



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
) ADP Case No. 13-00934
)
Applicant for Public Trust Position)

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: *Pro se*

06/04/2014

Decision

RIVERA, Juan J., Administrative Judge:

Applicant, a naturalized U.S. citizen since 1997, continues to exercise Greek citizenship and possesses a valid Greek passport. His scant evidence is insufficient to show he does not have divided loyalties, and that he is not subject to possible foreign manipulation. Additionally, he has a large unresolved debt and failed to establish financial responsibility. Applicant’s financial situation, foreign preference, and foreign influence raise trustworthiness concerns. Eligibility to hold a position of trust is denied.

Statement of the Case

Applicant submitted an electronic questionnaire for a position of trust (Application) on April 25, 2013. On October 9, 2013, the Department of Defense (DoD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) listing trustworthiness concerns under Guideline C (foreign preference), Guideline B (foreign influence), and Guideline F (financial considerations).¹ Applicant

¹ The DoD acted under Executive Order 12968, *Access to Classified Information* (August 2, 1995), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and DoD Regulation 5200.2-R, *Personnel Security*

answered the SOR on November 25, 2013 (Answer), and elected to have his case decided on the written record in lieu of a hearing.

A copy of the Government's file of relevant material (FORM) was provided to him by transmittal letter dated February 19, 2014. Applicant received the FORM on February 27, 2014. He was allowed 30 days to submit any objections to the FORM and to provide material in extenuation and mitigation. Applicant's response was due on March 29, 2014. He did not respond. The case was assigned to me on May 12, 2014.

Findings of Fact

In his Answer, Applicant admitted the factual allegations in SOR ¶¶ 1.a, 2.a, and 3.a through 3.d, 3.f, 3.g, 3.j, and 3.l through 3.o. Concerning the allegations in SOR ¶¶ 3.e, 3.h, 3.i, and 3.k, Applicant admitted it is possible he owes these debts, but indicated that he did not recognize these charges and intended to investigate them. I considered these four SOR allegations denied. His admissions are incorporated as findings of fact. After a thorough review of the record evidence, including his Application, his answers to the SOR, his June 2013 interview, and his credit reports, I make the following additional findings of fact:

Applicant is a 45-year-old employee of a government contractor. He was born in Greece, and entered the United States as a foreign exchange student in 1985. He graduated from a U.S. high school in May 1986; received a bachelor's degree in December 1989, and later pursued a master's degree, but did not complete it. He completed a computer trade school certificate in 1999. Applicant married in 1992 and divorced in May 2007. He has a 17-year-old daughter of this relationship. He lived with his fiancé starting in February 2011. In 2012, he married his fiancé in Greece in an unofficial religious ceremony for his parent's benefit. He intends to officially marry his wife in the United States in the near future.

Applicant became a naturalized U.S. citizen in March 1997 for his then wife's benefit. He wanted to stay longer in the United States without having to renew his residency card. He was issued his current U.S. passport in February 2005, which will not expire until February 2015.

Applicant's parents and siblings (a brother and sister) are citizens and residents of Greece. Applicant's father is 86 years old, and his mother is 75, both are retired. His brother is 47 and unemployed. His sister is 49 years old and works as a high school music teacher. He has monthly telephone contact with his relatives in Greece and has frequently traveled to Greece to visit with his family. He travelled to Greece in 2003, 2005, 2006, 2007, and 2012. On these occasions, he stayed in Greece for periods of 15 to 30 days. Additionally, Applicant moved to Greece and lived with his parents from

Program, dated January 1987, as amended (Regulation); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented by the DoD on September 1, 2006.

March 2009 through February 2011. He also travelled to Denmark with his fiancé for tourism in 2010.

Applicant's work history indicates that he was employed from January 2000 to April 2004; unemployed from April 2004 to August 2004; employed from October 2004 to March 2009; unemployed from March 2009 to July 2009; and unemployed from December 2010 to June 2011. He has been working for his current employer, a government contractor, since June 2011. This is his first application for a position of trust.

