts using an ATM there. The balance on deposit in U.S. financial institutions was about \$37,000 as of October 2007. He has a 401(k) retirement account through his employer.

Applicant and his current spouse have three children, a son born in March 2004 and twins about 18 months old. As of October 2007, Applicant's mother was living with him and his family in the U.S., where she was helping to care for her grandchildren. She has a pension from the Serbian government. Applicant's spouse works outside the home.

Applicant's two paternal aunts are resident citizens of Belgrade, Serbia. They are his only connection to his late father. One aunt is in her late 70s; the other is aged 84 or 85. They are retired and live off their state pensions (*i.e.*, a social security type benefit). Applicant visits them before heading off to the Montenegrin seacoast for vacation annually with his family. Applicant brings them small gifts (pair of gloves, wallet, scarf) when he goes to Serbia. Once a year or less, Applicant gave his aunts \$50 to \$100 when they needed it, such as for dental services. He has telephone contact a couple times a year with his aunts on holidays.

Applicant has been up-front with his FSO about his ownership of the apartments in Serbia and Montenegro. Over more than ten years at the company, Applicant has been diligent in following the company's procedures regarding compliance with the regulations concerning international trade in armaments (ITAR). The president of the company has always worked very closely with Applicant. He considers Applicant to be "extremely well qualified" in his field and a very good manager. (Tr. 106). As a senior person in the company, Applicant is a principal investigator on several projects at

⁵It is not clear which of the two properties in Montenegro is solely owned by Applicant.

the same time, including those involving unmanned vehicles. The lack of a clearance inhibits his contributions.

At the request of the government, I take administrative notice of the following facts concerning Serbia and its relationship with the United States. The Republic of Serbia is the self-proclaimed successor state to the Federal Republic of Yugoslavia (F.R.Y.) that was formed with Montenegro in April 1992 following the violent breakup along ethnic lines of the Socialist Federal Republic of Yugoslavia. Led by Slobodan Milosevic, Serbia pursued a campaign of uniting ethnic Serbs in neighboring republics, which led to its ouster from the United Nations in 1992. In late 1998, the Milosevic government unleashed a brutal police and military campaign against an ethnic Albanian insurgency in the formerly autonomous Serbian province of Kosovo. The Milosevic government's rejection of a proposed international settlement led to the North Atlantic Treaty Organization (NATO) bombing of Serbia from March to June 1999, and the severance of diplomatic relations between the Federal Republic of Yugoslavia and the U.S. After 79 days of bombing, Milosevic capitulated and NATO-led forces moved into Kosovo. The U.S. reestablished a diplomatic presence and formally reopened its Embassy in Belgrade in May 2001 after mass protests led to the defeat of the Milosevic government in September 2000 federal elections. With a broad coalition of democratic reformist parties in control, the country was once more accepted into the UN. In February 2003, a new constitutional charter was adopted establishing a federation of two state republics, Serbia and Montenegro. Following Montenegro's declaration of independence in June 2006, Serbia declared itself a sovereign republic and the successor state to the union of Serbia and Montenegro, retaining Serbia and Montenegro's membership in all international organizations. As of June 2007, Kosovo was legally part of Serbia but under the international protection of the U.N. and peacekeeping forces. Kosovo Albanians continue to advocate independence. The Serbian government's position is that Kosovo should remain part of Serbia as an autonomous province. The U.S. supports the U.N. special envoy's call for Kosovo's independence subject to a period of international supervision.

Since October 2000, Serbia has worked to stabilize and strengthen its bilateral relationships with neighboring countries. Several warrants have been served for the arrests of persons indicted for war crimes, but Serbia has not met all of its obligations to comply with the International Criminal Tribunal for the former Yugoslavia as six persons indicted for war crimes remain at large. Admitted to the Council of Europe in 2003, Serbia is actively pursuing European Union (EU) and NATO membership. In May 2006, the EU suspended talks toward accession because of Serbian inaction on apprehending those indicted for war crimes, although talks resumed in June 2007 in the wake of Serbia's improved cooperation on the war crimes issue. In November 2006, NATO invited Serbia into its Partnership for Peace, but conditioned further progress on compliance with the International Criminal Tribunal. About \$7 million in U.S. aid to Serbia for fiscal year 2006 was suspended because of Serbian lack of cooperation with the tribunal.

Serbia and the U.S. have bilateral diplomatic relations and provide a full range of consular services. U.S. citizens traveling with tourist, official, or diplomatic passports are not required to obtain a visa to enter Serbia and Montenegro for stays of up to 90 days. Visitors are required to register with the police within 24 hours of their arrival. The Serbian government generally respects the human rights of its citizens. Some problems persisted (including harassment of journalists, human rights workers, and others critical of the government, and limitations on freedom of speech and religion), but the government's increased efforts in addressing human rights violations brought

notable improvements in 2006. There were no reports of arbitrary or unlawful killings by the government, of politically motivated disappearances, or of government interference with peaceful public protests. Complaints of excessive force by local police were under investigation. The government generally observed the prohibition against arbitrary arrest or detention. Independent media organizations were active and expressed a wide range of views, although some media organizations experienced threats and reprisals for publishing views critical of the government.

