

KEYWORD: Foreign Preference; Foreign Influence

DIGEST: The Applicant has renounced both his Canadian and Yugoslav(Serbian) citizenship. His Canadian and Serbian passports have been destroyed. He intends no future visits to Serbia as he has no immediate relatives there. He will soon inherit an apartment in Serbia worth about \$30,000. Once he does, the Applicant intends to sell it. Its value pales in comparison to his \$3,000,000 net worth in the U.S. Mitigation is shown. Clearance is granted.

CASENO: 06-22305.h1

DATE: 09/21/2007

DATE: September 21, 2007

In Re:)	
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SSN: -----)	ISCR Case No. 06-22305
)	
Applicant for Security Clearance)	
)	

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

APPEARANCES

FOR GOVERNMENT

Jeff A. Nagel, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant has renounced both his Canadian and Yugoslav(Serbian) citizenship. His

Canadian and Serbian passports have been destroyed. He intends no future visits to Serbia as he has no immediate relatives there. He will soon inherit an apartment in Serbia worth about \$30,000. Once he does, the Applicant intends to sell it. Its value pales in comparison to his \$3,000,000 net worth in the U.S. Mitigation is shown. Clearance is granted.

STATEMENT OF THE CASE

On February 26, 2007, 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 March 26, 2007.

The case was originally assigned to another Judge, but was reassigned to the undersigned on June 18, 2007. A notice of hearing was issued that same day, and the case was heard on June 29, 2007. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also submitted documentary evidence. The transcript (TR) was received on July 12, 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 most of the allegations, except for subparagraph 1.c. in that he no longer possesses a Serbian passport; subparagraph 1.f. in that he also used his U.S. passport on his visits to Serbia; and subparagraph 2.a. in that his father-in-law is now deceased.]

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 58 years of age, has a Law Degree from an American University, 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 former Yugoslavia in 1948, emigrated to the U.S. by way of Canada, and became a naturalized American in 1991 (Government Exhibit (GX) 2).

1.a.~1.c. The Applicant has renounced both his Canadian and Serbian citizenship (Applicant's Exhibits (AppX) D). His Canadian and Serbian passports have been destroyed by his Security Manager (TR at page 21 line 7 to page 22 line 1, AppX A at pages 2 and 3, and AppX D).

1.d.~1.f. The Applicant traveled to Serbia six times from 1998~2004 to visit his mother and his in-laws (TR at page 22 lines 2~25, and at page 28 lines 2~23). When **not** accompanied by his children, he used both his American and Serbian passports (TR at page 22 lines 2~25). When accompanied by his "twin boys," he used his Canadian passport; as did his sons, to avoid his sons

possible conscription into the Serbian armed forces (*Id*). As the Applicant's mother and in-laws have all died, he plans no further trips to Serbia (TR at page 28 lines 2~23).

Guideline B - Foreign Influence

2.a. The Applicant's father-in-law is now deceased (TR at page 23 lines 1~6, and AppX A at page 5).

2.b. He will soon inherit an apartment in Serbia worth about \$30,000 (TR at page 23 line 11 to page 24 lines 3~25). Once he does, the Applicant intends to sell it (*Id*). Its value pales in comparison to his \$3,000,000 net worth in the U.S. (TR at page 24 line 22 to page 26 line 7, at page 29 line 15 to page 30 line 4, and AppX C).

As the Applicant stands to inherit property in Serbia, I must also consider that country. The newly-formed Republic of Serbia (2006) is a parliamentary democracy with about 7.5 million inhabitants. Serbia's human rights record varies. The government generally respects the human rights of its citizens and continues efforts to address human rights violations; however, numerous problems persist. Anti-American sentiment tends to be highest surrounding the anniversary dates of the 1999 NATO bombing campaign.

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 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 demonstrated a Foreign Preference or who is subject to 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, until recently, maintained Canadian and Serbian passports. 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 destroyed . . .*" Furthermore, the Applicant has not only "expressed a willingness to renounce," but has renounced his Canadian and Serbian citizenship.

The Applicant has no immediate family members living in Serbia, and his \$30,000 inheritance interest, which is in probate, is only about 1% of his net worth in the U.S. This property interest is not substantial. I find no disqualifying conditions applicable under Foreign Influence.

Furthermore, I am not limited to the mitigating conditions, delineated in the Directive, in deciding if an Applicant has demonstrated extenuation or mitigation. A colleague speaks most highly of the Applicants dedication, trustworthiness and reliability (AppX A at page 4). 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 his perceived 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, he has met his 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: Foreign Preference FOR THE APPLICANT

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

Paragraph 2: Foreign Influence FOR THE APPLICANT

- a. For the Applicant.
- b. 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 national interest to grant or continue a security clearance for the Applicant.

Richard A. Cefola
Administrative Judge