When Applicant was laid off from his job in March 2009, he travelled to Greece to be with his parents because his father was having health problems. While in Greece, he lived in an apartment rented by his parents for him, and he worked for a Greek company from July 2009 until June 2011. Applicant served in the Greek army from March 2009 until September 2009. He stated that as a Greek citizen, he was legally required to comply with his mandatory military service obligation. Applicant did not register for the U.S. Selective Service System in 1987, because he was not a U.S. citizen. He did not register after he became a U.S. citizen in 1997. He has never served in the U.S. military.

Applicant has possessed a Greek passport since he entered the United States in 1985. He most recently renewed his Greek passport in March 2012, and it will not expire until March 2017. He renewed his Greek passport for his travel convenience, and because he wants to be treated as a Greek citizen while living in Greece. He wants to be able to stay in Greece as long as he pleases, and to be able to move freely in that country. He believes Americans are treated differently by the Greek government and he does not want to be treated adversely, or to have to answer questions about why he renounced his Greek citizenship. He stated that he was not willing to renounce his Greek citizenship, but indicated his willingness to surrender his Greek passport if necessary for him to receive a favorable trustworthiness determination. Applicant presented no evidence to show he surrendered his Greek passport.

In his April 2013 Application, Applicant disclosed he failed to file his Federal and state income tax returns and to pay taxes for tax years 2008 through 2011, because he was living in Greece. A tax lien was filed against him in 2011, which was released in 2012. Applicant also disclosed that he failed to pay his child support obligation while he was in Greece. He started to repay his past-due child support in 2011 after he started his current job. Additionally, Applicant disclosed that his home was foreclosed when he lost his job in 2009. In his 2013 Application, Applicant stated that he was in the process of interviewing debt-consolidation companies to select one. He submitted no documentary evidence to show he retained a debt-consolidation company.

Applicant's background investigation addresses his financial problems and uncovered the 15 delinquent obligations alleged in the SOR. All of the SOR allegations are established by Applicant's admissions and the included credit reports. Applicant

presented little or no documentary evidence of any payments made, contacts with creditors, or of any efforts to otherwise resolve his delinquent obligations.

Applicant explained that his financial problems were the result of a contentious divorce, his child custody legal battle fees, and being laid off from his job in 2009. He was paying for his legal fees using his credit and when he was laid off he was not able to make the minimum payments on the credit cards. He explained that 25 percent of his current income goes to pay for his delinquent child support obligation. He intends to pay his delinquent child support obligation first, and then address his other delinquent debts. In his June 2013 statement to a government investigator, Applicant averred that he lives within his means and that he foresees no future financial problems. Applicant presented no documentary evidence of his current financial situation including his current monthly income, expenses, and debt payments. He did not present evidence to show he has participated in financial counseling.

Policies

Positions designated as ADP I and ADP II are classified as “sensitive positions.” Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3. “The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person’s loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security.” Regulation ¶ C6.1.1.1. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made. See Regulation ¶ C8.2.1.

The AG list disqualifying and mitigating conditions for evaluating a person’s suitability for a public trust position. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing suitability for a public trust position. Each decision must reflect a fair, impartial, and common-sense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable must be considered.

A public trust position decision resolves whether it is clearly consistent with the national security to grant or continue an applicant’s access to sensitive information. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her access to sensitive information.

Persons with access to sensitive and classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment,

reliability, and trustworthiness of those who must protect national security as their own. The “clearly consistent with the national security” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[Access to sensitive information] determinations should err, if they must, on the side of denials.” AG ¶ 2(b). Eligibility for a public trust position decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing access to sensitive information.

Analysis

Guideline C, Foreign Preference

AG ¶ 9 explains the trustworthiness concern about foreign preference stating:

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 ¶ 10 indicates four conditions that could raise a trustworthiness concern and may be disqualifying in this case:

(a) 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;
- (2) military service or a willingness to bear arms for a foreign country;
- (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;
- (4) residence in a foreign country to meet citizenship requirements;
- (5) using foreign citizenship to protect financial or business interests in another country;
- (6) seeking or holding political office in a foreign country;
- (7) voting in a foreign election;

(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen;

(c) performing or attempting to perform duties, or otherwise acting, so as to serve the interests of a foreign person, group, organization, or government in conflict with the national security interest; and

(d) any statement or action that shows allegiance to a country other than the United States: for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship.