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). 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 (App. Bd. Dec. 19, 2002).

The revised Adjudicative Guidelines set forth potentially 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 C—Foreign Preference

When 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 ¶ 9) Applicant came to the U.S. in September 1986 on a graduate research fellowship. He moved his first wife and infant son temporarily to Belgrade in 1989 as he felt an obligation to work for the Serbian company that had continued to pay him while he was performing his research in the U.S. In 1992, Applicant returned to the U.S. permanently. He became a naturalized citizen in March 1996, and a U.S. passport in May 1996. Yet he also retained, and in August 2000 renewed, a Federal Republic of Yugoslavia passport. Applicant used the Serbian passport in preference to his U.S. passport to enter and exit Serbia in at least 2000, August 2001, August 2002, July 2003, and June 2004, and to exit Serbia in 2006. While he used his U.S. passport exclusively on recent travel to Serbia and Montenegro in summer 2007, his foreign passport was still in his possession and valid for travel as of his October 2007 hearing for his clearance. Guideline C concerns are implicated by Applicant’s possession and use of a current Federal Republic of

Yugoslavia passport. DC ¶ 10(a)(1) (*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: (1) possession of a current foreign passport*) applies. Furthermore, since he renewed his foreign passport so as not to jeopardize his property interest in the family apartment in Belgrade, ¶ 10(a)(5) (*using foreign citizenship to protect financial or business interest in another country*) also must be considered.

Applicant clearly wants to retain his dual citizenship with Serbia and the U.S. (“I couldn’t do that to my mom.” Tr. 60).⁶ He views it as dishonest to renounce citizenship for any material gain, such as to obtain a security clearance. Retention of foreign citizenship acquired from birth out of respect for one’s ethnic heritage, for example, is not disqualifying in the absence of an exercise of a right, privilege, or obligation of that citizenship. (*See* ¶ 11(a) (*dual citizenship is based solely on parents’ citizenship or birth in a foreign country*)). Although renunciation of foreign citizenship is not mandated for a clearance, there must be adequate assurances that Applicant will not in the future actively exercise his foreign citizenship. Applicant has exhibited a willingness to comply with DoD requirements by surrendering his passport to his FSO following his hearing. (Ex. B). MC ¶ 11(e) (*the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated*) applies. While Applicant is eligible to apply for the new Serbian passport that the Serbian government is planning to issue to its citizens in 2008, he testified credibly at his hearing that he had no intent to renew his Federal Republic of Yugoslavia passport when it expires. He is not likely to seek one of the new passports when he does not physically possess the Federal Republic of Yugoslavia passport to provide to Serbian authorities, no longer needs a visa to travel to Serbia and Montenegro on his U.S. passport, and is accompanied on his vacations to Serbia and Montenegro by immediate family members (spouse and young children) who are solely citizens of the U.S. and travel on U.S. passports.

However, the surrender of the foreign passport to the FSO does not fully mitigate the foreign preference concerns. Applicant elected to surrender his foreign passport to the FSO rather than to the Serbian Embassy because he feared it could have a negative effect on his Serbian citizenship. Despite significant ties to the U.S. (voluntary acquisition of U.S. citizenship, career in the U.S., marriage to a native U.S. citizen), he acted to protect a property interest in Serbia that is of less value than his U.S. assets and even of his Montenegrin assets. His affinity for Serbia goes beyond mere sentiment for his heritage. Under the totality of the circumstances, I am unable to predict with a reasonable degree of certainty that Applicant can be counted on to act solely with regard to the interests of the U.S.

Guideline B—Foreign Influence

Under Guideline B, foreign influence, 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 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 to whether the foreign country

⁶There is no evidence that Applicant’s Serbian citizenship confers any property ownership right or benefit (such as lower property taxes) that would be unavailable to him were he solely a U.S. citizen.

is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism. (AG ¶ 6). Applicant understandably feels close to his mother, who lives with him and remains subject to Serbian laws and authority because of her dual citizenship with Serbia and the U.S. Applicant also has two paternal aunts, by his admission the only ties to his late father, who are resident citizens of Belgrade. DC ¶ 7(a) (*contact with a foreign family member, business or professional associate, friend, or other person 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*) and ¶ 7 (d) (*sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion*) must be considered.

Furthermore, Applicant co-owns with his mother the family apartment in Belgrade, with an estimated value of 70,000 to 80,000 euros, and a seaside apartment in Montenegro. Applicant is listed as sole owner of a second apartment in Montenegro. Based on the most conservative estimate, his financial interest in Montenegro could be worth upwards of 200,000 euros or, if he is sole owner of the less expensive property, about 130,000 euros. The Montenegrin assets are relevant and must be considered despite the government's alleging mistakenly that all of the properties are within Serbian territory (*see* SOR ¶ 2.c).⁷ Applicant has substantial property interests abroad that implicate DC ¶ 7(e) (*a substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation*). He currently benefits from these foreign interests, in that he has vacationed in these seaside properties in Montenegro with his family about annually since they were purchased. En route to and from Montenegro, they stayed in the family apartment in Belgrade for about a day and a half. His travel to Serbia (SOR ¶ 2.d) is relevant to the extent that it confirms his personal ties to his aunts (¶ 2.b) and his enjoyment of his properties in Serbia and Montenegro (SOR ¶ 2.c). But in the absence of any conduct while traveling that increased his vulnerability, ¶ 7(i) (*conduct, especially while traveling outside the U.S., which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country*) does not apply.

