

DATE: June 24, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-10111

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Jennifer Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a citizen of three countries with no intent to renounce her foreign citizenships. Her foreign contacts reside in and are citizens of Bulgaria and/or Canada, and who have regular contact with the Applicant. These foreign contacts are of a nature that could create the potential for influence that could result in the compromise of classified information. Clearance is denied.

STATEMENT OF THE CASE

On September 25, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), 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.

The Applicant responded to the SOR in writing on February 11, 2003, and requested a hearing before a DOHA Administrative Judge. This case was transferred to the undersigned Administrative Judge on March 31, 2003. A notice of hearing was issued on April 9, 2003. The hearing was held on May 7, 2003, at which the Government presented four exhibits. The Applicant presented three exhibits. The Applicant called two witnesses and testified on her own behalf. The Applicant also submitted one Post-Hearing Exhibit. The official transcript was received on May 23, 2003.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents in the record and the testimony. The Applicant is 46 years of age. She seeks a security clearance in connection with her employment in the defense industry.

Paragraph 1 (Guideline C - Foreign Preference). The Government alleges in this paragraph that the Applicant is ineligible for clearance because she has acted in such a way as to show a preference for another country over the United States.

The Applicant was born in Bulgaria in 1956. She married a Bulgarian in 1976 and her daughter was born in 1978. In April 1985, she left Bulgaria to join her husband, who was at that time, an exchange student at a University in the United States. In 1986, he no longer had permission from Bulgaria to stay in the United States, and had to return to Bulgaria. During this period, the Applicant's daughter lived in Bulgaria with her grandparents. The Applicant did not return to Bulgaria with her husband. Instead, she stayed in the United States. Her immigration status at that point, was political asylum. She later obtained a green card. In 1988, the Applicant's daughter was released from Bulgaria and issued a visa that allowed her to come to the United States to live with the Applicant. In 1989, the Applicant's husband, who had been trying to come to the United States moved to Canada.

The Applicant traveled back and forth between the United States and Canada to spend time with her husband and daughter for several years. For about five years she and her husband tried to reunite their family in the United States, which was their country of choice, but were unsuccessful. In 1990, the Applicant and her daughter moved to Canada. They applied for family immigrant status, which entitled them to use the Canadian national health care system. In 1991, the Applicant underwent heart surgery in Canada, that was paid for by the Canadian health care system. Due to the nature of the Applicant's line of study, she could not find satisfactory employment in Canada, and wanted to return to the United States. In February 1993, the Applicant became a United States citizen. In 1995, she became a Canadian citizen. She states that she became a Canadian citizen because her husband and daughter were Canadian citizens and she wanted to become a family again. The Applicant returned to Bulgaria in 1994, 1997 and 1999 for two to three weeks each time to visit her family members.

The Applicant is a citizen of three countries: Bulgaria, Canada, and the United States. She also possesses a passport from the same three countries. She indicates that her foreign passports from Bulgaria and Canada have both expired, and she does not use them anymore. She last used her Canadian passport to travel to South Africa in 1997. She states, however, that she retains all documents that she has ever had. She states that she learned of the provisions of the oney Memorandum when she received the Statement of Reasons. The record was left open for five additional days to allow the Applicant an opportunity to submit additional evidence. She submitted a letter dated May 13, 2003. At no time did she indicate that she would renounce her foreign citizenships. (*See, Applicant's Post-Hearing Exhibit*).

The Applicant has a Canadian retirement account valued at approximately \$17,793.39, at the time of the hearing. (*See, Applicant's Exhibit B*). She states that she has not closed this account in order to avoid taxes and penalties. She states that she does not plan on retiring in Canada. The Applicant has assets in the United States amounting to approximately \$70,000.00. She does not have a mortgage yet.

Paragraph 2 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because she has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant's mother, her sister, and an aunt are citizens of Bulgaria. The Applicant's sister and aunt currently reside in Bulgaria. The Applicant's mother, who currently has a green card, travels back and forth spending six months out of the year with the Applicant and the other six months living with the Applicant's sister in Bulgaria. (*See, Applicant's Exhibit A*).

The Applicant's husband is also a citizen of Bulgaria, Canada and the United States. The Applicant's mother-in-law is a citizen of Bulgaria and resides with the Applicant. The Applicant's daughter is a citizen of Bulgaria and Canada. She has a green card which has allowed her to move to the United States. (*See, Applicant's Exhibit A*).

The Applicant is very close to her family in Bulgaria. She telephones her mother about twice a month when she is living in Bulgaria. The Applicant also sends about \$400.00 per year to Bulgaria to help support her mother.

Testimony from the Applicant's supervisor and a coworker indicate that they have had no problems with her work performance.

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Foreign Preference

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.

Condition that could raise a security concern:

6. Using foreign citizenship to protect financial or business interests in another country.

Condition that could mitigate security concerns:

None.

Foreign Influence

A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are: (1) not citizens of the United States or (2) may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Conditions that could raise a security concern:

1. An immediate family member, or person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country;
2. Sharing living quarters with a persons or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists;
8. A substantial financial interest in a country, or in any foreign owned or operated business that could make the individual vulnerable to foreign influence.

Conditions that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct

- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have 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. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

The Government must make out a case under Guideline C (foreign preference) and Guideline B (foreign influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between 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 Applicant is presently qualified for a security clearance.

An individual who demonstrates a foreign preference and has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The mere possession of a foreign passport raises legitimate questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. 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

Having considered the evidence of record in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR, and that Applicant's foreign interests and contacts have a direct and negative impact on her suitability for access to classified information.

The Applicant is a citizen of three countries, Bulgaria, Canada and the United States. In 1993, she became a United States citizen. Two years later, she became a Canadian citizen. Although her foreign passports have expired, (both Bulgarian and Canadian) she has not renounced her foreign citizenship in either of these countries. Furthermore, she has not stated that she is willing to renounce her foreign citizenships. She last used her Canadian passport in 1997 to travel to South Africa, after she had become a naturalized United States citizen. She maintains her retirement account in Canada and has chosen not to close it as it would adversely effect her financial interests in Canada. Under the circumstances, the Applicant has not demonstrated an unequivocal preference for the United States. Accordingly, I find

against the Applicant under Guideline C.

With respect to Guideline B, the Applicant has significant foreign contacts, as well as emotional and family ties, in Bulgaria and Canada. The Applicant's mother, sister and aunt, are citizens of Bulgaria. The Applicant's husband and daughter are also citizens of Bulgaria and Canada. The Applicant maintains close contact with her family in Bulgaria. There remains the possibility of pressure being placed on them, and through them, on the Applicant. It is the Applicant's burden to show that these ties are not of a nature that could create the potential for influence that could result in the compromise of classified information. She has not done so. Accordingly, I cannot say that she would not be vulnerable to foreign influence. The risk is considerable, and is of present security significance. Accordingly, the Applicant's request for a security clearance must be denied under Guideline B.

Considering all the evidence, the Applicant has not met the mitigating conditions of Guidelines B and C of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, she has not met her ultimate burden of persuasion under Guidelines B and C.

FORMAL FINDINGS

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.

Subparas. 1.a.: Against the Applicant 1.b.: Against the Applicant 1.c.: Against the Applicant

1.d.: Against the Applicant

1.e.: Against the Applicant

Paragraph 2: Against the Applicant.

Subparas. 2.a.: Against the Applicant

2.b: Against the Applicant

2.c: Against the Applicant

2.d: Against the Applicant

DECISION

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson

Administrative Judge