Applicant immigrated to the United States in 1985, and became a naturalized U.S. citizen in 1997. After becoming a U.S. citizen, Applicant continued to renew and currently possesses a valid Greek passport that will not expire until 2017. Applicant maintains his Greek citizenship for his convenience and to be entitled to the benefits and privileges reserved for Greek citizens.

When Applicant was laid off from his U.S. job in March 2009 he travelled to Greece to be with his parents because his father was having health problems. He resided in Greece until February 2011. While in Greece, he lived in an apartment rented for him by his parents, and worked for a Greek company from July 2009 until June 2011. Applicant served in the Greek army from March 2009 until September 2009, because as a Greek citizen he was legally required to comply with his mandatory military service obligation. Applicant never registered for the U.S. Selective Service System, and never served in the U.S. military.

Foreign preference disqualifying condition AG ¶ 10(a) and 10(b) are supported by the evidence. If these conditions are not mitigated they would disqualify Applicant from eligibility to hold a public trust position.

AG ¶ 11 provides six conditions that could mitigate the security concerns for foreign preference:

(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

(b) the individual has expressed a willingness to renounce dual citizenship;

(c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;

(d) use of a foreign passport is approved by the cognizant security authority;

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated; and

(f) the vote in a foreign election was encouraged by the United States Government.

None of the foreign preference mitigating conditions is applicable. Applicant exercised his Greek citizenship after becoming a naturalized U.S. citizen in 1997. He renewed his passport in 2012, served in the Greek army in 2009, and has received privileges and benefits reserved for Greek citizens during his visits to Greece. During a 2013 interview, Applicant was made aware of the Government's foreign preference concerns raised by his possession of a valid foreign passport. Applicant presented no evidence to show that he surrendered his Greek passport. Nor did he express his willingness to renounce his Greek citizenship.

Guideline B, Foreign Influence

The concern under AG ¶ 6 is that:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, he or she 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 sets out conditions that could raise a security concern and may be disqualifying in this case, including:

(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

(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 or technology and the individual's desire to help a foreign person, group, or country by providing that information.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in

a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.² Applicant has contacts and a close relationship of affection and obligation with his parents and siblings all of whom are residents and citizens of Greece. These contacts create a risk of foreign pressure or attempted exploitation because there is always the possibility that Greek agents, criminals, or terrorists operating in Greece may exploit the opportunity to obtain information about the United States.

The Government produced substantial evidence raising these two potentially disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove a mitigating condition. The burden of disproving a mitigating condition never shifts to the Government.

Three foreign influence mitigating conditions under AG ¶ 8 are potentially applicable to these disqualifying conditions:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of 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.;

(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; and

(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.

There is no evidence to show Greece has a negative human rights record; that its government has ever conducted economic or industrial espionage against the United States; or that violent insurgencies or terrorists are allowed to operate freely within the Greek borders. Thus, it is less likely that Applicant's family members could be vulnerable to coercion. Notwithstanding, Applicant has the burden of persuasion to demonstrate that his contacts in Greece do not pose a security risk, and he is not in a position to be forced to choose between loyalty to the United States and his connections to family members.

² See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

Although Applicant provided some information concerning his parents and siblings, the information provided is insufficient for me to make a determination that it is unlikely Applicant will be placed in a position of having to choose between the interests of a foreign individual and the interests of the United States. There is no information concerning his parents' occupation before their retirement or whether they held a sensitive position within the Greek government.

In deciding whether Applicant's family members are in a position to be exploited, I considered Greece's form of government. The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an Applicant's family members are vulnerable to government coercion or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government or the country is known to conduct intelligence collection operations against the United States. The relationship of Greece with the United States does not indicate a heightened risk of possible foreign exploitation.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. See ISCR Case No. 00-0317, 2002 DOHA LEXIS 83 at **15-16 (App. Bd. Mar. 29, 2002).