Concerning Applicant's ongoing relations with his elderly aunts in Belgrade, he calls them on holidays and visits them en route to his annual vacation in Montenegro. He also brings them small gifts and they attended his wedding in the U.S. His contact with them is infrequent, but it is not sufficiently casual in nature to be mitigated under ¶ 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*). Under ¶ 8(a), even close ties with a foreign family member may be mitigated where *the nature of the relationships with the foreign person, the country in which the person is located, or the positions or activities or 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.* Elderly

⁷In closing, Applicant argued unpersuasively that he does not have a substantial property in a foreign country ("First of all, the country in question is Serbia where I owe a single piece of property, while the other property is in Montenegro." Tr. 122). On his security clearance application, Applicant reported that he owned three properties in Serbia and Montenegro, and that he possessed a passport of Serbia and Montenegro. Serbia and Montenegro were not independent when the properties were purchased, and Applicant did not distinguish that two of the properties were in Montenegro until his hearing. Applicant was clearly on notice that his three foreign properties were at issue.

pensioners of modest means, Applicant's aunts are not engaged in activities in Serbia which might be of interest to those seeking U.S. sensitive information. Routine pension benefits as enjoyed by his aunts as well as his mother do not heighten the risk. Applicant is not so close to his aunts that he would jeopardize his immediate family members (spouse, children, and mother) who all enjoy the protections of U.S. residency and citizenship. Although Applicant's mother vacations in Serbia and Montenegro annually, and she went to Serbia once or twice for some natural medicine treatment for her knees (Tr. 56), there is no indication of any untoward contacts during these trips.

Applicant's foreign financial assets consist of real estate valued at more than 160,000 euros. In determining whether his foreign property interests can be used to influence Applicant (*see* ¶ 8(f) (*the value or the routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual*)), I must consider not only the dollar amount of the foreign financial interest, but also its value in comparison to U.S. financial interests and the circumstances of the foreign financial interests and ties. (*See* ISCR Case No. 01-18860 (App. Bd. Mar. 17, 2003)). Even accounting for the diminished value of the dollar compared with the euro, the value of his U.S. assets exceeds his foreign assets. His home in the U.S. is worth about \$1.1 million US and his mortgage balance is about \$600,000 (Tr. 43), which gives him about \$500,000 in equity. In addition, he has his salary, his 401K, and about \$37,000 in bank deposits in the U.S. Yet, after taking into account Applicant's emotional ties to Serbia, his plan to continue to vacation in Montenegro annually (*see* Tr. 62), the financial benefit of staying in the apartments that are paid for (Q "And is that cheaper than staying in a hotel for a few nights?" A "Oh, yes, much, much cheaper." Tr. 62), and his bonds with his mother who owns two of the properties with him, the foreign property interests could well be used to influence, manipulate, or pressure Applicant. Applicant already showed a willingness to comply with Serbian law by renewing his foreign passport in 2000 to protect his property stake in Serbia.

The political situation has changed considerably in Serbia since the institution of democratic reforms starting in late 2000. Serbia has not complied with the international mandate to turn over war criminals for prosecution, but it also made significant improvements in the area of human rights in 2006. Despite its history of ethnic conflict and aggression, Serbia did not challenge Montenegro's independence. It also has full diplomatic relations with the U.S. and is not known to target U.S. interests. The government did not specifically request that I take official notice of any facts pertinent to Montenegro. What is of record concerning Montenegro is that non citizens were permitted to own property even before its independence from Serbia. Yet even friendly nations do not always have the same interests.

Under the whole person analysis required (*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, see* AG ¶ 2(a)), Applicant appears to be a person of considerable personal integrity. He moved his first wife and then infant son to Belgrade in 1989 because he felt an obligation to the employer who had financially supported him while he pursued his research in the U.S. More recently, Applicant reported his foreign travel to his employer and showed that he can abide by ITAR and his employer's procedures. I am persuaded that Applicant would not knowingly jeopardize his family in the U.S. However, his significant emotional and financial ties to Serbia and Montenegro (he even proposed to his current spouse at the Montenegrin seacoast) raise doubts as

to whether he can be counted on to act without regard to his foreign interests, particularly if he does not perceive a conflict between the foreign interests and the U.S.

FORMAL FINDINGS

Paragraph 1. Guideline C:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Paragraph 2. Guideline B:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	Against Applicant
Subparagraph 2.d:	Against Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Elizabeth M. Matchinski
Administrative Judge