

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: The Applicant has renounced her Serbian citizenship, and has surrendered her Serbian passport in compliance with the *Money Memorandum* (“Guide to DoD Central Adjudication Facilities (CAF) Clarifying the Application of Foreign Preference Adjudication Guidelines,” dated September 1, 2000). The Applicant’s father and two brothers are citizens of and reside in Serbia. None of the Applicant’s immediate family have a connection with the Serbian government or with any other government. Furthermore, the Applicant is not subject to coercion vis-a-vis these foreign relatives. Mitigation is shown. Clearance is granted.

CASENO: 06-17495.h1

DATE: 02/27/2007

DATE: February 27, 2007

In Re:	)	
	)	
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SSN: -----	)	ISCR Case No. 06-17495
	)	
Applicant for Security Clearance	)	
	)	

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

**APPEARANCES**

**FOR GOVERNMENT**

Melvin A. Howry, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

## SYNOPSIS

The Applicant has renounced her Serbian citizenship, and has surrendered her Serbian passport in compliance with the *Money Memorandum* ("Guide to DoD Central Adjudication Facilities (CAF) Clarifying the Application of Foreign Preference Adjudication Guidelines," dated September 1, 2000). The Applicant's father and two brothers are citizens of and reside in Serbia. None of the Applicant's immediate family have a connection with the Serbian government or with any other government. Furthermore, the Applicant is not subject to coercion vis-a-vis these foreign relatives. Mitigation is shown. Clearance is granted.

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<sup>1</sup> The Applicant has no middle name (Transcript (TR) at page 4 line 21 to page 5 line 4).

## STATEMENT OF THE CASE

On August 18, 2006, the Defense Office of Hearings and Appeals (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 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 filed an Answer to the SOR on October 1, 2006.

The case was received by the undersigned on December 18, 2006. A notice of hearing was issued on January 16, 2007, and the case was heard on February 6, 2007. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also submitted documentary evidence. The transcript was received on February 21, 2007. The issues raised here are whether the Applicant's perceived Foreign Preference and Foreign Influence militate against the granting of a security clearance. [The Applicant admits the underlying factual basis of all of the allegations, except for subparagraphs 1.b. and 1.d., as she has surrendered her Serbian passport.]

## 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 51 years of age, and is employed by a defense contractor who seeks a security clearance 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

The Applicant was born in the Serbian area of what was called Yugoslavia in 1956 (TR at page 27 line 8 to page 28 line 12). She immigrated to the U.S., and was naturalized as a U.S. citizen in 1984 (*Id.*, and Government Exhibit (GX) 1 at page 1).

1.a., 1.b. and 1.d. The Applicant has renounced her Serbian citizenship, and has surrendered

her Serbian passport in compliance with the *Money Memorandum* (TR at page 44 line 19 to page 45 line 14, and Applicant's Exhibits (AppXs) A and D).

1.c. The Applicant has traveled to Serbia on at least four occasions since 2000 (TR at page 46 line 20 to page 48 line 21, and GX 1 at pages 8~9). Whenever she traveled to Serbia, she tendered her American passport first, and only tendered her Serbian passport when asked by Serbian immigration officials at her point of entry (TR at page 71 line 12 to page 72 line 5, and AppX D the last page).

## Guideline B - Foreign Influence

2.a. The Applicant's father and two brothers are citizens of and reside in Serbia (GX 1 at pages 4~5). Her father is a retired farmer (TR at page 29 line 24 to page 30 line 7, and at page 39 line 25 to page 40 line 10). Her older brother works in a private plastics factory, and cares for her elderly father (TR at page 31 lines 7~19, and at page 41 lines 1~15). Her younger brother is sick with a lung ailment, as a result of working in the same plastics factory (TR at page 30 line 8 to page 31 line 5, at page 32 lines 3~11, and at page 40 lines 11~25).

2.b. The Applicant also has cousins, nieces and nephews who are citizens of and residents of Serbia (GX 1 at pages 4~5). She refers to them, in part, as "far" relatives (TR at page 32 line 12 to page 35 line 3, and at page 36 line 8 to page 37 line 23).<sup>2</sup> She has little direct contact with these relatives (*Id.*).

2.c. The Applicant has contacts with a Serbian band, on an annual basis (TR at page 37 line 24 to page 39 line 22, and at page 60 line 19 to page 62 line 3). This band has no connection with the Serbian government, but rather plays at church weddings on their annual visit to America (*Id.*).

Following a May 21, 2006, referendum on the independence of Montenegro, Serbia announced that it would be the successor state to the State Union of Serbia and Montenegro. The dissolution of the State Union has been peaceful. Serbia is a parliamentary democracy with approximately 10.2 million inhabitants. While civilian authorities generally maintained effective control of the security forces, there were a few instances in which elements of the security forces acted independently of government authority. However, the government's increased efforts in addressing human rights violations have brought notable improvements. Serbia does not appear to be a high level participant in espionage vis-a-vis the U.S. (*See* GXs 3 and 4).

## 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.

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<sup>2</sup> The Appeal Board has determined that such relatives are "other relatives," and not "immediate family members." ISCR Case NO. 02-26978 (September 21, 2005) at page 7.

- 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 which 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 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 disqualifying conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who has demonstrated a Foreign Preference or who is subject to a Foreign Influence, may be prone to provide information or make decisions that are harmful to the interests of the United States. 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

The Applicant was a dual national with Serbia, and until recently maintained a Serbian passport. The first and second disqualifying conditions under Foreign Preference are therefore applicable as there was an "exercise of dual citizenship," with the "possession . . . of a foreign passport." This is countered, however, by her compliance with the last mitigating condition, when she renounced his Serbian citizenship; and by her compliance with the *Money Memorandum*, when she surrendered his Serbian passport.

The Applicant's father, and two brothers are citizens of and reside in Serbia. The first disqualifying condition is therefore applicable as "[a]n immediate family member . . . is a citizen of a foreign country." This is countered, however, by the first mitigating condition, as there is no evidence that their presence in Serbia can "be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States." In

addition, I conclude that it would be unlikely that the Applicant would even consider any such attempt at exploitation.

Furthermore, I am not limited to the mitigating conditions, delineated in the Directive, in deciding if an Applicant has demonstrated extenuation or mitigation. Here, her manager and a vice president of her employer, speak most highly of her character, credibility and trustworthiness (AppX B). 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 thus found for the Applicant.

Considering all the evidence, the Applicant has rebutted the Government's case regarding her alleged Foreign Preference and Foreign Influence. 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.

### **FORMAL FINDINGS**

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

Paragraph 1: FOR THE APPLICANT

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

Paragraph 2: FOR THE APPLICANT

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

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

### **DECISION**

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

Richard A. Cefola  
Administrative Judge