Applicant's relationship with the United States must be weighed against the potential conflict of interest created by his relationship with his family members living in Greece. Applicant left Greece in 1985, at age 18. He became a naturalized U.S. citizen in 1997, for his then wife's convenience. He has one daughter who is a U.S. citizen by birth. However, he moved to Greece from 2009 to 2011, and provided no financial support to his daughter.

Applicant's scant evidence is insufficient to show that he has established strong connections to the United States. It is not clear whether he has any financial and property interests in the United States, except for his employment. The record evidence fails to support a determination that Applicant's ties and sense of obligation to the United States are sufficiently strong that he could be expected to resolve any conflict of interest in favor of the United States, even under circumstances detrimental to his parents and siblings in Greece.

Guideline F, Financial Considerations

Under Guideline F, the trustworthiness concern is that failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. (AG ¶ 18)

In 2007, Applicant went through a contentious divorce and child custody litigation. He used his credit to pay for his legal expenses. In 2009, he was laid off from his job and was unable to make minimum payments on his credit card debts. Applicant left the United States and went to Greece to live with his parents from March 2009 until February 2011. He worked for a Greek company from June 2009 to June 2011.

Applicant failed to timely file Federal and state income tax returns, and failed to pay his taxes from 2008 to 2011. He also failed to pay his child support obligation for at least three years, and abandoned his outstanding debts and financial obligations. He started making payments on his past-due child support obligation and delinquent taxes after he was hired by his current employer in 2011. Two of the financial considerations disqualifying conditions apply: AG ¶ 19(a): inability or unwillingness to satisfy debts, and AG ¶ 19(c): a history of not meeting financial obligations.

AG ¶ 20 lists five conditions that could mitigate the financial considerations trustworthiness concerns:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Considering the evidence as a whole, I find that none of the financial considerations mitigating conditions apply. AG ¶ 20(a) does not apply because Applicant's large debt is current and unresolved. Although Applicant's financial problems are due partially to circumstances beyond his control, he failed to establish that he has taken responsible action to address his debts (contacted creditors and established payment plans). I find that his delinquent debts continue to cast doubt on his current reliability, trustworthiness, and judgment. AG ¶ 20(b) partially applies, but does not mitigate the financial considerations concerns.

Applicant failed to provide sufficient documentary evidence to show financial responsibility with respect to the debts alleged in the SOR. He knew or should have known of his legal obligation to timely file his Federal and state income tax returns and to pay his taxes. Additionally, he was aware of his responsibility to provide financial support for his daughter. He also was aware of his legal obligation to pay his debts.

Applicant's evidence shows that he paid his back taxes and started paying his past-due child support obligation after he was hired for his current job. He failed to present any evidence of any other contacts with creditors. Applicant claimed that he intends to pay his debts and resolve his financial problems sometime in the future. On balance, I find that Applicant's scant favorable evidence fails to show financial responsibility in the handling of his financial obligations.

AG ¶ 20(c) does not apply. There is no evidence to show Applicant participated in financial counseling. Additionally, there is no evidence about Applicant's current financial situation, including his income, living expenses, and whether he has incurred additional debts. There are no clear indications that his financial problems are being resolved or under control. The remaining mitigating conditions are not applicable to the facts of this case (AG ¶¶ 20(d), (e), and (f)).

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case and under the whole-person concept. AG ¶ 2(c).

Applicant has worked for a government contractor since 2011, and this is his first trustworthiness application. He became a naturalized U.S. citizen in 1997, but continues to exercise his Greek citizenship for personal convenience and possesses a valid Greek passport. His scant evidence is insufficient to show he does not have divided loyalties, and that he is not subject to possible foreign manipulation.

Additionally, he has unresolved financial problems and failed to establish financial responsibility in the handling of his debts. Applicant's financial problems, foreign preference, and foreign influence raise trustworthiness 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
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Paragraph 3, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a – 1.o:	Against Applicant

Conclusion

In light of all the circumstances in this case, it is not clearly consistent with the national security to grant eligibility for a position of trust to Applicant. Eligibility for a position of trust is denied.

JUAN J. RIVERA
Administrative Judge