

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: The Applicant has surrendered her Latvian passport. She is married to a native born American. Her elderly, retired parents live in Russia. She no longer owns any property in Latvia. As the Applicant has “longstanding relationships and loyalties in the U.S.,” it is unlikely that she “will be placed in a position of having to choose between the interests of . . . [her foreign relatives] . . . and the interests of the U.S.” A determination of trustworthiness and access to personal sensitive information is granted.

CASENO: 06-23562.h1

DATE: 09/19/2007

DATE: September 19, 2007

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| SSN: -----                          | ) | ADP Case No. 06-23562 |
|                                     | ) |                       |
| Applicant for ADP I/II/III Position | ) |                       |
|                                     | ) |                       |

**DECISION OF ADMINISTRATIVE JUDGE  
RICHARD A. CEFOLA**

**APPEARANCES**

**FOR GOVERNMENT**

Melvin A. Howry, Esquire, Department Counsel

**FOR APPLICANT**

Alan V. Edmunds, Esquire

**SYNOPSIS**

The Applicant has surrendered her Latvian passport.<sup>1</sup> She is married to a native born American. Her elderly, retired parents live in Russia. She no longer owns any property in Latvia. As the Applicant has “longstanding relationships and loyalties in the U.S.,” it is unlikely that she “will be placed in a position of having to choose between the interests of . . . [her foreign relatives] . . . and the interests of the U.S.” A determination of trustworthiness and access to personal sensitive information is granted.

### **STATEMENT OF THE CASE**

On April 9, 1993, the Composite Health Care Systems Program Office (CHCSPO), the Defense Office of Hearings and Appeals (DOHA), and the Assistant Secretary of Defense for Command, Control, Communications and Intelligence (ASD C3I) entered into a memorandum of agreement for DOHA to provide trustworthiness determinations for contractor personnel employed in Information Systems Positions as defined in DoD Regulation 5200.2R, Personnel Security Program (Regulation), dated January of 1987.

On April 4, 2007, DOHA, pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a determination of trustworthiness, suitability, and eligibility for the Applicant to hold a sensitive Systems Position (ADP-I/II/III).

Applicant filed an Answer to the SOR on April 25, 2007.

The case was received by the undersigned for resolution on June 15, 2007. A notice of hearing was issued that same day, and the case was heard on July 10, 2007. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also submitted documentary evidence. The transcript (TR) was received on July 18, 2007. The issues raised here are whether the Applicant’s perceived Foreign Preference and Foreign Influence militate against a determination of trustworthiness and access to personal sensitive information. [The Applicant denies all of the allegations.]

### **FINDINGS OF FACT**

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The Applicant is 45 years of age, and is employed by a defense contractor who seeks an ADP-I/II/III position on behalf of the Applicant. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional Findings of Fact.

#### **Guideline C - Foreign Preference**

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<sup>1</sup>Dual nationality is not alleged in the Statement of Reasons.

The Applicant was born in Russia in 1962, to a Latvian/Russian father and a Russian mother (TR at page 24 line 24 to page 25 line 12, and at page 36 line 20 to page 37 line 5). She emigrated from Latvia to the U.S. in 1999 (TR at page 34 lines 11~13). She is married to a native born American, who also holds a security clearance, and who is working as a contractor for DoD in Kuwait (TR at page 24 line 24 to page 25 line 12, and Government Exhibit (GX) 1 at page 5). The Applicant was naturalized in 2005 (TR at page 35 line 1 to page 36 line 8).

1.a. The Applicant has surrendered her Latvian passport; and although it is not alleged, she has also renounced her Latvian citizenship (TR at page 25 lines 13~15, at page 34 lines 3~4, at page 46 lines 14~17, and Applicant's Exhibit (AppX) A).

### Guideline B - Foreign Influence

2.a. The Applicant's elderly, retired parents live in Russia (TR at page 26 lines 5~17, and GX 1 at page 6). Her 71 year old mother, and 74 year old father both worked in the construction sector (TR at page 46 line 18 to page 47 line 19). Her father still does some consulting to a private construction company (*Id*).

