



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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-----) ISCR Case No. 13-00388
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)
Applicant for Security Clearance)

Appearances

For Government: Eric H. Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

November 19, 2013

Decision

MOGUL, Martin H., Administrative Judge:

On May 1, 2013, the Department of Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines C and B for Applicant. (Item 1.) The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant replied to the SOR (RSOR) in writing on May 13, and June 3, 2013, and he requested that his case be decided on the written record in lieu of a hearing. (Item 2.) On July 23, 2013, Department Counsel issued the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant. In the FORM, Department Counsel offered nine documentary exhibits. (Items 1-9.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on September 12, 2013. Applicant submitted no additional evidence. The case was assigned to this Administrative Judge

on October 21, 2013. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Request for Administrative Notice

Department Counsel requested in the FORM that I take administrative notice of certain facts relating to the country of Serbia that were reviewed in the FORM. The documents upon which the facts were based have been referred to in the FORM as Items 6 through 9. The brief summary of the facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, the admitted documents, and the FORM, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 48 years old. He was born in Serbia, where he graduated from high school in 1983. From October 1983 to September 1984, he served in the Yugoslav Army. (Item 14.)

Applicant lived in Serbia until September 2003, when he emigrated to the United States. He became a naturalized United States citizen in April 2011. He has not renounced his Serbian citizenship, and he is currently a dual citizen of Serbia and the United States. (Item 3.) Applicant served in the Yugoslav Army under compulsive service from October 1983 to September 1984. (Item 14.) Applicant is employed by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

Paragraph 1 (Guideline C - Foreign Preference)

It is alleged in the SOR that Applicant acted in such a way as to indicate a preference for a foreign country over the United States by the following:

1.a. Applicant maintains his Serbian citizenship to protect his property ownership in a house and agricultural land in Serbia worth approximately 150,000 to 200,000 U.S. Dollars (USD.) Applicant estimates his current United States assets at \$70,000. (Item 4.)

1.b. Applicant retains a Serbian passport that he received in September 2009, and that will not expire until September 2019. Applicant received his Serbian passport before he became a United States citizen. While Applicant did technically surrender his Serbian passport to his Facilities Security Officer (Item 5), he intends to use his Serbian passport as proof of Serbian citizenship to sell his property in Serbia. Applicant stated that he believes if he relinquishes his Serbian passport prior to selling his property, the Serbian Government can take his property away from him. (Item 4.)

Paragraph 2 (Guideline B - Foreign Influence)

The SOR lists eight allegations, (2.a. through 2.h.) regarding Foreign Influence, under Adjudicative Guideline B, which will be reviewed in the same order as they were listed on the SOR. Applicant has admitted all of the allegations listed in his RSOR. (Item 2.):

2.a. It is alleged in the SOR that Applicant's wife is a dual citizen of Serbia and United States. In his Security Clearance Application (SCA) Applicant confirmed that since July 1988 Applicant has been married to his wife, who was born in Serbia and is now a United States citizen. (Item 3.)

2.b. It is alleged in the SOR that Applicant's son is a citizen of Serbia and resident of United States. Applicant confirmed that his 23 year old son is a Serbian citizen, who resides in the United States. (Item 3.) In his RSOR, Applicant alleged that his son is now a dual citizen of the United States as well as Serbia, but no evidence was introduced to establish his son's United States citizenship.

2.c. It is alleged in the SOR, and Applicant confirmed in his SCA, that his father is a dual citizen of Serbia and United States, and he resides in United States. (Item 3.)

2.d. It is alleged in the SOR, and Applicant confirmed in his SCA, that his mother is a citizen of Serbia and she resides in United States. (Item 3.) In his RSOR, Applicant alleged that his mother became a United States citizen on March 25, 2013, and is now a dual citizen of the United States as well as Serbia. However, no evidence was introduced to establish his mother's United States citizenship.

2.e. It is alleged in the SOR that Applicant's brother, sister-in-law, and niece are citizens of Serbia. In his SCA, Applicant's noted that his brother is a dual citizen of Serbia and the United States, now living in the United States. (Item 3.) He also indicated on his RSOR that his sister-in-law and niece are dual citizens of Serbia and the United States. Again, no evidence was introduced to establish the United States citizenship of his sister-in-law and niece.

2.f. It is alleged in the SOR, and Applicant admitted in his RSOR, that he has an uncle and aunt, who are citizens and residents of Serbia. This uncle farms the land in Serbia that is owned by Applicant. (Item 2.)