2.b. and 2.c. The Applicant traveled to Latvia in 2000 and in 2005, and to Russia in 2003 (TR at page 27 line 24 to page 28 line 7, and at 29 lines 5~23). She used her Latvian passport, as she was not yet a U.S. citizen (*Id*). Since becoming a U.S. citizen, she has only used her American passport (TR at page 27 line 24 to page 28 line 7, and at 29 lines 5~23).

2.d. The Applicant no longer owns any property in Latvia, as ownership has passed to her adult daughter (TR at page 29 line 24 to page 30 line 8, and at page 40 line 17 to page 43 line 24).

The Applicant would report any attempt at coercion vis-a-vis her Russian relatives "to [the] police and . . . [her] employer" (TR at page 26 line 18 to page 27 line 6).

As the Applicant has connections with both Latvia and Russia, I must also consider both countries. Latvia has a parliamentary democracy system of Government that has been independent of the former Union of Soviet Socialist Republics (USSR) since 1991. The Latvian government generally respects the human right of its citizens and resident non-citizens, but there are problems in some areas. The Judiciary has significant problems of inefficiency and corruption, and the conditions of its prison system remains poor with overcrowding.

Russia has an active, recent, and ongoing intelligence collection program targeting the U.S. Beyond collection and espionage directed at the U.S., Russia has provided technology for weapons of mass destruction to China, Venezuela, India and Iran. Russia also has internal problems including terrorism and a problematic human rights record.

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### **POLICIES**

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern. Furthermore, as set forth in the Directive, each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature, extent, and seriousness of the conduct, and surrounding circumstances.
- b. Frequency and recency of the conduct.

- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future.”

The Administrative Judge, however, can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence that is speculative or conjectural in nature.

The Government must make out a case under Guideline B (Foreign Influence) and Guideline C (Foreign Preference), which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and her suitability for a trustworthiness determination, 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 is presently qualifies for a sensitive Systems Position.

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## CONCLUSIONS

The Applicant, until recently, was a dual national with Latvia, and maintained a Latvian passport. The first disqualifying condition under Foreign Preference is therefore applicable as there was an *"exercise of any right . . . of foreign citizenship after becoming a U.S. citizen . . . . This includes but is not limited to: (1) possession of a current foreign passport; . . ."* This is countered, however, by the second and fifth mitigating conditions. *"[T]he individual has expressed a willingness to renounce dual citizenship,"* and *"the passport has been . . . surrendered . . ."* Here, the Applicant has not only initiated the renunciation of her Latvian citizenship, but has also surrendered her Latvian passport.

The Applicant's parents are citizens of and reside in Russia. The first and second disqualifying conditions under Foreign Influence are arguably applicable as this contact *"creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion,"* and creates *"a potential conflict of interests between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person . . . by providing that information."* Under the facts of this particular case, however, these are clearly countered by the first and second mitigating conditions. The nature of the Applicant's relationship with her parents is *"such that it is unlikely the individual will be placed in a position of having to choose between the interests of . . . [her parents] and the interests of the U.S."* Also, the Applicant *"has such deep and 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.”*

Furthermore, I am not limited to the mitigating conditions, delineated in the Directive, in deciding if an Applicant has demonstrated extenuation or mitigation. Her family, friends and colleagues aver that she is trustworthy (AppXs B~K). The totality of the Applicant’s conduct and circumstances, as set forth at length above, clearly warrants a favorable recommendation under the “whole person concept.” Mitigation is shown. Guidelines B and C are found for the Applicant.

Considering all the evidence, the Applicant has rebutted the Government's case regarding her alleged Foreign Influence and Foreign Preference. The Applicant has thus met the mitigating conditions of Guidelines B and C, and of Section E.2.2. of the Directive. Accordingly, she has met her ultimate burden of persuasion under Guidelines B and C.

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**FORMAL FINDINGS**

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: FOR THE APPLICANT

- a. For the Applicant.

Paragraph 2: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.
- d. For the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT and CONCLUSIONS, supra**.

## **DECISION**

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In light of the circumstances presented by the record in this case, it is clearly consistent with the national interest to make or continue a determination of trustworthiness, suitability and eligibility for the Applicant to hold a sensitive Systems Position (ADP-I/II/III).

Richard A. Cefola  
Administrative Judge