2.g. It is alleged in the SOR, and Applicant admitted in his RSOR, that he has a friend, who is a citizen and resident of Serbia. (Item 2.) Applicant communicates with him by telephone on a monthly basis. (Item 4.) No information was provided as to Applicant's friend's occupation or any association with the Serbian Government.

2.h. It is alleged in the SOR, and Applicant admitted in his RSOR, that he owns a house and separate land in Serbia, valued at approximately 200,000 USD, referred to in 1.a. and 1.b., above. (Item 2.) Applicant indicated that he would like to sell his Serbian property, but he has not done so because of Serbia's poor economy. (Item 4.)

Current Status of Serbia

In 1999, the United States broke off relations with the Federal Republic of Yugoslavia, the predecessor state that included Serbia, when it launched its ethnic cleansing and deportation campaign against noncombatant citizens. In October 2000, a coalition of democratic parties defeated Serbian strongman Slobodan Milosevic in presidential elections, overturning a regime that had plunged the country into bloody conflicts in the region, economic decline, and international isolation in the 1990's. Although the United States has reestablished formal relations with Serbia, U.S.-Serbian relations, positive in many respects, have been nonetheless negatively affected by the leading role played by the United States in promoting Kosovo's independence from Serbia.

After the U.S. recognized Kosovo independence in February 2008, rioters attacked the U.S. embassy in Belgrade and set it on fire. Violent demonstrations have occurred as recently as August 2011. People who are citizens of both United States and Serbia may be affected by certain laws that put special responsibilities on Serbian citizens. (Items 6 through 10.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The

Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline C, Foreign Preference

Under AG ¶ 9 the security concern involving foreign preference arises, “[W]hen 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.”

Applicant’s application, receipt, and retention of a passport from Serbia and dual citizenship with Serbia raises foreign preference concerns under Disqualifying Condition AG ¶ 10 (a) as the “exercise of any right, privilege or obligation of foreign citizenship.” I find that subparagraphs (1), (2), and (5) under AG ¶ 10 (a) apply as Applicant has indicated that he will not invalidate his foreign passport because he wants to use it to prove his Serbian citizenship to protect his real property interest in Serbia. Applicant also served in the Serbian military.

Since Applicant has not renounced his Serbian citizenship to the authorities, and he continues to maintain a Serbian passport, I do not find that any mitigating condition applies to this case under Guideline C. After considering all of the evidence of record under Guideline C, I conclude that the disqualifying evidence is strongly controlling. I, therefore, resolve Guideline C against Applicant.

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern regarding 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 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.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. The applicable conditions in this case include: AG ¶ 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.” This applies because all of Applicant’s family members are citizens of Serbia, a country of heightened risk, and several of his family members and a friend reside in Serbia.

I find AG ¶ 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 . . . and the individual’s desire to help a foreign person, group, or country by providing that information” is also applicable in this case.

I also find that because of Applicant’s Serbian house and property, valued at approximately \$200,000, ¶ 7(e) “a substantial business, financial or property interest in a foreign country . . . could subject the individual to heightened risk of foreign influence or exploitation,” is applicable.

AG ¶ 8 provides conditions that could mitigate security concerns. Because of Applicant’s continuing relationship with his family members, who are citizens and residents of Serbia, and because of Applicant’s valuable Serbian property, of which he clearly has a significant interest, I cannot find that AG ¶ 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 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,” or ¶ 8(f) “the value or 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 to effectively influence, manipulate, or pressure the individual” is applicable to this Applicant. Finally, I do not find that any other mitigating factor is applicable to this case. Therefore, I resolve Guideline B against Applicant.

Whole-Person Concept

Under the whole-person concept, the Administrative Judge must evaluate an Applicant’s eligibility for a security clearance by considering the totality of the Applicant’s conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2 (c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Based on the reasons cited above as to why the disqualifying conditions apply under Guidelines C and B, and why no mitigating conditions apply, I find that the record evidence leaves me with significant questions and doubts as to Applicant's eligibility and suitability for a security clearance under the whole-person concept. For all these reasons, I conclude Applicant has not mitigated the security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline C:	AGAINST APPLICANT
Subparagraphs 1.a. and 1.b.:	Against Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraphs 2.a. through 2.h.:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Martin H. Mogul
Administrative Judge